

**PLANNED UNIT DEVELOPMENT  
AGREEMENT  
FOR MINTURN NORTH PLANNED UNIT DEVELOPMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the TOWN OF MINTURN, COLORADO, a home rule municipality whose address is 302 Pine Street, P.O. Box 309, Minturn, CO 81645 (the "Town") and MINTURN CROSSING, LLC, a Colorado limited liability corporation whose address is 225 Main Street, Suite C-101, Edwards, CO 81632, (the "Developer") (individually, a "Party"; collectively, the "Parties");

W I T N E S S E T H:

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

WHEREAS, on June 28, 2023 after a duly noticed public hearing and pursuant to Minturn Municipal Code §§ 17-5-40 and 16-21-200, the Town of Minturn Planning Commission recommended to rezone the Property as Game Creek Character Area Minturn North PUD Zone and to approve a Preliminary Development Plan for the Minturn North Planned Unit Development; and

WHEREAS, on July 5, 2023 and July 19, 2023, the Town Council of the Town of Minturn, after holding all necessary public hearings, approved Ordinance No. 9, Series 2023 rezoning the Property as Game Creek Character Area Minturn North PUD Zone; and

WHEREAS, on July 5, 2023, the Town Council of the Town of Minturn, after holding all necessary public hearings, approved Resolution No. 19, Series 2023 approving a Preliminary Development Plan for the Minturn North Planned Unit Development; and

WHEREAS, on October 11, 2023, after a duly noticed public hearing and pursuant to Minturn Municipal Code §§ 17-6-20 and 16-21-200, the Town of Minturn Planning Commission recommended to approve a Final Subdivision Plat for the Minturn North Planned Unit Development; and

WHEREAS, on November 1, 2023 and on November 15, 2023, after duly noticed public hearing(s) and pursuant to Minturn Municipal Code §§ 17-6-30 and 16-21-200, the Town Council by appropriate ordinance approved a Final Development Plan and a final subdivision plat for Minturn North PUD creating thirty-nine (39) lots, which Ordinance No. \_\_, Series of 2023 is recorded as Reception Nos. \_\_\_\_\_ with the Eagle County Clerk and Recorder ("Final Plat"); and

WHEREAS, on November 15, 2023, after duly noticed public meeting and pursuant to Minturn Municipal Code § 16-21-220, the Town Council approved Resolution No. \_\_, Series 2023 approving this Planned Unit Development Agreement for the Minturn North PUD; and

WHEREAS, the Town and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town in connection with its approval, execution, and acceptance for recordation of the Final Development Plan, and that such matters are necessary to protect, promote, and enhance the public welfare; and

WHEREAS, the Town's approval of the PUD Final Development Plan for the Property cited above is contingent upon the express condition that all obligations and duties created by this PUD Agreement are faithfully performed by the Developer.

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

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

2. Purposes. The purpose of this PUD Agreement is to set forth the terms and conditions to be met by the Developer; to set forth the fees to be paid by the Developer at the time of recordation of the Final Development plan (or such other time as described herein); and to constitute the Planned Unit Development Agreement (referred to herein as "PUD Agreement") provided for in Sections 16-15-220, 17-7-10, and 17-7-20 of the Minturn Municipal Code. All terms and conditions contained herein are in addition to all requirements of the Minturn Municipal Code, the Town of Minturn Zoning and Subdivision Regulations (Titles 16 and 17 of the Minturn Municipal Code), and state and federal statutes, and are not intended to supersede any requirements contained therein, except where specifically provided in this PUD Agreement. The Developer agrees to bear all costs and responsibility for completion of the improvements servicing the Property as provided in this PUD Agreement. This PUD Agreement and any security provided to the Town is not executed for the benefit of materialmen, laborers, or others providing work, services, or materials to the Property, or for the benefit of future lot owners or occupants of the Property.

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

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

B. Water and Sewer Taps/Fees. The Developer, its successors and assigns, shall comply in full with Title 13 of the Minturn Municipal Code regarding tap fees and system improvement fees for water and sewer service. Developer shall pay the cost for tap fees (based on the fee currently in effect) in the amount of \$439,960 for all units within the Minturn North PUD (totaling new 39 units) and one common area irrigation tap within 30 days of recordation of the Final Plat. The Town acknowledges 6 pre-existing water and sewer taps used on the Property, which shall continue to be used within the Minturn North PUD. System Improvement Fees for each unit shall be paid at the time of issuance of a building permit for the unit. Sewer taps shall be assessed in accordance with the requirements of the Eagle River Water and Sanitation District.

C. Water Rights Dedication and Cash-in-Lieu Payment. The Developer shall deed to the Town water rights and pay the cash in lieu of the water rights dedication fees as required under Minturn Municipal Code Section 13-2-20, et. seq, as it may be amended. For this purpose, within 30 days of recording the Final Plat, the Developer shall pay the cash in lieu of water rights dedication fee (based on the fee currently in effect) in the amount of \$1,377,034 for 34 SFEs of the 70 SFEs reserved for the Minturn North PUD in Town Ordinance No. 5, Series 2020. The Town acknowledges 6 pre-existing SFEs used on the Property which shall continue to be used within the Minturn North PUD for a total of 40 SFEs of water service within the Minturn North PUD (one for each of Lots 1-39 and one for common area irrigation). The Developer hereby relinquishes and waives any right or claim to 16 SFEs of water service reserved for the Minturn North PUD in Town Ordinance No.5, Series 2020.

Lot Nos. 1-33 may construct houses in excess of 3,000 square feet and the Town hereby reserves additional SFEs for that purpose up to a total of 54 SFEs to be used in the Minturn North PUD. SFEs for houses in excess of 3,000 square feet on Lot Nos. 1-33 shall be subject to additional cash in lieu of the water rights dedication fees calculated and paid at the time of building permit issuance. The reservation of additional SFEs for Lot Nos. 1-33 shall be relinquished and waived upon the occurrence of the earlier of: (a) an initial building permit is issued for a lot, or (b) two years from the approval of this PUD Agreement.

At the time of recording the Final Plat, Developer shall cause Union Pacific Railroad Company ("UPRR") to execute and record the quitclaim deed for water rights attached as **Exhibit B**.

D. Property and Easement Dedications. The following property and easement dedications are conditions of approval of the Minturn North PUD.

- i. Developer shall deed to the Town 0.9 acres of land identified as Tract C on the Final Plat. This conveyance shall satisfy land dedication requirements to the Town (unless separately identified in this PUD Agreement) including Minturn Municipal Code § 16-17-90. The conveyance shall be by Special Warranty Deed the form of which is attached as **Exhibit C**, which shall be

- recorded at the time of recordation of the Final Plat.
- ii. On or before recording the Final Plat, Developer shall cause UPRR to record a deed conveying an easement for a non-motorized trail for an area starting at the northern boundary of the Minturn North PUD to the northern municipal boundary of the Town. The form of the deed is attached as **Exhibit D1**.
  - iii. On or before recording the Final Plat, Developer shall cause UPRR, Eagle County and the Town to execute an Agreement to vacate an outdated version of an easement for Minturn Road. The form of the Agreement is attached as **Exhibit D2**.
  - iv. On or before recording the Final Plat, Developer shall cause UPRR to record a deed conveying an easement for a portion of the Railroad Ave. and Minturn Road rights-of-way. The form of the deed is attached as **Exhibit D3**.
  - v. On or before recording the Final Plat, Developer shall cause UPRR to execute a Crossing Agreement for the railroad crossing of Railroad Avenue in the Town of Minturn. The form of the agreement is attached as **Exhibit D4**.
  - vi. On or before recording the Final Plat, Developer shall cause UPRR to record a separate easement deed conveying an at-grade public road crossing over Railroad Avenue in the Town of Minturn. The form of the deed is attached as **Exhibit DD5**.
  - vii. On or before recording the Final Plat, Developer shall cause UPRR to execute a Crossing Agreement for the railroad crossing of County Road 14 near Dowd Junction in Eagle County. The form of the agreement is attached as **Exhibit D6**.
  - viii. On or before recording the Final Plat, Developer shall cause UPRR to record a separate easement deed conveying an at-grade public road crossing over County Road 14 near Dowd Junction in Eagle County. The form of the deed is attached as **Exhibit D7**.
  - ix. On or before recording the Final Plat, Developer shall cause UPRR to record a document abandoning any interest in or right of reverter to the Taylor Ave. right-of-way. The form of the document is attached as **Exhibit D8**.
- E. Other Recorded Documents. The following covenants benefitting the Town are conditions of approval of the Minturn North PUD.
- i. On or before recording the Final Plat, Developer shall execute and cause to be recorded a Restrictive Covenant Imposing a Deed Restriction for the Benefit of Town of Minturn Local Housing. The form of the document is attached as **Exhibit E**.
  - ii. On or before recording the Final Plat, Developer shall execute and cause to be recorded a Restrictive Covenant Imposing a Transfer Assessment Deed Restriction for the Benefit of Town of Minturn. The form of the document is attached as **Exhibit F**.
  - iii. On or before recording the Final Plat, Developer shall execute and cause to be recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Minturn North. The form of the document is attached as



**Exhibit G.**

- iv. On or before recording the Final Plat, Developer shall form the Minturn North Property Owners Association, Inc.

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

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

B. Approved Plans. The public improvements to be constructed on the Property shall conform to the construction drawings and plans as shown on the plans attached as **Exhibit H** and incorporated by this reference (the “Construction Plans”). Any amendments to such plans and drawings shall require approval by the Town other than those permitted as minor modifications in the approved Minturn North PUD Guide.

C. Revegetation and Landscaping. The Developer shall landscape the Property and incorporate protective erosion control and run-off measures to eliminate erosion and revegetate any disturbed areas pursuant to the Construction Plans and the Landscaping Plans attached as **Exhibit I**. The Developer shall further install or require by covenant, to which the Town shall be a third-party beneficiary, landscaping on the common area Property pursuant to the Construction Plans and the Landscaping Plans. Cost estimates of all common area and open space landscaping shall be submitted to the Town, guaranteed by the security required by this PUD Agreement, and shall be considered a public improvement hereunder. Specific components of the common area and open space Landscaping Plan shall include, but are not limited to:

- i. Compliance with all applicable Town Code provisions, including Sections 16-17-130 to 16-17-170.
- ii. .
- iii. Plans for installation and maintenance of seed mix and temporary irrigation if this approach is selected over sod landscaping.
- iv. Features to protect mature tree stands, where feasible.

Each Lot shall have a maximum of 2000 square feet of landscaped irrigated area. Temporary landscaped irrigated area for the purpose of revegetating disturbed areas shall be limited to no more than 50,000 square feet on an annual basis. Temporary landscape irrigation shall extend no further than June 30, 2026 unless extended by approval of the Town.

D. Irrigation. The Developer agrees to construct and install, at the Developer’s sole expense, a permanent or temporary irrigation system sufficient to irrigate all common area, parks and open space for which the Developer installs landscaped improvements accordance with the Construction Plans and the Landscaping Plans.

If the system uses raw water, it may use the existing ditches on the Property. The plans and specifications for such system shall be subject to the approval of the Town Engineer and shall be part of the public improvements for purposes of this PUD Agreement. Irrigation systems in the drainage ways and cut and fill slopes shall be installed temporarily and may be removed when revegetation has been established and irrigation is no longer necessary.

E. Pedestrian Access. The Developer shall install sidewalks on the north side of Fourth Street, the Eco Trail, and the 4' wide easement connector trails, including proper ramps to the sidewalks on the north side of Fourth Street in compliance with ADA requirements in accordance with the Construction Plans. The 4' wide trail easements shall be dedicated to the Town; maintenance of the trails shall be performed by the Minturn North Property Owners Association, Inc. In the event that the Minturn North Property Owners Association, Inc. fails to adequately maintain the trails and after providing 14 days written notice, the Town may do so and invoice the Association for the work performed.

F. Mudflow Deflection Berm. The Construction Plans include the construction of a hazard deflection berm along Game Creek. Developer shall construct the mudflow deflection berm as part of the Public Improvements. Maintenance of the mudflow deflection berm shall be performed by the Minturn North Property Owners Association, Inc. In the event that the Minturn North Property Owners Association, Inc. fails to adequately maintain the mudflow deflection berm and after providing 14 days written notice, the Town may do so and invoice the Association for the work performed.

G. Drainage Improvements. The Public Improvements identified in the Construction Plans include various drainage improvements located along Taylor Ave., Fourth Street, within the PUD, and underlying Minturn Road and extending onto UPRR property. Developer shall construct these drainage improvements in accordance with the Construction Plans. Maintenance, repair and replacement of the drainage improvements shall be the responsibility of the Minturn North Property Owners Association, Inc. The Association shall submit to the Town an annual drainage maintenance plan for Minturn's review and approval. In the event that the Minturn North Property Owners Association, Inc. fails to adequately maintain the drainage improvements and after providing 14 days written notice, the Town may do so and invoice the Association for the work performed.

H. Emergency Access. Plans for emergency access to the Property shall be provided in compliance with the approved Final Plan and as approved by the Eagle River Fire Protection District.

I. Minturn Road Located in Eagle County. Developer agrees to construct the paving of Minturn Road from the northern boundary of the PUD to the Dowd Junction intersection ("County Minturn Road Improvements"). Developer shall submit fully engineered construction plans and an engineer's cost estimate for the County Minturn Road Improvements to the Town and Eagle County for approval

no later than November 31, 2024. Developer shall obtain all necessary approvals from Eagle County. In this regard, the Town agrees to assist and cooperate fully with Developer's planned applications to Eagle County. Construction of the County Minturn Road Improvements shall be completed no later than November 31, 2026. Developer shall provide the Town with security in the amount of \$1,190,110 concurrent with or prior to the transfer of any lot to a third-party purchaser, but no later than 30 days after recordation of Final Plat. The amount of the security will be adjusted at the time that the Town and Eagle County approve the fully engineered construction plans and an engineer's cost estimate.

J. CDOT Requirements. Developer agrees to construct all improvements required by the Colorado Department of Transportation ("CDOT") as part of Developer's access permit at the intersection of Minturn Road and Highway 24 at Dowd Junction and North Main Street and Highway 24 near Bellm Bridge. Developer will comply with the terms of access permit no. 323119. Developer will have the notice to proceed meeting no later than May 15, 2024 and complete all required improvements by November 31, 2026, or such earlier time as CDOT may require.

K. Game Creek Bridge. Developer agrees to construct a bridge across Game Creek as part of the Eco Trail improvements. Developer shall submit fully engineered construction plans and an engineer's cost estimate for the Game Creek bridge improvements to the Town and Eagle County for approval no later than November 31, 2024. Developer shall obtain all necessary approvals from Eagle County. In this regard, the Town agrees to assist and cooperate fully with Developer's planned applications to Eagle County. Construction of the Game Creek bridge improvements shall be completed no later than November 31, 2026. Developer shall provide the Town with security concurrent with or prior to the transfer of any lot to a third-party purchaser, but no later than 30 days after recordation of Final Plat, for the Game Creek bridge improvements, which amount shall be included in the engineer's cost estimate.

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

M. Traffic Control Devices. Any and all traffic control devices required by the approved Construction Plans shall be placed in the Town's right-of-way. All traffic control devices shall conform to the Town's requirements.

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

O. Wildlife Mitigation. Developer has prepared a Wildlife Mitigation Plan as part of the application submittals. The Wildlife Mitigation Plan is enforceable by the Colorado Division of Wildlife. The Minturn North PUD is subject to all wildlife protection and animal code provisions in the Town Code.

P. Construction Facilities and Management. For the overall initial development of the PUD infrastructure and public improvements, a construction trailer, equipment parking and material storage may be located within the Property. All construction traffic will be routed onto the site from Minturn Road and Fourth Street to the greatest extent practicable. Contractors must comply with allowed work hours as outlined in the Minturn Municipal Code. Contact information, including a telephone number and email address, for the Contractor must be provided to the Town of Minturn. Exterior construction may only occur Monday thru Saturday during the hours of 7:00 a.m. to 6:00 p.m. Interior construction may occur Monday thru Sunday during the hours of 7:00 a.m. to 6:00 p.m.

Q. Riparian Corridor. The Developer will install erosion control and temporary construction fencing at the 30' Game Creek buffer to protect the existing riparian area.

R. Dark Sky Lighting. Lighting installed on all Lots shall be compliant with dark sky guidelines unless an exception is approved as part of a Town of Minturn approval for the purpose of security.

S. Eagle County School District. The Developer shall pay to the Eagle County School District a fee in lieu of property dedication in the amount of \$50,000. Said fee shall be paid within 30 days of recordation of the Final Plat.

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

6. Public Improvements. All water lines, water facilities, sewer lines, sewer facilities, hydrants, water or sewer distribution facilities, drainage structures, landscaping, gas lines, trails and sidewalks, electrical facilities, cable T.V., telephone lines, utility systems, streets (public and/or private), lighting, and signage required by this PUD Agreement (the "Public Improvements"), shall be completed in accordance with the Construction Plans and the Town of Minturn Public Works Manual then in effect and shall be installed and completed at the expense of the Developer. All supplemental plans and specifications submitted by the Developer shall be approved by the Town Engineer and/or Town Public Works Director or his/her designee. Internal Roadways including Miles End Land and Silver Star Trail shall be owned and maintained by the Minturn North Property Owners Association, Inc.

A. All Public Improvements required by this PUD Agreement and the estimated costs thereof, are identified on **Exhibit J1-J3**, attached and

incorporated by this reference (“Construction Cost Estimates”).

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

C. The Developer shall pay the Town \$85,108.93 for off-site pedestrian improvements to the south of the PUD boundary on Railroad Avenue. Said payment shall be made within 30 days of the Final Plat being recorded. The Town shall seek all approvals and complete all work for the off-site pedestrian improvements in this area.

D. The parking spaces to be constructed adjoining Taylor Ave. pursuant to the Construction Plans shall be dedicated to and maintained by the Town.

7. Construction Observation and Inspection.

A. Materials and Workmanship. Unless otherwise specified, all materials used for the Public Improvements shall be new, and both workmanship and materials shall be of good quality and installed in accordance with the approved Construction Plans and the Landscaping Plans.

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

C. Construction Observation by the Town. The Town shall have the right to make engineering and construction observations at reasonable intervals during construction of the Public Improvements. Observation, acquiescence in or approval by any engineering and/or building inspector of the construction of any physical facilities, at any particular time, shall not constitute Town approval of any phase of construction of the Public Improvements. Town approvals shall be made only after completion of construction and in the manner hereinafter set forth. To assist the Town in monitoring the installation of the Public Improvements, a supervisor employed by the Developer’s general contractor shall inspect the Public Improvements on at least a weekly basis and shall provide the Town Engineer and/or Town Public Works Director or his/her designee with supervisor’s field and inspection notes relating to the installation of the Public Improvements which have been reviewed and stamped by a professional engineer. The supervisor shall regularly apprise the Town Public Works Director or his/her designee of the status of the work on the Public Improvements. Further, the Developer at its own expense shall have an approved geotechnical engineer monitor the methods of construction and backfill, to ensure such work is being completed in conformance with the

approved Construction Plans and the Landscaping Plans, and accepted standards for such work. The geotechnical engineer shall conduct inspections and testing as directed by the general contractor. The Town agrees to respond to requests for interim inspections in a timely manner and to respond not later than ten (10) business days after a request for a final inspection. Nothing in this paragraph shall be construed to constitute an acceptance by the Town of the Public Improvements, which approval and acceptance shall only occur pursuant to the specific provisions below.

8. Permits and Easements. The Developer shall obtain and present to the Town all land boundary surveys, permits, licenses, rights-of-way, and easements of a temporary or permanent nature, if any, necessary for the construction or maintenance of Public Improvements. The Town acknowledges that the public Improvements are in the best interests of the Town and its residents, including the acquisition of interests in property necessary for the installation of the Public Improvements.

9. Completion of Public Improvements; Approval. The Developer shall complete all Public Improvements for the PUD within twenty-four (24) months of the execution of this PUD Agreement, unless otherwise agreed in writing. Upon the Developer's completion of construction of the Public Improvements, the Developer's engineer shall certify in writing that the improvements have been completed in conformance with the Construction Plans and the Landscaping Plans and submit to the Town a completed acceptance checklist utilizing a form approved by the Town. Thereafter, the Town Public Works Director or his/her designee shall inspect the Public Improvements and certify in writing and with specificity their conformity or lack thereof to the Construction Plans and the Landscaping Plans. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Construction Plans and the Landscaping Plans. The Developer shall at its expense have as-built drawings prepared by a professional engineer and a registered land surveyor.

Once the as-built drawings and costs summary are approved, and any and all corrections are completed, the Town Public Works Director, Town Engineer, or his/her designee shall certify in writing that all Public Improvements are in conformity with the Construction Plans, and the date of such certification shall be known as the "Acceptance Date". The Town shall be under no obligation to provide any water or sewer service until all water and sewer Public Improvements are brought into conformance with the Construction Plans and the Landscaping Plans and the approved Final Plan and Final Subdivision Plat and are certified and approved by the Town Public Works Director, Town Engineer, or his/her designee pursuant to this PUD Agreement. However, upon certification and approval, the Town shall be obligated to provide water service to the Property, subject to all provisions of the Minturn Municipal Code.

10. Acceptance; Conveyance. Within thirty (30) days of the Acceptance Date, the Developer of the Property shall execute a deed to the Town or the Minturn North Property Owners Association, Inc. conveying all rights-of-way and easements required for the operation, maintenance, repair and replacement of the Public Improvements that have not otherwise been dedicated on the Final Plat. The Developer agrees to dedicate to the public and to convey or, with respect to off-site easements, to assign, to the Town, in such form as may be required by the Town, such easements and other rights as acquired by the Developer as may be reasonably required for

the construction of the Public Improvements. Such conveyance and dedication shall be free and clear of all liens and encumbrances that might adversely affect the use of the Public Improvements for their intended purpose. The Developer shall also execute a bill of sale conveying the Public Improvements to the Town, free and clear of all liens and encumbrances. All Public Improvements conveyed to the Town shall be warranted for a period of twelve (12) months from the Acceptance Date, as provided below. Internal Roadways, common area and open space within the Minturn North PUD including Miles End Land and Silver Star Trail shall be owned and maintained by the Minturn North Property Owners Association, Inc., therefore, they are not subject to conveyance.

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

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

12. Warranty Securitization. The Developer shall provide to the Town a Warranty Security in the form of a letter of credit or deposit agreement satisfactory to the Town Attorney no later than the Acceptance Date. The Warranty Security shall be adequate to repair or replace ten percent (10%) of the Public Improvements, as determined through the Construction Cost Estimate, during the Warranty Period. The Warranty Security shall be adequate to repair or replace twenty-five percent (25%) of the Landscaping Improvements as determined through the Construction Cost Estimate, during the Warranty Period.

If the Developer does not repair or replace damaged or inoperable improvements upon 90 days' notice (or such lesser period of time if the warranty security is going to expire in less than 90 days) from the Town, the Town shall have the right to do so and deduct the cost of the same from the Warranty Security. Such Warranty Security shall be held by the Town for the Warranty Period and shall be released upon the expiration of the same once all warranty issues have been resolved.

13. Performance Guarantee. The total amount of required security for the Public Improvements and the Landscaping Improvements shall be as specified on Construction Cost Estimate (as such may be amended). The Developer shall provide to the Town security in the form required under Section 17-7-10 of the Minturn Municipal Code. Such guarantees shall be subject to increase if deemed reasonable and necessary in the sole opinion of the Town.

- A. In order to secure the construction and installation of the Public

Improvements for which the Developer is responsible, the Developer shall prior to recordation of the Final Plat, furnish the Town with a certificate or other evidence, in good and sufficient form approved by the Town Attorney, of an irrevocable letter of credit, bond, deposit agreement, or other security approved by the Town. Any letter of credit or bond shall be issued or confirmed by a commercial banking institution authorized to do business within the State of Colorado to secure the performance and completion of the Public Improvements and Landscaping Improvements, in an amount set forth on the Construction Cost Estimate. The Town shall have the right to review and approve all terms and conditions of the letter of credit or deposit agreement prior to recording of the Final Plat.

The Letter of Credit shall comply in all respects with the Uniform Customs and Practice for Documentary Credits, 1993 Revision or later if amended, issued by the International Chamber Commerce, Paris, to the extent it does not conflict with Article 5 of the Colorado Uniform Commercial Code.

The Performance Guarantee shall specifically address:

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

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

B. In the event the Public Improvements are not constructed or completed within twenty-four (24) months of the date of this PUD Agreement (or such lesser period of time if the security is going to expire in less than 24 months), the letter of credit or deposit agreement shall provide that the funds necessary to complete the Public Improvements shall be put directly to an escrow account under the control of the Town Manager and shall be used to complete the Public Improvements called for herein.

C. Within thirty (30) days of timely completion and acceptance of the Public Improvements, and performance of the conditions and requirements of this PUD Agreement secured by the performance guarantee, and upon the approval of the



Town Manager, the performance guarantee shall be released to the Developer. If the Public Improvements are not completed within the required time, the performance guarantee may be called by the Town and the monies may be used to complete the Public Improvements; provided, however, that if such guarantee is not sufficient to pay the actual costs, the Developer shall be responsible for the balance.

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

E. The Parties expressly agree that the Developer's preparation and submission to the Town of "as-built drawings," the engineer's certification of conformance with the Construction Plans and a summary of actual construction costs for the Public Improvements to be dedicated to the Town or owners association—and approval by the Town of the as-built drawings and summary—are essential requirements of this PUD Agreement. In the event the Developer fails to provide the as-built drawings, the engineer's certification of conformance with the Construction Plans and the Landscaping Plans and summary to the Town thirty (30) days prior to the expiration of the performance guarantee or any extension thereof, such failure shall constitute a breach of this PUD Agreement with regard to the completion of the Public Improvements, damages for which are impossible to ascertain, entitling the Town to call upon the performance guarantee in an amount equal to ten percent (10%) of the total amount set forth the Construction Cost Estimate, which amount the Town may retain as liquidated damages due to the Developer's breach. Releases and reduction of the letter of creditor deposit agreement shall be granted by the Town as Public Improvements are accepted by the Town.

14. Phasing Plan. The Property is not phased.

15. Title Policy. Together with the recordation of the Final Plat for the Property, the Developer shall provide the Town a commitment for a title insurance policy, indicating that the Property which is to be dedicated or deeded to the Town is free and clear of all encumbrances whatsoever which would impair the use of the Property as proposed by the Final Subdivision Plat. Further, said title commitment, and/or an additional title commitment, shall show that all other property to be dedicated to the Town is free and clear of all encumbrances which would make said dedications unacceptable as the Town in its sole discretion determines. Within 30 days of recording the Final Plat, the title insurance policy(s) in the amount of \$500,000 shall be provided to the Town, and the premium(s) for the title insurance shall be paid by the Developer. In the event the

title commitment(s) reflect encumbrances which would impair the use of the Property as proposed or which would make the public dedications unacceptable, the Town shall notify the Developer, who shall cure or otherwise remove or subordinate said encumbrances to the satisfaction of the Town prior to the recordation of the Final Plat.

16. Vested Rights. Pursuant to Section 16-11-10, *et. seq.*, of the Minturn Municipal Code, the Town and the Developer agree that the Town Council's Subdivision Final Plat approval of the Property constitutes the approval of a "Site Specific Development Plan", and no further hearings are required. Pursuant to the approval by the Town Council of the Final Plat for the Property, the Town granted vested property rights for the Property for a period of 10 years from the effective date of the Town ordinance approving this PUD Agreement and the Final Plat upon the condition that the Developer comply with all of the terms and conditions of this PUD Agreement, the Final Plat for the Property, and the development submittal. Such rights shall also be subject to the provisions of Minturn Municipal Code Section, and the Developer shall at its expense publish the vested rights notice required by C.R.S. §24-68-103(1) and Minturn Municipal Code Section 16-21-710.

17. Owners Association; Covenants. An owners association shall be created by the Developer under the laws of the State of Colorado before any properties within the subdivision are sold to third parties. The Articles of Incorporation and covenants have been reviewed by the Town Attorney to ensure that they meet all legal requirements. The covenants for the Property shall address, at a minimum: snow removal, landscape maintenance, sidewalk and private drive maintenance, use of limited and general common elements, fencing styles and heights, outdoor storage, and pets. The Articles of Incorporation and covenants shall be reviewed and approved, and the Articles filed with the Colorado Secretary of State in conjunction with the recordation of the Final Plat.

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

- A. This PUD Agreement has been recorded in the Office of the Eagle County Clerk and Recorder, and a recorded copy is on file in the Office of the Town Clerk.
- B. The Final Plat has been recorded in the Office of the Eagle County Clerk and Recorder, and a recorded copy is on file in the Office of the Town Clerk.
- C. All Public Improvements have been secured by a performance guarantee in accordance with this PUD Agreement.
- D. There is no default under this PUD Agreement.

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

20. Breach by Developer; Town's Remedies. In the event of any default or breach by the Developer of any term, condition, covenant or obligation under this PUD Agreement, the Town Council shall be notified immediately. The Town may take such action as it deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders, and to protect the citizens of the Town from hardship. The Town's remedies include, but are not limited to:

- A. The refusal to issue to the Developer any development permit, building permit or certificate of occupancy; provided, however, that this remedy shall not be available to the Town once the affidavit described below has been recorded;
- B. The recording with the Eagle County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Manager or designee, stating that the terms and conditions of this PUD Agreement have been breached by the Developer. At the next regularly scheduled Town Council meeting, the Town Council shall either approve the filing of said affidavit or direct the Town Manager to file an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no further lots or parcels may be conveyed within the Property until the default has been cured. An affidavit signed by the Town Manager or designee and approved by the Town Council stating that the default has been cured shall remove this restriction;
- C. A demand that the security given for the completion of the public improvements be paid or honored; the refusal to consider further development plans within the Property; and/or any other remedy available at law.
- D. Red tag to halt work on any improvements currently under construction.
- E. An action for breach of contract including the remedy of specific performance.

Unless necessary to protect the immediate health, safety, and welfare of the Town or Town residents and the Lot owners or to effectuate the terms of this PUD Agreement, the Town shall provide the Developer thirty (30) days' written notice of its intent to take any action under this paragraph during which thirty-day period the Developer may cure the breach described in said notice and prevent further action by the Town. Furthermore, unless an affidavit as described above has been recorded with the Eagle County Clerk and Recorder, any person dealing with the Developer shall be entitled to assume that no default by the Developer has occurred hereunder unless a notice of default has been served upon the Developer as described above, in which event the Developer shall be expressly responsible for informing any such third party of the claimed default by the Town.

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

22. Indemnification. The Developer agrees to indemnify and hold the Town harmless

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

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

24. Runs with the Land. Developer and all other parties with an interest in title to the Property as hereafter is subdivided hereby acknowledge, or are deemed to acknowledge by virtue of recordation of the deed by which such owner takes title to a Lot within the PUD, that this Planned Unit Development Agreement shall constitute an irrevocable covenant running with the title to the Property as a burden thereon for the benefit of the Town of Minturn, or its assign, and shall be binding on the Developer with respect to the Developer's obligations under this Agreement and the Minturn North Property Owners Association, Inc. with respect to the owners association's obligations under this Agreement, and their successors or assigns. This agreement 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, damages or eviction. The remedies provided herein are cumulative and not exclusive of all other remedies provided by law.

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

26. Modifications. This PUD Agreement shall not be amended, except by subsequent written agreement of the Parties.

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

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

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

30. Invalid Provision. If any provisions of this PUD Agreement shall be determined to

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

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

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

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

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

35. Notice. All notices required under this PUD Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices shall be sent.

Notice to Town:

Town of Minturn  
P.O. Box 309  
Minturn, CO 81645  
[manager@minturn.org](mailto:manager@minturn.org)

With copy to:

Karp Neu Hanlon, P.C.  
P. O. Drawer 2030  
Glenwood Springs, CO 81602  
[mjs@mountainlawfirm.com](mailto:mjs@mountainlawfirm.com)

Notice to Developer:

Minturn Crossing, LLC  
Attn: Rick Hermes, Manager  
225 Main Street, Ste. C-101  
Edwards, CO 81632

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

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

38. Execution, No Guarantee. The execution of this PUD Agreement by the Town Council of Minturn in no way represents that the Town will accept the public Improvements set forth in the Final Plat, Construction Plans or Landscape Plans for title or maintenance purposes until said Improvements have been completed in strict compliance with Town standards, rules, and regulations.

39. Preservation of Other Remedies. The rights and remedies of the Town provided in this PUD Agreement shall not be exclusive and are in addition to any other rights or remedies provided by law. Developer, in developing the property contained within the Final Plat and the other Improvements herein described, shall fully comply with all applicable rules, regulations, standards, and laws of the Town and other governmental agencies, and bodies having jurisdiction.

40. Section Headings. The section headings are inserted herein only for convenience of reference and in no way shall they define, limit, or describe the scope or intent of any provisions of this PUD Agreement.

41. Entire Agreement. This PUD Agreement, along with any addendums and attachments hereto, constitutes the entire agreement between the Parties. The provisions of this PUD Agreement may be amended at any time by the mutual consent of both Parties. The Parties shall not be bound by any other agreements, either written or oral, except as set forth in this PUD Agreement.

42. Final Plat Approval. It shall be a condition precedent to the effectiveness of this PUD Agreement that the Final Plat is approved for recordation by the Town Council. In the event such approval does not occur, this PUD Agreement shall have no force or effect.

43. Authority. Each person signing this PUD Agreement, and any addendums or attachments hereto, represents and warrants that said person is fully authorized to enter and execute this PUD Agreement and to bind the Party it represents to the terms and conditions hereof.

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

TOWN OF MINTURN, COLORADO

By: \_\_\_\_\_  
Earle Bidez, Mayor

ATTEST:

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

DEVELOPER  
Minturn Crossing, LLC

By: \_\_\_\_\_  
Rick Hermes, Manager

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF                    )

Acknowledged, subscribed, and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by Rick Hermes as Manager of Minturn Crossing, LLC.

WITNESS my hand and official seal.

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

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

**EXHIBIT A**

Minturn PUD Property Description

Parcel 1 according to the Final Plat UPRR Subdivision according to that final plat recorded in the public records of Eagle County on \_\_\_\_, \_\_\_\_, 202\_\_, as Reception No. \_\_\_\_;  
less and excepting therefrom Tract C according to the Final Plat Minturn North P.U.D.  
recorded in the public records of Eagle County on \_\_\_\_, \_\_\_\_, 202\_\_, as Reception No.  
\_\_\_\_\_;



**EXHIBIT B**

Water Rights Quit Claim Deed

**WHEN RECORDED, RETURN TO:**

Holland & Hart, LLP  
c/o Susan Ryan  
600 East Main Street, Suite 104  
Aspen, Colorado 81611

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

3291-81

**QUITCLAIM DEED**

**UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), whose street address is 1400 Douglas St., Omaha, Nebraska 68179, for the consideration of Ten Dollars and other good and valuable consideration, in hand paid, hereby sells and quitclaims to the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado ("Grantee"), whose street address is 301 Boulder Street, #309, Minturn, Colorado 81645, the following water rights located in the County of Eagle, State of Colorado:

All of Grantor's right, title and interest in and to the following:

1. Twenty-two and one-half percent (22.5%) of the 0.2143 cubic foot per second (c.f.s.) Priority 1a with an appropriation date of June 1, 1886, Twenty-two and one-half percent (22.5%) of the 0.0979 c.f.s. Priority 3a with an appropriation date of December 31, 1902 and Twenty-two and one-half percent (22.5%) of the 0.2448 c.f.s. Priority 8a with an appropriation date of December 31, 1909 of the Minturn Water System Ditch (also known as the Bocco Creek Pipeline ) as decreed in Civil Action No. 671 on June 5, 1916, Civil Action No. 1137 on August 24, 1953, and Civil Action No. 1333 on December 11, 1963, all in the District Court, Eagle County.

2. Twenty-two and one-half percent (22.5%) of the 0.4452 c.f.s. of the Minturn Pumping Plant, Priority 10a with an appropriation date of July 1, 1891, as decreed in Civil Action No. 671 on June 5, 1916, District Court, Eagle County.

*(Remainder of page intentionally left blank.)*

IN WITNESS WHEREOF, Grantor has caused these presents to be signed by its duly authorized officers the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

Assistant Secretary

By: \_\_\_\_\_  
Printed Name: Chris D. Goble  
Title: Assistant Vice President – Real Estate

**STATE OF NEBRASKA            )**  
**) ss.**  
**COUNTY OF DOUGLAS        )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Chris D. Goble and \_\_\_\_\_, Assistant Vice President – Real Estate and Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, on behalf of the corporation.

WITNESS my hand and official seal.

---

Notary Public

(Seal)

**EXHIBIT C**

Special Warranty Deed for Tract C

# SPECIAL WARRANTY DEED

The “Grantor”, **MINTURN CROSSING, LLC**, a Colorado limited liability company., the “Grantee,” whose legal address is 56 Edwards Village Blvd. Suite 216-A, Edwards, CO 81632, of the County of Eagle and State of Colorado, for the consideration of Ten DOLLARS, (\$10.00), in hand paid, hereby sells and conveys to **THE TOWN OF MINTURN**, a Colorado municipal corporation, whose legal address is 301 Boulder Street, #309, Minturn, Co 81645, of the County of Eagle and State of Colorado, the following real property in the County of Eagle and State of Colorado, to wit:

**LEGAL DESCRIPTION ATTACHED AS ‘EXHIBIT A’**

Also known by street address as: N/A;

And assessor's schedule or parcel number: N/A;

with all its appurtenances and warrants the title against all persons claiming under the Grantor, subject to statutory exceptions.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

GRANTOR:  
**MINTURN CROSSING, LLC.**

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

STATE OF COLORADO )  
 ) ss.  
\_\_\_\_ County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_,

Witness my hand and official seal.

My commission expires:

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---

Notary Public

**EXHIBIT A**

Tract C according to the Final Plat Minturn North P.U.D. recorded in the public records of Eagle County on \_\_\_\_, \_\_\_\_, 202\_\_, as Reception No. \_\_\_\_

**EXHIBIT D**

UPRR Deeds and Documents

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

Union Pacific Railroad Company  
Attn: Real Estate Sales (Project No. 791508)  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179

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

Project No. 791508

**EASEMENT DEED**  
**FOR PEDESTRIAN TRAIL AND TRAIL IMPROVEMENTS**

This EASEMENT DEED FOR PEDESTRIAN TRAIL AND TRAIL IMPROVEMENTS is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado ("Grantee"). Grantor and Grantee may hereinafter be collectively referred to as the "Parties".

**WITNESSETH:**

WHEREAS, Grantor is the fee owner of certain real property located in Eagle County, State of Colorado, more particularly described and depicted on **Exhibit A**, attached hereto and made a part hereof ("Easement Property").

WHEREAS, Grantor wishes to grant to Grantee, and Grantee wishes to obtain from Grantor, a perpetual, non-exclusive easement ("Easement") across, on, over and upon the Easement Property for purposes of constructing, using, maintaining, repairing, renewing and reconstructing (i) an asphalt, non-motorized, surface pedestrian trail ("Trail") for the for the benefit of, and use and enjoyment by the public, and (ii) any and all drainage structures (e.g., culverts, grates, pipes, grading, slopes, etc.) (collectively, "Trail Improvements") necessary to prohibit flooding onto Grantor's real property adjacent to the Easement Property ("Grantor's Adjacent Property"), all in accordance with the terms and conditions of this instrument.

**EASEMENT:**

NOW, THEREFORE, in consideration of the foregoing premises and the following promises, the Parties hereby agree as follows:



1. **Grant of Easement.** Grantor, for good and valuable consideration in the amount of Ten and No/100<sup>th</sup> Dollars (\$10.00), the sufficiency of which is hereby confessed and acknowledged, hereby grants to Grantee, its successors and assigns, the Easement across, on, over and upon the Easement Property for purposes of constructing, using, maintaining, repairing, renewing and reconstructing the Trail and the Trail Improvements, all at Grantee's sole cost and expense. The Easement is granted subject to all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Property, whether recorded or unrecorded. Grantor shall not make or authorize any use of the Easement Property which is inconsistent with or interferes with the uses authorized herein. The Easement is limited to such rights Grantor may have in the Easement Property and is granted without warranty, express or implied. No damages will be recoverable from Grantor because of any dispossession of Grantee or because of failure of or defect in Grantor's title.

2. **Limited Uses.** Grantee's use of the Trail is limited to bicycles, pedestrians, wheelchairs, horseback riders, and other non-motorized users. No motorized vehicle use by the public is permitted, except for use by Grantee's maintenance vehicles as needed to construct, maintain, repair, renew and reconstruct the Trail and/or the Trail Improvements on the Easement Property. Grantee is prohibited from placing fencing, walls (except for retaining walls), railings or other barriers along the Trail. Grantee shall provide for continued drainage across and through the Easement Property. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optics, cable television, electrical gas or other liquid distribution and telephone lines.

3. **Construction of the Trail and Trail Improvements.** Grantee shall provide engineering and construction designs and plans for the Trail and the Trail Improvements (collectively, "Plans") to Grantor for review and approval prior to initiating construction of the Trail and the Trail Improvements on the Easement Property. Said Plans must include one (1) driveway cut wide enough for two (2) vehicles for Grantor's continued vehicular access to the remainder of Grantor's Adjacent Property. Any additional driveway cuts for access to Grantor's Adjacent Property will be the sole cost of Grantor, its successors or assigns. Grantee will be responsible for obtaining all other necessary permits to construct the Trail Improvements and any related improvements on the Easement Property. Grantee shall submit the Plans to Grantor at the following address:

Union Pacific Railroad Company  
Attn: Real Estate Sales (Project No. 791508)  
1400 Douglas Street, Mail 1690  
Omaha, NE 68179

4. **Maintenance of the Trail and Trail Improvements.** Grantee shall maintain, repair, renew and reconstruct the Trail and the Trail Improvements in a clean and sanitary condition, including, without limitation, regularly removing trash and garbage, controlling vegetation growth, removing graffiti, and keeping such areas free from all unauthorized persons, encampments and structures, all in a manner consistent with the requirements of Colorado law. Grantee shall maintain,

repair, renew and reconstruct the Trail and the Trail Improvements in such manner not to cause any interference with Grantor's Adjacent Property, or the facilities or access rights of utility companies or other occupants of the Easement Property. If Grantee fails to perform its maintenance obligations and continues in default in the performance of any provision of this instrument for a period of sixty (60) days after written notice from Grantor to Grantee specifying such default, Grantor may, at its sole discretion, initiate an action in the District Court of Eagle County, Colorado ("Eagle County District Court") to enforce this instrument.

5. **Abandonment of the Easement Property.** Nonuse of the Easement Property or any portion thereof, for a period of two (2) years will be deemed an abandonment of the Easement Property, whereupon Grantor will notify Grantee, its successors or assigns, in writing that the Easement will cease and terminate, and the title to the Easement Property will be freed from the burden of the Easement. Upon receipt of Grantor's written notice of intent to terminate based on abandonment by Grantee, its successors or assigns, Grantee will have thirty (30) days after its receipt of such termination notice to object in writing to the intent to terminate. If no objection is timely received, Grantee will be deemed to have abandoned any possessory rights. If an objection is timely received, the parties will mediate the dispute. If a resolution cannot be reached through mediation, either party may file an action in the Eagle County District Court for a factual determination of abandonment. Within one hundred eighty (180) days after termination or abandonment as contemplated by this instrument, Grantee, at its sole expense, shall (a) peacefully and quietly vacate and surrender possession of the portions of the Easement Property no longer encumbered by the Easement, and (b) deliver to Grantor a fully executed and acknowledged release and quitclaim instrument for such abandoned or terminated portions of the Easement Property in recordable form satisfactory to Grantor. Grantor shall thereafter record such instrument with the Clerk and Recorder of Eagle County, Colorado ("Eagle County Recorder").

6. **Successors and Assigns.** This instrument shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns and the benefits and burdens hereof shall constitute covenants running with the title to the Property.

7. **Modifications.** The Parties agree that any modification of this instrument will be effective only when made in writing signed by both Parties which will be recorded in the records of the Eagle County Recorder.

8. **Governing Law and Venue.** This instrument and the rights and obligations of the Parties hereunder shall be determined in accordance with the laws of the State of Colorado. Venue shall be in the Eagle County District Court.

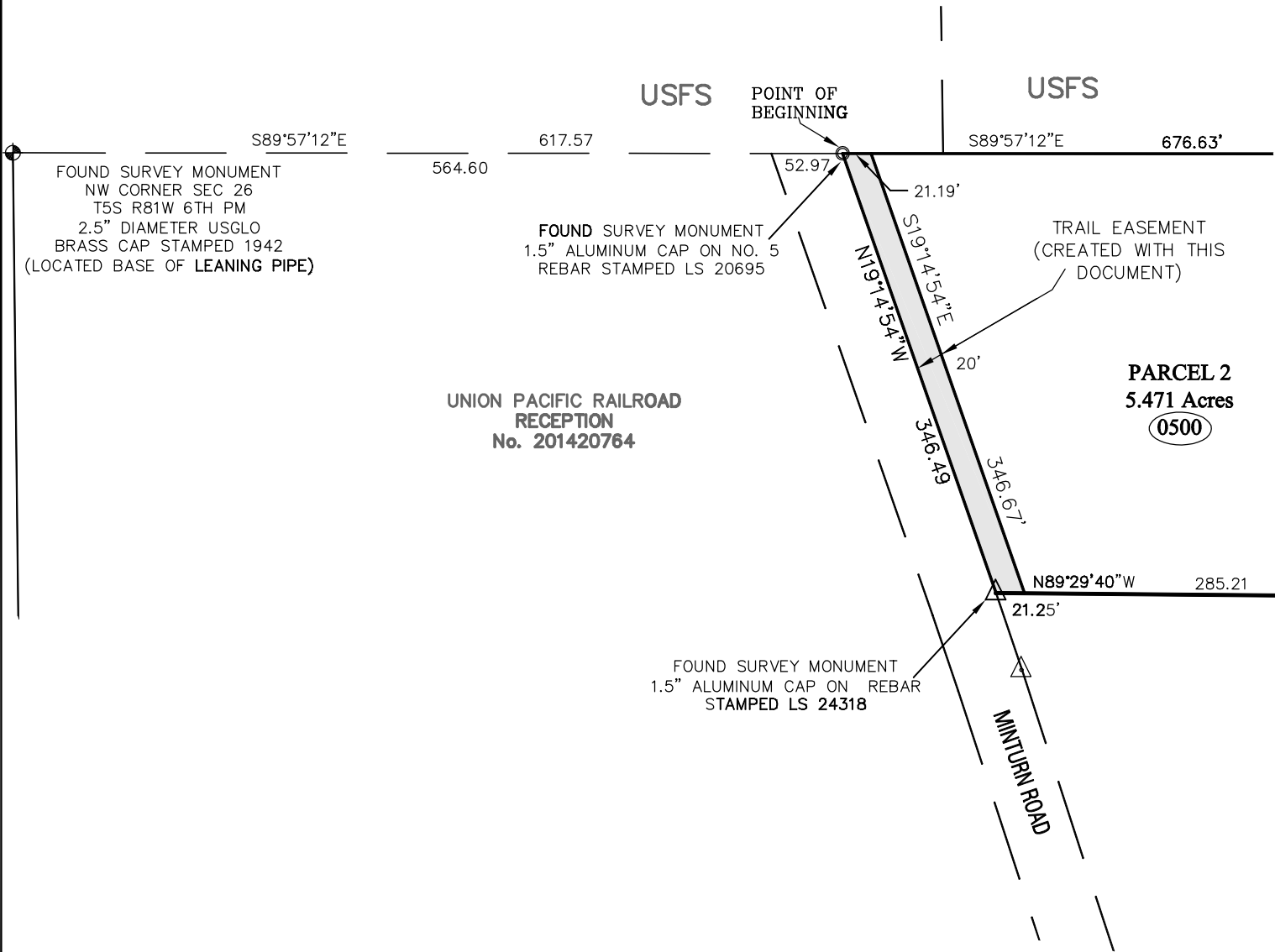
9. **Severability.** Whenever possible, each provision of this instrument will be interpreted in such a manner as to be valid under applicable law; provided, however, if any provision of this instrument will be invalid or prohibited under applicable law, such provision will be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this instrument.

**(Signature Pages to Follow)**

(Seal)



EXHIBIT A



LEGAL DESCRIPTION TRAIL EASEMENT

A strip of land for easement purposes, being the western most 20.00 feet of Parcel 2, UPRR Subdivision, Town of Minturn, County of Eagle, State of Colorado, with side lines terminating on, or extending to, the Northern and Southern Boundaries of said Parcel 2, all according to the Final Plat of said UPRR Subdivision as recorded on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ as Reception No. \_\_\_\_\_, in the Office of the Eagle County Clerk and Recorder, Eagle County, Colorado.  
Containing 6,932 square feet more or less



Matthew S. Slagle PLS 34998  
Professional Land Surveyor



0 60 120



1 inch = 120 feet

SLAGLE SURVEY SERVICES

P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office matthew@slaglesurvey.com  
www.SlagleSurvey.com

DRAWN BY:	DATE:	JOB NUMBER:	DWG NAME:
MSS	10-09-23	22055	22055 Exhibit2.dwg

## **AGREEMENT**

This Agreement (this "**Agreement**") is made and entered into as of \_\_\_\_\_, 2023, ("**Effective Date**"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**UP**"), the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado ("**Minturn**"), and **EAGLE COUNTY, COLORADO**, a body corporate and politic ("**County**").

### **RECITALS:**

A. An existing easement in favor of the County ("**Rio Grande Easement**"), attached hereto as **Exhibit 1**, is outdated and includes roads and bridges that no longer exist. Minturn now maintains the public road that is the subject of the Rio Grande Easement as currently configured ("**Minturn Road**"). The parties desire to supersede and replace the Rio Grande Easement by executing the form of Easement Termination ("**Easement Termination**"), attached hereto as **Exhibit 2**, and simultaneously documenting Minturn's rights and obligations with the Easement Deed for Minturn Road and Railroad Avenue in the form attached hereto as **Exhibit 3** ("**Minturn Road Easement**").

B. A portion of Minturn Road crosses UP's railroad tracks, and the parties desire to document such crossings with the form of (i) Public Highway At-Grade Crossing Agreement (Railroad Avenue, U.S. DOT No. 253531V), attached hereto as **Exhibit 4** ("**Railroad Avenue Crossing**"), and (ii) Public Highway At-Grade Crossing Agreement (Eagle County Road 14, U.S. DOT No. 253532C), attached hereto as **Exhibit 5** ("**Eagle County Road 14 Crossing**") (collectively, "**Crossing Agreements**"). The Easement Termination, the Minturn Road Easement, and the Crossing Agreements may hereinafter be collectively referred to as the "**Easement Agreements**".

C. UP is currently under contract with a third party to sell an 18.95-acre tract of land adjacent to the Minturn Road Easement ("**Transaction**"), and the parties desire for such Easement Agreements to be recorded upon the closing of the Transaction.

### **AGREEMENT:**

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Escrow and Recordation**. Within five (5) days of the Effective Date, UP will open Escrow with Land Title Guarantee Company, 0090 Benchmark Road #205, Avon, Colorado 81620 ("**Title Company**"), and the parties will deliver executed originals of the Easement Agreements to the Title Company within thirty (30) days of the Effective Date with instructions to Title Company to hold the same in escrow in accordance with the provisions of this Agreement. The parties will execute a commercially reasonable escrow agreement if required by the Title Company. The Title Company shall be instructed that simultaneously with the closing of the Transaction, the Title Company shall:

- (i) Record the Easement Termination in the land records of Eagle County, Colorado ("**County Records**"), and deliver to UP;
- (ii) Record the Minturn Road Easement in the County Records and deliver to Minturn; and
- (iii) Record the form of Easement Deed for both the Railroad Avenue Crossing and the Eagle County Road 14 Crossing, the form of which is attached to its respective Crossing Agreement, in the County Records and deliver to Minturn.

2. Closing Costs. All closing costs, including, but not limited to escrow and recording fees, will be paid by UP.

3. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. This Agreement may be signed and delivered electronically and the "pdf" signatures shall constitute original signatures with all force and effect of law.

4. Governing Law. This Agreement and all of the terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws principles.

5. Drafting. This Agreement has been prepared by UP and its professional advisors and reviewed by Minturn and the County and their professional advisors. UP, Minturn, the County, and their separate advisors believe this Agreement is the product of all of their efforts, that it expresses their agreement, and that it should not be interpreted in favor of or against any party merely because of their efforts in preparing it.

6. Legal Fees. If a dispute arises under this Agreement between the parties and the matter is turned over to an attorney, the prevailing party in the dispute will be awarded by the court or arbitrator its reasonable attorneys' fees and costs, in addition to its other damages and costs.

7. WAIVER OF JURY TRIAL. THE PARTIES HEREBY EXPRESSLY WAIVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, ON ANY CLAIM OR MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

8. Default. Upon a default, this Agreement may be enforced via specific performance in addition to all other rights and remedies available at law or in equity.

**(Signature Page Follows)**

IN WITNESS WHEREOF, the below signed have executed this Agreement to be effective as of the Effective Date.

UP:

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

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

Printed Name: Chris D. Goble

Title: Assistant Vice President – Real Estate

Minturn:

**TOWN OF MINTURN,  
a municipal corporation or political  
subdivision of the State of Colorado**

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

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

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

County:

**EAGLE COUNTY, COLORADO,  
a body corporate and politic**

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

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

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



**EXHIBIT 1**

**COPY OF THE RIO GRANDE EASEMENT  
(TO BE ATTACHED)**

*Handwritten notes:*  
10th Avenue & 1st St  
by the 8th Avenue  
by the 8th Avenue  
by the 8th Avenue

James H. Hager

Mid August 1917

James H. Hager  
Amity, Tenn  
By Geo. E. Goodland  
Ripley

THIS AGREEMENT, made and entered into this 13<sup>th</sup> day of August, A. D. 1904, by and between THE DENVER AND RIO GRANDE RAILROAD COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Colorado, and hereinafter referred to as the Railroad Company, party of the first part, and the COUNTY OF EAGLE, organized and existing under and by virtue of the laws of said State, and hereinafter referred to as the County, party of the second part, WITNESSETH: THAT

WHEREAS, the use by the public of the lands, premises and yards of the Railroad Company at or near the town of Minturn, in said county and state for public travel, and the crossing of its tracks within said yards by the public as heretofore practiced, involve great danger to the public, and danger and annoyance to said Railroad Company, and an impediment and hindrance to its operations, and

WHEREAS, it is the desire of said Railroad Company and of said County that there shall be located, laid out and constructed public roads in the vicinity of said yards, in such manner as to avoid as far as possible such dangers, annoyances and hindrances, and

WHEREAS, the people of the said town of Minturn have petitioned the Board of County Commissioners of said County to construct such bridge over the said Eagle River and to locate, lay out and construct such roads, and to provide for such crossing over the tracks of said Railroad Company in the vicinity of said yards as shall better accommodate the public and minimize the dangers to public travel in said vicinity, and the dangers and hindrances to said Railroad Company;

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, to be by the respective parties hereto kept, done and performed, it is agreed by and between said parties as follows, to-wit:

1. Said Railroad Company agrees to grant and does hereby grant unto said County an easement for a right of way for a public road forty (40) feet wide over and across the lands and premises of said Railroad Company in the West Half of the Northwest Quarter of Section Twenty-six (26), Township Five (5) South of Range Eighty-one (81) West of the 6th Principal Meridian, between the points hereinafter designated and as shown on the attached blue print, which is made and accepted as part and parcel of this agreement.

a. From a point marked B on said blue print to a point marked D thereon;

b. From a point marked D on said blue print to a point marked E thereon;

c. From a point marked E on said blue print to a point marked I thereon;

d. From a point marked I on said blue print to a point marked G thereon.

2. Said Railroad Company agrees to permit said County to use for the purposes of a public highway, and in order to afford ingress to and egress from Block B on the northerly side of the Eagle River, a strip of land as and of the dimensions shown on said blue print between a point marked B and a point marked J thereon, for such period of time as said Railroad Company shall not require the use thereof for an extension or enlargement of its round-house or other facilities, and until said Railroad Company shall furnish to said County for the use of the public other lands for a highway to afford ingress to and egress from the said Block B as aforesaid; provided, however, that said Railroad Company shall have the right at any time to terminate and discontinue the use by the public and said County of said last de-

scribed strip of land, upon furnishing to said County for the use of the public other lands for a highway to afford ingress to and egress from said Block E as aforesaid.

3. Said Railroad Company also agrees to permit the public to cross its lands, premises and tracks along the roadways now in use for such period of time as shall be required hereunder for said County to locate and construct the proposed new bridge over Eagle River between the points designated A and B on the attached blue-print and the proposed new highways between the points designated C to H to I, and B to J on said blue print, but not longer than until November 15th, 1904, except as to the present traveled road from L to M and from M to the south line of said Railroad Company's lands in said Section 26, the license to use which last described portions of roadways is provided for in Section 8 of this agreement.

4. Said Railroad Company further agrees at its sole cost and expense to install at the earliest practicable date, and thereafter to maintain and operate an alarm gong at the site of the proposed new crossing of its tracks in the south end of its said Minturn yard, between the said points B and C, as shown on said blue print, said gong to be connected with its double main tracks only, and further agrees to construct and thereafter to maintain a sixteen (16) foot plank crossing satisfactory to the County Commissioners of said County, over and across its tracks between said points B and C, as shown on said blue print.

5. Said County agrees, at its sole cost and expense, to locate, construct and complete ready for use by the public on or before November 15th, 1904, and as a part of its system of highway, a new wagon bridge of sufficient strength and of such dimensions as shall safely subserve the public convenience across the Eagle

River between points marked A and B on said blue print, together with the necessary approaches thereto, and thereafter to forever maintain the same in good, safe and serviceable condition and repair.

6. Said County further agrees, at its sole cost and expense, to enter at once upon the construction of, and thereafter with reasonable diligence to complete ready for public use highways on the easterly side of said Railroad Company's yard at Minturn along the lines hereinbefore designated and between the points B and E, H and I, and J and B, as shown on attached blue print, and after the completion thereof, to forever maintain the same, in good safe and serviceable condition for the use of the public as highways.

7. Said County further agrees by appropriate action to at once vacate for public use, and as a part of its system of highways, two bridges across said Eagle River, designated on said blue print as bridge No. 1, in the vicinity of the point designated K on said blue print, and <sup>all its rights in and to</sup> bridge No. 2, near the point designated L thereon.

8. Said County further agrees at once by appropriate action to vacate for public use, and as a part of its system of public highways or roads, used by the public or any portion thereof, all and singular the lands and premises within the exterior boundary lines of the lands and premises of said Railroad Company at or in the vicinity of said town of Minturn, as shown on said attached blue print between the points designated thereon as follows:

E to O, E to P, L to M, M to N and N to K, provided however that said roads designated on said print as extending from E to O from E to P and from M to N shall not be closed to public travel by said Railroad Company until said County shall have completed the construction of said new bridge between said points

marked A and B on said blue print, and the approaches thereto, and until said Railroad Company shall have completed the proposed new crossing over its tracks between the points B and C, as shown on said blue print, and provided, further, that said bridges designated on said blue print as Bridges No. 1 and No. 2, and said roads from L to M and from M to the south line of said Railroad Company's lands in the northwest quarter of said Section 26 shall not be closed to public travel by the said Railroad Company prior to December 31st, 1905, unless said County prior to said December 31st, 1905, shall have completed the construction of the proposed new public road on and along the right of way herein provided for between the points designated F and G on said blue print.

IN WITNESS WHEREOF, said Railroad Company has caused these presents to be duly executed by the hand of its Manager, and said County has caused these presents to be executed by the Chairman of its Board of County Commissioners, and its corporate seal to be hereunto affixed and attested by its Clerk, they being thereunto duly authorized by resolution of said Board of County Commissioners on the day and year first above written.

THE DENVER AND RIO GRANDE RAILROAD COMPANY,

By JA Edison  
Manager.

THE BOARD OF COUNTY COMMISSIONERS OF EAGLE  
COUNTY, COLORADO,

ATTEST:

James D. Cooper By W M Kinzie  
Clerk. Chairman.

W M Kinzie  
Jack Fleck  
John Auld

Board of County  
Commissioners  
of Eagle County,  
Colorado.



7.55	R.81W.
22	23
27	26

STATION GROUNDS  
MINUTURN  
EAGLE CO. COLO.  
*light woods*  
*white wood / oak*

TAYLOR AVE

**EXHIBIT 2**

**FORM OF EASEMENT TERMINATION  
(TO BE ATTACHED)**

## **EASEMENT TERMINATION**

This EASEMENT TERMINATION ("**Termination**") is executed as of \_\_\_\_\_, 2023 ("**Effective Date**") by **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**UP**"), successor-in-interest to The Denver and Rio Grande Railroad Company, and **EAGLE COUNTY, COLORADO** a body corporate and politic ("**Eagle County**").

### **RECITALS:**

WHEREAS, pursuant to that certain Agreement dated August 13, 1904, by and between The Denver Rio Grande Railroad Company, predecessor-in-interest to UP, and Eagle County, recorded January 10, 2019 at reception number 201900427 ("**Rio Grande Easement**"), certain easement rights and obligations were created for purposes of a right-of-way for public roads and bridges over portions of the real property as more particularly described in the Rio Grande Easement attached hereto as **Exhibit A**;

WHEREAS, the Rio Grande Easement was for the benefit of Eagle County, and includes certain roads and bridges that no longer exist and are no longer needed by Eagle County:

WHEREAS, UP and Eagle County desire to terminate the Rio Grande Easement.

### **AGREEMENT:**

NOW, THEREFORE, UP and Eagle County hereby declare as follows:

1. As of the Effective Date, the Rio Grande Easement is hereby terminated and shall be of no further force or effect.

**(Signature Pages to Follow)**





**EXHIBIT A**

**RIO GRANDE EASEMENT  
(TO BE ATTACHED)**

*Handwritten notes:*  
10th Avenue & 1st St  
by the 8th Avenue  
by the 8th Avenue  
by the 8th Avenue

James H. Hager

Mid August 1917

James H. Hager  
Amity, Tenn  
By Geo. E. Goodland  
Ripley



THIS AGREEMENT, made and entered into this 13<sup>th</sup> day of August, A. D. 1904, by and between THE DENVER AND RIO GRANDE RAILROAD COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Colorado, and hereinafter referred to as the Railroad Company, party of the first part, and the COUNTY OF EAGLE, organized and existing under and by virtue of the laws of said State, and hereinafter referred to as the County, party of the second part, WITNESSETH: THAT

WHEREAS, the use by the public of the lands, premises and yards of the Railroad Company at or near the town of Minturn, in said county and state for public travel, and the crossing of its tracks within said yards by the public as heretofore practiced, involve great danger to the public, and danger and annoyance to said Railroad Company, and an impediment and hindrance to its operations, and

WHEREAS, it is the desire of said Railroad Company and of said County that there shall be located, laid out and constructed public roads in the vicinity of said yards, in such manner as to avoid as far as possible such dangers, annoyances and hindrances, and

WHEREAS, the people of the said town of Minturn have petitioned the Board of County Commissioners of said County to construct such bridge over the said Eagle River and to locate, lay out and construct such roads, and to provide for such crossing over the tracks of said Railroad Company in the vicinity of said yards as shall better accommodate the public and minimize the dangers to public travel in said vicinity, and the dangers and hindrances to said Railroad Company;

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, to be by the respective parties hereto kept, done and performed, it is agreed by and between said parties as follows, to-wit:

1. Said Railroad Company agrees to grant and does hereby grant unto said County an easement for a right of way for a public road forty (40) feet wide over and across the lands and premises of said Railroad Company in the West Half of the Northwest Quarter of Section Twenty-six (26), Township Five (5) South of Range Eighty-one (81) West of the 6th Principal Meridian, between the points hereinafter designated and as shown on the attached blue print, which is made and accepted as part and parcel of this agreement.

a. From a point marked B on said blue print to a point marked D thereon;

b. From a point marked D on said blue print to a point marked E thereon;

c. From a point marked E on said blue print to a point marked I thereon;

d. From a point marked I on said blue print to a point marked G thereon.

2. Said Railroad Company agrees to permit said County to use for the purposes of a public highway, and in order to afford ingress to and egress from Block B on the northerly side of the Eagle River, a strip of land as and of the dimensions shown on said blue print between a point marked B and a point marked J thereon, for such period of time as said Railroad Company shall not require the use thereof for an extension or enlargement of its round-house or other facilities, and until said Railroad Company shall furnish to said County for the use of the public other lands for a highway to afford ingress to and egress from the said Block B as aforesaid; provided, however, that said Railroad Company shall have the right at any time to terminate and discontinue the use by the public and said County of said last de-

scribed strip of land, upon furnishing to said County for the use of the public other lands for a highway to afford ingress to and egress from said Block E as aforesaid.

3. Said Railroad Company also agrees to permit the public to cross its lands, premises and tracks along the roadways now in use for such period of time as shall be required hereunder for said County to locate and construct the proposed new bridge over Eagle River between the points designated A and B on the attached blue-print and the proposed new highways between the points designated C to H to I, and B to J on said blue print, but not longer than until November 15th, 1904, except as to the present traveled road from L to M and from M to the south line of said Railroad Company's lands in said Section 26, the license to use which last described portions of roadways is provided for in Section 8 of this agreement.

4. Said Railroad Company further agrees at its sole cost and expense to install at the earliest practicable date, and thereafter to maintain and operate an alarm gong at the site of the proposed new crossing of its tracks in the south end of its said Minturn yard, between the said points B and C, as shown on said blue print, said gong to be connected with its double main tracks only, and further agrees to construct and thereafter to maintain a sixteen (16) foot plank crossing satisfactory to the County Commissioners of said County, over and across its tracks between said points B and C, as shown on said blue print.

5. Said County agrees, at its sole cost and expense, to locate, construct and complete ready for use by the public on or before November 15th, 1904, and as a part of its system of highway, a new wagon bridge of sufficient strength and of such dimensions as shall safely subserve the public convenience across the Eagle

River between points marked A and B on said blue print, together with the necessary approaches thereto, and thereafter to forever maintain the same in good, safe and serviceable condition and repair.

6. Said County further agrees, at its sole cost and expense, to enter at once upon the construction of, and thereafter with reasonable diligence to complete ready for public use highways on the easterly side of said Railroad Company's yard at Minturn along the lines hereinbefore designated and between the points B and E, H and I, and J and B, as shown on attached blue print, and after the completion thereof, to forever maintain the same, in good safe and serviceable condition for the use of the public as highways.

7. Said County further agrees by appropriate action to at once vacate for public use, and as a part of its system of highways, two bridges across said Eagle River, designated on said blue print as bridge No. 1, in the vicinity of the point designated K on said blue print, and <sup>all its rights in and to</sup> bridge No. 2, near the point designated L thereon.

8. Said County further agrees at once by appropriate action to vacate for public use, and as a part of its system of public highways or roads, used by the public or any portion thereof, all and singular the lands and premises within the exterior boundary lines of the lands and premises of said Railroad Company at or in the vicinity of said town of Minturn, as shown on said attached blue print between the points designated thereon as follows:

E to O, E to P, L to M, M to N and N to K, provided however that said roads designated on said print as extending from E to O from E to P and from M to N shall not be closed to public travel by said Railroad Company until said County shall have completed the construction of said new bridge between said points

marked A and B on said blue print, and the approaches thereto, and until said Railroad Company shall have completed the proposed new crossing over its tracks between the points B and C, as shown on said blue print, and provided, further, that said bridges designated on said blue print as Bridges No. 1 and No. 2, and said roads from L to M and from M to the south line of said Railroad Company's lands in the northwest quarter of said Section 26 shall not be closed to public travel by the said Railroad Company prior to December 31st, 1905, unless said County prior to said December 31st, 1905, shall have completed the construction of the proposed new public road on and along the right of way herein provided for between the points designated F and G on said blue print.

IN WITNESS WHEREOF, said Railroad Company has caused these presents to be duly executed by the hand of its Manager, and said County has caused these presents to be executed by the Chairman of its Board of County Commissioners, and its corporate seal to be hereunto affixed and attested by its Clerk, they being thereunto duly authorized by resolution of said Board of County Commissioners on the day and year first above written.

THE DENVER AND RIO GRANDE RAILROAD COMPANY,

By JA Edison  
Manager.

THE BOARD OF COUNTY COMMISSIONERS OF EAGLE  
COUNTY, COLORADO,

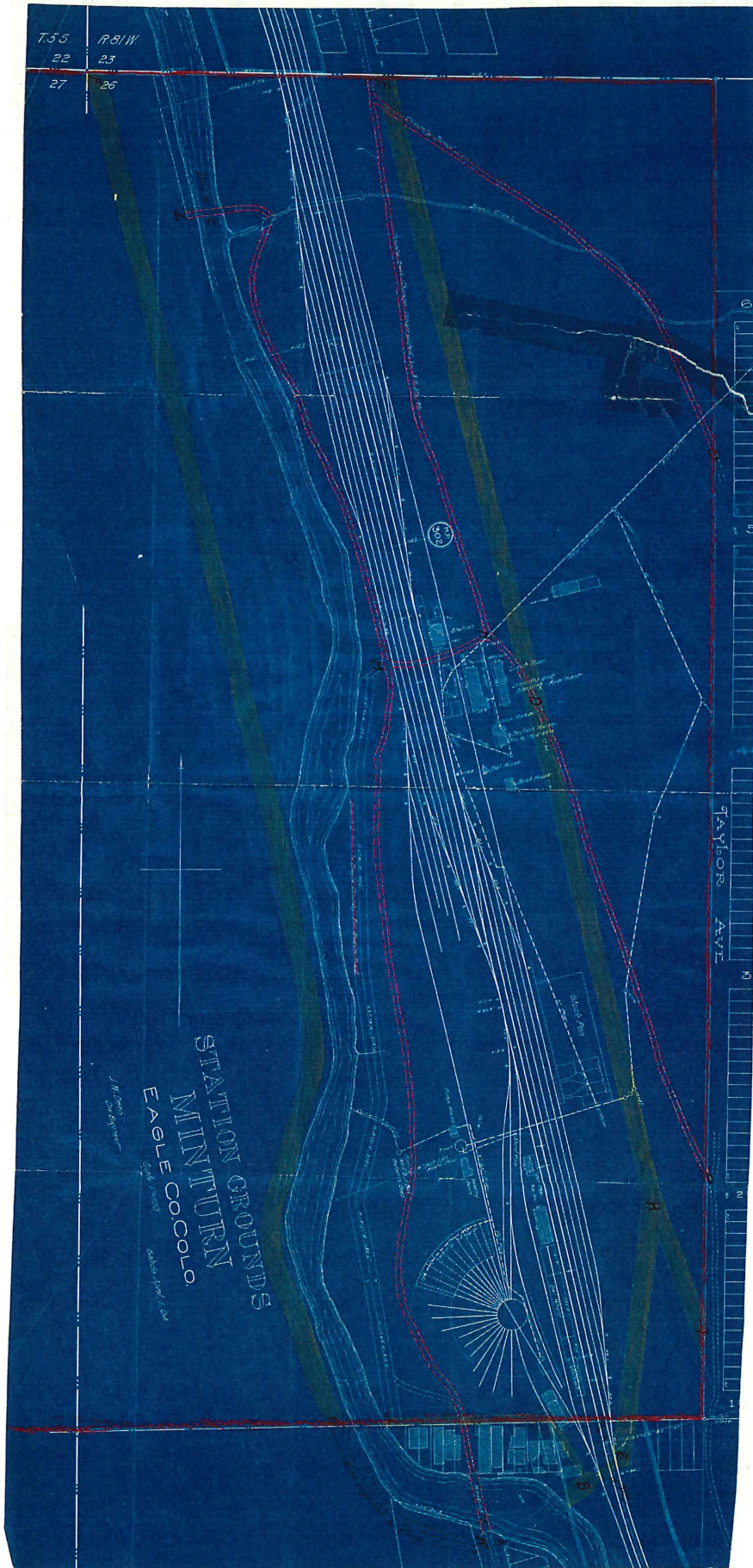
ATTEST:

James D. Cooper By W M Kinzie  
Clerk. Chairman.

W M Kinzie  
Jack Fleck  
John Auld

Board of County  
Commissioners  
of Eagle County,  
Colorado.

T.S.S. R.B.W.  
22 23  
27 26



STATION GROUNDS  
MINTURN  
EAGLE CO. COLO.

JAYSON AVE

**EXHIBIT 3**

**FORM OF MINTURN ROAD EASEMENT  
(TO BE ATTACHED)**

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

Town of Minturn  
Attn: Town Manager  
301 Boulder Street, #309  
Minturn, Colorado 81645

---

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

3185-08

**EASEMENT DEED**  
**FOR MINTURN ROAD AND RAILROAD AVENUE**

This EASEMENT DEED FOR MINTURN ROAD AND RAILROAD AVENUE ("Easement Deed") is made this \_\_\_\_ day of \_\_\_\_\_, 2023, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**Grantor**"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado ("**Grantee**"), whose address is 301 Boulder St., #309, Minturn, Colorado 81645.

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a non-exclusive easement ("**Easement**"), for the purpose of constructing, using, maintaining, repairing, renewing and reconstructing a public roadway, sidewalk, and utilities (collectively, "**Easement Improvements**") on, along, across and under certain property in Eagle County, State of Colorado, described and depicted in **Exhibits A-1, A-2, and A-3**, each of which are attached and by reference made a part hereof (collectively, the "**Easement Area**") for access to Grantee's adjacent property.

The Easement is granted for the purpose described above only; PROVIDED, HOWEVER, that Grantee is prohibited from using the Westerly twenty-five feet (25') of that certain portion of the Easement Area described and depicted in **Exhibit A-2** for sidewalk or pedestrian/bike trail purposes. The Easement is in gross and personal to Grantee, and may not be assigned, in whole or in part, without Grantor's prior written consent, which may be withheld in Grantor's sole discretion. Grantee may grant licenses and sub easements in the Easement Area for utilities. Prior to granting a license or sub easement, Grantee shall provide Grantor with information and a plan set showing the proposed location and configuration of the proposed license or sub easement agreement and allow Grantor fourteen (14) days to provide written comments. Any use of the Easement by Grantee or Grantee's licensees and sub easement holders shall be



coordinated with Grantor to ensure that such use will not harm or frustrate Grantor's then existing use(s) of the Easement Area.

Grantor, its successors and assigns, reserves the right to construct and to maintain at any and all times, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Easement Area, but in such a way as to not unreasonably interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement. Prior to installing any new use within the Easement Area or repairing or reconstructing an existing use, Grantor shall provide Grantee with information and a plan set showing the proposed location and configuration of the proposed use and allow Grantee fourteen (14) days to provide written comments. Any use of the Easement by Grantor or Grantor's licensees shall be coordinated with Grantee to ensure that such use will not harm or frustrate Grantee's use of the Easement, and that any damage to the Easement Improvements caused by the activities of Grantor or Grantor's licensees are repaired and replaced to as substantially similar of a condition that existed before any work was undertaken.

Any notices required or desired to be given under this Easement Deed shall be in writing and personally served, given by overnight express delivery, or given by mail. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

Grantor: UNION PACIFIC RAILROAD COMPANY  
ATTN: Gregg A. Larsen, Senior Manager-Real Estate  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 68179  
Telephone: (402) 544-8552  
Email: [galarsen@up.com](mailto:galarsen@up.com)

Grantee: TOWN OF MINTURN  
ATTN: Michelle Metteer, Town Manager  
301 Boulder St, Suite # 309  
Minturn, Colorado 81645  
Telephone: (970) 827-5645, Extension No. 8  
Email: [manager@minturn.org](mailto:manager@minturn.org)

The Easement is granted subject to all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from

Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

Grantee shall maintain and repair the Easement Improvements consistent with the requirements of Colorado law. Grantee shall also maintain and repair such Easement Improvements in such manner not to cause any interference with Grantor's tracks and appurtenances or rail operations, or the facilities or access rights of utility companies or other occupants of the Easement Area. If Grantee fails to perform its maintenance obligations and continues in default in the performance of any provision of this Easement Deed for a period of sixty (60) days after written notice from Grantor to Grantee specifying such default, Grantor may, at its sole discretion, initiate an action in the District Court of Eagle County to enforce this Easement Deed.

**To the extent it may lawfully do so and subject to the conditions and limitations imposed by the Taxpayer Bill of Rights in the Colorado Constitution, Grantee shall indemnify, defend, and hold harmless Grantor and its affiliates, its and their officers, agents, employees, successors or assigns (the "Indemnitees"), against and from any and all liability (including, without limitation, strict, consequential or punitive damages), claims, demands, actions, causes of action, costs and expenses of whatsoever nature including, without limitation, court costs and attorneys' fees, arising from Grantee's performance of its obligations described herein, except to the extent caused by the negligence or intentional conduct of the Indemnitees. The term "affiliate" (or "affiliates" as the case may be) as used in this Easement Deed means any corporation which directly or indirectly controls, or is controlled by, or is under common control with Grantor. NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER BY GRANTEE OF ANY OF THE IMMUNITIES AVAILABLE TO GRANTEE PURSUANT TO THE PROVISIONS OF THE COLORADO GOVERNMENTAL IMMUNITY ACT, C.R.S. § 24-10-101 ET. SEQ.**

Nonuse of the Easement Area or any portion thereof, for a period of two (2) year will be deemed an abandonment of the Easement Area, whereupon Grantor will notify Grantee, its successors or assigns, in writing that the Easement will cease and terminate, and the title to the Easement Area will be freed from the burden of the Easement. Upon receipt of Grantor's written notice of intent to terminate based on abandonment by Grantee, its successors or assigns, Grantee will have thirty (30) days after its receipt of such termination notice to object in writing to the intent to terminate. If no objection is timely received, Grantee will be deemed to have abandoned any possessory rights. If an objection is timely received, the parties will mediate the dispute. If a resolution cannot be reached through mediation, either party may file a District Court action in Eagle County, Colorado for a factual determination of abandonment. Within one hundred eighty (180) days after termination or abandonment as contemplated by this Easement Deed, Grantee, at its sole expense, shall (a) peacefully and quietly vacate and surrender possession of the portions of the Easement Area no longer encumbered by the Easement, and (b) deliver to Grantor a fully executed and acknowledged release and quitclaim for such abandoned or terminated portions of the Easement Area in recordable form satisfactory to Grantor.

**(Signature Pages to Follow)**





# EXHIBIT A-1

## PART OF THE SW 1/4, SW 1/4, SECTION 23, T5S, R81W, 6TH P.M. MINTURN, COLORADO

PARCEL DESCRIPTION:  
A PARCEL OF LAND BEING A PORTION OF LANDS DEFINED IN INSTRUMENT RECORDED IN BOOK 106 AT PAGE 331, IN THE OFFICE OF THE CLERK AND RECORDER, COUNTY OF EAGLE, STATE OF COLORADO, AS DEPICTED ON CONTRA LTD. ALTA/ACSM LAND TITLE SURVEY DATED APRIL 01, 1998, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT BEING THE SOUTHWEST CORNER OF SAID LANDS RECORDED IN BOOK 106 AT PAGE 331 AND ALSO BEING ON THE SOUTH SECTION LINE OF SAID SECTION 23 FROM WHICH THE CORNER OF SECTIONS 22, 23, 26 & 27, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE SIXTH PRINCIPAL MERIDIAN BEARS, WITH ALL BEARINGS CONTAINED HEREIN BEING BASED UPON, N89°57'12"W 508.87 FEET; THENCE UPON SAID SOUTH SECTION LINE S89°57'12"E 55.73 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING SAID SOUTH SECTION LINE N19°06'00"W 674.25 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID PARCEL DESCRIBED IN BOOK 106 AT PAGE 331; THENCE ALONG SAID EASTERLY BOUNDARY 633.72 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 2110.10 FEET, AN INTERIOR ANGLE OF 17°12'27" AND A CHORD WHICH BEARS S23°36'25"E 631.35 FEET; THENCE S15°00'11"E 60.73 FEET TO A POINT ON SAID SOUTH SECTION LINE; THENCE ALONG SAID SOUTH SECTION LINE N89°57'12"W 47.92 FEET TO THE TRUE POINT OF BEGINNING, SAID PARCEL CONTAINING 28,136 SQUARE FEET, MORE OR LESS.



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

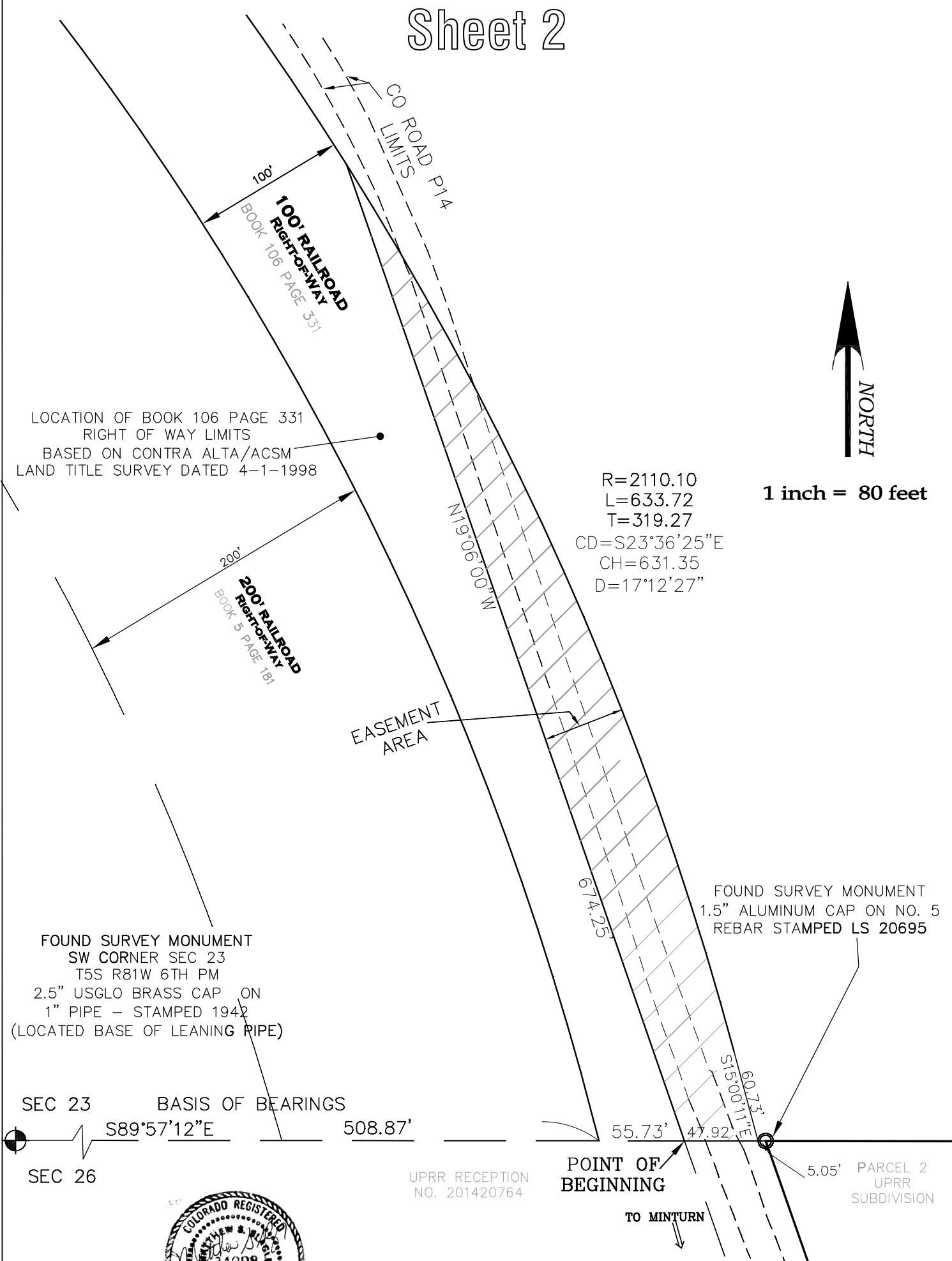
SLAGLE SURVEY SERVICES  
P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office    matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A-1		
PART OF THE SW 1/4, SW 1/4, SECTION 23, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 1 OF 2		DATE: 08-18-2023

# EXHIBIT A-1

PART OF THE SW 1/4, SW 1/4, SECTION 23,  
T5S, R81W, 6TH P.M. MINTURN, COLORADO

Sheet 2



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

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EXHIBIT A-1		
PART OF THE SW 1/4, SW 1/4, SECTION 23, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 2 OF 2		DATE: 08-18-2023

# EXHIBIT A-2

## PART OF THE W 1/2, NW 1/4, SECTION 26, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO

PARCEL DESCRIPTION:  
A PARCEL OF LAND BEING A PORTION OF THE NW 1/4 OF SECTION 26, TOWNSHIP 5 SOUTH,  
RANGE 81 WEST, OF THE 6TH PRINCIPAL MERIDIAN BEING MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID SECTION 26, FROM WHICH THE  
NORTHWEST CORNER OF SAID SECTION 26 BEARS, WITH ALL BEARINGS CONTAINED HEREIN  
BEING BASED UPON, N89°57'12"W 617.57 FEET SAID POINT ALSO BEING THE NORTHWEST  
CORNER OF PARCEL 2, UPRR SUBDIVISION; THENCE DEPARTING SAID SECTION LINE  
S19°14'54"E 346.49 FEET; THENCE 60.43 FEET UPON A CURVE TO THE RIGHT WITH A RADIUS  
OF 2813.69 FEET A CENTRAL ANGLE OF 01°13'50" AND A CHORD WHICH BEARS S18°37'58"E  
60.43 FEET; THENCE S18°01'03"E 324.55 FEET; THENCE 143.34 FEET UPON A CURVE TO THE  
RIGHT HAVING A RADIUS OF 763.58 FEET A CENTRAL ANGLE OF 10°45'20" AND A CHORD  
WHICH BEARS S12°38'24"E 143.13 FEET; THENCE S07°15'43"E 164.66 FEET; THENCE 127.07 FEET  
UPON A CURVE TO THE RIGHT HAVING A RADIUS OF 800.55 FEET A CENTRAL ANGLE OF  
09°05'41" AND A CHORD WHICH BEARS S11°48'34"E 126.94 FEET; THENCE ON A NON-TANGENT  
LINE S14°53'24"E 239.29 FEET; THENCE S15°11'50"E 538.46 FEET; THENCE 252.18 FEET UPON A  
CURVE TO THE RIGHT HAVING A RADIUS OF 2013.41 FEET A CENTRAL ANGLE OF 07°10'35"  
AND A CHORD WHICH BEARS S11°36'33"E 252.02 FEET; THENCE S08°01'15"E 215.43 FEET;  
THENCE 211.61 FEET UPON A CURVE TO THE RIGHT WITH A RADIUS OF 2208.58 FEET A  
CENTRAL ANGLE OF 05°29'23" AND A CHORD WHICH BEARS S05°16'34"E 211.53 FEET TO A  
POINT OF THE WESTERN LINE OF TAYLOR AVENUE ACCORDING TO THE INSTRUMENT  
RECORDED AS RECEPTION NO. 144697 IN THE OFFICE OF THE EAGLE COUNTY CLERK AND  
RECORDER, EAGLE, COLORADO; THENCE UPON SAID WESTERN LINE OF TAYLOR AVENUE  
THE FOLLOWING (3) THREE COURSES: 1) S36°42'11"W 56.49; 2) S53°17'49"E 7.56 FEET; 3) 84.91  
FEET UPON A NON-TANGENTIAL CURVE TO THE LEFT HAVING A RADIUS OF 188.33 FEET A  
CENTRAL ANGLE OF 25°49'58" AND A CHORD WHICH BEARS S12°55'08"W 84.19 FEET; THENCE  
DEPARTING SAID WESTERN LINE N01°30'44"W 129.71 FEET; THENCE 206.82 FEET UPON A  
NON-TANGENTIAL CURVE TO THE LEFT HAVING A RADIUS OF 2158.58 FEET WITH A  
CENTRAL ANGLE OF 05°29'23" AND A CHORD WHICH BEARS N05°16'34"W 206.74 FEET; THENCE  
N08°01'15"W 215.43 FEET; THENCE 245.92 FEET UPON A CURVE TO THE LEFT HAVING A  
RADIUS OF 1963.41 FEET A CENTRAL ANGLE OF 07°10'35" AND A CHORD WHICH BEARS  
N11°36'33"W 245.76 FEET; THENCE N15°11'50"W 538.59 FEET; THENCE N14°53'24"W 238.79 FEET;  
THENCE 134.36 FEET UPON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF  
850.55 FEET A CENTRAL ANGLE OF 09°03'03" AND A CHORD WHICH BEARS N11°47'15"W 134.22  
FEET; THENCE N07°15'43"W 164.66 FEET; THENCE 133.95 FEET UPON A CURVE TO THE LEFT  
WITH A RADIUS OF 713.58 FEET A CENTRAL ANGLE OF 10°45'20" AND A CHORD WHICH BEARS  
N12°38'24"W 133.76 FEET; THENCE N18°01'03"W 324.55 FEET; THENCE 59.36 FEET UPON A  
CURVE TO THE LEFT HAVING A RADIUS OF 2763.69 FEET A CENTRAL ANGLE OF 01°13'50" AND  
A CHORD WHICH BEARS N18°37'58"W 59.36 FEET; THENCE N19°14'54"W 364.12 FEET TO SAID  
NORTH LINE OF SECTION 26; THENCE UPON SAID NORTH LINE S89°57'12"E 52.98 FEET TO THE  
POINT OF BEGINNING.  
CONTAINING 133,342 SQUARE FEET MORE OR LESS.



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EXHIBIT A-2		
PART OF THE W 1/2, NW 1/4, SECTION 26, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit Min Road.dwg
1	3	08-22-2023

EXHIBIT A-2

PART OF THE W 1/2, NW 1/4, SECTION 26,  
T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO

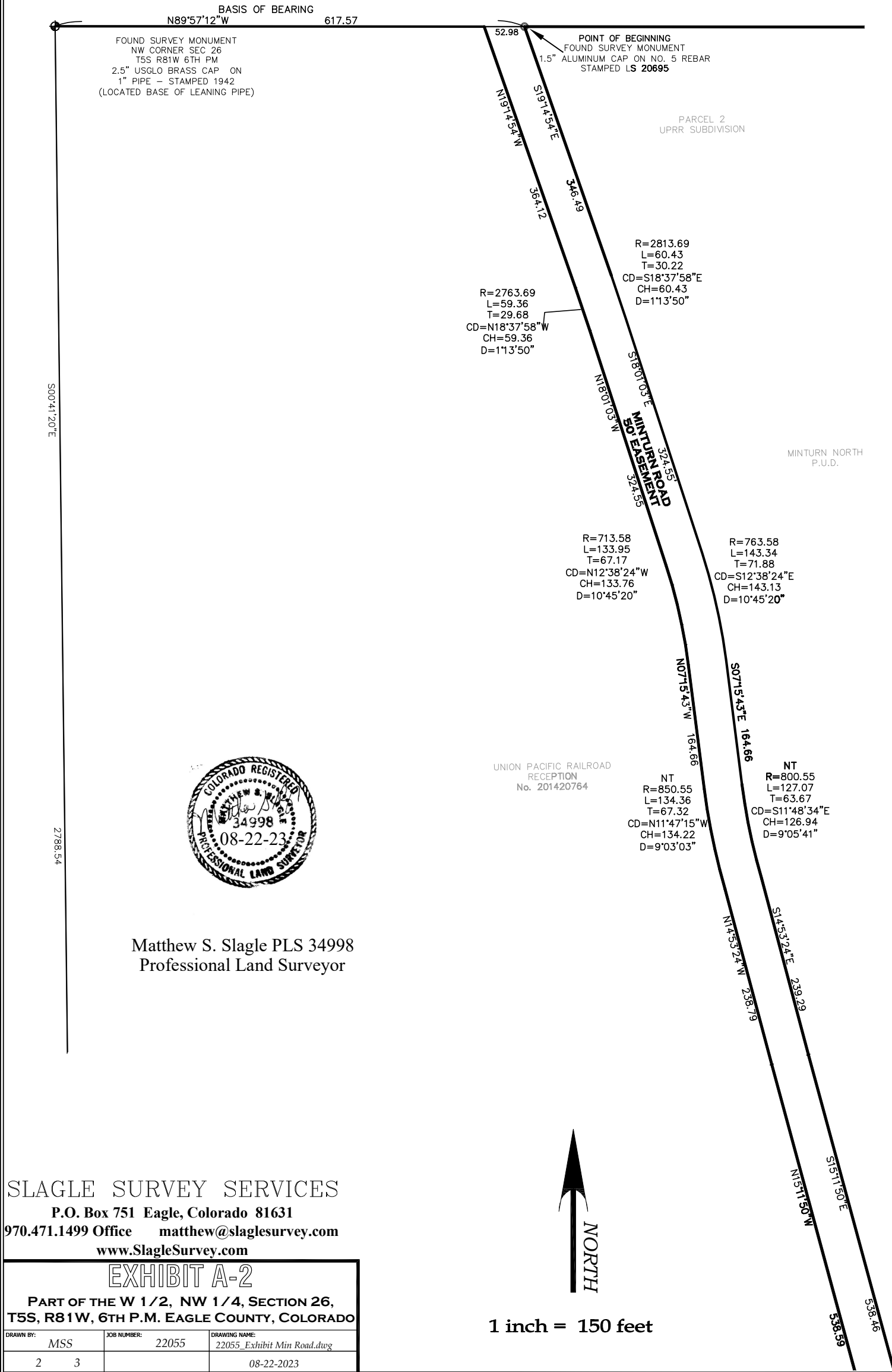
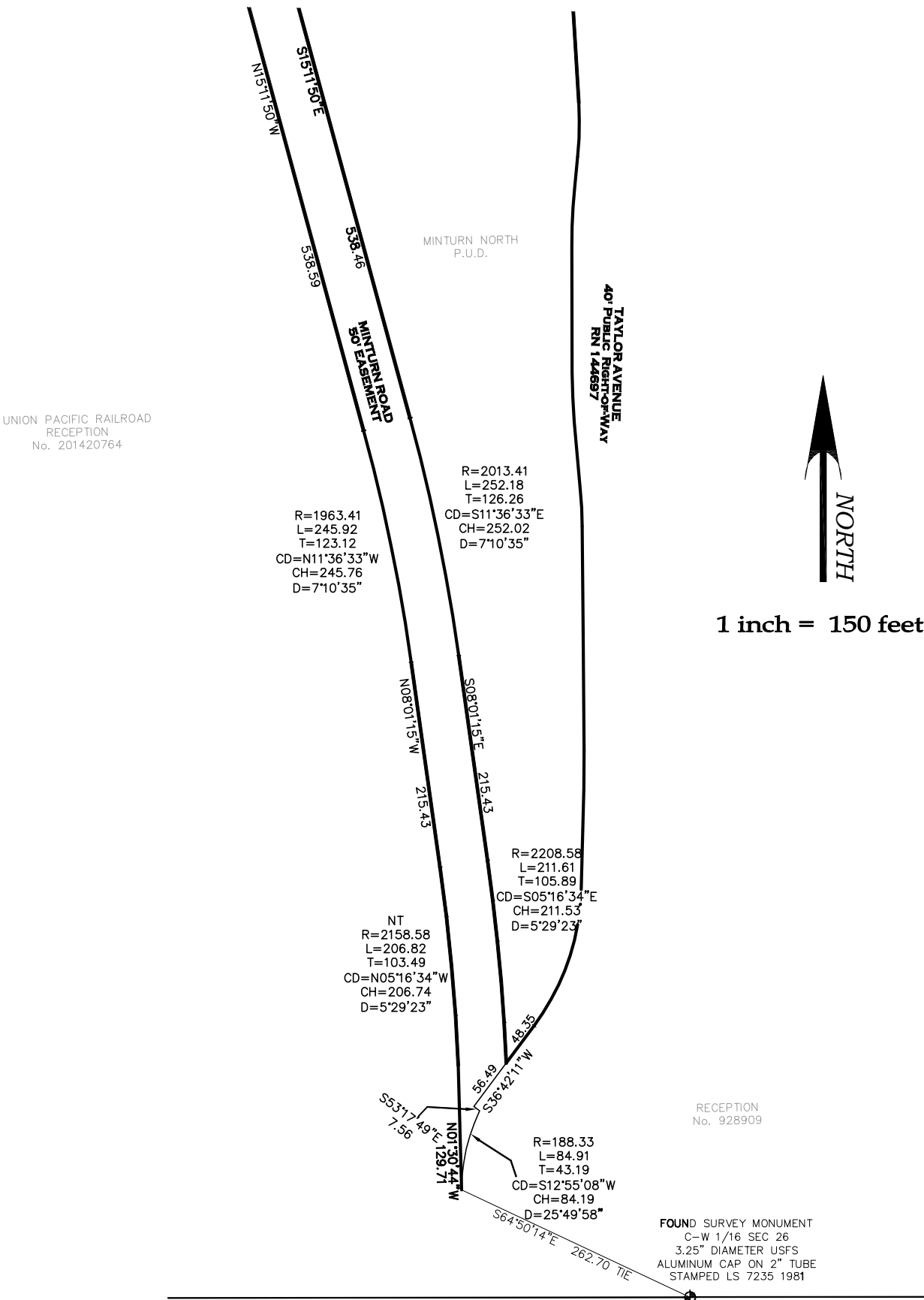




EXHIBIT A-2

PART OF THE W 1/2, NW 1/4, SECTION 26,  
T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO



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EXHIBIT A-2		
PART OF THE W 1/2, NW 1/4, SECTION 26, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit Min Road.dwg
3	3	08-22-2023

# EXHIBIT A-3

## PART OF THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO

PARCEL DESCRIPTION:

A PARCEL OF LAND SITUATED IN THE SW 1/4, NW 1/4, SECTION 26, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EAGLE, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 2.5" ALUMINUM CAP ON NO.6 REBAR STAMPED LS 37924 AT THE LOCATION OF THE MONUMENT PREVIOUSLY DESCRIBED AS THE "RAIL MONUMENT" FROM WHICH THE C-W 1/ 16TH CORNER OF SAID SECTION 26 BEARS S87°49'11"E 85.40 FEET; THENCE S89°45'25"W (WITH ALL BEARINGS CONTAIN HEREIN BEING BASED ) UPON THE MONUMENTED LINE BETWEEN SAID RAIL MONUMENT AND THE MONUMENT MARKING THE WEST QUARTER CORNER OF SAID SECTION 26, BEING A FOUND 2.5" USGLO BRASS CAP ON 1" IRON PIPE STAMPED PROPERLY, 1942, 296.59 FEET TO THE TRUE POINT OF BEGINNING BEING THE SOUTHEAST CORNER OF THE SUBJECT PARCEL DESCRIBED HEREIN; THENCE UPON SAID MONUMENTED LINE S89°45'25"W 232.38 FEET TO THE WESTERN RIGHT OF WAY OF MAIN STREET; THENCE DEPARTING SAID MONUMENTED LINE AND UPON SAID RIGHT OF WAY N00°06'32"W 24.15 FEET; THENCE N89°34'54"E 178.23 FEET; THENCE 60.97 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 78.88 FEET, AN INTERIOR ANGLE OF 44°16'52" AND A CHORD WHICH BEARS S65°41'57"E 59.46 FEET TO THE TRUE POINT OF BEGINNING, SAID PARCEL CONTAINING 5,255 SQUARE FEET, MORE OR LESS.



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

### SLAGLE SURVEY SERVICES

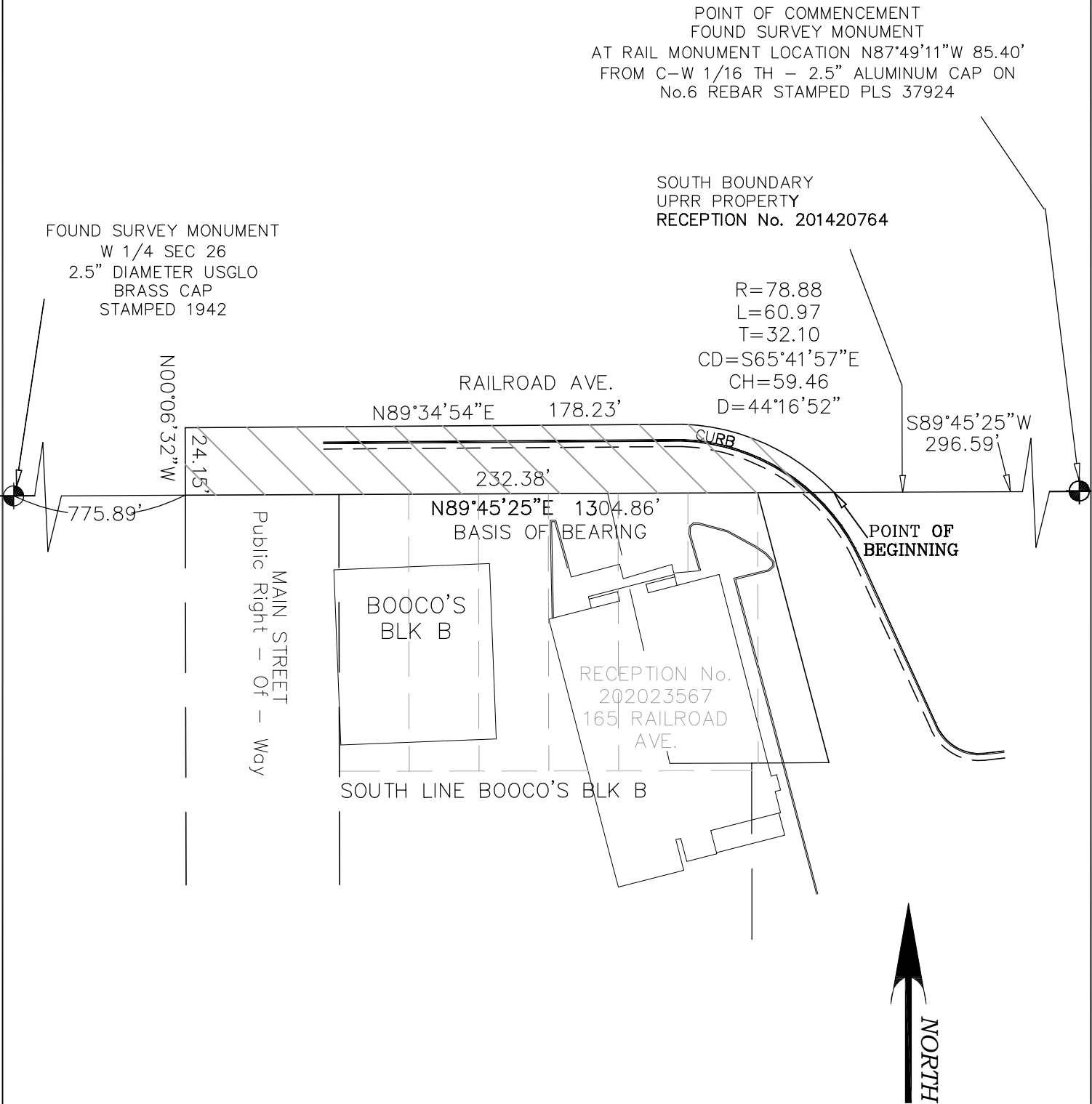
P.O. Box 751 Eagle, Colorado 81631  
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www.SlagleSurvey.com

EXHIBIT A-3		
PART OF THE NW 1/4, SW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 1 OF 2		DATE: 08-18-2023

# EXHIBIT A-3

PART OF THE SW 1/4, NW 1/4, SECTION 26,  
T5S, R81W, 6TH P.M. MINTURN, COLORADO

## Sheet 2



1 inch = 50 feet



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

SLAGLE SURVEY SERVICES

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EXHIBIT A-3		
PART OF THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 2 OF 2		DATE: 08-18-2023

**EXHIBIT 4**

**FORM OF PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT  
FOR THE RAILROAD AVENUE CROSSING  
(TO BE ATTACHED)**

**PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

RAILROAD AVENUE  
DOT NUMBER 253531V  
MILE POST 301.66, TENNESSEE PASS SUBDIVISION  
MINTURN, EAGLE COUNTY, COLORADO

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 202\_ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179, Attn: Real Estate Department ("Railroad"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado to be addressed at 301 Boulder St., #309, Minturn, Colorado 81645 ("Political Body").

**RECITALS:**

Railroad and Political Body desire to document the Political Body's use of an existing at-grade public crossing wherein vehicular traffic on Railroad Avenue traverse on, along and across Railroad's property at Railroad's Mile Post 301.66, DOT Number 253531V, on Railroad's Tennessee Pass Subdivision at or near Minturn, Eagle County, Colorado (the "Crossing Area"). The Crossing Area is shown on the print marked **Exhibit A** and described in the legal description marked **Exhibit A-1** with each exhibit being attached hereto and hereby made a part hereof. The portion of the public crossing located within the Crossing Area on Railroad's property is the "Roadway".

**AGREEMENT:**

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

**Section 1. EXHIBIT B**

The general terms and conditions marked **Exhibit B** are attached hereto and hereby made a part hereof.

**Section 2. GRANT OF EASEMENT**

Upon completion of the execution of this Agreement, the Railroad shall execute and deliver to the Political Body a nonexclusive easement in the form Easement Deed marked **Exhibit C**, attached hereto and hereby made a part hereof, for the property described and shown on **Exhibit A** and **Exhibit A-1**, for the sole purposes of constructing,

using, maintaining, repairing, renewing and reconstructing the Roadway and sidewalks located within the Crossing Area.

### **Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

### **Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

A. Prior to Contractor performing any work within the Crossing Area, including maintenance and repair work, the Political Body shall require the Contractor to:

- Execute the Railroad's then current Contractor's Right of Entry Agreement;
- Obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- Provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. If the Political Body's own employees will be performing any maintenance or repair work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

### **Section 5. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS**

If Railroad, in its sole and absolute discretion, determines there is a threat to the continuity of Railroad's operations and/or the safety of the Railroad's personnel, trains, property, facilities, operations and/or the public and, in connection with such threat, Railroad performs any work, or as may otherwise be requested by Political Body to perform any work, Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with such work, including, but not limited to, all actual costs of engineering review, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

### **Section 6. CONDITIONS TO BE MET BEFORE POLITICAL BODY AND/OR CONTRACTOR CAN COMMENCE WORK**

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad and Colorado Public Utilities Commission ("CPUC") has provided to Political Body the Railroad's and CPUC's written approval of the Political Body's plans and specifications for any work to be performed within the Crossing Area.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad representative named in the Contractor's Right of Entry Agreement.

## **Section 7. NON-RAILROAD IMPROVEMENTS**

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required. The Non-Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non-Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non-Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non-Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non-Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to supplement this Agreement, or enter into a separate agreement, with terms and conditions covering the Non Railroad Facilities.

## **Section 8. EFFECTIVE DATE; TERM; TERMINATION**

This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property, subject to the abandonment provisions contained in the Easement.

## **Section 9. FUTURE PROJECTS**

Projects within the Crossing Area involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad, CPUC, and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

## **Section 10. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

## **Section 11. SPECIAL PROVISION**

A. If the Railroad, in its sole and absolute discretion, reactivates the track at the location of the Crossing Area, Political Body shall cooperate with Railroad to evaluate and implement any improvements necessitated by such reactivation, including without limitation, changes in grade and warning devices, and will enter into separate agreements with Railroad as may be required by Railroad for the construction, cost allocations and continued use of the Roadway.

B. In the event the Political Body fails to perform its obligations set forth in this Agreement and the Railroad, in its sole and absolute discretion, determines there is a threat to the continuity of Railroad's operations and/or the safety of the Railroad's personnel, trains, property, facilities, operations and/or the public, Railroad, without any liability to Political Body, and at the expense of the Political Body, may take any and all action it deems reasonably necessary to remediate the threat, protect the road crossing, restore Railroad's operations and to insure the safety of Railroad's personnel, trains, property, facilities and/or operations.

C. Political Body's covenants to indemnify under the terms of this Agreement (a) shall not be deemed a waiver of sovereign immunity under the Colorado Governmental Immunity Act ("Act"), (b) shall only be effective to the extent of the limits of the Act as set forth in CRS Section 24-10-114, as those may be amended, (c) shall only be effective if the City's obligation to indemnify or pay costs is insured by the Colorado



Intergovernmental Risk Sharing Agency ("CIRSA") or CIRSA's successor as the Political Body's liability carrier.

D. This Agreement is expressly made subject to the limitations of the Colorado Constitution, except for any issues involving this Agreement that are preempted by Federal law. To that end, no financial obligation or covenant to indemnify contained herein shall create a debt or multi-year fiscal obligation or an obligation of future appropriations by the Town of Minturn, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget (or similar applicable funding device) which contains an allocation of sufficient funds for the performance of fiscal obligations (other than in connection with a covenant to indemnify) arising under this Agreement.

E. Notwithstanding anything to the contrary contained in this Agreement, Railroad agrees and understands that Political Body is relying on and does not relinquish or waive, by any provision of this Agreement, any applicable limitations of liability provided to Political Body by the Act.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

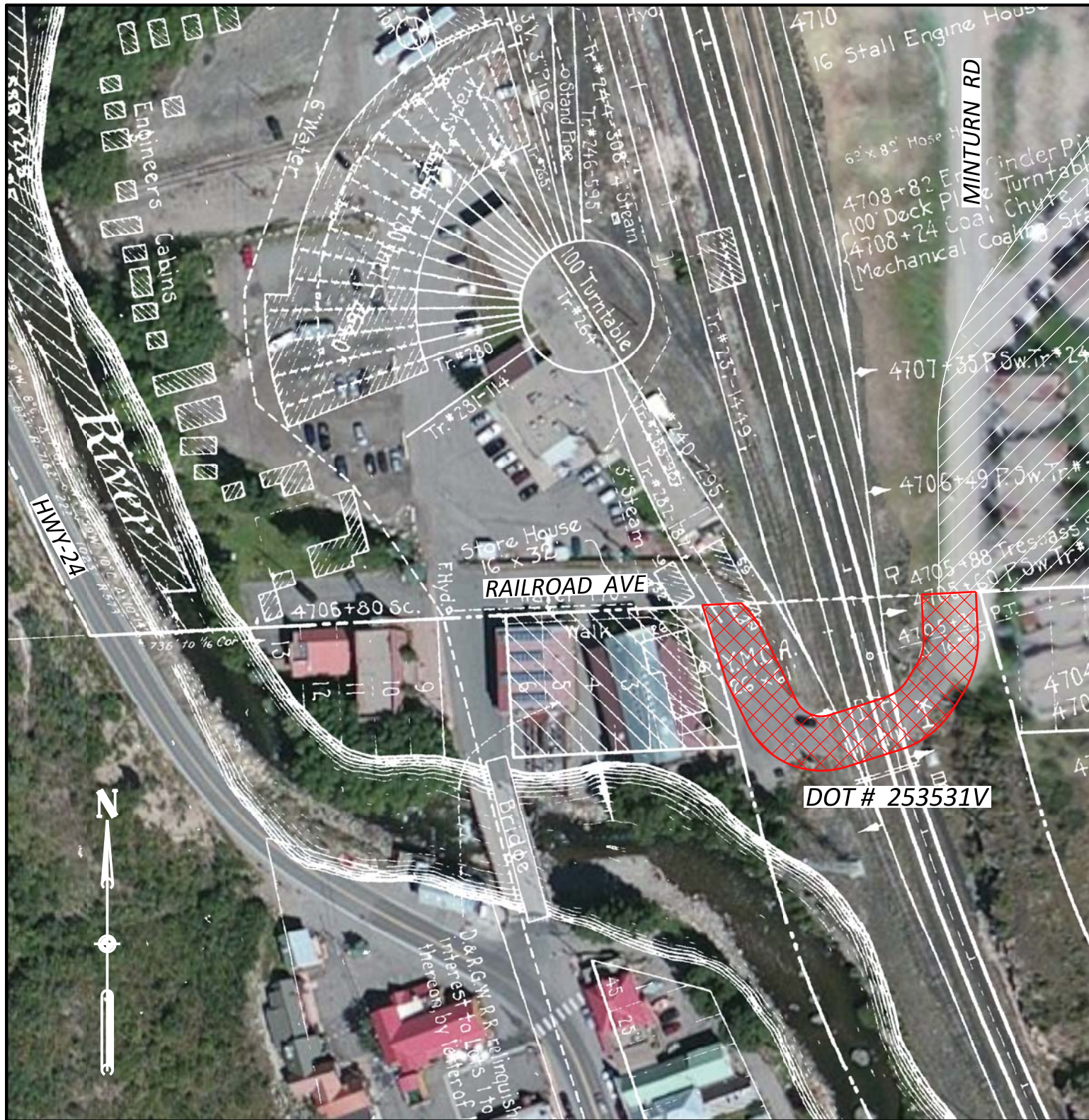
*(Federal Tax ID #94-6001323)*

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

**TOWN OF MINTURN**

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

**EXHIBIT A**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**



# **LEGEND:**

CROSSING AREA .....



UPRR CO. R/W OUTLINED .....

CROSSING AREA = 13,200 SQ. FT. +/-

CADD  
FILENAME 0318510

SCAN  
FILENAME X

NOTE: BEFORE YOU BEGIN ANY WORK, SEE  
AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

MINTURN, EAGLE COUNTY, COLORADO

M.P. 301.66 - TENNESSEE PASS SUB.

MAP DRGW V-7A / S-24A

SCALE: 1" = 100'

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 8-21-2023

PJB FILE: 0318510

**EXHIBIT A-1**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**



# EXHIBIT A-1

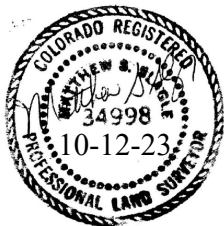
## PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO

### DESCRIPTION

#### PARCEL DESCRIPTION:

A PARCEL OF LAND SITUATED IN A PART OF BOTH THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4, SECTION 26, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EAGLE, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 2.5" ALUMINUM CAP ON NO.6 REBAR STAMPED LS 37924 AT THE LOCATION OF THE MONUMENT PREVIOUSLY DESCRIBED AS THE "RAIL MONUMENT" FROM WHICH THE C-W 1/ 16TH CORNER OF SAID SECTION 26 BEARS S87°49'11"E 85.40 FEET; THENCE S89°45'25"W (WITH ALL BEARINGS CONTAIN HEREIN BEING BASED ) UPON THE MONUMENTED LINE BETWEEN SAID RAIL MONUMENT AND THE MONUMENT MARKING THE WEST QUARTER CORNER OF SAID SECTION 26, BEING A FOUND 2.5" USGLO BRASS CAP ON 1" IRON PIPE STAMPED PROPERLY, 1942, 127.25 FEET TO THE TRUE POINT OF BEGINNING BEING A POINT ON TAYLOR AVENUE ACCORDING TO THE MINTURN TOWNE HOMES - PHASE 3 FINAL PLAT RECORDED AS RECEPTION NO. 200633401 IN THE OFFICE OF THE EAGLE COUNTY CLERK AND RECORDER; THENCE DEPARTING SAID MONUMENTED LINE AND UPON THE EASTERN LINE OF SAID TAYLOR AVENUE S00°00'31"E 3.08 FEET; THENCE UPON THE SOUTH LINE OF SAID MINTURN TOWNE HOMES N89°52'59"E 3.80 FEET; THENCE DEPARTING SAID SOUTH LINE S00°09'58"W 44.45 FEET; THENCE 41.59 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 70.00 FEET, AN INTERIOR ANGLE OF 34°02'33" AND A CHORD WHICH BEARS S17°11'14"W 40.98 FEET; THENCE S34°12'31"W 3.20 FEET; THENCE 54.15 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 75.84 FEET, AN INTERIOR ANGLE OF 40°54'22" AND A CHORD WHICH BEARS S54°39'42"W 53.00 FEET; THENCE S75°06'53"W 45.08 FEET; THENCE 88.41 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 64.04 FEET, AND INTERIOR ANGLE OF 79°06'25" AND A CHORD WHICH BEARS N65°19'59"W 81.56 FEET TO THE EASTERN BOUNDARY OF LANDS DESCRIBED IN INSTRUMENT RECORDED AS RECEPTION NO. 202023567, IN THE OFFICE OF THE EAGLE COUNTY CLERK AND RECORDER BEING A POINT 100 FEET PERPENDICULAR WESTERLY FROM THE CENTERLINE OF THE DENVER AND RIO GRANDE RAILROAD COMPANY'S ORIGINAL MAIN TRACK; THENCE UPON A LINE PARALLEL TO SAID CENTERLINE AND UPON THE WESTERN RAILROAD RIGHT OF WAY N14°48'29"W 100.00 FEET TO A POINT ON SAID MONUMENTED LINE; THENCE UPON SAID MONUMENTED LINE N89°45'25"E 27.83 FEET; THENCE DEPARTING SAID MONUMENTED LINE 27.78 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 71.80 FEET, AN INTERIOR ANGLE OF 22°10'11" AND A CHORD WHICH BEARS S34°26'58"E 27.61 FEET; THENCE S23°21'52"E 58.16 FEET; THENCE 25.90 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 18.20 FEET, AN INTERIOR ANGLE OF 81°31'15" AND A CHORD WHICH BEARS S64°07'30"E 23.77 FEET; THENCE N75°06'53"E 45.08 FEET; THENCE 21.42 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 30.00 FEET, AN INTERIOR ANGLE OF 40°54'22" AND A CHORD WHICH BEARS N54°39'42"E 20.97 FEET; THENCE N34°12'31"E 11.84 FEET; THENCE 17.82 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 30.00 FEET, AN INTERIOR ANGLE OF 34°02'33" AND A CHORD WHICH BEARS N17°11'14"E 17.56 FEET; THENCE N00°09'58"E 36.82 FEET TO A POINT ON SAID MONUMENTED LINE; THENCE UPON SAID MONUMENTED LINE N89°45'25"E 36.19 FEET TO THE TRUE POINT OF BEGINNING, SAID PARCEL CONTAINING 13,200 SQUARE FEET, MORE OR LESS.



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

### SLAGLE SURVEY SERVICES

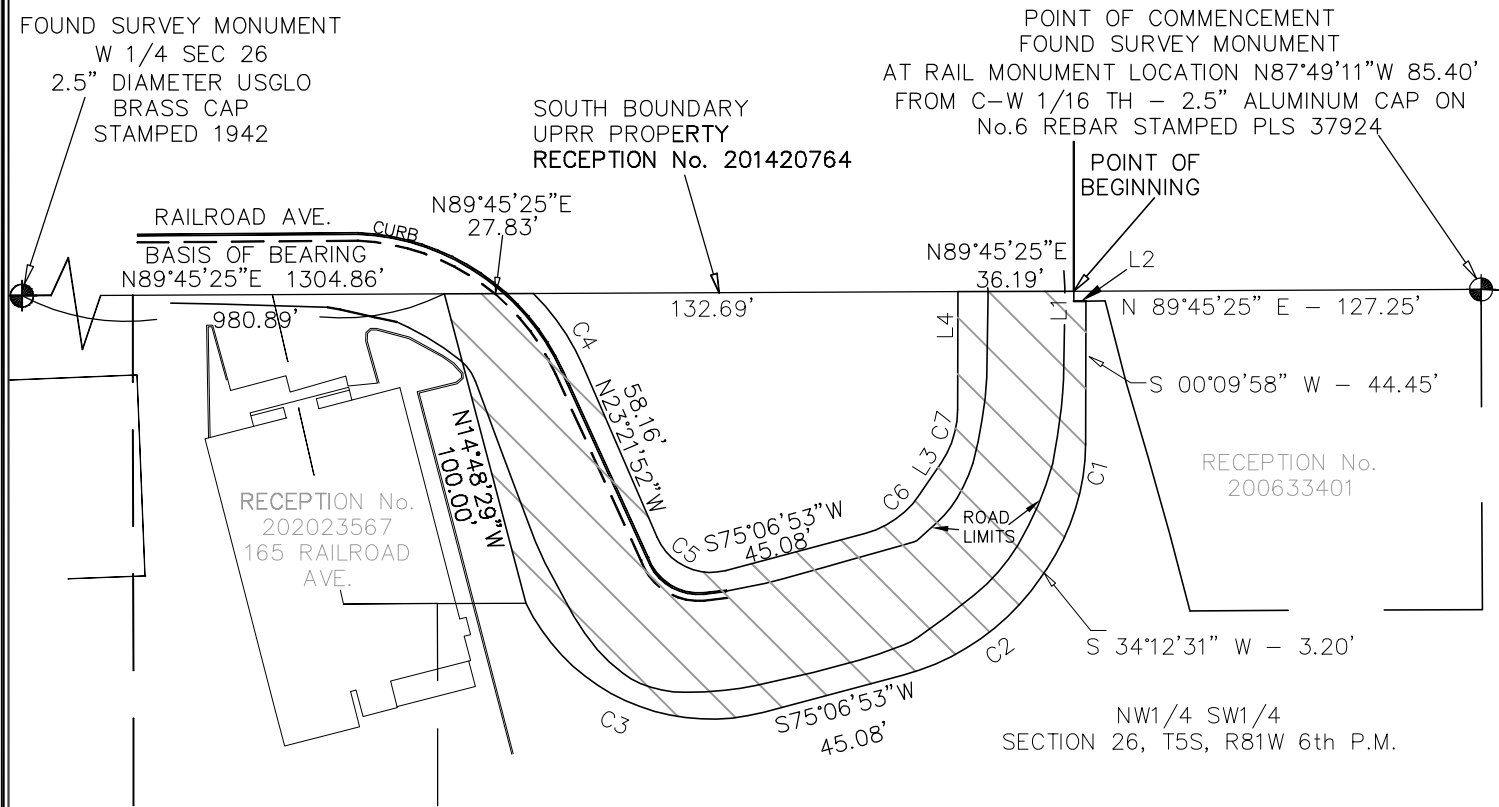
P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office    [matthew@slaglesurvey.com](mailto:matthew@slaglesurvey.com)  
[www.SlagleSurvey.com](http://www.SlagleSurvey.com)

EXHIBIT A-1		
PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 1 OF 2		DATE: 08-18-2023

EXHIBIT A-1

PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4  
SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO

Sheet 2



CURVE TABLE					
CURVE #	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	41.59	70.00	34°02'33"	S17°11'14"W	40.98
C2	54.15	75.84	40°54'22"	S54°39'42"W	53.00
C3	88.41	64.04	79°06'25"	N65°19'59"W	81.56
C4	27.78	71.80	22°10'11"	S34°26'58"E	27.61
C5	25.90	18.20	81°31'15"	S64°07'30"E	23.77
C6	21.42	30.00	40°54'22"	N54°39'42"E	20.97
C7	17.82	30.00	34°02'33"	N17°11'14"E	17.56

LINE TABLE

	BEARING	LENGTH
L1	S00°00'31"E	3.08
L2	N89°52'59"E	3.80
L3	N34°12'31"E	11.84
L4	N00°09'58"E	36.82



1 inch = 60 feet



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

SLAGLE SURVEY SERVICES

P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A-1		
PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 2 OF 2	DATE: 08-18-2023	

**EXHIBIT B**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

**SECTION 1. CONDITIONS AND COVENANTS**

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipelines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

**E. INTENTIONALLY OMITTED**

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

## **SECTION 2. INTENTIONALLY OMITTED**

## **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

## **SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

## **SECTION 5. MAINTENANCE AND REPAIRS**

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, repaired or replaced, the Railroad, at the Political Body's expense, shall install such replacement surfacing.

## **SECTION 6. CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

## **SECTION 7. REARRANGEMENT OF WARNING DEVICES**

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.



## **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or

safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws,

regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Crossing Area shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. The Political Body will give due consideration to suggestions and recommendations made by Railroad for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be directly plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the

"vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for

relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 9. INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

#### **SECTION 10. OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

#### **SECTION 11. INTENTIONALLY OMITTED**

#### **SECTION 12. REMEDIES FOR BREACH OR NONUSE**

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

#### **SECTION 13. MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding

between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

**EXHIBIT C**  
**TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**FORM OF EASEMENT DEED**

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

Town of Minturn  
Attn: Town Manager  
301 Boulder Street, #309  
Minturn, Colorado 81645

---

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

3185-10

**EASEMENT DEED**

THIS EASEMENT DEED is made this \_\_\_\_ day of \_\_\_\_\_, 2023, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado to be addressed at 301 Boulder St., #309, Minturn, Colorado 81645 ("Grantee").

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a non-exclusive easement ("Easement"), for the sole purposes of constructing, using, maintaining, repairing, renewing and reconstructing an at-grade public road crossing over Railroad Avenue, on, along and across DOT No. 253531V at Railroad's Milepost 301.66 on Railroad's Tennessee Pass Subdivision (the "Roadway"), including any sidewalks adjacent or related thereto, located at or near Minturn, Eagle County, Colorado, as described and depicted in **Exhibit A**, attached and by reference made a part hereof (the "Easement Area").

The Easement is granted for the purposes described above only. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, or telephone lines.

Grantor, its successors and assigns, reserves the right to construct and to maintain at any and all times railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the

Easement Area, but in such a way as to not unreasonably interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement, including but not limited to any and all general railroad purposes.

The Easement is granted subject to the terms and conditions contained in the separate Public Highway At-Grade Crossing Agreement dated \_\_\_\_\_, 2023, as signed by Grantor and Grantee, and is also subject to all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

If Grantee, its successors or assigns, abandons the Easement Area or any portion of the Easement Area, the Easement will cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area will be freed from the burden of the Easement. Nonuse of the Easement Area or any portion thereof, for public highway purposes continuing at any time for a period of eighteen (18) months will be deemed an abandonment of the Easement Area or portion thereof not used.

**(Signature Pages to Follow)**



**Attest:**

\_\_\_\_\_

Assistant Secretary

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

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

Printed Name: Chris D. Goble

Title: Assistant Vice President – Real Estate

**TOWN OF MINTURN,  
a municipal corporation or political  
subdivision of the State of Colorado**

(Seal)

**EXHIBIT A**  
**TO FORM OF EASEMENT DEED**

**LEGAL DESCRIPTION OF EASEMENT AREA  
(TO BE ATTACHED)**

**EXHIBIT 5**

**FORM OF PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT  
FOR THE EAGLE COUNTY ROAD 13 CROSSING  
(TO BE ATTACHED)**

**PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

EAGLE COUNTY ROAD 14  
DOT NUMBER 253532C  
MILE POST 302.93, TENNESSEE PASS SUBDIVISION  
EAGLE COUNTY, COLORADO

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 202\_ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179, Attn: Real Estate Department ("Railroad"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado to be addressed at 301 Boulder St., #309, Minturn, Colorado 81645 ("Political Body").

**RECITALS:**

Railroad and Political Body desire to document the Political Body's use of an existing at-grade public crossing wherein vehicular traffic on Eagle County Road 14 traverse on, along and across Railroad's property at Railroad's Mile Post 302.93, DOT Number 253532C, on Railroad's Tennessee Pass Subdivision at or near Minturn, Eagle County, Colorado (the "Crossing Area"). The Crossing Area is shown on the print marked **Exhibit A** and described in the legal description marked **Exhibit A-1** with each exhibit being attached hereto and hereby made a part hereof. The portion of the public crossing located within the Crossing Area on Railroad's property is the "Roadway".

**AGREEMENT:**

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

**Section 1. EXHIBIT B**

The general terms and conditions marked **Exhibit B** are attached hereto and hereby made a part hereof.

**Section 2. GRANT OF EASEMENT**

Upon completion of the execution of this Agreement, the Railroad shall execute and deliver to the Political Body a nonexclusive easement in the form Easement Deed marked **Exhibit C**, attached hereto and hereby made a part hereof, for the property described and shown on **Exhibit A** and **Exhibit A-1**, for the sole purposes of constructing,

using, maintaining, repairing, renewing and reconstructing the Roadway and sidewalks located within the Crossing Area.

### **Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

### **Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

A. Prior to Contractor performing any work within the Crossing Area, including maintenance and repair work, the Political Body shall require the Contractor to:

- Execute the Railroad's then current Contractor's Right of Entry Agreement;
- Obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- Provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. If the Political Body's own employees will be performing any maintenance or repair work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

### **Section 5. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS**

If Railroad, in its sole and absolute discretion, determines there is a threat to the continuity of Railroad's operations and/or the safety of the Railroad's personnel, trains, property, facilities, operations and/or the public and, in connection with such threat, Railroad performs any work, or as may otherwise be requested by Political Body to perform any work, Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with such work, including, but not limited to, all actual costs of engineering review, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

### **Section 6. CONDITIONS TO BE MET BEFORE POLITICAL BODY AND/OR CONTRACTOR CAN COMMENCE WORK**

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad and Colorado Public Utilities Commission ("CPUC") has provided to Political Body the Railroad's and CPUC's written approval of the Political Body's plans and specifications for any work to be performed within the Crossing Area.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad representative named in the Contractor's Right of Entry Agreement.

## **Section 7. NON-RAILROAD IMPROVEMENTS**

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required. The Non-Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non-Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non-Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non-Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non-Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to supplement this Agreement, or enter into a separate agreement, with terms and conditions covering the Non Railroad Facilities.

## **Section 8. EFFECTIVE DATE; TERM; TERMINATION**

This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property, subject to the abandonment provisions contained in the Easement.

## **Section 9. FUTURE PROJECTS**

Projects within the Crossing Area involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

## **Section 10. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

## **Section 11. SPECIAL PROVISION**

A. If the Railroad, in its sole and absolute discretion, reactivates the track at the location of the Crossing Area, Political Body shall cooperate with Railroad to evaluate and implement any improvements necessitated by such reactivation, including without limitation, changes in grade and warning devices, and will enter into separate agreements with Railroad as may be required by Railroad for the construction, cost allocations and continued use of the Roadway.

B. In the event the Political Body fails to perform its obligations set forth in this Agreement and the Railroad, in its sole and absolute discretion, determines there is a threat to the continuity of Railroad's operations and/or the safety of the Railroad's personnel, trains, property, facilities, operations and/or the public, Railroad, without any liability to Political Body, and at the expense of the Political Body, may take any and all action it deems reasonably necessary to remediate the threat, protect the road crossing, restore Railroad's operations and to insure the safety of Railroad's personnel, trains, property, facilities and/or operations.

C. Political Body's covenants to indemnify under the terms of this Agreement (a) shall not be deemed a waiver of sovereign immunity under the Colorado Governmental Immunity Act ("Act"), (b) shall only be effective to the extent of the limits of the Act as set forth in CRS Section 24-10-114, as those may be amended, (c) shall only be effective if the City's obligation to indemnify or pay costs is insured by the Colorado



Intergovernmental Risk Sharing Agency ("CIRSA") or CIRSA's successor as the Political Body's liability carrier.

D. This Agreement is expressly made subject to the limitations of the Colorado Constitution, except for any issues involving this Agreement that are preempted by Federal law. To that end, no financial obligation or covenant to indemnify contained herein shall create a debt or multi-year fiscal obligation or an obligation of future appropriations by the Town of Minturn, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget (or similar applicable funding device) which contains an allocation of sufficient funds for the performance of fiscal obligations (other than in connection with a covenant to indemnify) arising under this Agreement.

E. Notwithstanding anything to the contrary contained in this Agreement, Railroad agrees and understands that Political Body is relying on and does not relinquish or waive, by any provision of this Agreement, any applicable limitations of liability provided to Political Body by the Act.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

*(Federal Tax ID #94-6001323)*

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


**TOWN OF MINTURN**

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

**EXHIBIT A**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**



**LEGEND:**

CROSSING AREA ..... 

UPRRCO. R/W OUTLINED ..... 

CROSSING AREA = 5,197 SQ. FT. +/-

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

MINTURN, EAGLE COUNTY, COLORADO

M.P. 302.93 - TENNESSEE PASS SUB.

MAP DRGW V-7A / 24

SCALE: 1" = 100'

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 8-21-2023

PJB FILE: 0328625

CADD FILENAME	0328625
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SCAN FILENAME	X
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**EXHIBIT A-1**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

# EXHIBIT A-1

## PART OF THE SW 1/4, NE 1/4, SECTION 22, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO

PARCEL DESCRIPTION:  
A PARCEL OF LAND, FIFTY FEET IN WIDTH, SITUATED IN A PART OF THE SW 1/4 NE 1/4 SECTION 22, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF EAGLE, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER SAID SECTION 22, FROM WHICH THE WEST 1/16TH CORNER SECTION 23 AND 26, T5S, R81W, OF THE 6TH P.M. BEARS, AND ALL BEARINGS CONTAINED HEREIN BEING BASED UPON, S89°57'12"E; THENCE N34°49'55"W 3631.48 FEET TO A POINT ON THE RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY N43°58'41"W 50.01 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY N44°55'46"E 41.10 FEET; THENCE 61.04 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 125.00 FEET, AN INTERIOR ANGLE OF 27°58'41" AND A CHORD WHICH BEARS N58°55'06"E 60.43 FEET TO A POINT ON SAID RIGHT-OF-WAY; THENCE ALONG SAID RIGHT-OF-WAY S43°58'41"E 62.20 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY 65.45 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 75.00 FEET, AN INTERIOR ANGLE OF 50°00'11" AND A CHORD WHICH BEARS S69°55'51"W 63.40 FEET; THENCE S44°55'46"W 42.05 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 5,197 SQUARE FEET, PLUS OR MINUS.



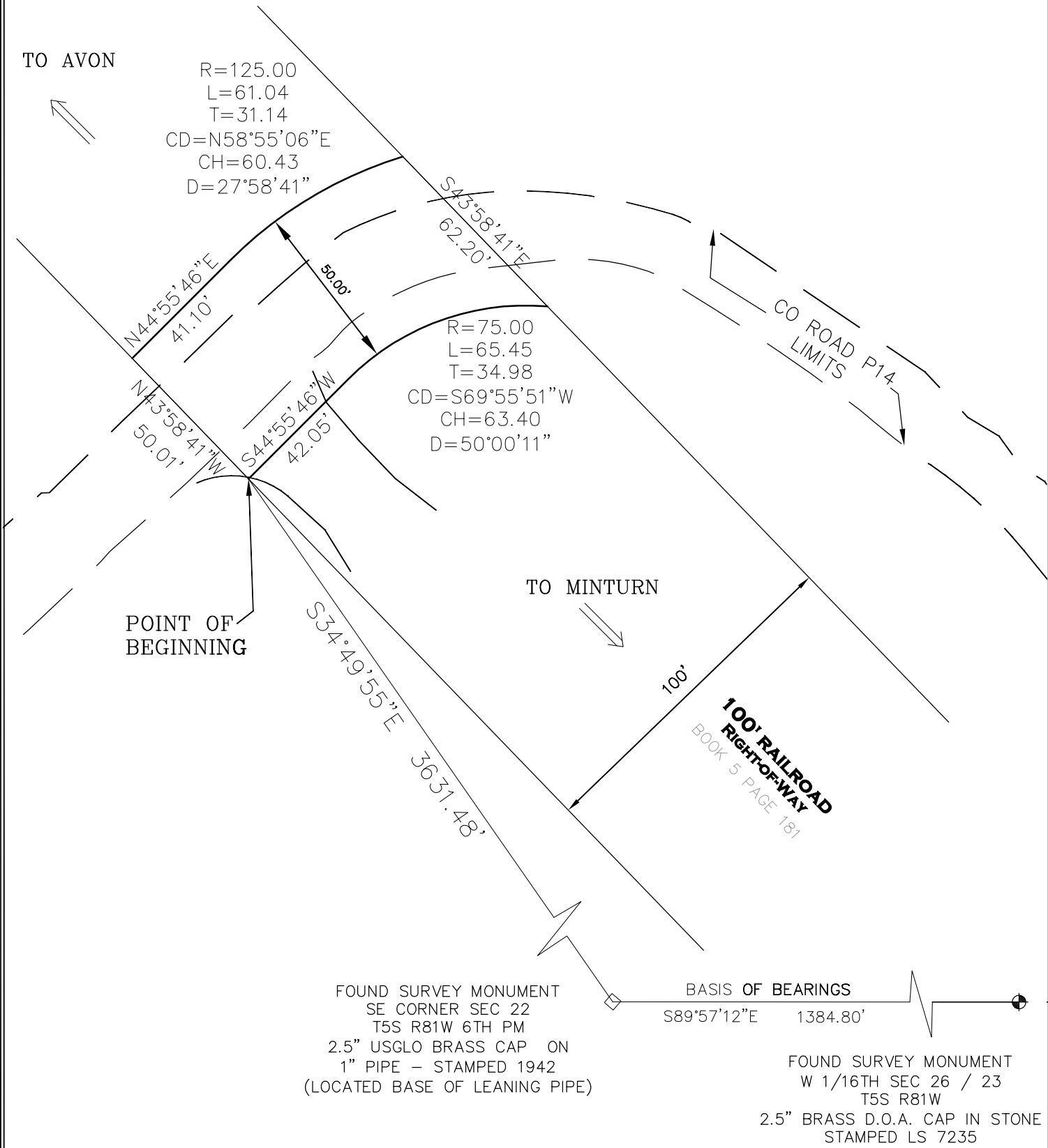
Matthew S. Slagle PLS 34998  
Professional Land Surveyor

SLAGLE SURVEY SERVICES  
P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office    matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A-1		
PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A Dowl.dwg
SHEET 1 OF 2		DATE: 08-18-2023

# EXHIBIT A-1

## PART OF THE SW 1/4, NE 1/4, SECTION 22, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO Sheet 2



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

SLAGLE SURVEY SERVICES  
P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A-1		
PART OF THE SW 1/4, NE 1/4, SECTION 22, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A Dowd.dwg
SHEET 2 OF 2		DATE: 08-18-2023

**EXHIBIT B**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

**SECTION 1. CONDITIONS AND COVENANTS**

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipelines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

**E. INTENTIONALLY OMITTED**

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.



## **SECTION 2. INTENTIONALLY OMITTED**

## **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

## **SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

## **SECTION 5. MAINTENANCE AND REPAIRS**

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, repaired or replaced, the Railroad, at the Political Body's expense, shall install such replacement surfacing.

## **SECTION 6. CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

## **SECTION 7. REARRANGEMENT OF WARNING DEVICES**

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.



## **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or

safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws,

regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Crossing Area shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. The Political Body will give due consideration to suggestions and recommendations made by Railroad for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be directly plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the

"vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for

relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 9. INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

#### **SECTION 10. OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

#### **SECTION 11. INTENTIONALLY OMITTED**

#### **SECTION 12. REMEDIES FOR BREACH OR NONUSE**

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

#### **SECTION 13. MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding

between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

**EXHIBIT C**  
**TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**FORM OF EASEMENT DEED**

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

Town of Minturn  
Attn: Town Manager  
301 Boulder Street, #309  
Minturn, Colorado 81645

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

3286-25

**EASEMENT DEED**

THIS EASEMENT DEED is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado to be addressed at 301 Boulder St., #309, Minturn, Colorado 81645 ("Grantee").

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a non-exclusive easement ("Easement"), for the sole purposes of constructing, using, maintaining, repairing, renewing and reconstructing an at-grade public road crossing over Eagle County Road 14, on, along and across DOT No. 253532C at Railroad's Milepost 302.93 on Railroad's Tennessee Pass Subdivision (the "Roadway"), including any sidewalks adjacent or related thereto, located at or near Minturn, Eagle County, Colorado, as described and depicted in **Exhibit A**, attached and by reference made a part hereof (the "Easement Area").

The Easement is granted for the purposes described above only. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, or telephone lines.

Grantor, its successors and assigns, reserves the right to construct and to maintain at any and all times railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the

Easement Area, but in such a way as to not unreasonably interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement, including but not limited to any and all general railroad purposes.

The Easement is granted subject to the terms and conditions contained in the separate Public Highway At-Grade Crossing Agreement dated \_\_\_\_\_, 2023, as signed by Grantor and Grantee, and is also subject to all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

If Grantee, its successors or assigns, abandons the Easement Area or any portion of the Easement Area, the Easement will cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area will be freed from the burden of the Easement. Nonuse of the Easement Area or any portion thereof, for public highway purposes continuing at any time for a period of eighteen (18) months will be deemed an abandonment of the Easement Area or portion thereof not used.

**(Signature Pages to Follow)**



**Attest:**

\_\_\_\_\_

Assistant Secretary

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

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

Printed Name: Chris D. Goble

Title: Assistant Vice President – Real Estate

**STATE OF NEBRASKA            )**  
   **) ss.**  
**COUNTY OF DOUGLAS        )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Chris D. Goble and \_\_\_\_\_, Assistant Vice President – Real Estate and Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, on behalf of the corporation.

WITNESS my hand and official seal.

Notary Public

(Seal)

**TOWN OF MINTURN,  
a municipal corporation or political  
subdivision of the State of Colorado**

(Seal)

**EXHIBIT A**  
**TO FORM OF EASEMENT DEED**

**LEGAL DESCRIPTION OF EASEMENT AREA  
(TO BE ATTACHED)**

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

Town of Minturn  
Attn: Town Manager  
301 Boulder Street, #309  
Minturn, Colorado 81645

---

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

3185-08

**EASEMENT DEED**  
**FOR MINTURN ROAD AND RAILROAD AVENUE**

This EASEMENT DEED FOR MINTURN ROAD AND RAILROAD AVENUE ("Easement Deed") is made this \_\_\_\_ day of \_\_\_\_\_, 2023, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**Grantor**"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado ("**Grantee**"), whose address is 301 Boulder St., #309, Minturn, Colorado 81645.

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a non-exclusive easement ("**Easement**"), for the purpose of constructing, using, maintaining, repairing, renewing and reconstructing a public roadway, sidewalk, and utilities (collectively, "**Easement Improvements**") on, along, across and under certain property in Eagle County, State of Colorado, described and depicted in **Exhibits A-1, A-2, and A-3**, each of which are attached and by reference made a part hereof (collectively, the "**Easement Area**") for access to Grantee's adjacent property.

The Easement is granted for the purpose described above only; PROVIDED, HOWEVER, that Grantee is prohibited from using the Westerly twenty-five feet (25') of that certain portion of the Easement Area described and depicted in **Exhibit A-2** for sidewalk or pedestrian/bike trail purposes. The Easement is in gross and personal to Grantee, and may not be assigned, in whole or in part, without Grantor's prior written consent, which may be withheld in Grantor's sole discretion. Grantee may grant licenses and sub easements in the Easement Area for utilities. Prior to granting a license or sub easement, Grantee shall provide Grantor with information and a plan set showing the proposed location and configuration of the proposed license or sub easement agreement and allow Grantor fourteen (14) days to provide written comments. Any use of the Easement by Grantee or Grantee's licensees and sub easement holders shall be

coordinated with Grantor to ensure that such use will not harm or frustrate Grantor's then existing use(s) of the Easement Area.

Grantor, its successors and assigns, reserves the right to construct and to maintain at any and all times, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Easement Area, but in such a way as to not unreasonably interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement. Prior to installing any new use within the Easement Area or repairing or reconstructing an existing use, Grantor shall provide Grantee with information and a plan set showing the proposed location and configuration of the proposed use and allow Grantee fourteen (14) days to provide written comments. Any use of the Easement by Grantor or Grantor's licensees shall be coordinated with Grantee to ensure that such use will not harm or frustrate Grantee's use of the Easement, and that any damage to the Easement Improvements caused by the activities of Grantor or Grantor's licensees are repaired and replaced to as substantially similar of a condition that existed before any work was undertaken.

Any notices required or desired to be given under this Easement Deed shall be in writing and personally served, given by overnight express delivery, or given by mail. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

Grantor: UNION PACIFIC RAILROAD COMPANY  
ATTN: Gregg A. Larsen, Senior Manager-Real Estate  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 68179  
Telephone: (402) 544-8552  
Email: [galarsen@up.com](mailto:galarsen@up.com)

Grantee: TOWN OF MINTURN  
ATTN: Michelle Metteer, Town Manager  
301 Boulder St, Suite # 309  
Minturn, Colorado 81645  
Telephone: (970) 827-5645, Extension No. 8  
Email: [manager@minturn.org](mailto:manager@minturn.org)

The Easement is granted subject to all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from

Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

Grantee shall maintain and repair the Easement Improvements consistent with the requirements of Colorado law. Grantee shall also maintain and repair such Easement Improvements in such manner not to cause any interference with Grantor's tracks and appurtenances or rail operations, or the facilities or access rights of utility companies or other occupants of the Easement Area. If Grantee fails to perform its maintenance obligations and continues in default in the performance of any provision of this Easement Deed for a period of sixty (60) days after written notice from Grantor to Grantee specifying such default, Grantor may, at its sole discretion, initiate an action in the District Court of Eagle County to enforce this Easement Deed.

**To the extent it may lawfully do so and subject to the conditions and limitations imposed by the Taxpayer Bill of Rights in the Colorado Constitution, Grantee shall indemnify, defend, and hold harmless Grantor and its affiliates, its and their officers, agents, employees, successors or assigns (the "Indemnitees"), against and from any and all liability (including, without limitation, strict, consequential or punitive damages), claims, demands, actions, causes of action, costs and expenses of whatsoever nature including, without limitation, court costs and attorneys' fees, arising from Grantee's performance of its obligations described herein, except to the extent caused by the negligence or intentional conduct of the Indemnitees. The term "affiliate" (or "affiliates" as the case may be) as used in this Easement Deed means any corporation which directly or indirectly controls, or is controlled by, or is under common control with Grantor. NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER BY GRANTEE OF ANY OF THE IMMUNITIES AVAILABLE TO GRANTEE PURSUANT TO THE PROVISIONS OF THE COLORADO GOVERNMENTAL IMMUNITY ACT, C.R.S. § 24-10-101 ET. SEQ.**

Nonuse of the Easement Area or any portion thereof, for a period of two (2) year will be deemed an abandonment of the Easement Area, whereupon Grantor will notify Grantee, its successors or assigns, in writing that the Easement will cease and terminate, and the title to the Easement Area will be freed from the burden of the Easement. Upon receipt of Grantor's written notice of intent to terminate based on abandonment by Grantee, its successors or assigns, Grantee will have thirty (30) days after its receipt of such termination notice to object in writing to the intent to terminate. If no objection is timely received, Grantee will be deemed to have abandoned any possessory rights. If an objection is timely received, the parties will mediate the dispute. If a resolution cannot be reached through mediation, either party may file a District Court action in Eagle County, Colorado for a factual determination of abandonment. Within one hundred eighty (180) days after termination or abandonment as contemplated by this Easement Deed, Grantee, at its sole expense, shall (a) peacefully and quietly vacate and surrender possession of the portions of the Easement Area no longer encumbered by the Easement, and (b) deliver to Grantor a fully executed and acknowledged release and quitclaim for such abandoned or terminated portions of the Easement Area in recordable form satisfactory to Grantor.

**(Signature Pages to Follow)**

(Seal)





# EXHIBIT A-1

## PART OF THE SW 1/4, SW 1/4, SECTION 23, T5S, R81W, 6TH P.M. MINTURN, COLORADO

PARCEL DESCRIPTION:  
A PARCEL OF LAND BEING A PORTION OF LANDS DEFINED IN INSTRUMENT RECORDED IN BOOK 106 AT PAGE 331, IN THE OFFICE OF THE CLERK AND RECORDER, COUNTY OF EAGLE, STATE OF COLORADO, AS DEPICTED ON CONTRA LTD. ALTA/ACSM LAND TITLE SURVEY DATED APRIL 01, 1998, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT BEING THE SOUTHWEST CORNER OF SAID LANDS RECORDED IN BOOK 106 AT PAGE 331 AND ALSO BEING ON THE SOUTH SECTION LINE OF SAID SECTION 23 FROM WHICH THE CORNER OF SECTIONS 22, 23, 26 & 27, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE SIXTH PRINCIPAL MERIDIAN BEARS, WITH ALL BEARINGS CONTAINED HEREIN BEING BASED UPON, N89°57'12"W 508.87 FEET; THENCE UPON SAID SOUTH SECTION LINE S89°57'12"E 55.73 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING SAID SOUTH SECTION LINE N19°06'00"W 674.25 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID PARCEL DESCRIBED IN BOOK 106 AT PAGE 331; THENCE ALONG SAID EASTERLY BOUNDARY 633.72 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 2110.10 FEET, AN INTERIOR ANGLE OF 17°12'27" AND A CHORD WHICH BEARS S23°36'25"E 631.35 FEET; THENCE S15°00'11"E 60.73 FEET TO A POINT ON SAID SOUTH SECTION LINE; THENCE ALONG SAID SOUTH SECTION LINE N89°57'12"W 47.92 FEET TO THE TRUE POINT OF BEGINNING, SAID PARCEL CONTAINING 28,136 SQUARE FEET, MORE OR LESS.



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

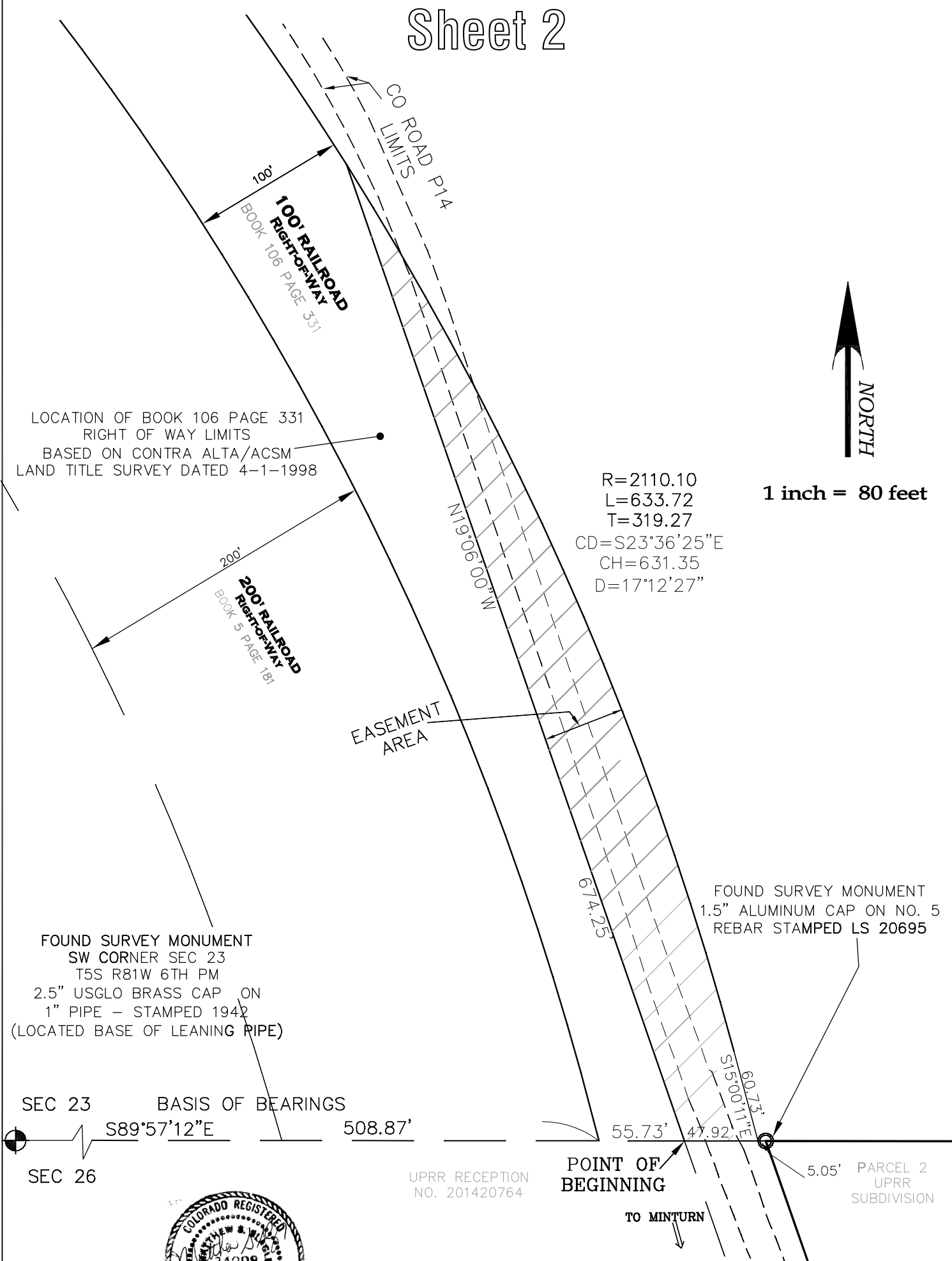
SLAGLE SURVEY SERVICES  
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970.471.1499 Office    matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A-1		
PART OF THE SW 1/4, SW 1/4, SECTION 23, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 1 OF 2		DATE: 08-18-2023

# EXHIBIT A-1

PART OF THE SW 1/4, SW 1/4, SECTION 23,  
T5S, R81W, 6TH P.M. MINTURN, COLORADO

Sheet 2



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EXHIBIT A-1		
PART OF THE SW 1/4, SW 1/4, SECTION 23, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 2 OF 2		DATE: 08-18-2023

# EXHIBIT A-2

## PART OF THE W 1/2, NW 1/4, SECTION 26, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO

PARCEL DESCRIPTION:  
A PARCEL OF LAND BEING A PORTION OF THE NW 1/4 OF SECTION 26, TOWNSHIP 5 SOUTH,  
RANGE 81 WEST, OF THE 6TH PRINCIPAL MERIDIAN BEING MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID SECTION 26, FROM WHICH THE  
NORTHWEST CORNER OF SAID SECTION 26 BEARS, WITH ALL BEARINGS CONTAINED HEREIN  
BEING BASED UPON, N89°57'12"W 617.57 FEET SAID POINT ALSO BEING THE NORTHWEST  
CORNER OF PARCEL 2, UPRR SUBDIVISION; THENCE DEPARTING SAID SECTION LINE  
S19°14'54"E 346.49 FEET; THENCE 60.43 FEET UPON A CURVE TO THE RIGHT WITH A RADIUS  
OF 2813.69 FEET A CENTRAL ANGLE OF 01°13'50" AND A CHORD WHICH BEARS S18°37'58"E  
60.43 FEET; THENCE S18°01'03"E 324.55 FEET; THENCE 143.34 FEET UPON A CURVE TO THE  
RIGHT HAVING A RADIUS OF 763.58 FEET A CENTRAL ANGLE OF 10°45'20" AND A CHORD  
WHICH BEARS S12°38'24"E 143.13 FEET; THENCE S07°15'43"E 164.66 FEET; THENCE 127.07 FEET  
UPON A CURVE TO THE RIGHT HAVING A RADIUS OF 800.55 FEET A CENTRAL ANGLE OF  
09°05'41" AND A CHORD WHICH BEARS S11°48'34"E 126.94 FEET; THENCE ON A NON-TANGENT  
LINE S14°53'24"E 239.29 FEET; THENCE S15°11'50"E 538.46 FEET; THENCE 252.18 FEET UPON A  
CURVE TO THE RIGHT HAVING A RADIUS OF 2013.41 FEET A CENTRAL ANGLE OF 07°10'35"  
AND A CHORD WHICH BEARS S11°36'33"E 252.02 FEET; THENCE S08°01'15"E 215.43 FEET;  
THENCE 211.61 FEET UPON A CURVE TO THE RIGHT WITH A RADIUS OF 2208.58 FEET A  
CENTRAL ANGLE OF 05°29'23" AND A CHORD WHICH BEARS S05°16'34"E 211.53 FEET TO A  
POINT OF THE WESTERN LINE OF TAYLOR AVENUE ACCORDING TO THE INSTRUMENT  
RECORDED AS RECEPTION NO. 144697 IN THE OFFICE OF THE EAGLE COUNTY CLERK AND  
RECORDER, EAGLE, COLORADO; THENCE UPON SAID WESTERN LINE OF TAYLOR AVENUE  
THE FOLLOWING (3) THREE COURSES: 1) S36°42'11"W 56.49; 2) S53°17'49"E 7.56 FEET; 3) 84.91  
FEET UPON A NON-TANGENTIAL CURVE TO THE LEFT HAVING A RADIUS OF 188.33 FEET A  
CENTRAL ANGLE OF 25°49'58" AND A CHORD WHICH BEARS S12°55'08"W 84.19 FEET; THENCE  
DEPARTING SAID WESTERN LINE N01°30'44"W 129.71 FEET; THENCE 206.82 FEET UPON A  
NON-TANGENTIAL CURVE TO THE LEFT HAVING A RADIUS OF 2158.58 FEET WITH A  
CENTRAL ANGLE OF 05°29'23" AND A CHORD WHICH BEARS N05°16'34"W 206.74 FEET; THENCE  
N08°01'15"W 215.43 FEET; THENCE 245.92 FEET UPON A CURVE TO THE LEFT HAVING A  
RADIUS OF 1963.41 FEET A CENTRAL ANGLE OF 07°10'35" AND A CHORD WHICH BEARS  
N11°36'33"W 245.76 FEET; THENCE N15°11'50"W 538.59 FEET; THENCE N14°53'24"W 238.79 FEET;  
THENCE 134.36 FEET UPON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF  
850.55 FEET A CENTRAL ANGLE OF 09°03'03" AND A CHORD WHICH BEARS N11°47'15"W 134.22  
FEET; THENCE N07°15'43"W 164.66 FEET; THENCE 133.95 FEET UPON A CURVE TO THE LEFT  
WITH A RADIUS OF 713.58 FEET A CENTRAL ANGLE OF 10°45'20" AND A CHORD WHICH BEARS  
N12°38'24"W 133.76 FEET; THENCE N18°01'03"W 324.55 FEET; THENCE 59.36 FEET UPON A  
CURVE TO THE LEFT HAVING A RADIUS OF 2763.69 FEET A CENTRAL ANGLE OF 01°13'50" AND  
A CHORD WHICH BEARS N18°37'58"W 59.36 FEET; THENCE N19°14'54"W 364.12 FEET TO SAID  
NORTH LINE OF SECTION 26; THENCE UPON SAID NORTH LINE S89°57'12"E 52.98 FEET TO THE  
POINT OF BEGINNING.  
CONTAINING 133,342 SQUARE FEET MORE OR LESS.



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EXHIBIT A-2		
PART OF THE W 1/2, NW 1/4, SECTION 26, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit Min Road.dwg
1	3	08-22-2023

EXHIBIT A-2

PART OF THE W 1/2, NW 1/4, SECTION 26,  
T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO

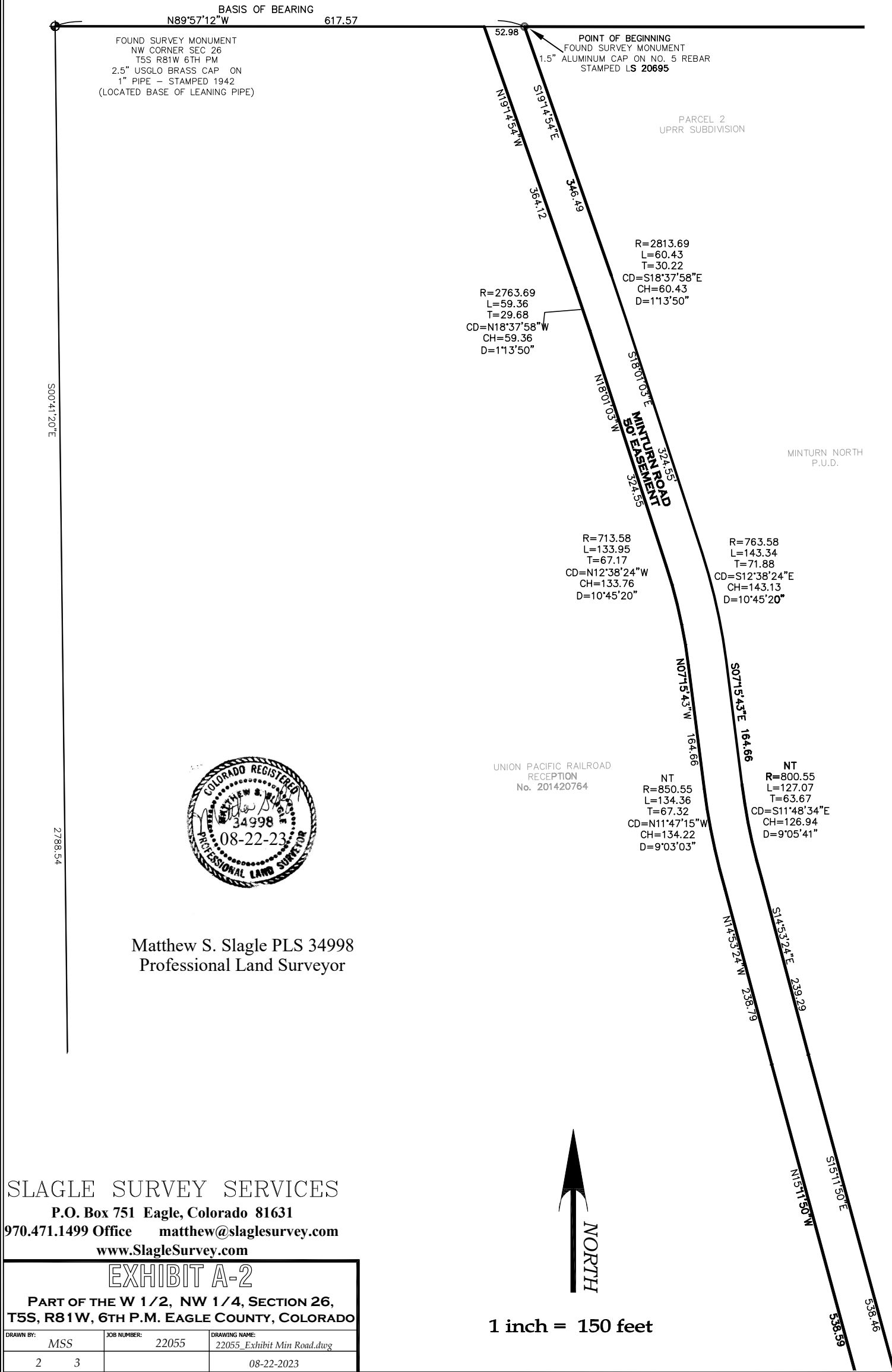
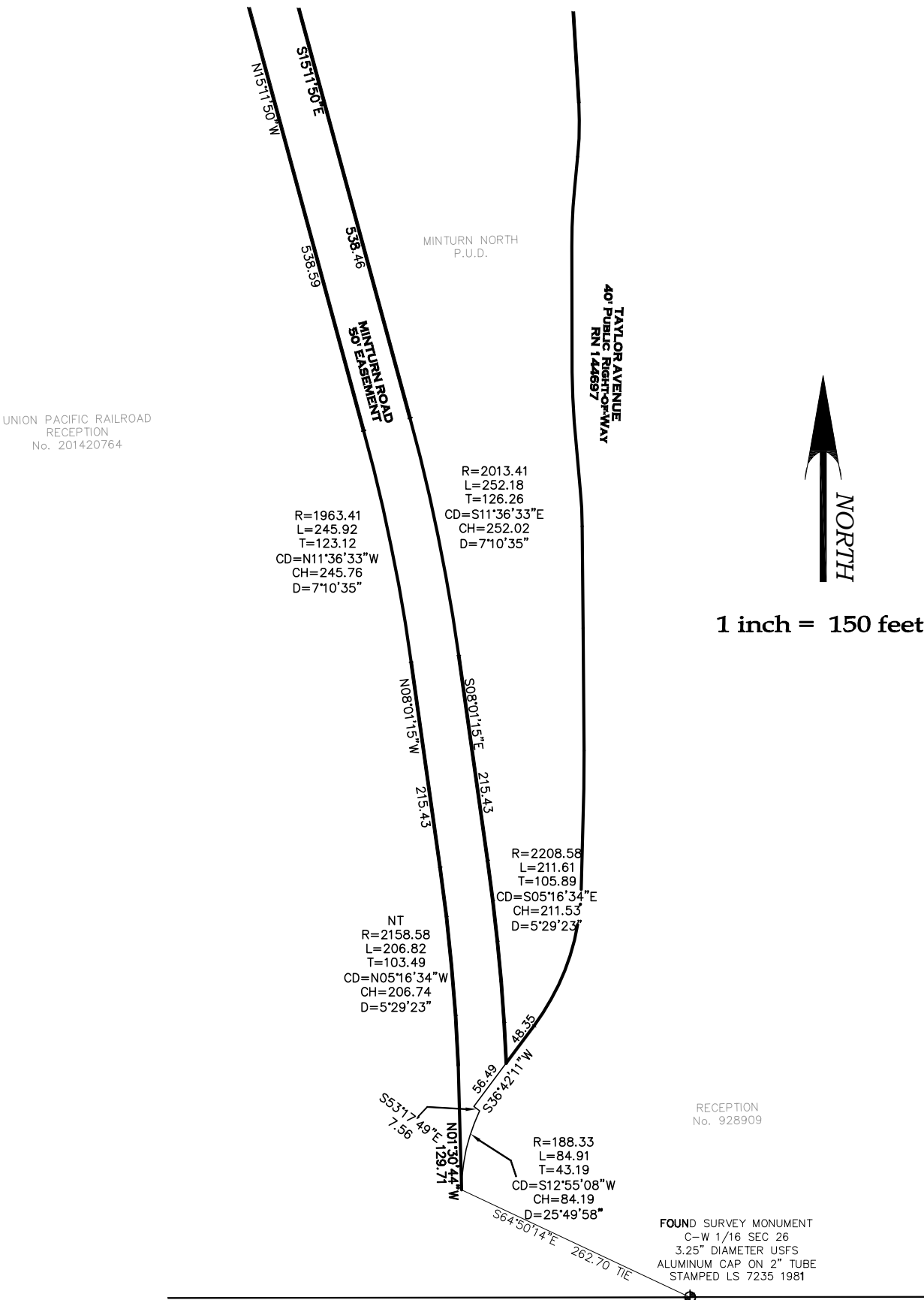


EXHIBIT A-2

PART OF THE W 1/2, NW 1/4, SECTION 26,  
T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO



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EXHIBIT A-2		
PART OF THE W 1/2, NW 1/4, SECTION 26, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit Min Road.dwg
3	3	08-22-2023

# EXHIBIT A-3

## PART OF THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO

PARCEL DESCRIPTION:

A PARCEL OF LAND SITUATED IN THE SW 1/4, NW 1/4, SECTION 26, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EAGLE, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 2.5" ALUMINUM CAP ON NO.6 REBAR STAMPED LS 37924 AT THE LOCATION OF THE MONUMENT PREVIOUSLY DESCRIBED AS THE "RAIL MONUMENT" FROM WHICH THE C-W 1/ 16TH CORNER OF SAID SECTION 26 BEARS S87°49'11"E 85.40 FEET; THENCE S89°45'25"W (WITH ALL BEARINGS CONTAIN HEREIN BEING BASED ) UPON THE MONUMENTED LINE BETWEEN SAID RAIL MONUMENT AND THE MONUMENT MARKING THE WEST QUARTER CORNER OF SAID SECTION 26, BEING A FOUND 2.5" USGLO BRASS CAP ON 1" IRON PIPE STAMPED PROPERLY, 1942, 296.59 FEET TO THE TRUE POINT OF BEGINNING BEING THE SOUTHEAST CORNER OF THE SUBJECT PARCEL DESCRIBED HEREIN; THENCE UPON SAID MONUMENTED LINE S89°45'25"W 232.38 FEET TO THE WESTERN RIGHT OF WAY OF MAIN STREET; THENCE DEPARTING SAID MONUMENTED LINE AND UPON SAID RIGHT OF WAY N00°06'32"W 24.15 FEET; THENCE N89°34'54"E 178.23 FEET; THENCE 60.97 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 78.88 FEET, AN INTERIOR ANGLE OF 44°16'52" AND A CHORD WHICH BEARS S65°41'57"E 59.46 FEET TO THE TRUE POINT OF BEGINNING, SAID PARCEL CONTAINING 5,255 SQUARE FEET, MORE OR LESS.



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

### SLAGLE SURVEY SERVICES

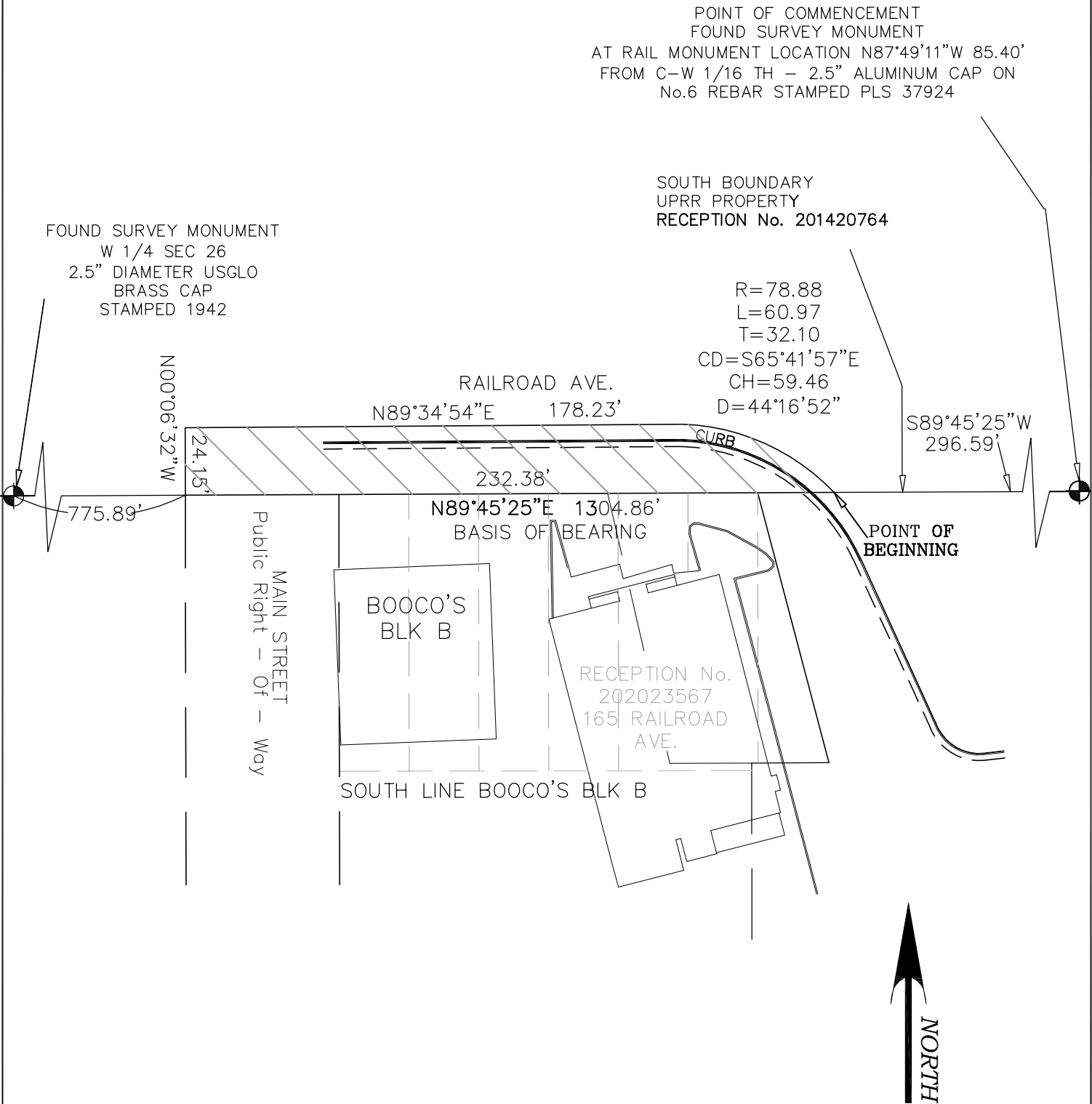
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970.471.1499 Office    matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A-3		
PART OF THE NW 1/4, SW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 1 OF 2		DATE: 08-18-2023

# EXHIBIT A-3

PART OF THE SW 1/4, NW 1/4, SECTION 26,  
T5S, R81W, 6TH P.M. MINTURN, COLORADO

## Sheet 2



1 inch = 50 feet



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EXHIBIT A-3		
PART OF THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 2 OF 2		DATE: 08-18-2023

**PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

RAILROAD AVENUE  
DOT NUMBER 253531V  
MILE POST 301.66, TENNESSEE PASS SUBDIVISION  
MINTURN, EAGLE COUNTY, COLORADO

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 202\_ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179, Attn: Real Estate Department ("Railroad"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado to be addressed at 301 Boulder St., #309, Minturn, Colorado 81645 ("Political Body").

**RECITALS:**

Railroad and Political Body desire to document the Political Body's use of an existing at-grade public crossing wherein vehicular traffic on Railroad Avenue traverse on, along and across Railroad's property at Railroad's Mile Post 301.66, DOT Number 253531V, on Railroad's Tennessee Pass Subdivision at or near Minturn, Eagle County, Colorado (the "Crossing Area"). The Crossing Area is shown on the print marked **Exhibit A** and described in the legal description marked **Exhibit A-1** with each exhibit being attached hereto and hereby made a part hereof. The portion of the public crossing located within the Crossing Area on Railroad's property is the "Roadway".

**AGREEMENT:**

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

**Section 1. EXHIBIT B**

The general terms and conditions marked **Exhibit B** are attached hereto and hereby made a part hereof.

**Section 2. GRANT OF EASEMENT**

Upon completion of the execution of this Agreement, the Railroad shall execute and deliver to the Political Body a nonexclusive easement in the form Easement Deed marked **Exhibit C**, attached hereto and hereby made a part hereof, for the property described and shown on **Exhibit A** and **Exhibit A-1**, for the sole purposes of constructing,



using, maintaining, repairing, renewing and reconstructing the Roadway and sidewalks located within the Crossing Area.

### **Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

### **Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

A. Prior to Contractor performing any work within the Crossing Area, including maintenance and repair work, the Political Body shall require the Contractor to:

- Execute the Railroad's then current Contractor's Right of Entry Agreement;
- Obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- Provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. If the Political Body's own employees will be performing any maintenance or repair work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

### **Section 5. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS**

If Railroad, in its sole and absolute discretion, determines there is a threat to the continuity of Railroad's operations and/or the safety of the Railroad's personnel, trains, property, facilities, operations and/or the public and, in connection with such threat, Railroad performs any work, or as may otherwise be requested by Political Body to perform any work, Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with such work, including, but not limited to, all actual costs of engineering review, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

### **Section 6. CONDITIONS TO BE MET BEFORE POLITICAL BODY AND/OR CONTRACTOR CAN COMMENCE WORK**

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad and Colorado Public Utilities Commission ("CPUC") has provided to Political Body the Railroad's and CPUC's written approval of the Political Body's plans and specifications for any work to be performed within the Crossing Area.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad representative named in the Contractor's Right of Entry Agreement.

## **Section 7. NON-RAILROAD IMPROVEMENTS**

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required. The Non-Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non-Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non-Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non-Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non-Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to supplement this Agreement, or enter into a separate agreement, with terms and conditions covering the Non Railroad Facilities.

## **Section 8. EFFECTIVE DATE; TERM; TERMINATION**

This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property, subject to the abandonment provisions contained in the Easement.

## **Section 9. FUTURE PROJECTS**

Projects within the Crossing Area involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad, CPUC, and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

## **Section 10. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

## **Section 11. SPECIAL PROVISION**

A. If the Railroad, in its sole and absolute discretion, reactivates the track at the location of the Crossing Area, Political Body shall cooperate with Railroad to evaluate and implement any improvements necessitated by such reactivation, including without limitation, changes in grade and warning devices, and will enter into separate agreements with Railroad as may be required by Railroad for the construction, cost allocations and continued use of the Roadway.

B. In the event the Political Body fails to perform its obligations set forth in this Agreement and the Railroad, in its sole and absolute discretion, determines there is a threat to the continuity of Railroad's operations and/or the safety of the Railroad's personnel, trains, property, facilities, operations and/or the public, Railroad, without any liability to Political Body, and at the expense of the Political Body, may take any and all action it deems reasonably necessary to remediate the threat, protect the road crossing, restore Railroad's operations and to insure the safety of Railroad's personnel, trains, property, facilities and/or operations.

C. Political Body's covenants to indemnify under the terms of this Agreement (a) shall not be deemed a waiver of sovereign immunity under the Colorado Governmental Immunity Act ("Act"), (b) shall only be effective to the extent of the limits of the Act as set forth in CRS Section 24-10-114, as those may be amended, (c) shall only be effective if the City's obligation to indemnify or pay costs is insured by the Colorado

Intergovernmental Risk Sharing Agency ("CIRSA") or CIRSA's successor as the Political Body's liability carrier.

D. This Agreement is expressly made subject to the limitations of the Colorado Constitution, except for any issues involving this Agreement that are preempted by Federal law. To that end, no financial obligation or covenant to indemnify contained herein shall create a debt or multi-year fiscal obligation or an obligation of future appropriations by the Town of Minturn, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget (or similar applicable funding device) which contains an allocation of sufficient funds for the performance of fiscal obligations (other than in connection with a covenant to indemnify) arising under this Agreement.

E. Notwithstanding anything to the contrary contained in this Agreement, Railroad agrees and understands that Political Body is relying on and does not relinquish or waive, by any provision of this Agreement, any applicable limitations of liability provided to Political Body by the Act.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

*(Federal Tax ID #94-6001323)*

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

**TOWN OF MINTURN**

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

**EXHIBIT A**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**





**EXHIBIT A-1**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**



# EXHIBIT A-1

## PART OF THE NW 1 / 4, SW 1 / 4 AND THE SW 1 / 4, NW 1 / 4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO

### DESCRIPTION

#### PARCEL DESCRIPTION:

A PARCEL OF LAND SITUATED IN A PART OF BOTH THE NW 1/4, SW 1 / 4 AND THE SW 1 / 4, NW 1 / 4, SECTION 26, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EAGLE, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 2.5" ALUMINUM CAP ON NO.6 REBAR STAMPED LS 37924 AT THE LOCATION OF THE MONUMENT PREVIOUSLY DESCRIBED AS THE "RAIL MONUMENT" FROM WHICH THE C-W 1/ 16TH CORNER OF SAID SECTION 26 BEARS S87°49'11"E 85.40 FEET; THENCE S89°45'25"W (WITH ALL BEARINGS CONTAIN HEREIN BEING BASED ) UPON THE MONUMENTED LINE BETWEEN SAID RAIL MONUMENT AND THE MONUMENT MARKING THE WEST QUARTER CORNER OF SAID SECTION 26, BEING A FOUND 2.5" USGLO BRASS CAP ON 1" IRON PIPE STAMPED PROPERLY, 1942, 127.25 FEET TO THE TRUE POINT OF BEGINNING BEING A POINT ON TAYLOR AVENUE ACCORDING TO THE MINTURN TOWNE HOMES - PHASE 3 FINAL PLAT RECORDED AS RECEPTION NO. 200633401 IN THE OFFICE OF THE EAGLE COUNTY CLERK AND RECORDER; THENCE DEPARTING SAID MONUMENTED LINE AND UPON THE EASTERN LINE OF SAID TAYLOR AVENUE S00°00'31"E 3.08 FEET; THENCE UPON THE SOUTH LINE OF SAID MINTURN TOWNE HOMES N89°52'59"E 3.80 FEET; THENCE DEPARTING SAID SOUTH LINE S00°09'58"W 44.45 FEET; THENCE 41.59 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 70.00 FEET, AN INTERIOR ANGLE OF 34°02'33" AND A CHORD WHICH BEARS S17°11'14"W 40.98 FEET; THENCE S34°12'31"W 3.20 FEET; THENCE 54.15 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 75.84 FEET, AN INTERIOR ANGLE OF 40°54'22" AND A CHORD WHICH BEARS S54°39'42"W 53.00 FEET; THENCE S75°06'53"W 45.08 FEET; THENCE 88.41 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 64.04 FEET, AND INTERIOR ANGLE OF 79°06'25" AND A CHORD WHICH BEARS N65°19'59"W 81.56 FEET TO THE EASTERN BOUNDARY OF LANDS DESCRIBED IN INSTRUMENT RECORDED AS RECEPTION NO. 202023567, IN THE OFFICE OF THE EAGLE COUNTY CLERK AND RECORDER BEING A POINT 100 FEET PERPENDICULAR WESTERLY FROM THE CENTERLINE OF THE DENVER AND RIO GRANDE RAILROAD COMPANY'S ORIGINAL MAIN TRACK; THENCE UPON A LINE PARALLEL TO SAID CENTERLINE AND UPON THE WESTERN RAILROAD RIGHT OF WAY N14°48'29"W 100.00 FEET TO A POINT ON SAID MONUMENTED LINE; THENCE UPON SAID MONUMENTED LINE N89°45'25"E 27.83 FEET; THENCE DEPARTING SAID MONUMENTED LINE 27.78 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 71.80 FEET, AN INTERIOR ANGLE OF 22°10'11" AND A CHORD WHICH BEARS S34°26'58"E 27.61 FEET; THENCE S23°21'52"E 58.16 FEET; THENCE 25.90 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 18.20 FEET, AN INTERIOR ANGLE OF 81°31'15" AND A CHORD WHICH BEARS S64°07'30"E 23.77 FEET; THENCE N75°06'53"E 45.08 FEET; THENCE 21.42 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 30.00 FEET, AN INTERIOR ANGLE OF 40°54'22" AND A CHORD WHICH BEARS N54°39'42"E 20.97 FEET; THENCE N34°12'31"E 11.84 FEET; THENCE 17.82 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 30.00 FEET, AN INTERIOR ANGLE OF 34°02'33" AND A CHORD WHICH BEARS N17°11'14"E 17.56 FEET; THENCE N00°09'58"E 36.82 FEET TO A POINT ON SAID MONUMENTED LINE; THENCE UPON SAID MONUMENTED LINE N89°45'25"E 36.19 FEET TO THE TRUE POINT OF BEGINNING, SAID PARCEL CONTAINING 13,200 SQUARE FEET, MORE OR LESS.



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

### SLAGLE SURVEY SERVICES

P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office    [matthew@slaglesurvey.com](mailto:matthew@slaglesurvey.com)  
[www.SlagleSurvey.com](http://www.SlagleSurvey.com)

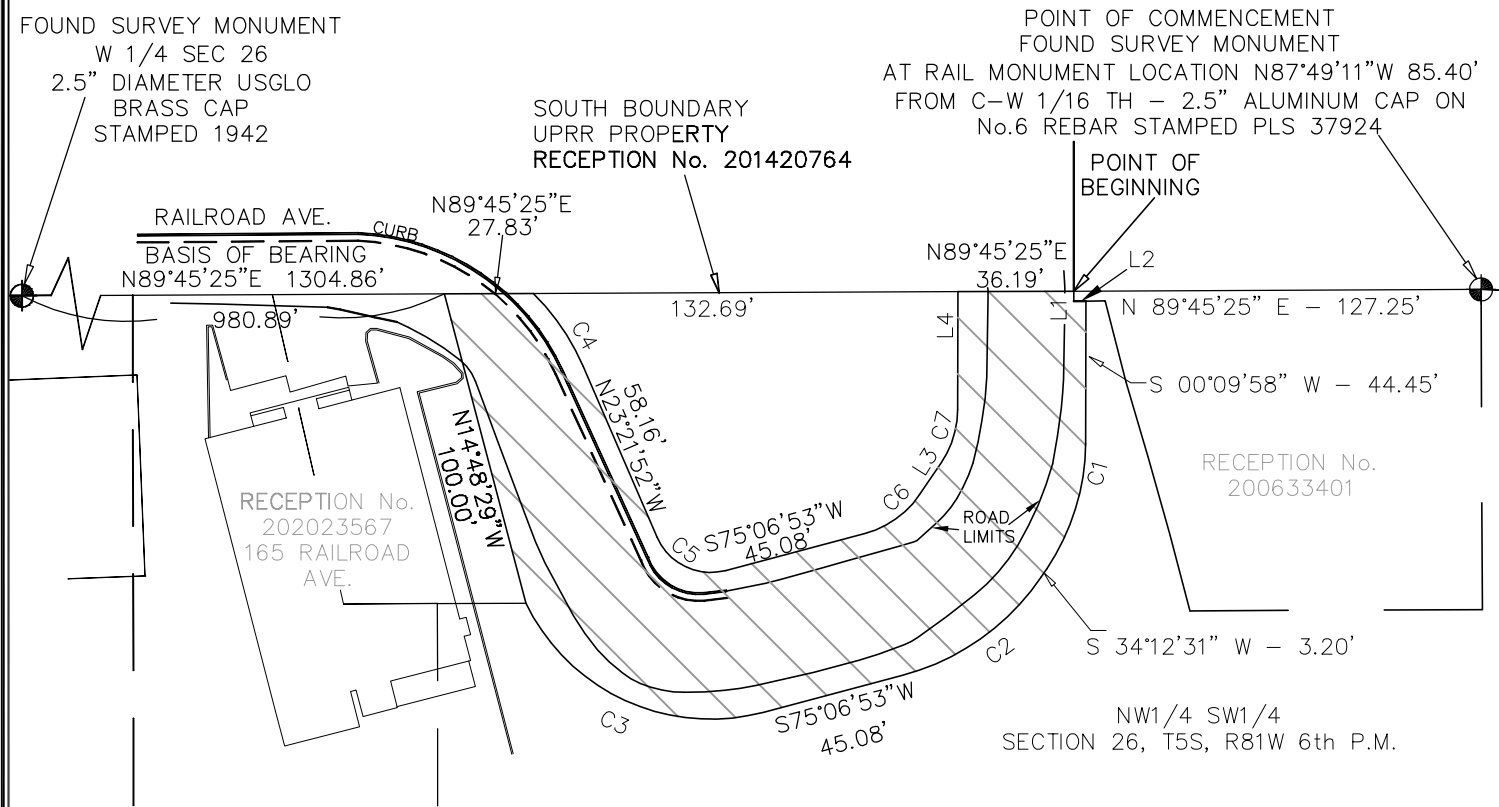
EXHIBIT A-1		
PART OF THE NW 1 / 4, SW 1 / 4 AND THE SW 1 / 4, NW 1 / 4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 1 OF 2	DATE: 08-18-2023	



EXHIBIT A-1

PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4  
SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO

Sheet 2



CURVE TABLE					
CURVE #	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	41.59	70.00	34°02'33"	S17°11'14"W	40.98
C2	54.15	75.84	40°54'22"	S54°39'42"W	53.00
C3	88.41	64.04	79°06'25"	N65°19'59"W	81.56
C4	27.78	71.80	22°10'11"	S34°26'58"E	27.61
C5	25.90	18.20	81°31'15"	S64°07'30"E	23.77
C6	21.42	30.00	40°54'22"	N54°39'42"E	20.97
C7	17.82	30.00	34°02'33"	N17°11'14"E	17.56

LINE TABLE

	BEARING	LENGTH
L1	S00°00'31"E	3.08
L2	N89°52'59"E	3.80
L3	N34°12'31"E	11.84
L4	N00°09'58"E	36.82



1 inch = 60 feet



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

SLAGLE SURVEY SERVICES

P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A-1		
PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY: MSS	JOB NUMBER: 22055	DRAWING NAME: 22055_Exhibit A S curve.dwg
SHEET 2 OF 2	DATE: 08-18-2023	

**EXHIBIT B**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

**SECTION 1. CONDITIONS AND COVENANTS**

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipelines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

**E. INTENTIONALLY OMITTED**

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

## **SECTION 2. INTENTIONALLY OMITTED**

## **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

## **SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

## **SECTION 5. MAINTENANCE AND REPAIRS**

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, repaired or replaced, the Railroad, at the Political Body's expense, shall install such replacement surfacing.

## **SECTION 6. CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

## **SECTION 7. REARRANGEMENT OF WARNING DEVICES**

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

## **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or

safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws,

regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Crossing Area shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. The Political Body will give due consideration to suggestions and recommendations made by Railroad for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be directly plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the

"vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for

relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 9. INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

#### **SECTION 10. OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

#### **SECTION 11. INTENTIONALLY OMITTED**

#### **SECTION 12. REMEDIES FOR BREACH OR NONUSE**

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

#### **SECTION 13. MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding



between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

**EXHIBIT C**  
**TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**FORM OF EASEMENT DEED**

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

Town of Minturn  
Attn: Town Manager  
301 Boulder Street, #309  
Minturn, Colorado 81645

---

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

3185-10

**EASEMENT DEED**

THIS EASEMENT DEED is made this \_\_\_\_ day of \_\_\_\_\_, 2023, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado to be addressed at 301 Boulder St., #309, Minturn, Colorado 81645 ("Grantee").

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a non-exclusive easement ("Easement"), for the sole purposes of constructing, using, maintaining, repairing, renewing and reconstructing an at-grade public road crossing over Railroad Avenue, on, along and across DOT No. 253531V at Railroad's Milepost 301.66 on Railroad's Tennessee Pass Subdivision (the "Roadway"), including any sidewalks adjacent or related thereto, located at or near Minturn, Eagle County, Colorado, as described and depicted in **Exhibit A**, attached and by reference made a part hereof (the "Easement Area").

The Easement is granted for the purposes described above only. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, or telephone lines.

Grantor, its successors and assigns, reserves the right to construct and to maintain at any and all times railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the

Easement Area, but in such a way as to not unreasonably interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement, including but not limited to any and all general railroad purposes.

The Easement is granted subject to the terms and conditions contained in the separate Public Highway At-Grade Crossing Agreement dated \_\_\_\_\_, 2023, as signed by Grantor and Grantee, and is also subject to all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

If Grantee, its successors or assigns, abandons the Easement Area or any portion of the Easement Area, the Easement will cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area will be freed from the burden of the Easement. Nonuse of the Easement Area or any portion thereof, for public highway purposes continuing at any time for a period of eighteen (18) months will be deemed an abandonment of the Easement Area or portion thereof not used.

**(Signature Pages to Follow)**

**Attest:**

\_\_\_\_\_  
Assistant Secretary

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

By: \_\_\_\_\_  
Printed Name: Chris D. Goble  
Title: Assistant Vice President – Real Estate

**STATE OF NEBRASKA            )**  
**) ss.**  
**COUNTY OF DOUGLAS         )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Chris D. Goble and \_\_\_\_\_, Assistant Vice President – Real Estate and Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, on behalf of the corporation.

WITNESS my hand and official seal.

Notary Public

(Seal)

**TOWN OF MINTURN,  
a municipal corporation or political  
subdivision of the State of Colorado**

(Seal)

**EXHIBIT A**  
**TO FORM OF EASEMENT DEED**

**LEGAL DESCRIPTION OF EASEMENT AREA  
(TO BE ATTACHED)**

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

Town of Minturn  
Attn: Town Manager  
301 Boulder Street, #309  
Minturn, Colorado 81645

---

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

3185-10

**EASEMENT DEED**

THIS EASEMENT DEED is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado to be addressed at 301 Boulder St., #309, Minturn, Colorado 81645 ("Grantee").

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a non-exclusive easement ("Easement"), for the sole purposes of constructing, using, maintaining, repairing, renewing and reconstructing an at-grade public road crossing over Railroad Avenue, on, along and across DOT No. 253531V at Railroad's Milepost 301.66 on Railroad's Tennessee Pass Subdivision (the "Roadway"), including any sidewalks adjacent or related thereto, located at or near Minturn, Eagle County, Colorado, as described and depicted in **Exhibit A**, attached and by reference made a part hereof (the "Easement Area").

The Easement is granted for the purposes described above only. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, or telephone lines.

Grantor, its successors and assigns, reserves the right to construct and to maintain at any and all times railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Easement Area, but in such a way as to not unreasonably interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement, including but not limited to any and all general railroad purposes.

The Easement is granted subject to the terms and conditions contained in the separate Public Highway At-Grade Crossing Agreement dated \_\_\_\_\_, 2023, as signed by Grantor and Grantee, and is also subject to all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

If Grantee, its successors or assigns, abandons the Easement Area or any portion of the Easement Area, the Easement will cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area will be freed from the burden of the Easement. Nonuse of the Easement Area or any portion thereof, for public highway purposes continuing at any time for a period of eighteen (18) months will be deemed an abandonment of the Easement Area or portion thereof not used.

**(Signature Pages to Follow)**



**Attest:**

\_\_\_\_\_

Assistant Secretary

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

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

Printed Name: Chris D. Goble

Title: Assistant Vice President – Real Estate

Grantor and Grantee have caused this Easement to be executed as of the date first herein written.

**TOWN OF MINTURN,  
a municipal corporation or political  
subdivision of the State of Colorado**

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

**ATTEST:**

Jay Brunvand, Town Clerk

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, Notary Public in and for the State of Colorado, personally appeared \_\_\_\_\_ who is the \_\_\_\_\_ of the TOWN OF MINTURN, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(Seal)

# EXHIBIT A

## PART OF THE NW 1 / 4, SW 1 / 4 AND THE SW 1 / 4, NW 1 / 4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO

### DESCRIPTION

#### PARCEL DESCRIPTION:

A PARCEL OF LAND SITUATED IN A PART OF BOTH THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4, SECTION 26, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EAGLE, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 2.5" ALUMINUM CAP ON NO.6 REBAR STAMPED LS 37924 AT THE LOCATION OF THE MONUMENT PREVIOUSLY DESCRIBED AS THE "RAIL MONUMENT" FROM WHICH THE C-W 1/ 16TH CORNER OF SAID SECTION 26 BEARS S87°49'11"E 85.40 FEET; THENCE S89°45'25"W (WITH ALL BEARINGS CONTAIN HEREIN BEING BASED ) UPON THE MONUMENTED LINE BETWEEN SAID RAIL MONUMENT AND THE MONUMENT MARKING THE WEST QUARTER CORNER OF SAID SECTION 26, BEING A FOUND 2.5" USGLO BRASS CAP ON 1" IRON PIPE STAMPED PROPERLY, 1942, 127.25 FEET TO THE TRUE POINT OF BEGINNING BEING A POINT ON TAYLOR AVENUE ACCORDING TO THE MINTURN TOWNE HOMES - PHASE 3 FINAL PLAT RECORDED AS RECEPTION NO. 200633401 IN THE OFFICE OF THE EAGLE COUNTY CLERK AND RECORDER; THENCE DEPARTING SAID MONUMENTED LINE AND UPON THE EASTERN LINE OF SAID TAYLOR AVENUE S00°00'31"E 3.08 FEET; THENCE UPON THE SOUTH LINE OF SAID MINTURN TOWNE HOMES N89°52'59"E 3.80 FEET; THENCE DEPARTING SAID SOUTH LINE S00°09'58"W 44.45 FEET; THENCE 41.59 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 70.00 FEET, AN INTERIOR ANGLE OF 34°02'33" AND A CHORD WHICH BEARS S17°11'14"W 40.98 FEET; THENCE S34°12'31"W 3.20 FEET; THENCE 54.15 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 75.84 FEET, AN INTERIOR ANGLE OF 40°54'22" AND A CHORD WHICH BEARS S54°39'42"W 53.00 FEET; THENCE S75°06'53"W 45.08 FEET; THENCE 88.41 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 64.04 FEET, AND INTERIOR ANGLE OF 79°06'25" AND A CHORD WHICH BEARS N65°19'59"W 81.56 FEET TO THE EASTERN BOUNDARY OF LANDS DESCRIBED IN INSTRUMENT RECORDED AS RECEPTION NO. 202023567, IN THE OFFICE OF THE EAGLE COUNTY CLERK AND RECORDER BEING A POINT 100 FEET PERPENDICULAR WESTERLY FROM THE CENTERLINE OF THE DENVER AND RIO GRANDE RAILROAD COMPANY'S ORIGINAL MAIN TRACK; THENCE UPON A LINE PARALLEL TO SAID CENTERLINE AND UPON THE WESTERN RAILROAD RIGHT OF WAY N14°48'29"W 100.00 FEET TO A POINT ON SAID MONUMENTED LINE; THENCE UPON SAID MONUMENTED LINE N89°45'25"E 27.83 FEET; THENCE DEPARTING SAID MONUMENTED LINE 27.78 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 71.80 FEET, AN INTERIOR ANGLE OF 22°10'11" AND A CHORD WHICH BEARS S34°26'58"E 27.61 FEET; THENCE S23°21'52"E 58.16 FEET; THENCE 25.90 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 18.20 FEET, AN INTERIOR ANGLE OF 81°31'15" AND A CHORD WHICH BEARS S64°07'30"E 23.77 FEET; THENCE N75°06'53"E 45.08 FEET; THENCE 21.42 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 30.00 FEET, AN INTERIOR ANGLE OF 40°54'22" AND A CHORD WHICH BEARS N54°39'42"E 20.97 FEET; THENCE N34°12'31"E 11.84 FEET; THENCE 17.82 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 30.00 FEET, AN INTERIOR ANGLE OF 34°02'33" AND A CHORD WHICH BEARS N17°11'14"E 17.56 FEET; THENCE N00°09'58"E 36.82 FEET TO A POINT ON SAID MONUMENTED LINE; THENCE UPON SAID MONUMENTED LINE N89°45'25"E 36.19 FEET TO THE TRUE POINT OF BEGINNING, SAID PARCEL CONTAINING 13,200 SQUARE FEET, MORE OR LESS.



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

### SLAGLE SURVEY SERVICES

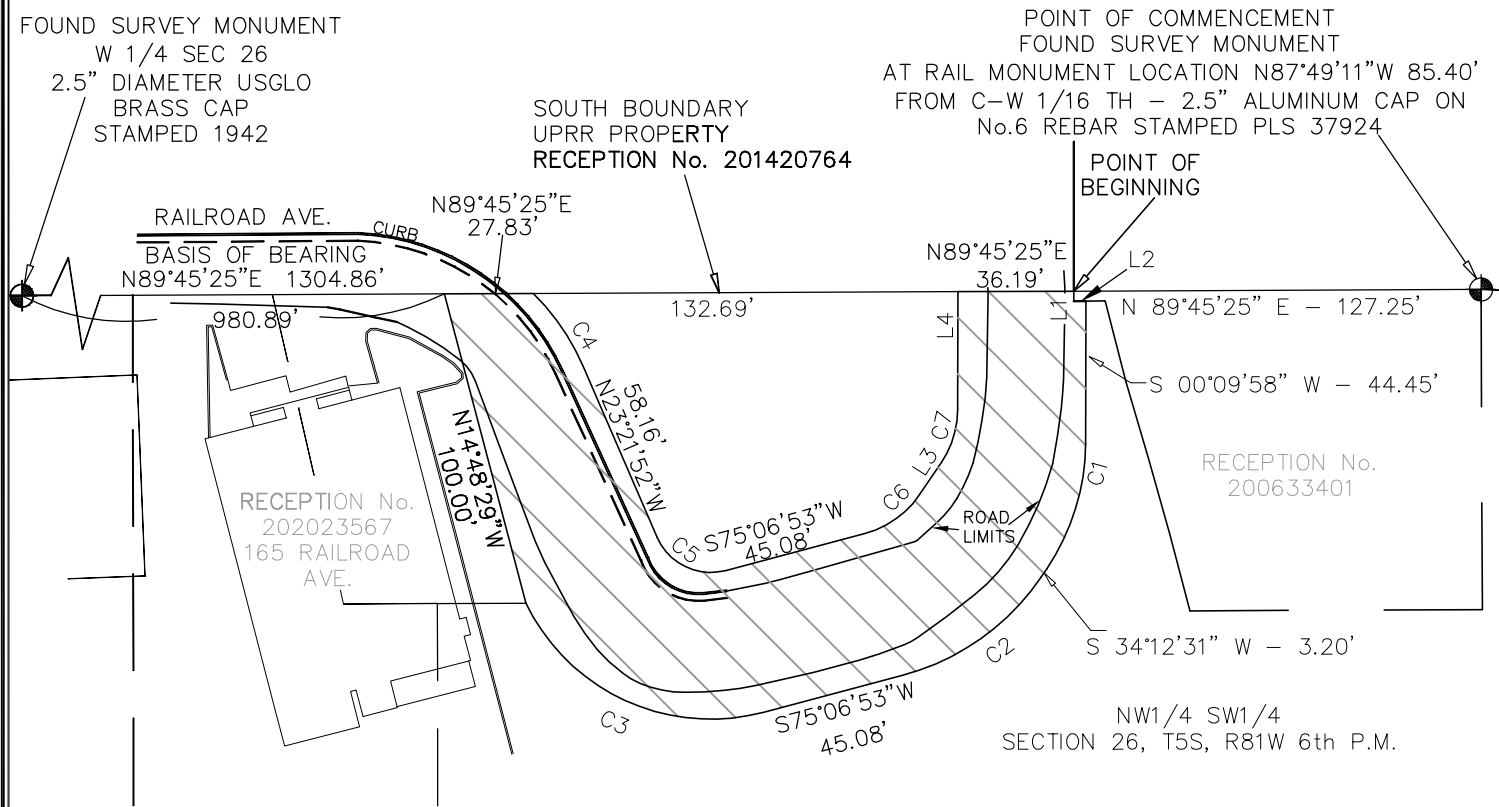
P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office    [matthew@slaglesurvey.com](mailto:matthew@slaglesurvey.com)  
[www.SlagleSurvey.com](http://www.SlagleSurvey.com)

EXHIBIT A		
PART OF THE NW 1 / 4, SW 1 / 4 AND THE SW 1 / 4, NW 1 / 4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A S curve.dwg
SHEET 1 OF 2		DATE: 08-18-2023

EXHIBIT A

PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4  
SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO

Sheet 2



CURVE TABLE

CURVE #	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	41.59	70.00	34°02'33"	S17°11'14"W	40.98
C2	54.15	75.84	40°54'22"	S54°39'42"W	53.00
C3	88.41	64.04	79°06'25"	N65°19'59"W	81.56
C4	27.78	71.80	22°10'11"	S34°26'58"E	27.61
C5	25.90	18.20	81°31'15"	S64°07'30"E	23.77
C6	21.42	30.00	40°54'22"	N54°39'42"E	20.97
C7	17.82	30.00	34°02'33"	N17°11'14"E	17.56

LINE TABLE

	BEARING	LENGTH
L1	S00°00'31"E	3.08
L2	N89°52'59"E	3.80
L3	N34°12'31"E	11.84
L4	N00°09'58"E	36.82



1 inch = 60 feet



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

SLAGLE SURVEY SERVICES

P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A		
PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY: MSS	JOB NUMBER: 22055	DRAWING NAME: 22055_Exhibit A S curve.dwg
SHEET 2 OF 2	DATE: 08-18-2023	

**PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

EAGLE COUNTY ROAD 14  
DOT NUMBER 253532C  
MILE POST 302.93, TENNESSEE PASS SUBDIVISION  
EAGLE COUNTY, COLORADO

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 202\_ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179, Attn: Real Estate Department ("Railroad"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado to be addressed at 301 Boulder St., #309, Minturn, Colorado 81645 ("Political Body").

**RECITALS:**

Railroad and Political Body desire to document the Political Body's use of an existing at-grade public crossing wherein vehicular traffic on Eagle County Road 14 traverse on, along and across Railroad's property at Railroad's Mile Post 302.93, DOT Number 253532C, on Railroad's Tennessee Pass Subdivision at or near Minturn, Eagle County, Colorado (the "Crossing Area"). The Crossing Area is shown on the print marked **Exhibit A** and described in the legal description marked **Exhibit A-1** with each exhibit being attached hereto and hereby made a part hereof. The portion of the public crossing located within the Crossing Area on Railroad's property is the "Roadway".

**AGREEMENT:**

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

**Section 1. EXHIBIT B**

The general terms and conditions marked **Exhibit B** are attached hereto and hereby made a part hereof.

**Section 2. GRANT OF EASEMENT**

Upon completion of the execution of this Agreement, the Railroad shall execute and deliver to the Political Body a nonexclusive easement in the form Easement Deed marked **Exhibit C**, attached hereto and hereby made a part hereof, for the property described and shown on **Exhibit A** and **Exhibit A-1**, for the sole purposes of constructing,

using, maintaining, repairing, renewing and reconstructing the Roadway and sidewalks located within the Crossing Area.

### **Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

### **Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

A. Prior to Contractor performing any work within the Crossing Area, including maintenance and repair work, the Political Body shall require the Contractor to:

- Execute the Railroad's then current Contractor's Right of Entry Agreement;
- Obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- Provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. If the Political Body's own employees will be performing any maintenance or repair work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

### **Section 5. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS**

If Railroad, in its sole and absolute discretion, determines there is a threat to the continuity of Railroad's operations and/or the safety of the Railroad's personnel, trains, property, facilities, operations and/or the public and, in connection with such threat, Railroad performs any work, or as may otherwise be requested by Political Body to perform any work, Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with such work, including, but not limited to, all actual costs of engineering review, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

### **Section 6. CONDITIONS TO BE MET BEFORE POLITICAL BODY AND/OR CONTRACTOR CAN COMMENCE WORK**

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad and Colorado Public Utilities Commission ("CPUC") has provided to Political Body the Railroad's and CPUC's written approval of the Political Body's plans and specifications for any work to be performed within the Crossing Area.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad representative named in the Contractor's Right of Entry Agreement.

## **Section 7. NON-RAILROAD IMPROVEMENTS**

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required. The Non-Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non-Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non-Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non-Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non-Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to supplement this Agreement, or enter into a separate agreement, with terms and conditions covering the Non Railroad Facilities.

## **Section 8. EFFECTIVE DATE; TERM; TERMINATION**

This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property, subject to the abandonment provisions contained in the Easement.

## **Section 9. FUTURE PROJECTS**

Projects within the Crossing Area involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

## **Section 10. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

## **Section 11. SPECIAL PROVISION**

A. If the Railroad, in its sole and absolute discretion, reactivates the track at the location of the Crossing Area, Political Body shall cooperate with Railroad to evaluate and implement any improvements necessitated by such reactivation, including without limitation, changes in grade and warning devices, and will enter into separate agreements with Railroad as may be required by Railroad for the construction, cost allocations and continued use of the Roadway.

B. In the event the Political Body fails to perform its obligations set forth in this Agreement and the Railroad, in its sole and absolute discretion, determines there is a threat to the continuity of Railroad's operations and/or the safety of the Railroad's personnel, trains, property, facilities, operations and/or the public, Railroad, without any liability to Political Body, and at the expense of the Political Body, may take any and all action it deems reasonably necessary to remediate the threat, protect the road crossing, restore Railroad's operations and to insure the safety of Railroad's personnel, trains, property, facilities and/or operations.

C. Political Body's covenants to indemnify under the terms of this Agreement (a) shall not be deemed a waiver of sovereign immunity under the Colorado Governmental Immunity Act ("Act"), (b) shall only be effective to the extent of the limits of the Act as set forth in CRS Section 24-10-114, as those may be amended, (c) shall only be effective if the City's obligation to indemnify or pay costs is insured by the Colorado



Intergovernmental Risk Sharing Agency ("CIRSA") or CIRSA's successor as the Political Body's liability carrier.

D. This Agreement is expressly made subject to the limitations of the Colorado Constitution, except for any issues involving this Agreement that are preempted by Federal law. To that end, no financial obligation or covenant to indemnify contained herein shall create a debt or multi-year fiscal obligation or an obligation of future appropriations by the Town of Minturn, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget (or similar applicable funding device) which contains an allocation of sufficient funds for the performance of fiscal obligations (other than in connection with a covenant to indemnify) arising under this Agreement.

E. Notwithstanding anything to the contrary contained in this Agreement, Railroad agrees and understands that Political Body is relying on and does not relinquish or waive, by any provision of this Agreement, any applicable limitations of liability provided to Political Body by the Act.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

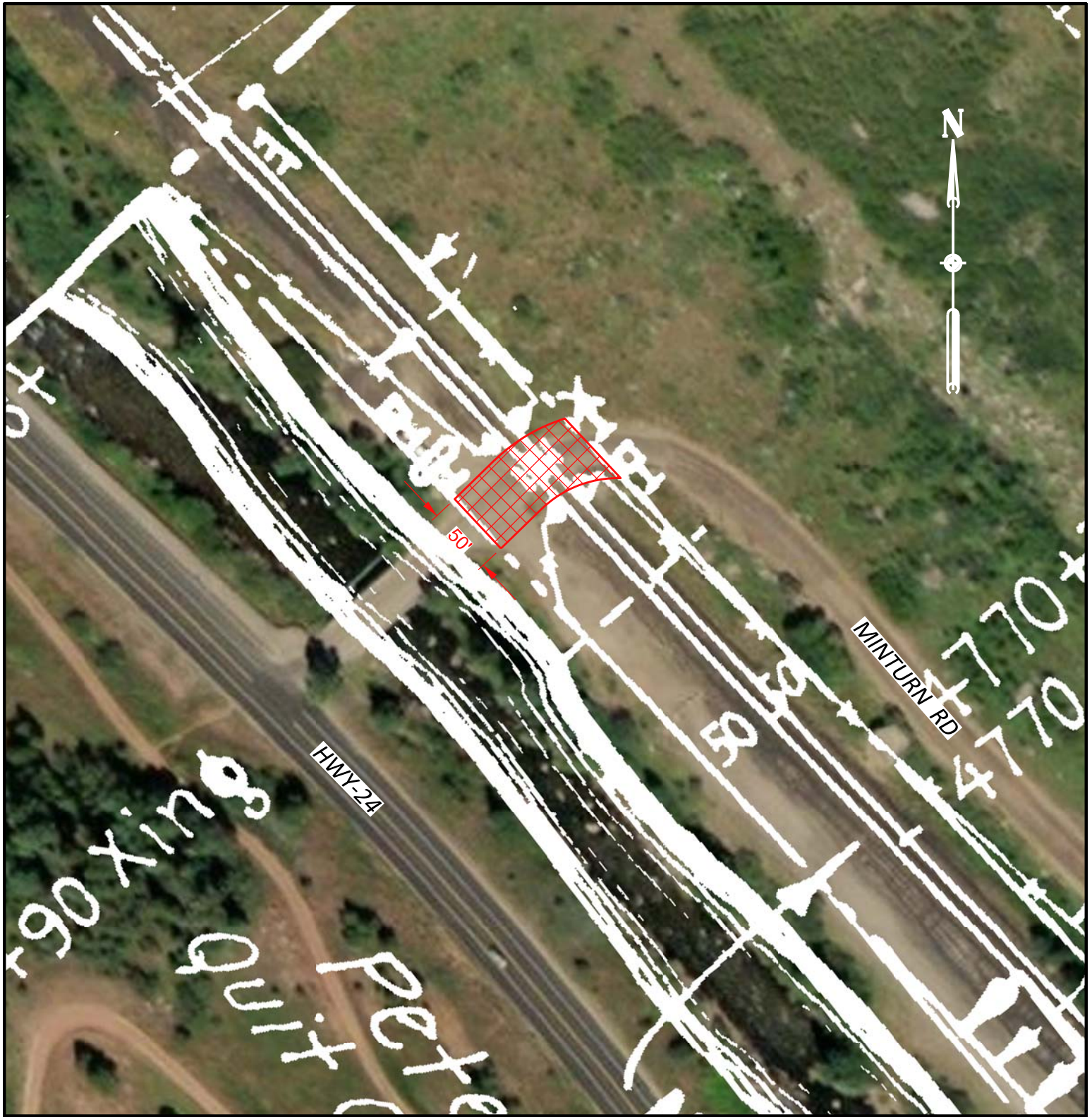
*(Federal Tax ID #94-6001323)*

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


**TOWN OF MINTURN**

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

**EXHIBIT A**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**



**LEGEND:**

CROSSING AREA ..... 

UPRRCO. R/W OUTLINED ..... 

CROSSING AREA = 5,197 SQ. FT. +/-

NOTE: BEFORE YOU BEGIN ANY WORK, SEE  
AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

MINTURN, EAGLE COUNTY, COLORADO

M.P. 302.93 - TENNESSEE PASS SUB.

MAP DRGW V-7A / 24

SCALE: 1" = 100'

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 8-21-2023

PJB FILE: 0328625

CADD FILENAME	0328625
------------------	---------

SCAN FILENAME	X
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**EXHIBIT A-1**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

# EXHIBIT A-1

## PART OF THE SW 1/4, NE 1/4, SECTION 22, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO

PARCEL DESCRIPTION:  
A PARCEL OF LAND, FIFTY FEET IN WIDTH, SITUATED IN A PART OF THE SW 1/4 NE 1/4 SECTION 22, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF EAGLE, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER SAID SECTION 22, FROM WHICH THE WEST 1/16TH CORNER SECTION 23 AND 26, T5S, R81W, OF THE 6TH P.M. BEARS, AND ALL BEARINGS CONTAINED HEREIN BEING BASED UPON, S89°57'12"E; THENCE N34°49'55"W 3631.48 FEET TO A POINT ON THE RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY N43°58'41"W 50.01 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY N44°55'46"E 41.10 FEET; THENCE 61.04 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 125.00 FEET, AN INTERIOR ANGLE OF 27°58'41" AND A CHORD WHICH BEARS N58°55'06"E 60.43 FEET TO A POINT ON SAID RIGHT-OF-WAY; THENCE ALONG SAID RIGHT-OF-WAY S43°58'41"E 62.20 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY 65.45 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 75.00 FEET, AN INTERIOR ANGLE OF 50°00'11" AND A CHORD WHICH BEARS S69°55'51"W 63.40 FEET; THENCE S44°55'46"W 42.05 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 5,197 SQUARE FEET, PLUS OR MINUS.



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

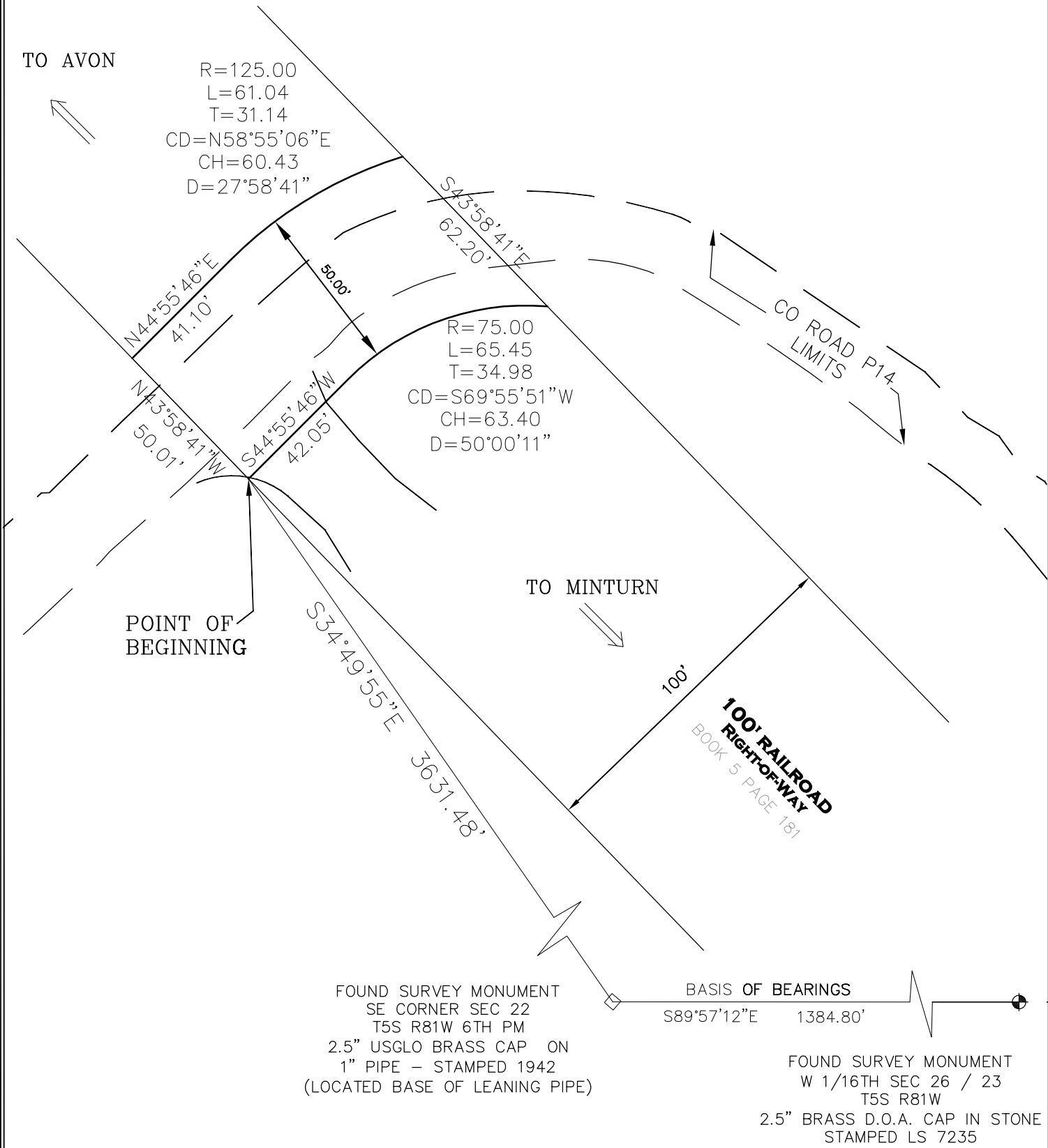
SLAGLE SURVEY SERVICES  
P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office    matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A-1		
PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A Dowd.dwg
SHEET 1 OF 2		DATE: 08-18-2023

# EXHIBIT A-1

## PART OF THE SW 1/4, NE 1/4, SECTION 22, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO

### Sheet 2



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

SLAGLE SURVEY SERVICES  
P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A-1		
PART OF THE SW 1/4, NE 1/4, SECTION 22, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO		
DRAWN BY: MSS	JOB NUMBER: 22055	DRAWING NAME: 22055_Exhibit A Dowd.dwg
SHEET 2 OF 2	DATE: 08-18-2023	

**EXHIBIT B**  
**TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

**SECTION 1. CONDITIONS AND COVENANTS**

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipelines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

**E. INTENTIONALLY OMITTED**

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.



## **SECTION 2. INTENTIONALLY OMITTED**

## **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

## **SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

## **SECTION 5. MAINTENANCE AND REPAIRS**

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, repaired or replaced, the Railroad, at the Political Body's expense, shall install such replacement surfacing.

## **SECTION 6. CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

## **SECTION 7. REARRANGEMENT OF WARNING DEVICES**

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.



## **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or

safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws,

regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Crossing Area shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. The Political Body will give due consideration to suggestions and recommendations made by Railroad for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be directly plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the

"vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for

relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 9. INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

#### **SECTION 10. OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

#### **SECTION 11. INTENTIONALLY OMITTED**

#### **SECTION 12. REMEDIES FOR BREACH OR NONUSE**

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

#### **SECTION 13. MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding

between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

**EXHIBIT C**  
**TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**FORM OF EASEMENT DEED**

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

Town of Minturn  
Attn: Town Manager  
301 Boulder Street, #309  
Minturn, Colorado 81645

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

3286-25

**EASEMENT DEED**

THIS EASEMENT DEED is made this \_\_\_\_ day of \_\_\_\_\_, 2023, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado to be addressed at 301 Boulder St., #309, Minturn, Colorado 81645 ("Grantee").

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a non-exclusive easement ("Easement"), for the sole purposes of constructing, using, maintaining, repairing, renewing and reconstructing an at-grade public road crossing over Eagle County Road 14, on, along and across DOT No. 253532C at Railroad's Milepost 302.93 on Railroad's Tennessee Pass Subdivision (the "Roadway"), including any sidewalks adjacent or related thereto, located at or near Minturn, Eagle County, Colorado, as described and depicted in **Exhibit A**, attached and by reference made a part hereof (the "Easement Area").

The Easement is granted for the purposes described above only. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, or telephone lines.

Grantor, its successors and assigns, reserves the right to construct and to maintain at any and all times railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the

Easement Area, but in such a way as to not unreasonably interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement, including but not limited to any and all general railroad purposes.

The Easement is granted subject to the terms and conditions contained in the separate Public Highway At-Grade Crossing Agreement dated \_\_\_\_\_, 2023, as signed by Grantor and Grantee, and is also subject to all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

If Grantee, its successors or assigns, abandons the Easement Area or any portion of the Easement Area, the Easement will cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area will be freed from the burden of the Easement. Nonuse of the Easement Area or any portion thereof, for public highway purposes continuing at any time for a period of eighteen (18) months will be deemed an abandonment of the Easement Area or portion thereof not used.

**(Signature Pages to Follow)**



Grantor and Grantee have caused this Easement to be executed as of the date first herein written.

**Attest:**

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

\_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Printed Name: Chris D. Goble  
Title: Assistant Vice President – Real Estate

**STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Chris D. Goble and \_\_\_\_\_, Assistant Vice President – Real Estate and Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, on behalf of the corporation.

WITNESS my hand and official seal.

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

(Seal)

Grantor and Grantee have caused this Easement to be executed as of the date first herein written.

**TOWN OF MINTURN,  
a municipal corporation or political  
subdivision of the State of Colorado**

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

**ATTEST:**

Jay Brunvand, Town Clerk

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, Notary Public in and for the State of Colorado, personally appeared \_\_\_\_\_ who is the \_\_\_\_\_ of the TOWN OF MINTURN, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(Seal)

**EXHIBIT A**  
**TO FORM OF EASEMENT DEED**

**LEGAL DESCRIPTION OF EASEMENT AREA  
(TO BE ATTACHED)**

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

Town of Minturn  
Attn: Town Manager  
301 Boulder Street, #309  
Minturn, Colorado 81645

---

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

3286-25

**EASEMENT DEED**

THIS EASEMENT DEED is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and the **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado to be addressed at 301 Boulder St., #309, Minturn, Colorado 81645 ("Grantee").

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a non-exclusive easement ("Easement"), for the sole purposes of constructing, using, maintaining, repairing, renewing and reconstructing an at-grade public road crossing over Eagle County Road 14, on, along and across DOT No. 253532C at Railroad's Milepost 302.93 on Railroad's Tennessee Pass Subdivision (the "Roadway"), including any sidewalks adjacent or related thereto, located at or near Minturn, Eagle County, Colorado, as described and depicted in **Exhibit A**, attached and by reference made a part hereof (the "Easement Area").

The Easement is granted for the purposes described above only. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, or telephone lines.

Grantor, its successors and assigns, reserves the right to construct and to maintain at any and all times railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Easement Area, but in such a way as to not unreasonably interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement, including but not limited to any and all general railroad purposes.

The Easement is granted subject to the terms and conditions contained in the separate Public Highway At-Grade Crossing Agreement dated \_\_\_\_\_, 2023, as signed by Grantor and Grantee, and is also subject to all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

If Grantee, its successors or assigns, abandons the Easement Area or any portion of the Easement Area, the Easement will cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area will be freed from the burden of the Easement. Nonuse of the Easement Area or any portion thereof, for public highway purposes continuing at any time for a period of eighteen (18) months will be deemed an abandonment of the Easement Area or portion thereof not used.

**(Signature Pages to Follow)**

Grantor and Grantee have caused this Easement to be executed as of the date first herein written.

**Attest:**

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

\_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Printed Name: Chris D. Goble  
Title: Assistant Vice President – Real Estate

**STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Chris D. Goble and \_\_\_\_\_, Assistant Vice President – Real Estate and Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, on behalf of the corporation.

WITNESS my hand and official seal.

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

(Seal)

**TOWN OF MINTURN,  
a municipal corporation or political  
subdivision of the State of Colorado**

(Seal)

# EXHIBIT A

## PART OF THE SW 1/4, NE 1/4, SECTION 22, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO

PARCEL DESCRIPTION:  
A PARCEL OF LAND, FIFTY FEET IN WIDTH, SITUATED IN A PART OF THE SW 1/4 NE 1/4 SECTION 22, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF EAGLE, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER SAID SECTION 22, FROM WHICH THE WEST 1/16TH CORNER SECTION 23 AND 26, T5S, R81W, OF THE 6TH P.M. BEARS, AND ALL BEARINGS CONTAINED HEREIN BEING BASED UPON, S89°57'12"E; THENCE N34°49'55"W 3631.48 FEET TO A POINT ON THE RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY N43°58'41"W 50.01 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY N44°55'46"E 41.10 FEET; THENCE 61.04 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 125.00 FEET, AN INTERIOR ANGLE OF 27°58'41" AND A CHORD WHICH BEARS N58°55'06"E 60.43 FEET TO A POINT ON SAID RIGHT-OF-WAY; THENCE ALONG SAID RIGHT-OF-WAY S43°58'41"E 62.20 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY 65.45 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 75.00 FEET, AN INTERIOR ANGLE OF 50°00'11" AND A CHORD WHICH BEARS S69°55'51"W 63.40 FEET; THENCE S44°55'46"W 42.05 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 5,197 SQUARE FEET, PLUS OR MINUS.



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

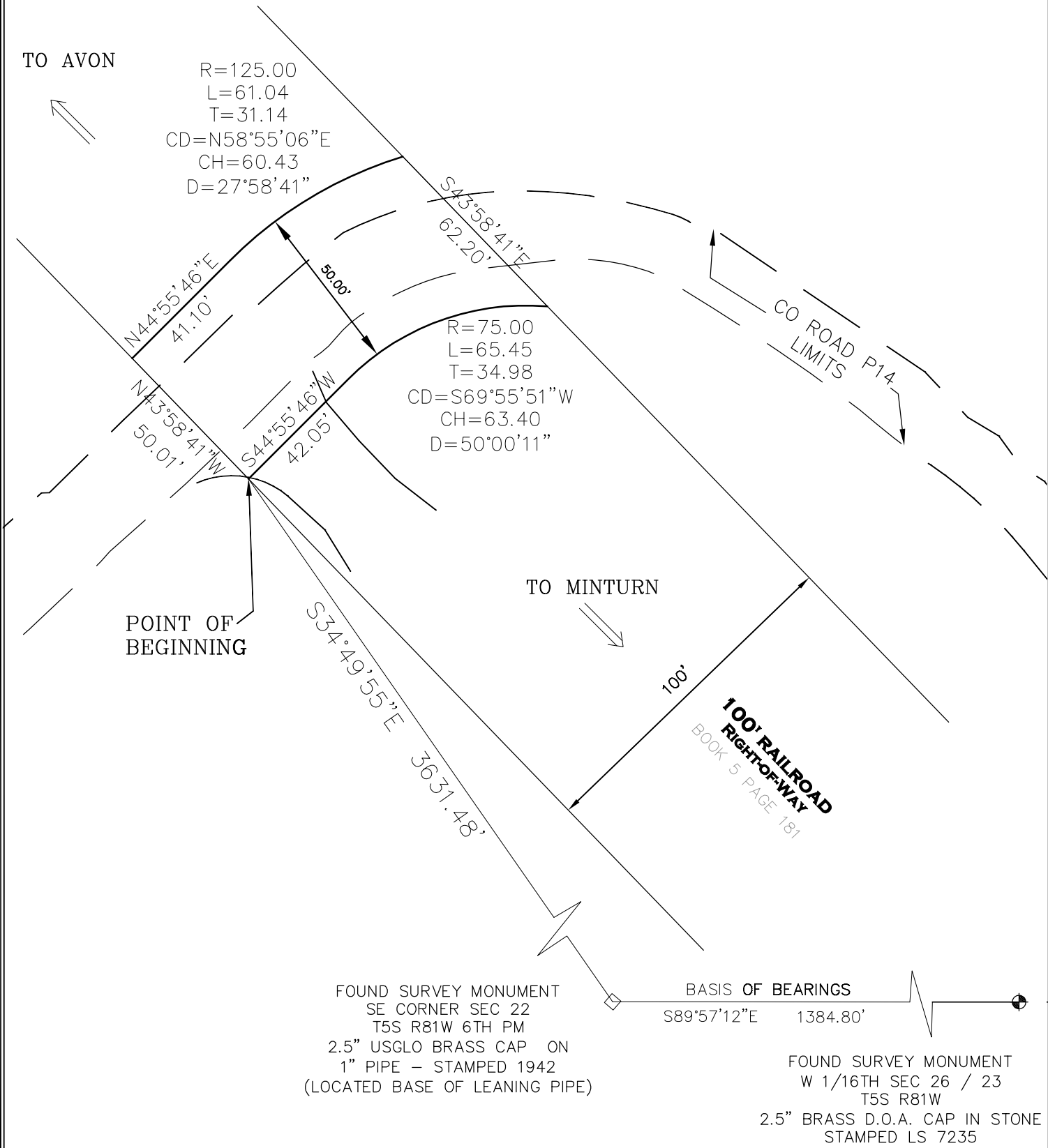
SLAGLE SURVEY SERVICES  
P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office    matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A		
PART OF THE NW 1/4, SW 1/4 AND THE SW 1/4, NW 1/4 SECTION 26, T5S, R81W, 6TH P.M. MINTURN, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A Dowl.dwg
SHEET 1 OF 2		DATE: 08-18-2023



# EXHIBIT A

## PART OF THE SW 1/4, NE 1/4, SECTION 22, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO Sheet 2



Matthew S. Slagle PLS 34998  
Professional Land Surveyor

SLAGLE SURVEY SERVICES  
P.O. Box 751 Eagle, Colorado 81631  
970.471.1499 Office matthew@slaglesurvey.com  
www.SlagleSurvey.com

EXHIBIT A		
PART OF THE SW 1/4, NE 1/4, SECTION 22, T5S, R81W, 6TH P.M. EAGLE COUNTY, COLORADO		
DRAWN BY:	JOB NUMBER:	DRAWING NAME:
MSS	22055	22055_Exhibit A Dowd.dwg
SHEET 2 OF 2		DATE: 08-18-2023

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

Town of Minturn  
301 Boulder Street, #309  
Minturn, CO 81645

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

**RELEASE OF REVERSIONARY INTEREST**

This RELEASE OF REVERSIONARY INTEREST is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("UPRR"), and **TOWN OF MINTURN**, a municipal corporation or political subdivision of the State of Colorado ("Town").

**RECITALS:**

WHEREAS, that certain Dedication dated July 23, 1976, and recorded on September 2, 1976 in Book 248, Page 452 of the Official Records of the County Recorder of Eagle County, Colorado ("1976 Dedication Instrument"), The Denver and Rio Grande Western Railroad Company, a Delaware corporation ("DRGWRC"), dedicated to the Town certain real property located in the County of Eagle, State of Colorado, legally described therein, for the purpose of a roadway and a right-of-way and easement for utility pipelines and appurtenances.

WHEREAS, the 1976 Dedication Instrument included the following condition in favor of DRGWRC, its successors and assigns:

"PROVIDED, however, that in the event that use of said land for the above-described purposes should ever be abandoned, or the roadway be vacated, then the title to that portion of the presently existing roadway which is situated in the West one-half of the Northwest one-quarter of Section 26, Township 5 South, Range 81 West of the Sixth Principal Meridian, County of Eagle, State of Colorado, shall revert to and vest absolutely in said Grantor, its successors and assigns forever."

The above condition will hereinafter be referred to as the "Reversionary Interest".

WHEREAS, DRGWRC merged with and into Union Pacific Railroad Company, a Utah corporation, which merged with and into Southern Pacific Transportation Company, a Delaware corporation, which simultaneously changed its name to Union Pacific Railroad Company, a Delaware corporation, effective February 1, 1998.

WHEREAS, the Town has requested that UPRR forever release and relinquish all of UPRR's right, title and interest in and to the Reversionary Interest described in the 1976 Dedication Instrument, and UPRR has agreed to forever release and relinquish all of UPRR's right, title and interest in and to said Reversionary Interest pursuant to the terms and conditions of this instrument.

**RELEASE:**

NOW, THEREFORE, UPRR, in consideration of the sum of One Dollar (\$1.00) to it paid by the Town, receipt of which is hereby confessed and acknowledged, for itself, its successors and assigns, hereby waives, releases and relinquishes to the Town, its successors and assigns, forever, the right of UPRR to have said Reversionary Interest hereinabove quoted kept, observed or performed.

*(Remainder of page intentionally left blank.)*

UPRR:

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

**Attest:**

\_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Printed Name: Chris D. Goble  
Title: Assistant Vice President – Real Estate

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Chris D. Goble and \_\_\_\_\_, Assistant Vice President – Real Estate and Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, on behalf of the corporation.

Notary Public

(Seal)

(Seal)

**EXHIBIT E**

Local's Housing 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:**

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

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

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

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

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

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

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

1. Definitions

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

i. Qualification:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

Town of Minturn:

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

Minturn Crossing, LLC:

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

STATE OF COLORADO    )  
  )ss.  
COUNTY OF EAGLE        )

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

Witness my hand and official seal.

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

\_\_\_\_\_

Notary Public

## **Exhibit A**

### Legal Description of the Properties

## Exhibit B

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

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

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

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

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

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

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

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

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

[illegible]

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

Witness my hand and official seal.

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

Notary Public

## Exhibit C

### BUYERS AFFIDAVIT

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

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

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

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

#### Buyer's Affidavit and Acknowledgements:

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

#### AND

At least one member of the Household:

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



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

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

**AND**

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

**AND**

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

**AND**

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

**AND**

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

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

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

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

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

## EMPLOYERS AFFIDAVIT AND VERIFICATION OF EMPLOYMENT

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

Employer Information/Verification of Employee Start Date

Employer Name and Contact Information:

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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**

Transfer Assessment 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:**

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 1-33 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

B. The Declarant agreed to this Covenant as part of its application for approval of the MNPUD, approved by the Town of Minturn by Ordinance No. 15 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

C. 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

D. 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

E. 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.

F. 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:

1. 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 for the preceding thirty-six (36) months prior to his or her retirement; or
      - e. Is a disabled person who had been a full-time employee in Eagle County (subject to the retirement exception) for a minimum of two years immediately prior to his or her disability or has been granted an exception to the minimum thirty (30) hours per week in order to continue with a federal or state benefit program, if the person works the maximum number of hours per week the program will allow.
    - 2. The Household must cumulatively earn at least 75% of the Households Gross Household Income in Eagle County.
  - ii. Title of the Unit shall be held in the name of the natural person(s) who are members of the Household which qualifies under criteria i. above. For example, title may be held jointly in the name of the husband and wife who are members of an eligible Household.
    - 1. Notwithstanding the foregoing, an Eligible Household may seek a variance to allow title of a Unit to be held in trust for the benefit of a natural person who also meets the definition of an Eligible Household. Such ownership in trust may only occur in the

circumstances provided herein and at the sole discretion of the Town of Minturn, or its assign. To request a variance, the applicant shall submit a letter to the Town of Minturn, or its assign, requesting a special review and a determination that title of the Unit may be held in trust as set forth herein.

2. The beneficiary of the trust must be of the age of majority to qualify for this variance.
    3. 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, evidence that the Unit (in whole or in part) is not being rented to any third party, 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.
2. 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.
3. 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.

4. **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. The rental of the Unit, in whole or in part, shall be prima face proof that the Owner is no longer considered an Eligible Household and the Transfer Assessment shall be due within thirty (30) days from notice thereof being sent by the Town to the Owner.
- c. 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.
- d. 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.
- e. 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, (ii) proof of employment pursuant to Paragraph 1)a)i), and (iii) a statement made under criminal penalty of perjury that the Unit, in whole or in part, was not rented to any third party in the last twelve (12) months.
- f. 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.



5. Term of Covenant: This Covenant shall expire on the 1st day of March 2073, unless extended, at the sole option of the Town of Minturn Town Council, for an additional period not to exceed 50 years, after public hearing and comment on the proposed extension.
6. Covenant Runs with the Land: Declarant and all Owners of a Unit, and all other parties with an interest in title to a Unit hereby acknowledge, or are deemed to acknowledge by virtue of recordation of the deed by which such Owner takes title to a Unit, that this Covenant shall constitute an irrevocable covenant running with the title to the Unit as a burden thereon for the benefit of the Town of Minturn, or its assign, and shall be binding on the Owner of each Unit, and on its heirs, personal representatives, assigns, lessees, licensees and any transferee of the Owner of each Unit. This Covenant shall be enforceable by the Town of Minturn and its Town Council, and their respective successors and assigns, as applicable, or their designee, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction. The remedies provided herein are cumulative and not exclusive of all other remedies provided by law.
7. Notices: any notice, consent, or approval that is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the parties indicated below as long as prior written notice of the change of address has been given to all parties as indicated.

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

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

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

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

8. 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.
9. 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.

10. 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.
11. 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.
12. 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.
13. Waiver: No claim of waiver, consent, or acquiescence with respect to any provision of this Covenant shall be valid against the Declarant and the Town of Minturn except on the basis of a written instrument executed by the Town of Minturn.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.

19. 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.

Town of Minturn

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

Minturn Crossing, LLC

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

STATE OF COLORADO    )  
                                  )ss.  
COUNTY OF EAGLE     )

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

Witness my hand and official seal.

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

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

## **Exhibit A**

### Legal Description of the Properties

## Exhibit B

### ACKNOWLEDGEMENT OF THE RESTRICTIVE COVENANT IMPOSING A 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 as may be amended by the Minturn Town Council ( <i>To: Town of Minturn Clerk</i> )	_____
2. Identification ( <i>Copy of ID; drivers license, passport, etc.</i> )	_____
3. Affidavit for verification of employment	_____

DELIVER/MAIL PACKET TO: Town of Minturn

P.O. Box 309  
Minturn, CO  
81645

or 302 Pine St., Minturn, Colorado 81645

#### Buyer's Affidavit and Acknowledgements:

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

**AND**

At least one member of the Household:

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

**AND**

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

**AND**

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

**AND**

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

**AND**



●I (we) understand that the Unit, in whole or in part, may not be rented to any third party without losing Eligible Household designation and the Transfer Assessment being due.

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

Buyer(s) Signature \_\_\_\_\_ Date: \_\_\_\_\_

Buyer(s) Signature \_\_\_\_\_ Date: \_\_\_\_\_

Member(s) Signature \_\_\_\_\_ Date: \_\_\_\_\_

Member(s) Signature \_\_\_\_\_ Date: \_\_\_\_\_

Member(s) Signature \_\_\_\_\_ Date: \_\_\_\_\_

Member(s) Signature \_\_\_\_\_ Date: \_\_\_\_\_

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

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

**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 thirty-six (36) consecutive months before retirement.

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

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

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

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

**EXHIBIT G**  
Property Owners Association Covenants

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

## TABLE OF CONTENTS

<b>ARTICLE 1</b>	<b>DECLARATION AND SUBMISSION.....</b>	<b>- 1 -</b>
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>	<b>- 2 -</b>
Section 2.1	Definitions. ....	- 2 -
<b>ARTICLE 3</b>	<b>NAME, DIVISION INTO UNITS.....</b>	<b>- 5 -</b>
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>		<b>- 6 -</b>
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>		<b>- 7 -</b>
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>	<b>- 10 -</b>
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 18.4.4 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 Crossing, LLC, a Colorado limited liability company.

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

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

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

Parcel 1, UPRR Subdivision, according to the Final Plat thereof recorded on \_\_\_\_\_, 202\_\_ as Reception No. \_\_\_\_\_ in the Office of the Eagle County Clerk and Recorder, Eagle County, Colorado; less and excepting therefrom Tract C according to the Final Plat Minturn North P.U.D. recorded on \_\_\_\_\_, 202\_\_ as Reception No. \_\_\_\_\_ in the Office of the Eagle County Clerk and Recorder, Eagle County, Colorado.

**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

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*(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:

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 1-33 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

B. The Declarant agreed to this Covenant as part of its application for approval of the MNPUD, approved by the Town of Minturn by Ordinance No. 15 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

C. 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

D. 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

E. 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.

F. 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:

1. 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 for the preceding thirty-six (36) months prior to his or her retirement; or
- e. Is a disabled person who had been a full-time employee in Eagle County (subject to the retirement exception) for a minimum of two years immediately prior to his or her disability or has been granted an exception to the minimum thirty (30) hours per week in order to continue with a federal or state benefit program, if the person works the maximum number of hours per week the program will allow.

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

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

1. Notwithstanding the foregoing, an Eligible Household may seek a variance to allow title of a Unit to be held in trust for the benefit of a natural person who also meets the definition of an Eligible Household. Such ownership in trust may only occur in the circumstances provided herein and at the sole discretion of the Town

of Minturn, or its assign. To request a variance, the applicant shall submit a letter to the Town of Minturn, or its assign, requesting a special review and a determination that title of the Unit may be held in trust as set forth herein.

2. The beneficiary of the trust must be of the age of majority to qualify for this variance.
  3. 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, evidence that the Unit (in whole or in part) is not being rented to any third party, 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.
2. 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.
  3. 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.

4. **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. The rental of the Unit, in whole or in part, shall be prima face proof that the Owner is no longer considered an Eligible Household and the Transfer Assessment shall be due within thirty (30) days from notice thereof being sent by the Town to the Owner.
- c. 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.
- d. 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.
- e. 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, (ii) proof of employment pursuant to Paragraph 1)a)i), and (iii) a statement made under criminal penalty of perjury that the Unit, in whole or in part, was not rented to any third party in the last twelve (12) months.
- f. 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.

5. Term of Covenant: This Covenant shall expire on the 1st day of March 2073, unless extended, at the sole option of the Town of Minturn Town Council, for an additional period not to exceed 50 years, after public hearing and comment on the proposed extension.
6. Covenant Runs with the Land: Declarant and all Owners of a Unit, and all other parties with an interest in title to a Unit hereby acknowledge, or are deemed to acknowledge by virtue of recordation of the deed by which such Owner takes title to a Unit, that this Covenant shall constitute an irrevocable covenant running with the title to the Unit as a burden thereon for the benefit of the Town of Minturn, or its assign, and shall be binding on the Owner of each Unit, and on its heirs, personal representatives, assigns, lessees, licensees and any transferee of the Owner of each Unit. This Covenant shall be enforceable by the Town of Minturn and its Town Council, and their respective successors and assigns, as applicable, or their designee, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction. The remedies provided herein are cumulative and not exclusive of all other remedies provided by law.
7. Notices: any notice, consent, or approval that is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the parties indicated below as long as prior written notice of the change of address has been given to all parties as indicated.

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

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

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

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

8. 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.
9. 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.

10. 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.
11. 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.
12. 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.
13. Waiver: No claim of waiver, consent, or acquiescence with respect to any provision of this Covenant shall be valid against the Declarant and the Town of Minturn except on the basis of a written instrument executed by the Town of Minturn.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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, and the survivor of them, plus twenty-one (21) years.

19. 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.

Town of Minturn

Minturn Crossing, LLC

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

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

STATE OF COLORADO   )  
  )ss.  
COUNTY OF EAGLE     )

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

Witness my hand and official seal.

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

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

## **Exhibit A**

### Legal Description of the Properties



## Exhibit B

### ACKNOWLEDGEMENT OF THE RESTRICTIVE COVENANT IMPOSING A 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) \_\_\_\_\_

STATE OF COLORADO    )  
  )ss.  
COUNTY OF EAGLE     )

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 as may be amended by the Minturn Town Council ( <i>To: Town of Minturn Clerk</i> )	_____
2. Identification ( <i>Copy of ID; drivers license, passport, etc.</i> )	_____
3. Affidavit for verification of employment	_____

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

#### Buyer's Affidavit and Acknowledgements:

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

**AND**

At least one member of the Household:

- \_\_\_\_\_ has earned a living primarily in Eagle County by having worked an average of at least thirty (30) hours per week on an annual basis at a

business with an office or job site physically located in Eagle County (multiple jobs in eagle County may be combined to reach 30 hours per week); or

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

**AND**

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

**AND**

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

**AND**

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

**AND**

- I (we) understand that the Unit, in whole or in part, may not be rented to any third party without losing Eligible Household designation and the Transfer Assessment being due.

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

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

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

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

**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 thirty-six (36) consecutive months 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:

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

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

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

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

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

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

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

1. Definitions

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

i. Qualification:

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

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

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

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

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



submit a letter to the Town of Minturn, or its assign, requesting a special review and a determination that title of the Unit may be held in trust as set forth herein.

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

5. Term of Covenant: This Covenant shall expire on the 1st day of March 2073, unless extended, at the sole option of the Town of Minturn Town Council, for an additional not to exceed 50 years, after public hearing and comment on the proposed extension.
6. Covenant Runs with the Land: Declarant and all Owners of a Unit, and all other parties with an interest in title to a Unit hereby acknowledge, or are deemed to acknowledge by virtue of recordation of the deed by which such Owner takes title to a Unit, that this Covenant shall constitute an irrevocable covenant running with the title to the Unit as a burden thereon for the benefit of the Town of Minturn, or its assign, and shall be binding on the Owner of each Unit, and on its heirs, personal representatives, assigns, lessees, licensees and any transferee of the Owner of each Unit. This Covenant shall be enforceable by the Town of Minturn and its Town Council, and their respective successors and assigns, as applicable, or their designee, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction. The remedies provided herein are cumulative and not exclusive of all other remedies provided by law.
7. Default: In the event of default, the Town of Minturn shall have all remedies legally available to it at law and in equity. Said remedies shall include obtaining a decree of specific performance requiring the Owner to convey title to an Eligible Household within thirty (30) days.
8. Annual Reporting: An Owner of Lots 34-39 must verify to the Town of Minturn, or its assign, on at least an annual basis, that it remains an Eligible Household. To confirm such eligibility, the Owner shall submit the following information, to the Town of Minturn: (i) a verification that the Owner continues to meet the requirements of an Eligible Household who uses the Unit as its Primary Residence, (ii) proof of employment pursuant to Paragraph 1)a)i), and (iii) a statement made under criminal penalty of perjury that the Unit, in whole or in part, was not rented to any third party in the last twelve (12) months except to other Eligible Households.
9. Notices: any notice, consent, or approval that is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the parties indicated below as long as prior written notice of the change of address has been given to all parties as indicated.

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

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

To Town of Minturn:

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

To Owner:

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

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

Covenant or any Covenant or documents relating hereto or entered into in connection herewith.

20. Modifications: The Declarant, any Owner of a Unit, and the Town of Minturn agree that any modifications of this Covenant shall be effective only when made by writings signed by the parties and recorded with the Clerk and Recorder of the Town of Minturn. The Town of Minturn reserves the right to amend this Covenant unilaterally where deemed necessary to effectuate the purpose and intent of this Covenant, and where such unilateral action does not materially impair an Owner's rights or any lender's rights under this Covenant.
21. Perpetuities Savings Clause: If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Covenant or any of its **Exhibits A, B and C** shall be unlawful or void for violation of: (a) the rule against perpetuities or some similar statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only by the lives of the then then-current duly elected and seated Town of Minturn Town Council members, and the then-current Town of Minturn employees, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.
22. Assignment: The Town of Minturn may in its sole discretion assign the benefits and delegate the responsibilities hereunder to a non-profit private entity or public agency or authority or operated in whole or in part to provide housing programs in Eagle County.

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

Town of Minturn:

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

Minturn Crossing, LLC:

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

STATE OF COLORADO   )  
  )ss.  
COUNTY OF EAGLE       )

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

Witness my hand and official seal.

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

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

## **Exhibit A**

### Legal Description of the Properties

## Exhibit B

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

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

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

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

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) \_\_\_\_\_

STATE OF COLORADO    )  
  )ss.  
COUNTY OF EAGLE     )

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 as such may be amended by Minturn Town Council ( <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 for at least thirty-six (36) months prior to retirement; or
- I (we) are a disabled person who had been a full-time employee in Eagle County (subject to the retirement exception) for a minimum of two years immediately prior to the disability or have been granted an exception to the minimum thirty (30) hours per week in order to continue with a federal or state benefit program and work the maximum number of hours per week the program will allow.

**AND**

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

**AND**

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

**AND**

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

**AND**

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

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

Buyer(s) Signature \_\_\_\_\_

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

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

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

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

## EMPLOYERS AFFIDAVIT AND VERIFICATION OF EMPLOYMENT

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

Employer Information/Verification of Employee Start Date

Employer Name and Contact Information:

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

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

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

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

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

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

**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.

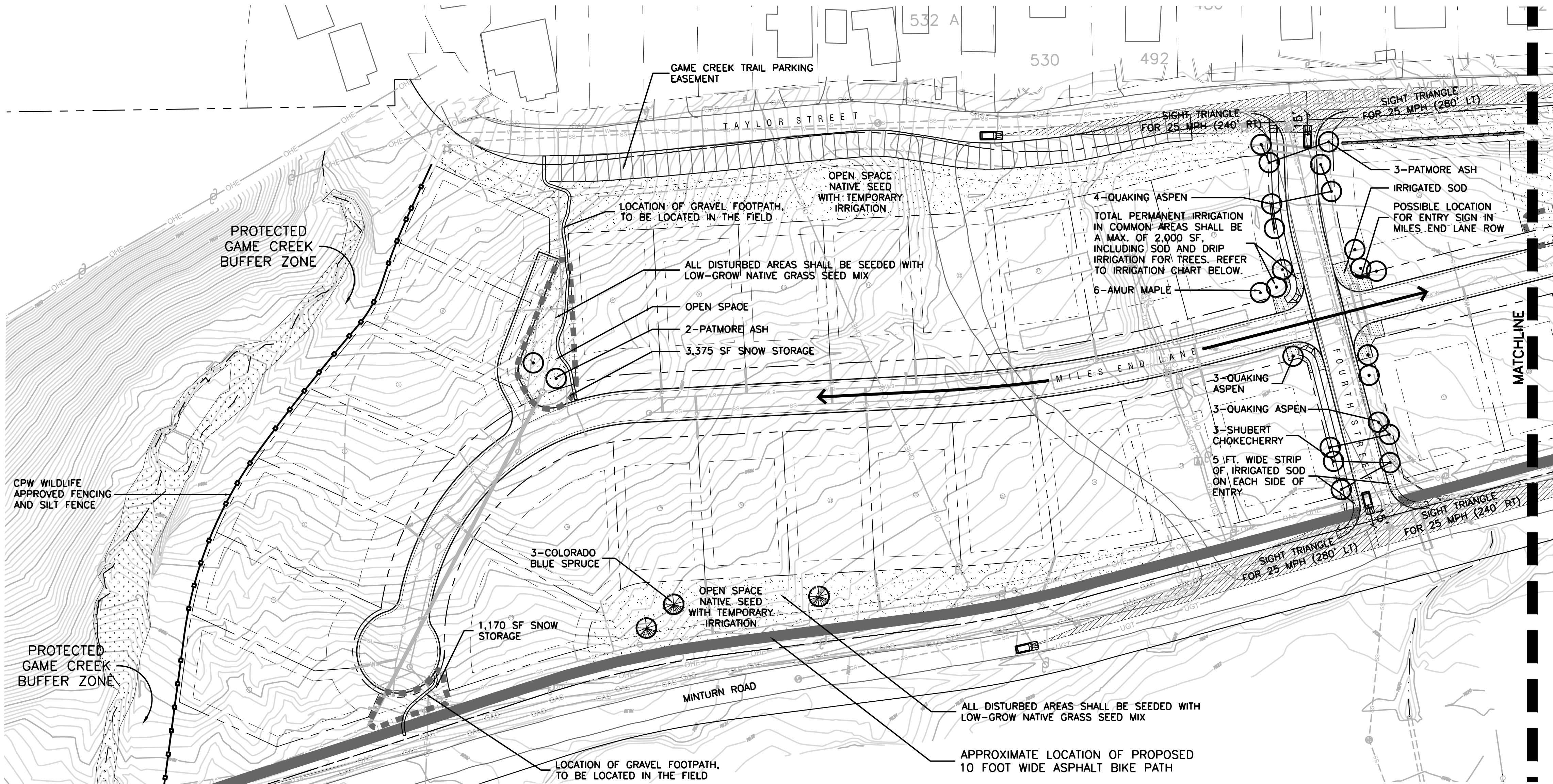
Enforcement of the Wildlife Mitigation Plan shall be administered by the Minturn North Property Owners Association.

**EXHIBIT H**  
Construction Plans

**EXHIBIT I**

Landscaping Plans



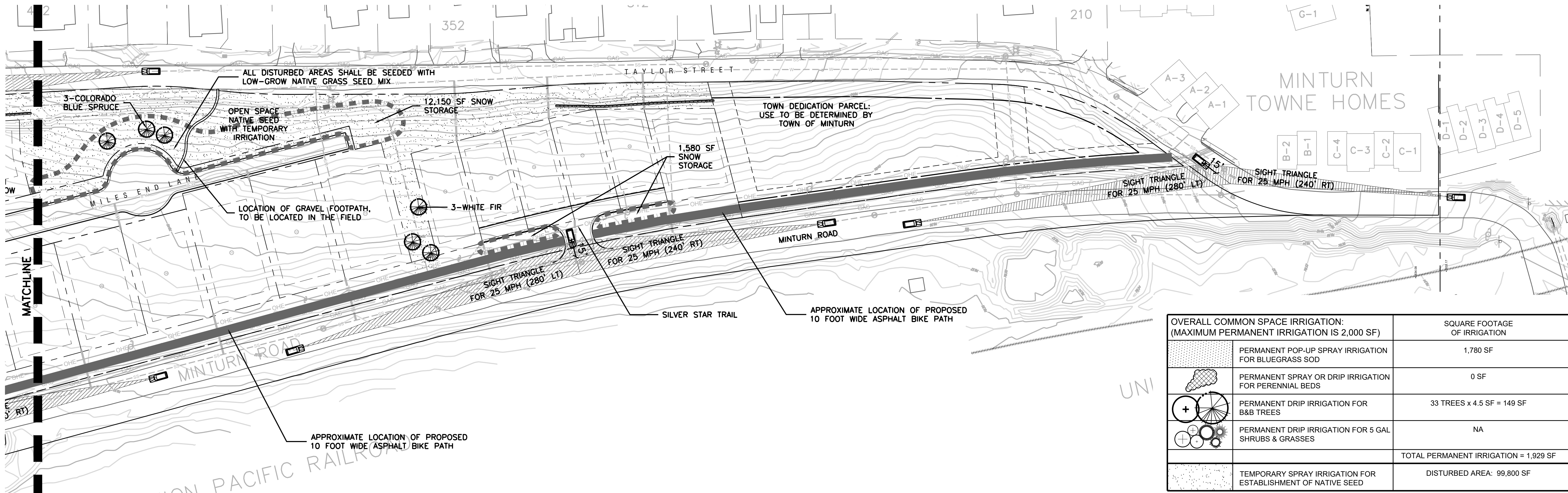


LEGEND

- PROPOSED NATIVE SEED WITH TEMPORARY IRRIGATION (SEE IRRIGATION NOTES L2)
- PROPOSED SOD WITH PERMANENT IRRIGATION
- PROPOSED SNOW STORAGE (REFER TO PLAN FOR SF)
- PROPOSED DECIDUOUS TREE
- PROPOSED 10 FT WIDE ASPHALT BIKE PATH

PROPOSED PLANT MATERIAL LIST FOR COMMON SPACE (CHOSEN FROM EXHIBIT B, MINTURN GUIDELINES):

QUAN.	COMMON / BOTANICAL NAME	FIRE MITIGATION ZONE	SIZE	COMMENTS
EVERGREEN TREES				
6	Colorado Spruce <i>Picea pungens</i>	2	8' ht.	Specimen quality B&B, staked
3	White Fir <i>Abies concolor</i>	2	8' ht.	Specimen quality B&B, staked
DECIDUOUS TREES				
6	Amur Maple <i>Acer ginnala</i>	1 & 2	2.5" cal.	Specimen quality B&B, guyed
5	Patmore Ash <i>Fraxinus pennsylvanica</i> 'Patmore'	1 & 2	3" cal.	Specimen quality B&B, guyed
10	Quaking Aspen <i>Populus tremuloides</i>	1 & 2	2.5" cal.	Specimen quality B&B, guyed
3	Shubert Chokecherry <i>Prunus virginiana</i> 'Shubert'	1 & 2	3" cal.	Specimen quality B&B, guyed

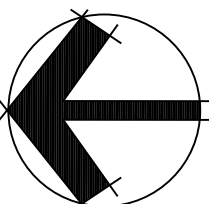


OVERALL LANDSCAPE PLAN

SCALE: 1"=50'-0"

OVERALL COMMON SPACE IRRIGATION: (MAXIMUM PERMANENT IRRIGATION IS 2,000 SF)		SQUARE FOOTAGE OF IRRIGATION
	PERMANENT POP-UP SPRAY IRRIGATION FOR BLUEGRASS SOD	1,780 SF
	PERMANENT SPRAY OR DRIP IRRIGATION FOR PERENNIAL BEDS	0 SF
	PERMANENT DRIP IRRIGATION FOR B&B TREES	33 TREES x 4.5 SF = 149 SF
	PERMANENT DRIP IRRIGATION FOR 5 GAL SHRUBS & GRASSES	NA
		TOTAL PERMANENT IRRIGATION = 1,929 SF
	TEMPORARY SPRAY IRRIGATION FOR ESTABLISHMENT OF NATIVE SEED	DISTURBED AREA: 99,800 SF

0 25 50 100  
SCALE: 1"=50'-0"



LANDSCAPE ARCHITECT:  
TOMINA TOWNSEND, LA  
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EDWARDS, CO 81632  
P. 303.572.7876  
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MINTURN NORTH P.U.D.

TOWN OF MINTURN  
COUNTY OF EAGLE, STATE OF COLORADO

DESIGNED: Resort Concepts  
DRAWN: TT  
CHECKED: JT  
DATE: 9/28/2022  
REVISIONS:  
REVISED PUD PRELIMINARY PLAN: 4.11.23  
REVISED PUD PRELIMINARY PLAN: 6.2.23  
REVISED PUD PRELIMINARY PLAN: 7.18.23  
REVISED PUD PRELIMINARY PLAN: 8.21.23  
REVISED PUD PRELIMINARY PLAN: 10.30.23

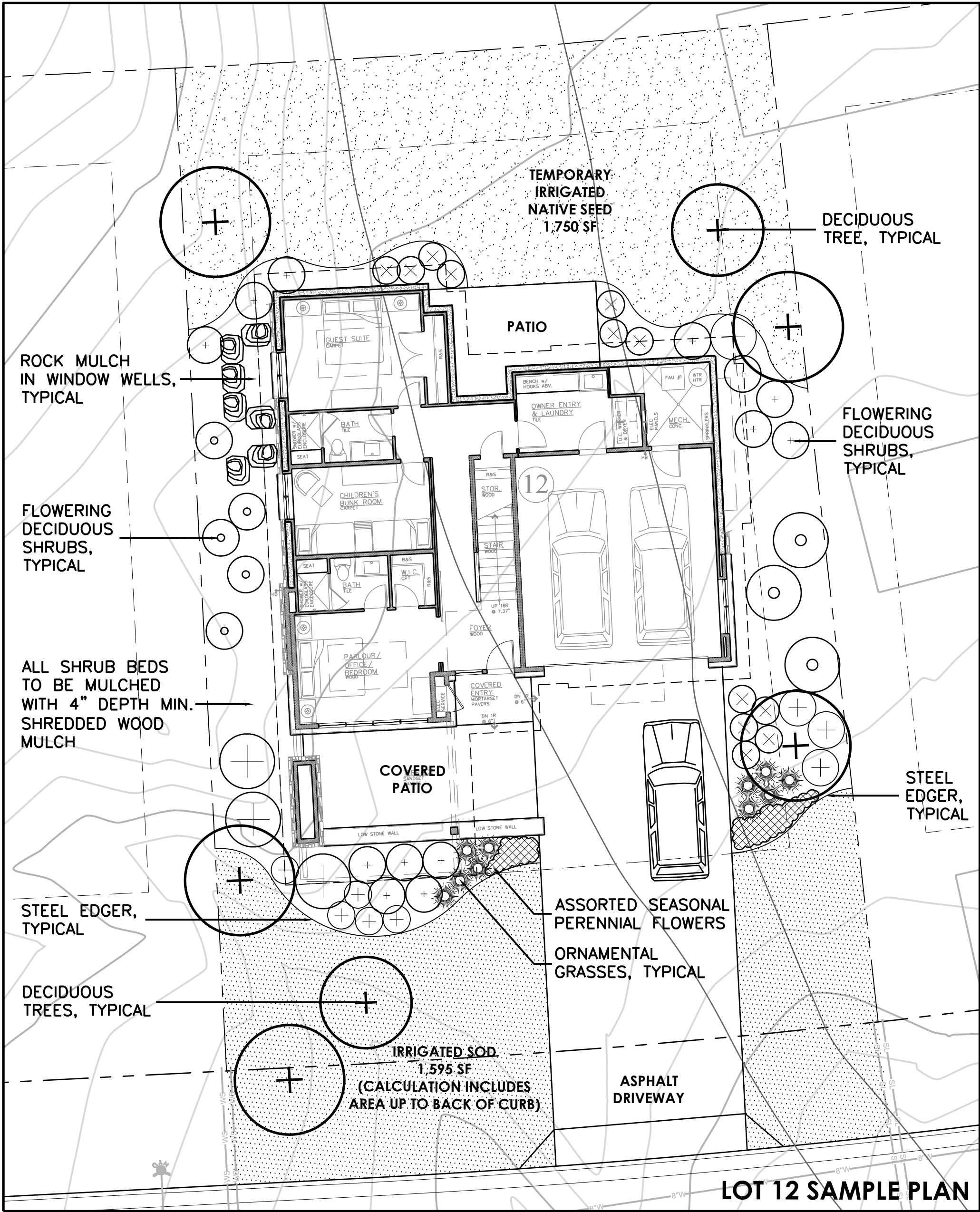
PUD PRELIMINARY PLAN

SHEET TITLE:  
LANDSCAPE PLAN

SCALE: 1"=50'-0"  
SHEET NUMBER:

L1





TYPICAL LOT LANDSCAPE ESTIMATED IRRIGATION: (LOTS 1-33 TOTAL MAX. PERMANENT IRRIGATION OF 2,000 SF)		
	PERMANENT POP-UP SPRAY IRRIGATION FOR BLUEGRASS SOD	1,595 SF
	PERMANENT SPRAY OR DRIP IRRIGATION FOR PERENNIAL BEDS	25 SF
	PERMANENT DRIP IRRIGATION FOR B&B TREES	7 TREES x 4.5 SF = 32 SF
	PERMANENT DRIP IRRIGATION FOR 5 GAL SHRUBS & GRASSES	55 SHRUBS x 3 SF = 165 SF
	TEMPORARY SPRAY IRRIGATION FOR NATIVE SEED	1,750 SF
TOTAL PERMANENT IRRIGATION = 1,817 SF		

## TYPICAL SINGLE FAMILY LANDSCAPE

SCALE: 1"=10'-0"

### General Notes and Specifications:

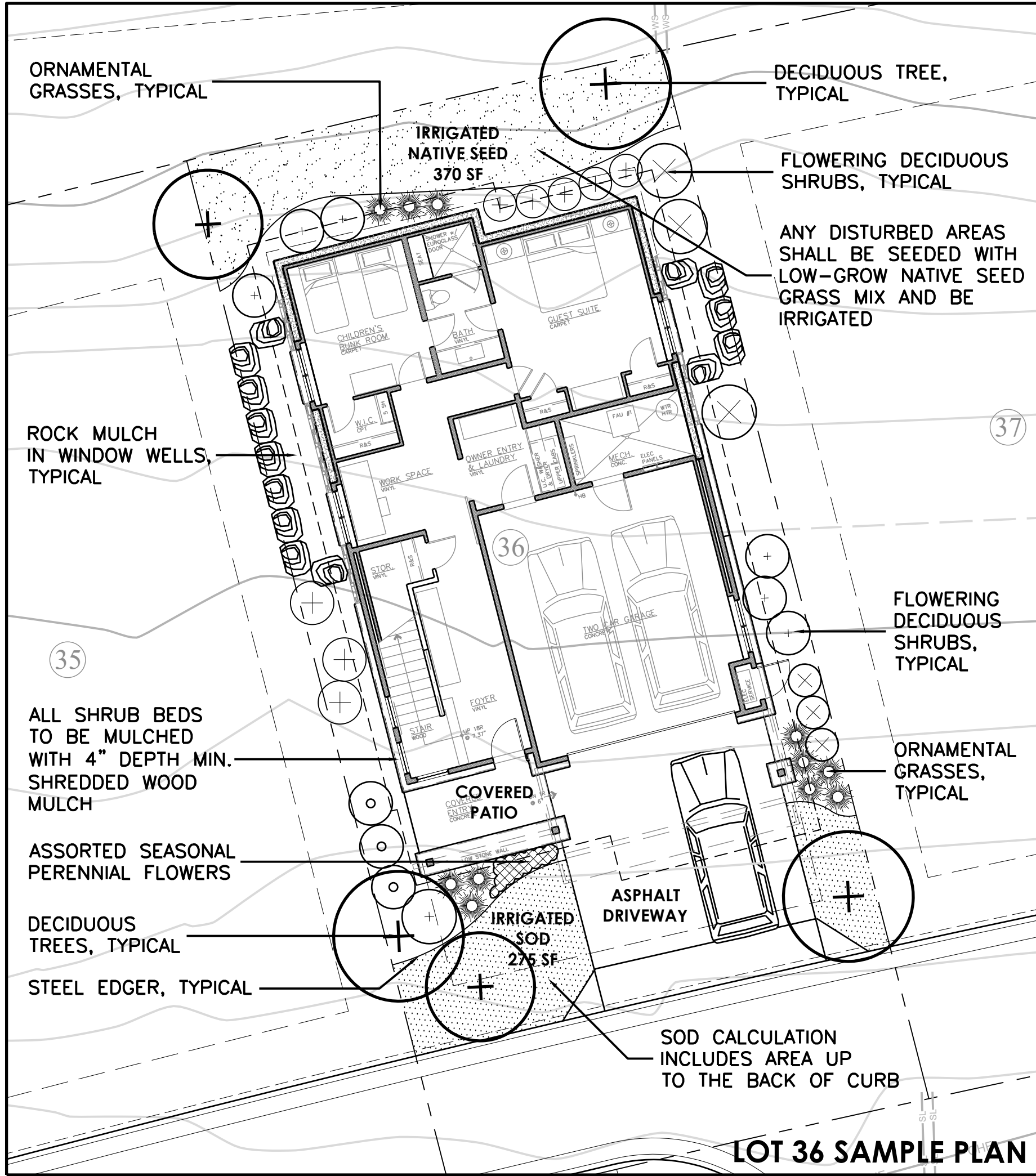
- All areas disturbed by construction and not designated a shrub bed or wildflower seed, shall be planted with the specified native grass seed.
- The contractor shall maintain positive drainage away from all walls and walkways. Fine grading shall be approved prior to planting.
- The Landscape Plan shall be reviewed on site prior to installation to ensure planting meets the intent of the design guidelines and county wildfire mitigation standards.
- Quantity and location of "natural" shrub plantings within Wildfire Mitigation Zone 2 shall be subject to field review by Wildfire Mitigation Officer.
- See Civil Engineering sheets for final grading and drainage.
- Snow Storage area shall be a min. of 25% of all driveway and parking areas.

### Revegetation Notes:

- Seed shall be broadcast and raked to 1/4" depth.
- Apply Biodegradable Green Dyed-Wood Cellulose-Fiber Mulch to all seeded Areas at a rate of 20 lbs. per 1,000 s.f.
- Prior to seeding, apply min. 6" topsoil, 10 lbs./1,000 s.f. Superphosphate and 40 lbs./1,000 s.f. Biosol Complete Fertilizer.

### Fire Mitigation Notes:

- Zone 1 (15' from building and integral planting): no flammable plants shall be planted within 15' of the structure or attachments.
- Zone 2 (70' from building and integral planting): a 10' crown separation must be maintained for all conifers and shrubs over 4'. A 4' crown separation must be maintained for shrubs under 4'.
- Plants listed on forest service publication 6.305 FireWise Plant Material can be used in any zone.
- Final existing vegetation to be limbed or removed will be subject to the constraints of the final unit site plans and reviewed on site with a representative from the Wildfire Mitigation Officer, the Minturn North DRB on a unit by unit basis prior to construction.



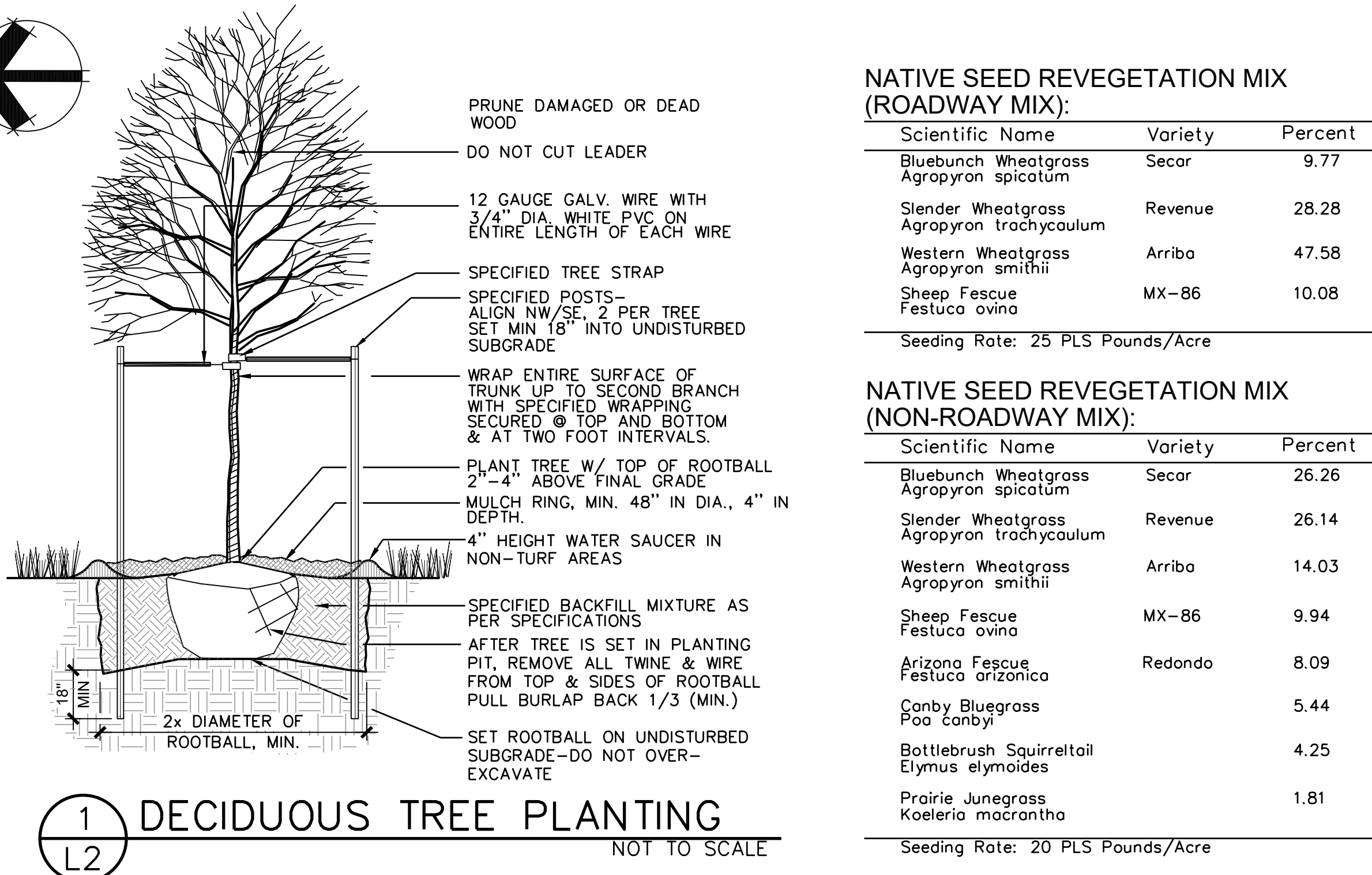
TYPICAL LOT LANDSCAPE ESTIMATED IRRIGATION: (LOTS 34-39 TOTAL MAX. PERMANENT IRRIGATION OF 2,000 SF)		
	PERMANENT POP-UP SPRAY IRRIGATION FOR BLUEGRASS SOD	275 SF
	PERMANENT SPRAY OR DRIP IRRIGATION FOR PERENNIAL BEDS	13 SF
	PERMANENT DRIP IRRIGATION FOR B&B TREES	5 TREES x 4.5 SF = 23 SF
	PERMANENT DRIP IRRIGATION FOR 5 GAL SHRUBS & GRASSES	35 SHRUBS x 3 SF = 105 SF
	PERMANENT SPRAY IRRIGATION FOR NATIVE SEED	370 SF
TOTAL PERMANENT IRRIGATION = 786 SF		

## TYPICAL LOCAL HOUSING LANDSCAPE

SCALE: 1"=10'-0"

### IRRIGATION NOTES:

- FOR THE SINGLE FAMILY LOTS (1-33), TOTAL PERMANENT IRRIGATION SHALL NOT EXCEED 2,000 SF. REFER TO TYPICAL LOT LANDSCAPE ABOVE FOR ESTIMATED IRRIGATED AREA CALCULATIONS.
- FOR THE LOCAL HOUSING LOTS (34-39), TOTAL IRRIGATION SHALL NOT EXCEED 2,000 SF. REFER TO TYPICAL LOT LANDSCAPE ABOVE FOR ESTIMATED IRRIGATED AREA CALCULATIONS.
- IRRIGATION DESIGN CRITERIA: DESIGN AUTOMATIC UNDERGROUND IRRIGATION SYSTEM TO UNIFORMLY IRRIGATE ALL PLANTING AREAS. ZONE IRRIGATED TURF GRASS AND SHRUB PLANTING AREAS SEPARATELY. PROVIDE DRIP IRRIGATION FOR SHRUB BEDS. PROVIDE MINIMUM 12 INCH POP-UP SPRAY HEADS IN ANNUAL, PERENNIAL, AND GROUND COVER BEDS. DESIGN ROTORS FOR TURF GRASS AREAS MORE THAN 40' WIDE. POP-UP SPRAY HEADS FOR AREAS LESS THAN 40' WIDE.
- ALL TREES AND SHRUBS TO BE DRIP IRRIGATED.



## 1 L2 DECIDUOUS TREE PLANTING

NOT TO SCALE

### PLANT LIST FOR TYPICAL LOT LAYOUT:

NOTE: ALL PLANT MATERIAL FOUND WITHIN 30' WILDFIRE DEFENSIBLE ZONE IS CHOSEN FROM THE CSU EXTENSION FIREWISE PLANT MATERIALS LIST-6.305

QUAN.	COMMON/ BOTANICAL NAME	FIRE MITIGATION ZONE	SIZE	COMMENTS
EVERGREEN TREES (ONLY TO BE LOCATED OUTSIDE THE 30' DEFENSIBLE ZONE)				
	Colorado Blue Spruce <i>Picea pungens</i>	2	8' ht.	Specimen quality B&B, staked
	Colorado Blue Spruce <i>Picea pungens</i>	2	10' ht.	Specimen quality B&B, staked
DECIDUOUS TREES				
	Quaking Aspen <i>Populus tremuloides</i>	1 & 2	2.5" cal.	Specimen quality B&B, guyed
	Quaking Aspen <i>Populus tremuloides</i>	1 & 2	3" cal.	Specimen quality B&B, guyed
	Amur Maple <i>Acer ginnala</i>	1 & 2	2.5" cal.	Specimen quality B&B, guyed
	Green Ash <i>Fraxinus pennsylvanica</i>	1 & 2	2.5" cal.	Specimen quality B&B, guyed
	Native Mountain Ash <i>Sorbus scopulina</i>	1 & 2	clump form	Specimen quality B&B, guyed
	Honeylocust <i>Gleditsia triacanthos</i>	1 & 2	2.5" cal.	Specimen quality B&B, guyed
PERENNIALS (Approximately X sf. @ 12" O.C. spacing)				
Assorted Perennials (All perennials to be chosen by landscape installer from FIREWISE PLANT MATERIALS LIST)				
	Blue Avena Grass <i>Helictotrichon sempervirens</i>	1 & 2	1 gal.	Container Full
	Little Bluestem <i>Schizachyrium scoparium</i>	1 & 2	1 gal.	Container Full
SEMI-EVERGREEN/BROADLEAF EVERGREEN SHRUBS				
	Common Mountain Mahogany <i>Cercocarpus montanus</i>	1 & 2	5 gal.	Container, 5 canes minimum 24"-36" ht.
DECIDUOUS SHRUBS				
	Arnold's Red Honeysuckle <i>Lonicera tatarica 'Arnold's Red'</i>	1 & 2	5 gal.	Container, 5 canes minimum 24"-36" ht.
	Burkwood Daphne <i>Daphne burkwoodii 'Somerset'</i>	1 & 2	5 gal.	Container, 5 canes minimum 18"-24" ht.
	Common Lilac <i>Syringa vulgaris</i>	1 & 2	5 gal.	Container, 5 canes minimum 24"-36" ht.
	Golden Currant <i>Ribes aureum</i>	1 & 2	5 gal.	Container, 5 canes minimum 24"-36" ht.
	Mountain Ninebark <i>Physocarpus monogynus</i>	1 & 2	5 gal.	Container, 5 canes minimum 12"-18" ht.
	Mountain Snowberry <i>Symphoricarpos oreophilus</i>	1 & 2	5 gal.	Container, 5 canes minimum 10"-12" ht.
	Redtwig Dogwood <i>Cornus stolonifera</i>	1 & 2	5 gal.	Container, 5 canes minimum 24"-36" ht.
	Saskatoon Serviceberry <i>Amelanchier alnifolia</i>	1 & 2	5 gal.	Container, 5 canes minimum 24"-36" ht.
	Boulder Raspberry <i>Rubus deliciosus</i>	1 & 2	5 gal.	Container, 5 canes minimum 18"-24" ht.
	Wax Flower <i>Jamesia americana</i>	1 & 2	5 gal.	Container, 5 canes minimum 24"-36" ht.
	Russet Buffaloberry <i>Shepherdia canadensis</i>	1 & 2	5 gal.	Container, 5 canes minimum 24"-36" ht.



Know what's below.  
Call before you dig.

LANDSCAPE ARCHITECT:  
TOMINA TOWNSEND, LA  
PO BOX 3000, PMB 301  
EDWARDS, CO 81632  
P. 303.572.7876  
TTownsend@ResortConceptsCO.com

MIN TURN NORTH P.U.D.

TOWN OF MINTURN  
COUNTY OF EAGLE, STATE OF COLORADO

DESIGNED: Resort Concepts  
DRAWN: TT  
CHECKED: JT  
DATE: 9/28/2022

REVISIONS:  
REVISED PUD PRELIMINARY  
PLAN: 4.11.23  
REVISED PUD PRELIMINARY  
PLAN: 6.2.23  
REVISED PUD PRELIMINARY  
PLAN: 7.18.23  
REVISED PUD PRELIMINARY  
PLAN: 8.21.23  
REVISED PUD PRELIMINARY  
PLAN: 10.30.23

### PUD PRELIMINARY PLAN

SHEET TITLE:  
LANDSCAPE  
NOTES & DETAILS

SCALE:  
SHEET NUMBER:

L2





LANDSCAPE ARCHITECT:  
TOMINA TOWNSEND, LA  
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MINTURN NORTH P.U.D.  
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REVISED PUD PRELIMINARY  
PLAN: 8.21.23

REVISED PUD PRELIMINARY  
PLAN: 10.30.23

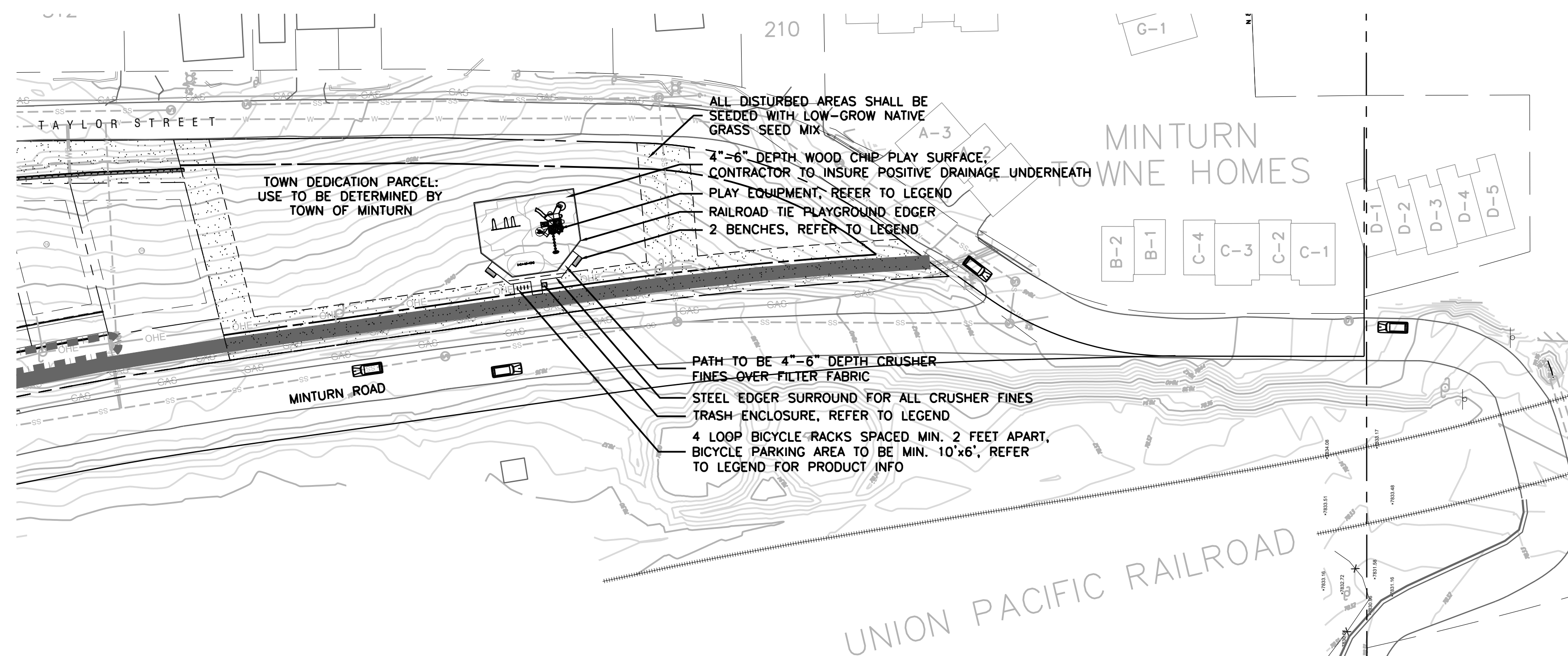
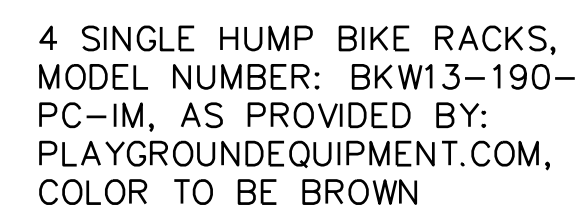
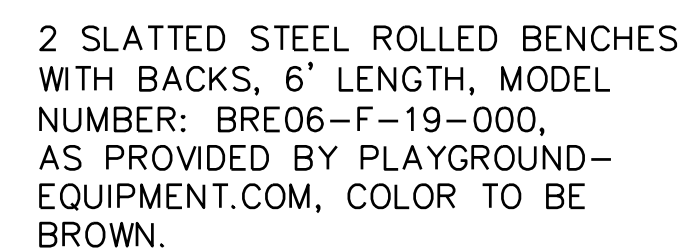
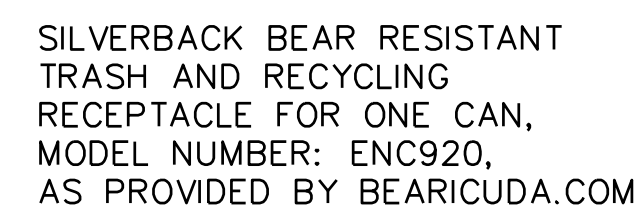
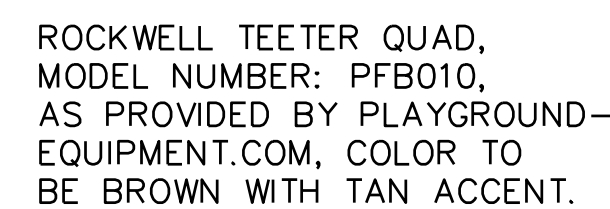
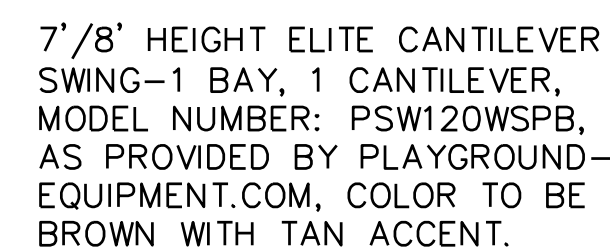
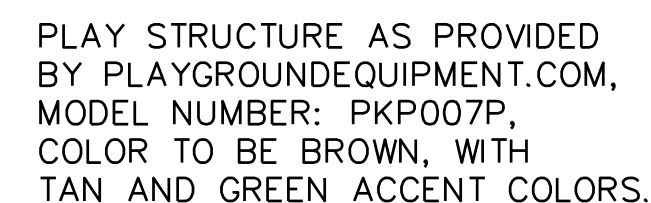
## PROPOSED PARK PLAN

SHEET TITLE:  
LANDSCAPE  
PLAN

SCALE: 1"=50'-0"  
SHEET NUMBER:

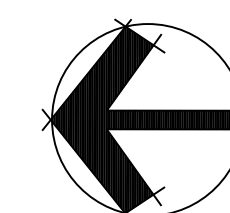
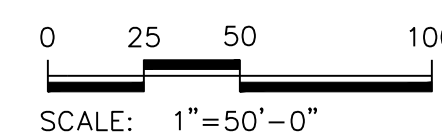
### L3

## LEGEND



## PARK PLAN

SCALE: 1"=50'-0"



IMAGES  
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**EXHIBIT J**

Construction Cost Estimate



## MINTURN NORTH - MINTURN CO

### Engineer's Opinion Of Estimated Cost

November 7, 2023

Prepared by Boundaries Unlimited Inc.

PROJECT NO: 22036.01

Final Plat - Civil Engineering Plans Dated 11-7-2023

Item No.	Description	QTY	Unit	Unit Cost (Typical)	Cost	%
<b>GENERAL</b>						
G1	Mobilization	1	LS	\$85,000	\$85,000	2.2%
G2	Mud Tracking Mitigation	1	LS	\$6,000	\$6,000	0.2%
G3	Erosion Control - Silt Fencing	2,589	LF	\$3.50	\$9,062	0.2%
G4	Erosion Control - Silt Logs	200	EA	\$34.00	\$6,800	0.2%
G5	Traffic Control - Barricades & Signage + Flaging	1	LS	\$90,000	\$90,000	2.3%
G6	Street Signs	10	EA	\$550	\$5,500	0.1%
G7	Revegetation (Dryland)	5	AC	\$1,700	\$8,500	0.2%
G8	Permenent Turf Reinforcement	4,900	SY	\$12.00	\$58,800	1.5%
G9	Temporary Turf Reinforcement	2,200	SY	\$9.00	\$19,800	0.5%
G10	Guard Rail	250	LF	\$160	\$40,000	1.0%
G11	Pavement Striping	1	LS	\$2,500	\$3,500	0.1%
G12	Landscape	1	LS	\$45,000	\$45,000	1.2%
				<b>Item Subtotal</b>	<b>\$377,962</b>	<b>9.8%</b>
<b>EARTHWORK</b>						
D1	Top Soil Removal & Replacement	3,450	CY	\$22.50	\$77,625	2.0%
D2	Site Excavation (Cut/Fill & Compaction)	5,300	CY	\$22.00	\$116,600	3.0%
D3	Cut Export	4,200	CY	\$38.00	\$159,600	4.2%
				<b>Item Subtotal</b>	<b>\$353,825</b>	<b>9.2%</b>
<b>SANITARY SEWER</b>						
S1	8" PVC Sewer Main	2,395	LF	\$91	\$217,945	5.7%
S2	4' Dia Concrete Manhole	12	EA	\$5,800	\$69,600	1.8%
S3	4' Dia Concrete Manhole w/Cast-Inplace Base onto Live Main	4	EA	\$8,600	\$34,400	0.9%
S4	Core Existing Manhole for New 8" pipe	1	EA	\$6,500	\$6,500	0.2%
S5	4" PVC Sewer Service	39	EA	\$3,600	\$140,400	3.7%
S6	Manhole Removal	2	EA	\$2,600	\$5,200	0.1%
S7	Plug Abandond Sewer Main Pipe Ends	5	EA	\$1,000	\$5,000	0.1%
S8	Manhole Cone Rotation, Adjust Rim & New WaterProof Lid	2	EA	\$2,600	\$5,200	0.1%
S9	Manhole Rim Elev Adjustment	4	EA	\$600	\$2,400	0.1%
				<b>Item Subtotal</b>	<b>\$486,645</b>	<b>12.7%</b>
<b>POTABLE WATER</b>						
W1	8" Tee Connection w/8" GV and 10"x8" Reducer	2	EA	\$22,000	\$44,000	1.1%
W2	10" Tee Connection w/Two 10" GV's & Plug	1	EA	\$16,000	\$16,000	0.4%
W3	10" C900 Water Main (includes fittings & restraints)	2,517	EA	\$144.00	\$362,448	9.4%
W4	10" Gate Valve	4	EA	\$4,800	\$19,200	0.5%
W5	Sleeve & Insulation for SewerLine Crossings (CDH)	60	LF	\$200	\$12,000	0.3%
W6	Fire Hydrant w/ GV, C900 Pipe, Tee, Restraints & Gravel	6	EA	\$10,800	\$64,800	1.7%
W7	PureCore Water Service w/Wettap, Saddle, Corp Stop & Curb Stop	39	EA	\$5,600	\$218,400	5.7%
W8	Air Vac Valve w/ Vault, fittings, service line & Main Connection	1	EA	\$8,000	\$8,000	0.2%
				<b>Item Subtotal</b>	<b>\$744,848</b>	<b>19.4%</b>
<b>IRRIG WATER</b>						
I1	4" HDPE DR11 Irrigation Main (includes Misc Fittings)	1,335	LF	\$55	\$73,425	1.9%
I2	2" HDPE DR11 Irrigation Main (include Misc Fittings)	1,901	LF	\$35	\$66,535	1.7%
I3	2" Valve with Box & Lid	6	EA	\$500	\$3,000	0.1%
I4	1" Drain/Air Valve w/ fittings, Box & Lid	6	EA	\$600	\$3,600	0.1%
I5	4X2 Tee Connection/Fitting	6	EA	\$300	\$1,800	0.0%
I6	Meter/Valve Vault ( includes, fittings, Valves, Meter)	1	LS	\$8,000	\$8,000	0.2%
				<b>Item Subtotal</b>	<b>\$156,360</b>	<b>4.1%</b>
<b>DRAINAGE</b>						
D1	Arch CMP Culvert Cleaning & Debris Removal	1	LS	\$22,000	\$22,000	0.6%
D2	Headwall Structure Conc. Blocks for Exisitng Arch CMP Culv Entrance	240	SF	\$120	\$28,800	0.7%



## MINTURN NORTH - MINTURN CO

### Engineer's Opinion Of Estimated Cost

November 7, 2023

PROJECT NO: 22036.01

Prepared by Boundaries Unlimited Inc.

Final Plat - Civil Engineering Plans Dated 11-7-2023

Item No.	Description	QTY	Unit	Unit Cost (Typical)	Cost	%
D3	18" Nominal Angular RipRap	100	Ton	\$154.00	\$15,400	0.4%
D4	Concrete Headwall & Wingwall Structures for Culverts	6	EA	\$11,000	\$66,000	1.7%
D5	24" RCP Culvert	188	LF	\$165	\$31,020	0.8%
D6	18" ADS-N12 Culvert	336	LF	\$120	\$40,320	1.0%
D7	18" Flared End Sections	7	EA	\$480	\$3,360	0.1%
D8	Type R Inlet w/Snout & Bio-skirts	7	EA	\$11,500	\$80,500	2.1%
D9	Nyloplast Single Inlet w Snout & Bio-skirts	2	EA	\$9,000	\$18,000	0.5%
D10	Nyloplast Double Inlet w Snout & Bio-skirts	2	EA	\$13,250	\$26,500	0.7%
D11	Ditch Gabion Check Dams	48	EA	\$725	\$34,800	0.9%
				<b>Item Subtotal</b>	<b>\$366,700</b>	<b>9.5%</b>
<b>SHALLOW UTILITES (Electric, Communications &amp; Gas)</b>						
U1	Heritage OH Pwr Line Relocation (Trench Excavation only)	1,820	LF	\$20	\$36,400	0.9%
U2	Primary Elect/Comm lines/Trench Exc & Conduit Install	2,957	LF	\$25	\$73,925	1.9%
U3	Electric Transformers/Vault install	9	EA	\$1,200	\$10,800	0.3%
U5	Gas line Trenching	3,210	LF	\$20	\$64,200	1.7%
				<b>Item Subtotal</b>	<b>\$148,925</b>	<b>3.9%</b>
<b>ROADS, CURB &amp; Apron, Pans &amp; Sidewalk</b>						
R1	Asphalt Saw Cut & Rotomill	172	LF	\$22	\$3,784	0.1%
R2	Minturn Road Demo & Subgrade Prep & Compaction	3,716	SY	\$7	\$26,014	0.7%
R3	On-Site Roads Demo & Subgrade Prep & Compaction	900	SY	\$9	\$8,100	0.2%
R4	Class 6 ABC for Roads, Drives, Curbs, Aprons, Pans, Walk & Shldrs	5,245	Ton	\$41	\$215,045	5.6%
R5	18" Standard Vertical & Mountable Curb & Gutter	5,609	LF	\$40	\$224,360	5.8%
R6	12" Spill Curb Edge	181	LF	\$36	\$6,516	0.2%
R7	Curb Return Apron Fillets & Valley Pans	2,285	SF	\$18	\$41,130	1.1%
R8	5' Sidewalk	1,232	SF	\$14	\$17,248	0.4%
R9	On-Site Roads ADA ramps	426	SF	\$14	\$5,964	0.2%
R10	3" Asphaltic Pavement	78	Ton	\$180	\$14,040	0.4%
R11	4" Asphaltic Pavement	2,467	Ton	\$158	\$389,786	10.1%
					<b>\$951,987</b>	<b>24.8%</b>
<b>TRAILS</b>						
T1	Trail 53 Parking Space Site Grading/Subgrade Preparation	1	LS	\$6,000	\$6,000	0.2%
T2	Trail 53 Parking Space - 6" Class 6 ABC	980	Ton	\$41	\$40,180	1.0%
T3	ECO Trail Class 6 ABC	1,036	Ton	\$41	\$42,476	1.1%
T4	ECO Trail 3" Asphalt	472	Ton	\$168	\$79,296	2.1%
T5	ECO Trail ADA ramps	175	SF	\$22	\$3,850	0.1%
T6	ECO Trail Bridge (To be determined)	1	LS	\$75,000	\$75,000	2.0%
T7	Onsite 3' wide Trail (6" Compacted crusher fines over 160N Fabric)	328	LF	\$22	\$7,216	0.2%
				<b>Item Subtotal</b>	<b>\$254,018</b>	<b>6.6%</b>
<b>CONSTRUCTION TOTAL</b>					<b>\$3,841,270</b>	<b>100.0%</b>
<b>OTHER SERVICES &amp; COSTS</b>						
A1	Construction Survey		2.0%		\$76,825	2.0%
A2	Testing (water, sewer, compaction)		2.0%		\$76,825	2.0%
A3	BOND		1.5%		\$57,619	1.5%
A4	Contingency (10%)		10.0%		\$384,127	10.0%
				<b>Item Subtotal</b>	<b>\$595,397</b>	<b>15.5%</b>
<b>TOTAL COSTS</b>					<b>\$4,436,667</b>	



P.O. Box 3901  
Eagle, Colorado 81631

YARNELL CONSULTING &  
CIVIL DESIGN, LLC  
(970) 323-7008      11/7/2023

129 Midland Avenue  
Basalt, Colorado 81621

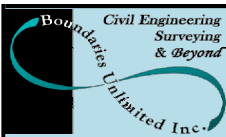
ENGINEER'S OPINION OF PROBABLE COST

Project Name:    North Minturn P.U.D.

Project No.: 20.004

Item No.	Description	Quantity	Units	Unit Price	Ext. Price
	GENERAL				
1	Mobilization	1	LS	\$ 20,000.00	\$ 20,000.00
2	Construction Surveying	1	LS	\$ 15,000.00	\$ 15,000.00
3	Traffic Control	30	Day	\$ 900.00	\$ 27,000.00
	EROSION CONTROL & REVEGETATION				
4	Sediment Control Logs	191	LF	\$ 2.50	\$ 477.50
5	Hydromulch	722	SY	\$ 5.00	\$ 3,611.11
	DEMOLITION & RELOCATION				
6	Sawcut	2,165	LF	\$ 4.00	\$ 8,660.00
7	Remove Guardrail	108	LF	\$ 12.00	\$ 1,296.00
8	Mill Asphalt (~2-inch Depth)	10,852	SF	\$ 2.65	\$ 28,757.80
9	Remove Full-Depth Asphalt	4,225	SF	\$ 5.50	\$ 23,237.50
	EARTHWORK				
10	Sub-grade Soil Preparation (1-foot)	967	SY	\$ 6.00	\$ 5,802.00
11	Strip, Relocate, & Place Topsoil	100	CY	\$ 30.00	\$ 3,000.00
12	Import Structural Fill	50	CY	\$ 38.00	\$ 1,900.00
13	Import 8" Base Course	294	Ton	\$ 42.00	\$ 12,336.50
14	Riprap	3	Ton	\$ 154.00	\$ 462.00
	UTILITIES				
15	CDOT Type R Storm Sewer Inlet	1	Ea	\$ 5,750.00	\$ 5,750.00
16	CDOT Type D Storm Sewer Inlet	1	Ea	\$ 8,600.00	\$ 8,600.00
17	Adjust Manhole Rim Elevation	1	Ea	\$ 750.00	\$ 750.00
	FLATWORK				
18	CDOT Type IIB Curb & Gutter	765	LF	\$ 47.00	\$ 35,955.00
19	Irregular Curb & Gutter	100	LF	\$ 72.00	\$ 7,200.00
20	4" Hot-Mix Asphalt Pavement	218	Ton	\$ 180.00	\$ 39,163.50
21	2" Hot-Mix Asphalt Overlay	635	Ton	\$ 180.00	\$ 114,306.75
	PAVEMENT MARKINGS				
22	4-inch Double-Yellow Centerline	1,002	LF	\$ 1.65	\$ 1,653.30
23	4-inch White Edge Line	2,087	LF	\$ 1.25	\$ 2,608.75
24	8-inch White Turn Bay Line	276	LF	\$ 2.35	\$ 648.60
Notes: 1. Prices assume there is adequate ROW width. 2. No design or permitting prices included.		Sub-Total* =			\$ 368,176.31
		20% Contingencies =			\$ 73,635.26
		5% Testing & Observation =			\$ 18,408.82
		3-year Inflation (8%/year) =			\$ 76,553.67
		Total =			\$ 536,774.06

\*This tabulation of costs represents Yarnell Consulting & Civil Design, LLC's (YCCD's) opinion of the costs associated with completing the scope of work. Since many factors determine the ultimate cost of construction, YCCD cannot offer any warranty as to the information provided. It is recommended that a qualified contractor review the scope of work to confirm the costs.



**MINTRUN ROAD (Offsite Improvements)**  
**MINTURN NORTH - MINTURN CO**  
**Engineer's Opinion Of Estimated Cost**

November 7, 2023

PROJECT NO: 22036.01

Prepared by Boundaries Unlimited Inc.

Final Plat - Civil Engineering Estimate Dated 8-3-2023

Item No.	Description	QTY	Unit	Unit Cost (Typical)	Cost	%
<b>GENERAL</b>						
G1	Mobilization	1	LS	\$85,000	\$85,000	7.4%
G2	Traffic Control - Barricades & Signage + Flagging	1	LS	\$24,000	\$24,000	2.1%
G3	Erosion Control - Silt Fencing	4,380	LF	\$3.50	\$15,330	1.3%
G4	Erosion Control - Silt Logs	110	EA	\$34.00	\$3,740	0.3%
G5	Hydromulch Revegetation	7,300	SY	\$5	\$24,000	2.1%
G6	Pavement Striping	1	LS	\$2,500	\$36,500	3.2%
				<b>Item Subtotal</b>	<b>\$188,570</b>	<b>16.5%</b>
<b>DRAINAGE</b>						
D1	18" ADS-N12 Culvert (4 road crossings)	336	LF	\$120	\$40,320	3.5%
D2	18" Culvert Flared End Section	8	EA	\$200	\$1,600	0.1%
D3	18" Nominal Angular RipRap	100	Ton	\$154.00	\$15,400	1.3%
D4	Borrow Ditch and Shoulder Improvements (Excavation & Compaction)	2,000	CY	\$30.00	\$60,000	5.3%
				<b>Item Subtotal</b>	<b>\$117,320</b>	<b>10.3%</b>
<b>ROAD</b>						
R1	Minturn Road Demo & Subgrade Prep & Compaction	15,000	SY	\$6.00	\$90,000	7.9%
R2	Class 6 ABC 6" Depth Subbase	3,699	Ton	\$42.00	\$155,358	13.6%
R3	Class 6 ABC 2' Wide Shoulder	1,233	Ton	\$43.00	\$53,019	4.6%
R4	4" Asphaltic Pavement	2,596	Ton	\$180.00	\$467,280	40.9%
R5	Minturn Road Interconnection - Each Ends	2	EA	\$10,000	\$20,000	1.8%
R6	RailRoad Crossing Improvements	1	LS	\$25,000	\$25,000	2.2%
R7	Bridge Approach Improvements ( Eagle River Crossing)	1	LS	\$25,000	\$25,000	2.2%
				<b>Item Subtotal</b>	<b>\$835,657</b>	<b>73.2%</b>
<b>CONSTRUCTION TOTAL</b>					<b>\$1,141,547</b>	<b>100.0%</b>
<b>OTHER SERVICES &amp; COSTS</b>						
O1	Drainage Study	1	LS	\$25,000	\$25,000	2.2%
O2	Civil Engineering	1	LS	\$25,000	\$25,000	2.2%
O3	Construction Surveying & Staking	1	LS	\$15,000	\$15,000	1.3%
O4	Geotech Testing (compaction)	1	2.0%	\$15,000	\$15,000	1.3%
O5	Construction Observation	1	LS	\$20,000	\$20,000	1.8%
O6	BOND		1.5%		\$17,123	1.5%
O7	Contingency (10%)		10.0%		\$114,155	10.0%
O8	3 Year Inflation adjustment (8%/YR)		24.0%		\$273,971	24.0%
				<b>Item Subtotal</b>	<b>\$231,278</b>	<b>20.3%</b>
<b>TOTAL COSTS</b>					<b>\$1,372,825</b>	

*Note: Any opinions of price, probable project costs or construction costs prepared by Boundaries Unlimited Inc. represent its best judgement and are furnished for general guidance. Boundaries Unlimited Inc. makes no warranty of guarantee, either expressed or implied as to the accuracy of such opinions as compared to bid or actual costs.*