

ENCROACHMENT AGREEMENT (Boulder Retaining Wall)

This Encroachment Agreement (this “Agreement”) dated this ___ day of June, 2024, is by and between David Bombard and Adriana Bombard, whose address is P.O. Box 2185, Edwards Colorado, 81632 (collectively, the “Lot 7 Owner”) and the Minturn North Property Owners Association, Inc., a Colorado nonprofit corporation, whose address is 225 Main Street, Ste. C-101, Edwards, Colorado 81632 (the “Association”).

WHEREAS, the Association governs and administers use of the Common Area for the property known as Minturn North, according to the Final Plat thereof recorded March 4, 2024 under Reception No. 202402234, and as defined in the Declaration of Covenants, Conditions, Restrictions and Easements for Minturn North recorded March 4, 2024 under Reception No. 202402240, County of Eagle, State of Colorado (such Common Area, the “Association Property” herein).

WHEREAS, the Lot 7 Owner is the owner of the real property legally described as Lot 7, Minturn North P.U.D., according to the Final Plat recorded March 4, 2024 under Reception No. 202402234, County of Eagle, State of Colorado, also known as: 186 Miles End Lane, Minturn, Colorado, 81645.

WHEREAS, certain improvements installed by the Association, or its predecessor, encroach upon Lot 7 in the location generally depicted on Exhibit “A” attached hereto and incorporated by this reference herein (such area, the “Encroachment Area” and such encroachment, the “Retaining Wall Encroachment”).

WHEREAS, the Lot 7 Owner desires to grant an easement to the Association, which shall include the Retaining Wall Encroachment upon Lot 7.

NOW, THEREFORE, in consideration of the recitals, the mutual agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lot 7 Owner and the Association covenant and agree as follows:

1. Grant of Easement.

a. Subject to the terms and conditions set forth herein, for the portion of any improvements, including but not limited to, a two tiered boulder retaining wall structure, which are owned by and for the benefit the Association, but which portion actually lies upon Lot 7 (the “Improvements”), the Lot 7 Owner acknowledges such Retaining Wall Encroachment and grants and conveys to the Association, its successors and assigns, for the benefit of the Association, a non-exclusive, perpetual access and maintenance easement and right-of-way over and across the portion of Lot 7 in the location depicted on Exhibit A as the “Boulder Retaining Wall” for the construction, improvement, maintenance, repair, and replacement of the Improvements.

**After recording, please return to:
Alpenglow Law, LLC
P.O. Box 2340
Edwards, CO 81632**

b. The Improvements constructed and installed by the Association, or its predecessor, within the Encroachment Area shall be and remain the property of, and therefore the responsibility of, the Association, the party responsible for said Improvements.

c. In the event the Improvements located within the Encroachment Area are partially or totally destroyed and then rebuilt promptly, said Retaining Wall Encroachment shall be valid and remain in full force and effect for the rebuilt improvements only if the rebuilt improvements conform in both size and location to the original Improvements.

d. The Association shall at all times remain responsible for injuries, demands, damages to persons or property, losses or judgment arising from its use of the Improvements and the Association's acts and omissions thereon by the Association and its owners, members, employees, suppliers, officers, agents and subcontractors.

2. Miscellaneous.

a. Run With the Land. This Agreement shall be recorded with the Clerk and Recorder of Eagle County, Colorado and shall run with the land, and shall be binding upon and inure to the benefit of the parties hereto and the heirs, successors and assigns of the parties hereto, so that a transfer of title to Lot 7 and/or the Association Property shall automatically transfer the benefits and burdens of the encroachment rights under this Agreement.

b. Jurisdiction, Prevailing Party Attorneys' Fees. The Agreement is made and entered into in the State of Colorado and shall be construed in accordance with the laws of the State of Colorado. Should any litigation be commenced between the parties hereto concerning any provision hereof or the rights or duties of any person in relation hereto, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for its attorneys' fees and costs incurred in such litigation which will be determined by the court in such litigation or in a separate action brought for that purpose. Any litigation arising out of or concerning this Agreement shall be commenced and maintained in Eagle County, Colorado.

c. Amendments. This Agreement may not be amended, nor may any rights hereunder be waived, except by an instrument in writing executed by the parties hereto and duly recorded in the real estate records of Eagle County, Colorado.

d. Entire Agreement. This Agreement constitutes the entire understanding and Agreement between the parties. All preceding agreements relating to the subject matter hereof, if any, whether written or oral, are hereby merged into this Agreement.

e. Further Acts. The parties agree to perform such further acts and to execute and deliver such further agreements or other documents as may be reasonably necessary to effectuate and carry out the provisions of this Agreement. The parties agree to fully and promptly cooperate to correct any scrivener, clerical or other errors found in any legal descriptions or in any other provision of this Agreement or any exhibits hereto.

f. Execution. A telecopy or other reproduction of this Agreement may be executed by the parties and shall be considered valid, binding and effective for all purposes. At the request of either party, the parties agree to execute an original of this Agreement, as well as any telecopy or other reproduction. This Agreement may be executed in counterparts and, as executed, shall constitute one

Agreement binding on all of the parties hereto notwithstanding that all said parties are not signatory to the original or same counterpart.

g. Consent of Lienholders. In the event there exists any lienholder or mortgagee having a lien against Lot 7 or the Association Property, that owner shall obtain from such lienholder or mortgagee in recordable form a consent whereby such lienholder or mortgagee agrees that no foreclosure (or deed in lieu of foreclosure) upon such mortgage or lien will have the effect of extinguishing this Agreement or impairing the rights of the grantees hereunder.

IN WITNESS WHEREOF, the undersigned have executed this Encroachment Agreement effective as of the day and year first written above.

ASSOCIATION:

Minturn North Property Owners Association, Inc., a Colorado nonprofit corporation

By: _____
Rick Hermes, President

STATE OF COLORADO)
) ss
COUNTY OF EAGLE)

The foregoing Agreement was acknowledged this ____ day of _____, 2024 by Rick Hermes, as President of the Minturn North Property Owners Association, Inc.

WITNESS my hand and official seal.
My commission expires:

Notary Public

LOT 7 OWNER:

By: _____
David Bombard

By: _____
Adriana Bombard

STATE OF COLORADO)
) ss
COUNTY OF EAGLE)

The foregoing Agreement was acknowledged this ____ day of _____, 2024 by David Bombard and Adriana Bombard.

WITNESS my hand and official seal.
My commission expires:

Notary Public

EXHIBIT "A"

[General Description of Encroachment Area Attached]

