

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 10, SERIES 2011**

AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN A REVOCABLE LICENSE AGREEMENT WITH MINTURN TOWNE HOMES OWNERS' ASSOCIATION TO PERMIT ENCROACHMENT ONTO TOWN RIGHT OF WAY PROPERTY OF THE TOWN OF MINTURN, COLORADO, AS IT PERTAINS TO GRANT AVENUE, BLOCK A, TAYLOR ADDITION TO THE TOWN OF MINTURN, EAGLE COUNTY, COLORADO

WHEREAS, Town of Minturn, Colorado (Grantor) owns for use and benefit of the citizens of the Town of Minturn, Colorado and the general public, a 50-foot wide platted right of way in the Taylor Addition to the Town of Minturn, Eagle County, Colorado, upon a portion of which the Minturn Towne Homes Owners' Association wishes to construct a drainage channel, berm and inlet along Grant Avenue, Block A – Taylor Addition to the Town of Minturn on the aforementioned platted right of way as shown in Attachment A; and

WHEREAS, Minturn Towne Homes Owners' Association, (Grantee) wish authority to use the area of the aforementioned platted right of way to construct the aforementioned drainage channel, berm and inlet. Grantor is agreeable to the use of such property under the terms and conditions as set forth below, more particularly described in the license agreement attached as Attachment B, situated in the Town of Minturn, Colorado; and

WHEREAS, after notice provided by law, a public hearing was held before the Minturn Town Council, at which time the applicant and the public were given an opportunity to express their opinions regarding the proposed amendment; and

WHEREAS, based on the evidence, testimony and exhibits and recommendations of the Town Council of the Town of Minturn, Colorado, finds as follows:

1. The proper publication was provided as required by law for the Town Council of the Town of Minturn, Colorado.
2. The hearings before the Town Council were both extensive and complete and all pertinent facts, matters and issues were submitted at those hearings.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:

INTRODUCED, read by title, approved on the first reading and ordered published in full the 20 day of July, 2011. The 3 day of August, 2011, at 7:00 p.m. at the Minturn Town Hall, Minturn, Colorado 81645 is set for public hearing hereon.

TOWN OF MINTURN

By: Howkeye Flaherty
Mayor

ATTEST:

[Signature]
Town Clerk



THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED AND ORDERED PUBLISHED BY TITLE ONLY ON SECOND READING THIS 5th DAY OF October, 2011.

Howkeye Flaherty
Mayor

ATTEST:

[Signature]
Town Clerk



LICENSE AGREEMENT

This Agreement, entered into this 5th day of October, 2011, by and between the Town of Minturn, a Colorado municipal corporation (hereinafter "Grantor") and Minturn Towne Homes Owners' Association, (hereinafter "Grantee").

RECITALS

Whereas, Grantor owns, for use and benefit of the citizens of the Town of Minturn, Colorado and the general public, a 50-foot wide, unimproved, platted public road ("public right of way") in Block A, Taylor Addition to the Town of Minturn, Eagle County, Colorado, and

Whereas, Grantee wishes authority to use the area depicted on the map attached as Exhibit A to construct a drainage berm and channel for the purpose of diverting run-off water from the adjacent hillside into the existing drainage system located on the Grantee's property and Grantor is agreeable to the use of such property under the terms and conditions as set forth below.

Now, therefore, for and in consideration of the performing of the covenants and agreements by the Parties to this Agreement, the Grantor does hereby permit the Grantee to use the property depicted on the map attached as Exhibit A for the purpose of installing a drainage channel and inlet for the purpose of diverting run-off water from the adjacent hillside into the existing drainage system as set forth in this License Agreement:

This license shall extend from the date of this License Agreement until such a time as the Grantor determines at a public hearing that the area of encroachment is necessary for use as a recreational trail or other municipal purpose. The following stipulations are expressly agreed by and between the Grantor and Grantees.

1. Use of Site. The site be used for the construction of a drainage channel, diversion berm and catch basins and for no other purpose whatsoever.
2. Term. As indicated above.
3. Condition of Site. During the term of this License Agreement, Grantees shall keep the premises licensed under this Agreement in good condition. Grantees agree to undertake no activity which could be hazardous or in any way detrimental to the community, or permit further encroachment of the structure into the public right of way.
4. Maintenance. The Grantee will be responsible for annual maintenance on the drainage facility to ensure that the channel and inlets remain free from debris and obstructions. The Grantee will also be responsible for revegetating and maintaining all disturbed areas of the project. Additionally, the Grantee will be responsible for annual maintenance of the retention pond to ensure that the pond functions at maximum capacity. For the life of this Agreement, the Grantee shall provide an annual report to the Town outlining the maintenance measures that were performed by the Grantee.

Ordinance 10 – Series 2011 (ATTACHMENT B)

5. Release From Liability. Grantee hereby releases and discharges the Grantor from any and all liability arising from this Agreement, to-wit; from damage to its property, whether in custody of the Grantee or its agents or representatives, or in the control or custody of the employees or representatives of the Grantor, or whether in the control or custody of third parties or while upon premises owned or under the control of the Grantor or Grantee.
6. Indemnification. Grantee hereby agrees that it shall indemnify, defend and hold harmless Grantor and its successors and assigns from, against, and with respect to any claim, liability, obligation, loss, damage, assessment, judgment, cost or expense (including, without limitation, reasonable attorneys' fees and expenses and costs and expenses reasonably incurred in investigating, preparing or defending against any litigation or claim, action, suit, proceeding or demand, of any kind or character), of or in any manner relating or attributable to any claims of damages arising from Grantee's activities associated with this License Agreement.
7. Assignment and Subletting. This License Agreement may not be transferred or assigned during the term of this License Agreement without the prior written consent to assignment of this License Agreement by Grantor, nor shall Grantee permit any other person or entity to share its occupancy hereunder without the prior written permission of the Grantor.
8. Notices. All notices and communications required herein shall be in writing and shall be sent by certified mail to the following addresses:

Grantor:
Town Manager
Town of Minturn
PO Box 309
Minturn, CO 81645

Grantee:

Minturn Towne Homes Owners Association
PO Box 5800
Avon, CO 81620

Notices shall be deemed properly given when mailed by certified mail in a sealed envelope, postage prepaid, addressed to the above addresses. Any such notice or demand shall be deemed to have been given or made at the time it is deposited in the United States Post Office. Any party may change its address of record by giving written notice of the change to the other party.

8. Waiver. Failure or delay on the part of Grantee or the Grantor to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

Ordinance 10 – Series 2011 (ATTACHMENT B)

9. Prior Negotiations. This License Agreement constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations and agreements.
10. Amendments. No revision of this License Agreement shall be valid unless made in writing and signed by an authorized officer of Grantor and by Grantee.
11. Applicable Law. This License Agreement is entered into at Minturn, Eagle County, Colorado, and it is agreed that the proper jurisdictions and venue of any action pertaining to the interpretation of enforcement of this License Agreement shall be in the County or District Court of Eagle County, Colorado. This License Agreement shall be interpreted under the laws of the State of Colorado.
12. Binding Agreement. It is understood and agreed that this Agreement shall be binding upon the assigns and successors in interest of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set the hands of their respective authorized officers.



TOWN OF MINTURN,
a Colorado Municipal Corporation,
Grantor

ATTEST:


Town Clerk


Mayor

MINTURN TOWN HOMES OWNERS' ASSOCIATION,
Inc.,
Grantee

By: _____

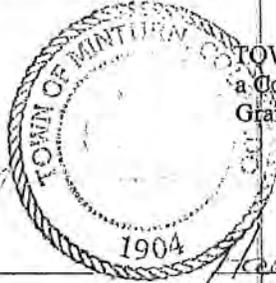
ATTEST:

Secretary

agreements.

- 10. Amendments. No revision of this License Agreement shall be valid unless made in writing and signed by an authorized officer of Grantor and by Grantee.
- 11. Applicable Law. This License Agreement is entered into at Minturn, Eagle County, Colorado, and it is agreed that the proper jurisdictions and venue of any action pertaining to the interpretation of enforcement of this License Agreement shall be in the County or District Court of Eagle County, Colorado. This License Agreement shall be interpreted under the laws of the State of Colorado.
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IN WITNESS WHEREOF, the parties hereto have set the hands of their respective authorized officers.



TOWN OF MINTURN,
a Colorado Municipal Corporation,
Grantor

ATTEST:

[Handwritten signature]

Town Clerk

[Handwritten signature]

Mayor

MINTURN TOWN HOMES OWNERS' ASSOCIATION,
Inc.,
Grantee

By: *[Handwritten signature]*
Michael W Peck

ATTEST:

Secretary

Ordinance 10 – Series 2011 (ATTACHMENT B)

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, by Gordon "Hawkeye" Flaherty, as Mayor of the Town of Minturn and Jay Brunvand, as Town Clerk of the Town of Minturn, this 5th day of OCTOBER, 2011.

My commission expires 8/18/2013

Witness my hand and seal.

[Signature]

NOTARY PUBLIC



STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before undersigned Notary Public, by _____, this _____ day of _____, 2011.

My commission expires _____

Witness my hand and seal.

NOTARY PUBLIC

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

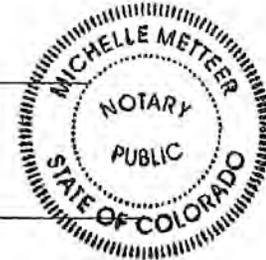
The foregoing instrument was acknowledged before me, the undersigned Notary Public, by Gordon "Hawkeye" Flaherty, as Mayor of the Town of Minturn and Jay Brunvand, as Town Clerk of the Town of Minturn, this 5th day of OCTOBER, 2011.

My commission expires

8/18/2013

Witness my hand and seal.

[Signature]



NOTARY PUBLIC

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before undersigned Notary Public, by Michael Peck this 18th day of December, 2011.

My commission expires

4-24-2013

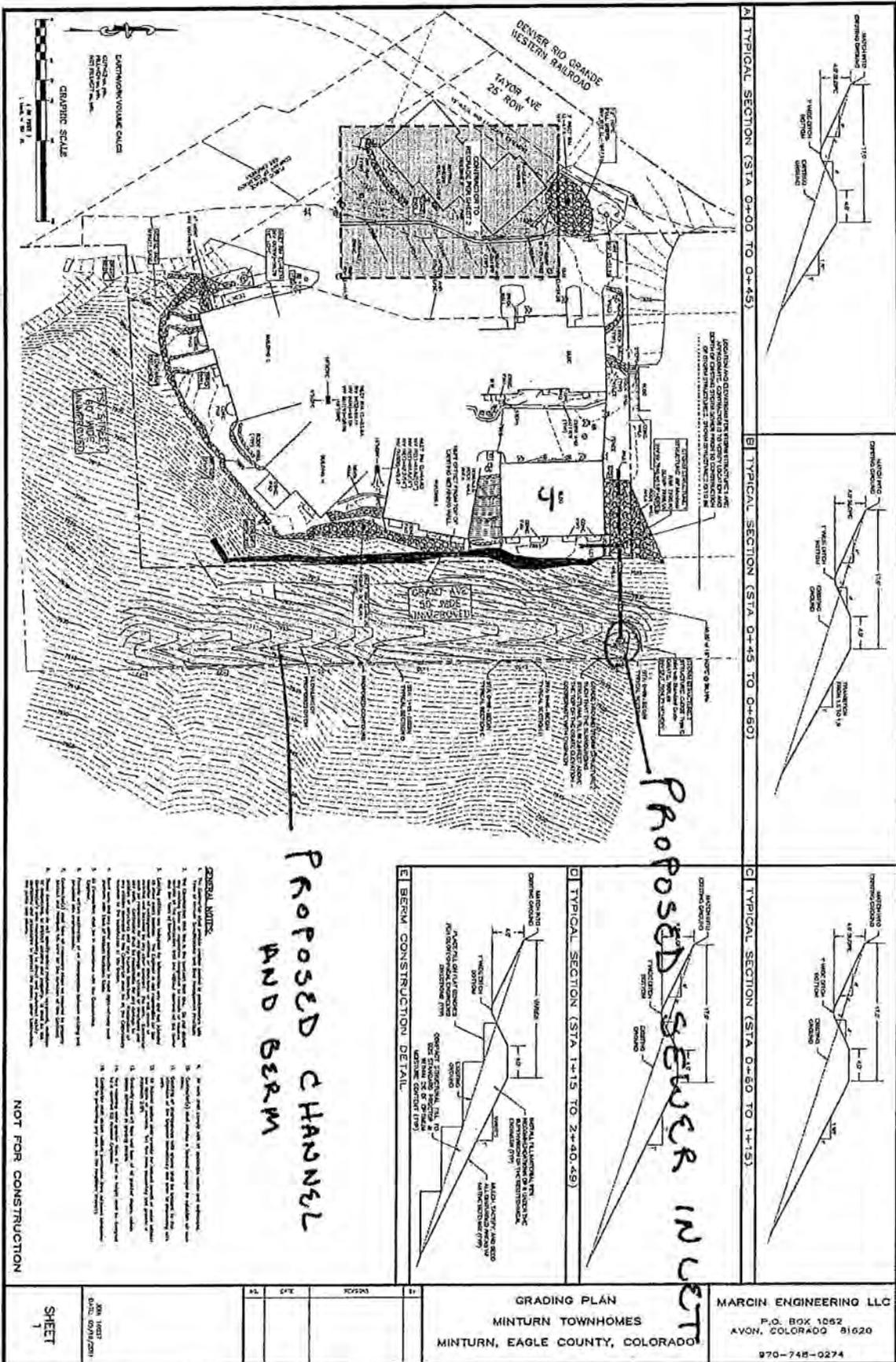
Witness my hand and seal.

[Signature]

NOTARY PUBLIC



My Commission Expires 04/24/2013



CARTON/VOLUME QUOTE
INDICATED BY
REVISIONS

CONTRACTOR TO
VERIFY ALL
DIMENSIONS
AND
ELEVATIONS
ON
SITE
AND
REPORT
TO
ENGINEER
AS
SOON
AS
PRACTICABLE

PROPOSED SEWER IN CUT
AND BERM

GRADING PLAN
MINTURN TOWNHOMES
MINTURN, EAGLE COUNTY, COLORADO

MARCIN ENGINEERING LLC
P.O. Box 1052
AVON, COLORADO 81620
970-748-0274

JAN 10 2011
DWG: 0001/0201

SHEET 1

TOWN OF MINTURN ORDINANCE CHECKLIST

Ord 10 - 2011

FIRST READING

7/20/11 The ordinance shall be introduced and read by title at any regular or special meeting. Copies shall be available to the public.

7/22/11 If the ordinance is approved on first reading, Mayor and Clerk must sign ordinance after first reading. It shall be published in full in a newspaper of general circulation within the Town. The minutes shall reflect number of votes for and against each ordinance.

_____ If the ordinance is tabled, it shall be reconsidered at subsequent meetings until it is approved with or without amendment or rejected by vote of the Council.

8/3/11 The Council shall set a day, hour and place at which the Council shall hold a public hearing on the ordinance, and notice of such day, hour and place shall be included in the first publication.

SECOND READING

10/5/11 The ordinance shall be introduced a second time at the meeting at which the public hearing on the ordinance is held. The ordinance may be read by title only on second reading. The ordinance may be amended before final approval or rejection by vote of the Council. The text of any such amendment or amendments shall be read in full.

10/10/11 If the ordinance is substantially amended it shall be published in full after final passage. If not amended in substance, it may be published either by title or in full, as the Council may determine, after final passage.

6-1 Passal The minutes shall reflect the number of votes for and against the ordinance.

✓ A true copy of every ordinance shall be numbered and recorded in the official records of the Town. Its adoption and publication shall be authenticated by the signatures of the Mayor or Mayor Pro Tem and the Town Clerk and by the certificate of publication. Proof of publication for both readings shall be attached to the ordinance.

✓ The effective date of ordinances is seven (7) days after publication following final passage unless a later date is prescribed in the ordinance.

Fri, Oct 07, 2011
7102448

09:38:52

Ad Ticket #5

Acct: 1032852
Phone: (970)827-5645
E-Mail: MANAGER@MINTURN.OR
Client:
Caller: Jay Brunvan
Receipt

Name: Town of Minturn
Address: P.O. Box 309

City: MINTURN
State: CO

Zip: 81645

Ad Name: 7102448A

Editions: 8VD/8VDI/

Start: 10/17/11

Color:

Copyline: 7102448 Ordinance No 10-2011

Original Id: 0

Class: 0990

Stop: 10/17/11

Issue 1

Rep: Pam Schultz

TOWN OF MINTURN, COLORADO
ORDINANCE NO. 10, SERIES 2011

Lines:	27
Depth:	2.26
Columns:	1
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
Total	8.59
Payment	0.00

AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN A REVOCABLE LICENSE AGREEMENT WITH MINTURN TOWNE HOMES OWNERS' ASSOCIATION TO PERMIT ENCROACHMENT ONTO TOWN RIGHT OF WAY PROPERTY OF THE TOWN OF MINTURN, COLORADO, AS IT PERTAINS TO GRANT AVENUE, BLOCK A, TAYLOR ADDITION TO THE TOWN OF MINTURN, EAGLE COUNTY, COLORADO

THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED AND ORDERED PUBLISHED BY TITLE ONLY ON SECOND READING THIS 5TH DAY OF OCTOBER, 2011.

Mayor
ATTEST:

Jay Brunvand
Town Clerk

Published in the Vall Daily October 10, 2011.
(7102448)

Ad shown is not actual print size