

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. 07 – SERIES 2017**

**A RESOLUTION APPROVING THE TERMS AND CONDITIONS OF A REAL
PROPERTY EXCHANGE AND TEMPORARY EASEMENT AGREEMENT AND
AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF
THE TOWN.**

WHEREAS, the Town of Minturn (“Minturn” or the “Town”) owns certain real property located in the vicinity of the intersection of Main Street and Eagle Street; and

WHEREAS, Minturn Realty Inc., is a Colorado corporation doing business in the Town and owner of the “Minturn Anglers Building” located at 102 Main Street, Minturn, CO 81645; and

WHEREAS, a portion of the Town’s infrastructure lies over, under, and through the real property owned by Minturn Realty Inc., and a portion of the Minturn Anglers Building lies within the Town’s Eagle Street right-of-way; and

WHEREAS, Town’s Eagle Street sidewalk has been established, constructed, and integrated into the foundation of the Minturn Angler’s Building, making it a necessary and indispensable element thereof and imbuing the sidewalk with a primarily private character; and

WHEREAS, the Town Council of the Town of Minturn finds and declares that it is in the best interest of the public health, safety, and welfare for the Town and Minturn Realty Inc. to pursue an agreement and any necessary applications for the exchange of property in the vicinity of the intersection of Main Street and Eagle Street to better represent as-built conditions and the parties’ various interests in the real property improvements in the area.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN AS FOLLOWS:

1. The foregoing recitals are incorporated herein as if set forth in full.
2. The Town Council of the Town of Minturn authorizes the Town Manager to enter the Real Property Exchange and Temporary Easement Agreement attached as **Exhibit A** and such applications necessary to pursue the parties’ mutual interest in the eventual exchange of the real property in the vicinity of the intersection of Main Street and Eagle Street in the Town.

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED THIS 15th
DAY OF MARCH, 2017.**

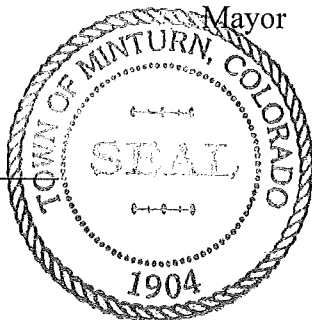
By: 

Mayor

ATTEST

By: 

Town Clerk



REAL PROPERTY EXCHANGE AND TEMPORARY EASEMENT AGREEMENT

This PROPERTY EXCHANGE AND TEMPORARY EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the date of the last signature hereto, by and between the Town of Minturn, Colorado, a home rule municipality whose address is 302 Pine Street, Minturn, Colorado 81645, P.O. Box 309 (the "Town") and Minturn Realty Inc., a Colorado corporation whose address is 109 William St., Minturn, Colorado 81645, P.O. Box 130 ("Minturn Realty") (individually, a "Party"; collectively, the "Parties").

RECITALS

WHEREAS, Minturn Realty is the owner of a certain tract of real property located near the intersection of Main Street and Eagle Street in the Town and more particularly identified in the records of the Eagle County Clerk and Recorder as Parcel No. 2103-263-07-010 and as follows (the "Anglers Building Property"):

Subdivision: BOOCO; Block: C; Lot: 1 THRU: - Lot:3
BK-0363 PG-0321 QCD 10-03-79
R899588 EAS 12-03-04; and

WHEREAS, the Town is the owner of the North Main Street and Eagle Street rights-of-way adjacent to Parcel No. 2103-263-07-010; and

WHEREAS, the northeastern corner of the Anglers Building is located within the Town's right-of-way; and

WHEREAS, the Town has made certain improvements on the Angler's Building Property in the vicinity of Eagle Street and North Main Street; and

WHEREAS, the Parties believe it is in their mutual interest to exchange certain real property between them to better establish their respective property interests and facilitate the establishment of the Town's improvements.

NOW, THEREFORE, in consideration of the mutual representations and covenants made in this Agreement, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

TERMS

Section 1. Incorporation of Recitals. The foregoing recitals are incorporated as terms of this Agreement as though set forth in full.

Section 2. Vacation of Right-of-Way. The Town and Minturn Realty shall together process an application for the vacation of that portion of the Eagle Street right-of-way currently occupied by the northeasterly corner of the Anglers Building (as depicted on Exhibit A) as follows:

- A. The Town shall, at its sole expense, obtain a survey of the area occupied by the Anglers Building and the area to be used by the Town for streetscape and utility purposes, and present to Minturn Realty the proposed new property descriptions to be exchanged under this Agreement. The Town shall use Intermountain Engineering as its contractor in preparation of such survey. The Town shall deliver a copy of such survey to Minturn Realty, and Minturn Realty shall have twenty (20) days to review and approve the survey. If Minturn Realty does not approve the survey, then this Agreement shall terminate. If Minturn Realty approves the survey, then that document shall be hereinafter referred to as the "Approved Survey".
- B. The Town shall, at its sole expense, draft and submit a petition and application for vacation of that portion of the Eagle Street right-of-way occupied by the Anglers Building as approximately depicted on Exhibit A (and as finally determined by the Approved Survey) consistent with the requirements of Chapter 17, Article 9 of the Minturn Municipal Code. Minturn Realty will be a signatory and co-applicant to the petition.
- C. The Parties acknowledge that the petition and application to vacate that portion of the Eagle Street right-of-way occupied by the Anglers Building will be considered and potentially approved by the Minturn Planning & Zoning Commission and the Minturn Town Council. The Parties acknowledge that there is no guarantee that the petition and application will be granted and the decision-making boards retain their discretion.
- D. Pursuant to Section 17-9-20(i), the Town shall provide Minturn Realty with a quit claim deed for the property occupied by the Anglers Building contemporaneously with the provision of the deed in lieu of condemnation by Minturn Realty.

Section 3. Temporary Easement. Minturn Realty hereby grants to the Town a Temporary Easement, as approximately depicted on Exhibit A ("MR Land dedicated to Town") and as finally determined by the Approved Survey, for the Town to operate and maintain road, curb, sidewalk, stairway, irrigation, landscaping, and utility lines and appurtenances. The term of such Temporary Easement shall be until the exchange of properties described in Section 2 is completed or this Agreement is terminated.

Section 4. Deed in Lieu of Condemnation. In the event that the Town approves the petition and application, Minturn Realty shall grant to the Town a Deed in Lieu of Condemnation for the area approximately depicted on Exhibit A and finally determined by the Approved Survey. Upon approval of the vacation of said portion of the Eagle Street right-of-way, the Deed in Lieu of Condemnation shall serve to vacate the Temporary Access Easement described in Section 3 of this Agreement.

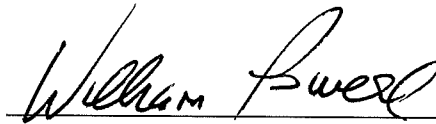
Section 5. Miscellaneous Provisions.

- A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Eagle, State of Colorado.
- B. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*
- C. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective heirs, personal representatives, successors, and assigns.

- D. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- E. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.
- F. Authority. Each person signing this Agreement, and any addendums or attachments hereto, represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the Party it represents to the terms and conditions hereof.
- G. Attorneys' Fees. Should this Agreement become the subject of litigation between the Town and Minturn Realty, the prevailing Party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to attorneys' fees and expert witness fees. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

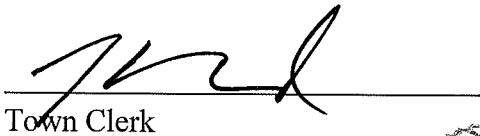
TOWN OF MINTURN, COLORADO



William Powell, Town Manager

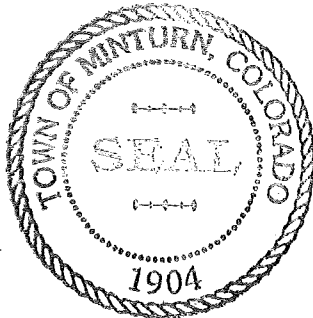
ATTEST:

DATE:



Town Clerk

4/5/17



MINTURN REALTY INC.

By: *Kristen M. Tarrin*

Name: Kristen M. Tarrin

Title: President

STATE OF COLORADO)

) ss.

COUNTY OF EAGLE)

The foregoing Agreement was acknowledged before me this 7th day of April, 2016 by *KRISTEN M. TARRIN*.
JB

Witness my hand and official seal.

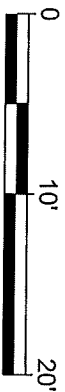
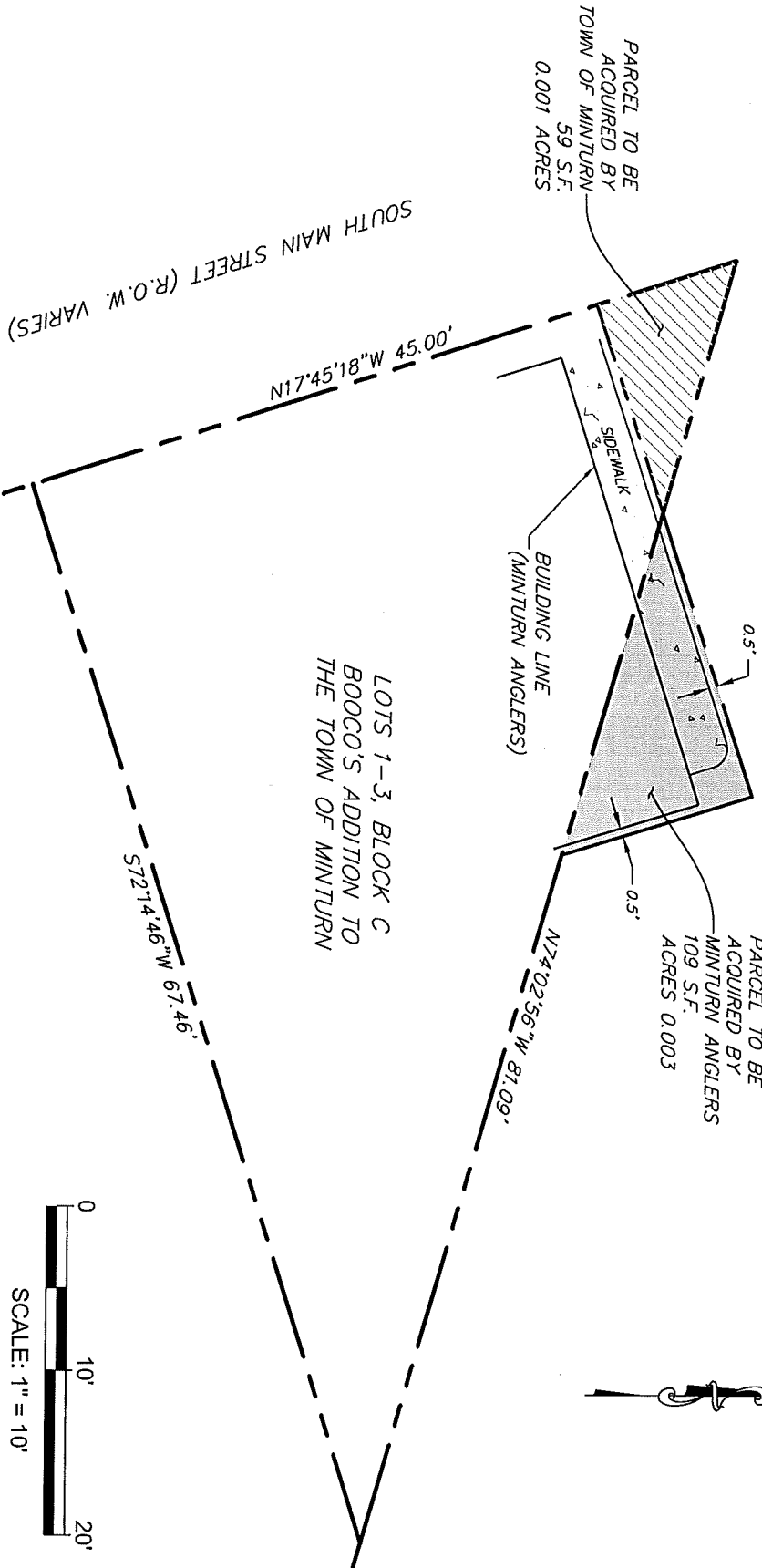
My commission expires: 4/29/18.

{ SEAL }

Jay Brunvand
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19984012019
MY COMMISSION EXPIRES APRIL 29, 2018

Jay Brunvand
Notary Public

EAGLE STREET (R.O.W. VARIES)



SCALE: 1" = 10'

Inter-Mountain ENGINEERING
 Civil Engineers & Surveyors
 P.O. BOX 974 AVON, CO 81620 PH: (970)946-5172 FAX: (970)946-5139
 9618 BROOK HILL LANE, LONG TREE, CO 80124 EMAIL: INFO@INTERMOUNT.NET

CLIENT: TOWN OF MINTURN

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LAND SWAP EXHIBIT
 LOTS 1-3, BLOCK C
 BOOCO'S ADDITION TO THE TOWN OF MINTURN
 TOWN OF MINTURN, EAGLE COUNTY, COLORADO

DRAWN BY:	SPF
SCALE:	1"=10'
DATE CHECKED:	2-16-17
PROJECT NO.:	16-0087
CHECKED:	A