



Cheri Brunvand-Summit County Recorder

1/23/2004 9:56 DF:



AFFORDABLE HOUSING

RESTRICTIVE COVENANTS AGREEMENT

FOR CERTAIN SODA CREEK CONDOMINIUM UNITS

October 31, 2003

AFFORDABLE HOUSING RESTRICTIVE COVENANTS AGREEMENT
FOR CERTAIN SODA CREEK CONDOMINIUM UNITS

This Affordable Housing Restrictive Covenants Agreement ("the "Agreement"), is made this 31st day of October, 2003, by APARTMENTS AT SODA CREEK, L.L.C., hereinafter referred to as "Declarant".

RECITALS

A. Declarant is the Owner of certain real estate including forty (40) condominium units located in the County of Summit, State of Colorado, and legally described as follows in the Condominium Map of Soda Creek Condominiums: 1-A; 1-B; 1-C; 1-D; 1-E; 1-F; 1-G; 1-H; 2-A; 2-B; 2-C; 2-D; 2-E; 2-F; 2-G; 2-H; 3-A; 3-B; 3-C; 3-D; 3-E; 3-F; 3-G; 3-H; 4-A; 4-B; 4-C; 4-D; 4-E; 4-F; 4-G; 4-H; 5-A; 5-B; 5-C; 5-D; 5-E; 5-F; 5-G; and 5-H, according to the condominium map thereof on file in the Office of the Clerk and Recorder for Summit County, Colorado, at Reception No. 738203 (the "Map").

B. On July 14, 2003 the Summit County Board of County Commissioners (BOCC) approved a Major PUD Modification permitting the conversion of Soda Creek Apartments into Soda Creek Condominiums (the "Project") on real property legally described as:

***Tract A, Soda Creek at Lake Dillon, Filing No. 3,
County of Summit, State of Colorado***

C. The Declarant voluntarily initiated the application that led to the approval of the Project and voluntarily offered to deed restrict twenty (20) condominium units within the Project to be affordable housing units and of its own initiative requested that the execution of restrictive covenants restricting such units be made a condition of the County's approval of the Project.

D. Pursuant to the Declarant's request the approval of the Project included a provision that the Project include twenty (20) deed restricted affordable housing units.

E. Declarant hereby designates that the following twenty (20) units in the Project as affordable housing units restricted by this Agreement: 1-A; 1-D; 1-E; 1-H; 2-A; 2-D; 2-E; 2-H; 3-A; 3-D; 3-E; 3-H; 4-A; 4-D; 4-E; 4-H; 5-A; 5-D; 5-E; and 5-H, according to the Map on file in the Office of the Clerk and Recorder for Summit County, Colorado, at Reception No. 738203 (the "Property").

F. Declarant hereby designates that the following twenty (20) units in the Project are "free market units" ***excluded from this Agreement and the Property and which are in no way restricted or controlled by this Agreement:*** 1-B; 1-C; 1-F; 1-G; 2-B; 2-C; 2-F; 2-G; 3-B; 3-C; 3-F; 3-G; 4-B; 4-C; 4-F; 4-G; 5-B; 5-C; 5-F; and 5-G; according to the Map on file in the

Office of the Clerk and Recorder for Summit County, Colorado, at Reception
No. 738263.

NOW, THEREFORE, in consideration of the County's approval of the Project, Declarant hereby declares that the Property shall hereafter be held, sold, and conveyed subject to the following covenants, restrictions, and conditions, all of which shall be a covenant running with the land, and which are for the purpose of ensuring that the Property remains available for purchase and occupation by persons residing and working in Summit County, Colorado, as affordably priced housing, and further to protect the value and desirability of the Property, and which shall run with the Property and be binding on all parties having any right, title, or interest in the Property, or any part thereof, their heirs, successors, and assigns, and shall enure for the benefit of the Owners of the Property, the Summit County Housing Authority, the County of Summit, the Declarant and any successors of said parties.

AGREEMENT

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. The following words, when used in this Agreement, shall have the following meaning:

- A. "*County*" means the County of Summit, State of Colorado.
- B. "*Dependent*" shall mean a person, including a spouse of, a child of, a step-child of, a child in the permanent legal custody of, or a parent of, a Qualified Resident, whose principal place of residence is in the same household as such Qualified Resident, and who is financially dependent upon the support of the Qualified Resident. Dependent shall also include any person included within the definition of "Familial Status" as defined in 42 U.S.C. § 3602(k), as that act shall from time to time be amended. Nothing contained herein shall, however, prevent a spouse of a Qualified Resident, which spouse is also gainfully employed, from also being a Dependent hereunder.
- C. "*Maximum Resale Price Limit*" means that maximum Purchase price that shall be paid by any purchaser of a Unit, other than the initial purchaser who acquires the Unit from Declarant, so long as this Agreement remains in effect. The Maximum Resale Price is not a guaranteed price, but merely the highest price a Qualified Resident Owner may accept for the sale of a Unit.
- D. "*Mortgage*" means a consensual interest created by a real estate mortgage or deed of trust on real estate or the like.
- E. "*Mortgagee*" means any grantee, beneficiary, or assignee of a Mortgage.

- F. "*Owner*" means the record owner of the fee simple title to any Unit contained within the Property.
- G. "*Purchase Money Mortgage*" means a Mortgage given by an Owner to the extent that it is: (a) taken or retained by the seller of a Unit to secure all or part of the payment of the Purchase price; or (b) taken by a person who by making advances, by making a loan, or by incurring an obligation gives value to enable the Owner to acquire the Unit if such value is in fact so used.
- H. "*Qualified Occupant*" means a natural person or persons person eighteen (18) years of age or older who, during the entire period of his or her occupancy of the Property earns his or her living by working in Summit County, Colorado an average of at least thirty (30) hours per week.
- I. "*Qualified Resident*" means a person who (a) at the time of purchase of a Unit, earns his or her living primarily within Summit County by working in the County either an average of at least 30 hours per week (determined on an annual basis, or as to seasonal employees, on a seasonal basis) and earns no more than 100% of the Area Median Income (AMI) for Summit County as published by the US Department of Housing and Urban Development or (b) is a person who is approved, in writing, by Summit Housing Authority ("SHA") or the County based upon criteria including, but not limited to, total income, percent of income earned within Summit County, place of voter registration, place of automobile registration, and driver's license address and other qualifications established by the SHA or the County from time to time. Compliance with each of these criteria is not necessary; in certifying Qualified Residents, the SHA or the County shall consider the criteria cumulatively as they relate to the intent and purpose of this Agreement. This "income test" applies only to the time of purchase of the unit by a Unit Owner and is not intended to discourage career advancement or additional earnings after the time of purchase. There is no additional "income test" applied to a Unit Owner after the Unit Owner's purchase of the unit, for the duration of their ownership of the unit.
- J. "*SHA*" means the Summit Housing Authority or any successor.
- K. "*Unit*" shall mean any of the condominium units contained within the description of the Property as set forth hereinabove but not the excluded condominiums as set forth hereinabove.

ARTICLE II
PURPOSE

Section 2.1. Purpose. The purpose of this Agreement is to restrict ownership and sale of the Units in such a fashion as to provide, on a permanent basis, affordably priced housing to be occupied by individuals and their families living and working in Summit County, Colorado, which individuals, because of their income, may not otherwise be in a position to afford to purchase, own, and occupy other similar properties, and to help establish and preserve a supply of affordably priced housing to help meet the needs of the locally employed Qualified Residents of Summit County and their families.

ARTICLE III
OWNERSHIP RESTRICTION

Section 3.1. Ownership Restriction. Title to each Unit shall be taken and held only in the name of an Owner who is a Qualified Resident, except in the event title is transferred by means of a public trustee's, treasurer's, or sheriff's deed, or by a deed in lieu of foreclosure of a deed of trust or mortgage, in which case such an entity shall take, hold and transfer title subject to the terms and conditions of this Agreement.

ARTICLE IV
INITIAL SALE OF A UNIT

Section 4.1. Initial Sale and Purchase Price. Each Unit shall be sold to initial purchasers who qualify as a Qualified Resident at a Purchase Price that is affordable to a person earning 100% of the Area Median Income ("AMI") for Summit County as such AMI is published by the U.S. Department of Housing and Urban Development. For purposes of this section, a Purchase Price is "affordable" as described above if a financial institution is willing to loan the Purchase price to an individual earning not more than 100% of the AMI or based on a determination by the SHA using its established guidelines an example of which is:

Description	Example
100% of most recent AMI	\$58,200 for 2 person household in 2002
Divide by 12 to get monthly 80% AMI	$\$58,200/12 = \$4,850$
Multiply by 30% to get maximum monthly housing expense	$\$4,850 \times .3 = \$1,455$
Subtract monthly HOA dues, taxes, and utilities	$\$1,455 - (\$200+100+40) = \$1115$
Insert remainder into financial calculator to arrive at sales price. Assume a current 30 year fixed rate mortgage as published by Freddie Mac or purchaser's actual rate.	\$1,115 payment at 5.5% current interest rate on 30 year fixed rate loan results in \$196,375.

Increase result by 10% to allow for down payment by purchaser.	$\$195,375 \times 1.10 = \$214,912.50$
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ARTICLE V
USE RESTRICTIONS

Section 5.1. Occupancy. Except as otherwise provided in this Agreement, each Unit shall, at all times, be occupied as a principal place of residence by an Owner, along with his or her dependents, who, at the time of purchase of the Unit, qualified as a Qualified Resident. In the event that any such Owner ceases to occupy a Unit as his or her principal place of residence, the Owner of the Unit shall, within 10 days of ceasing such occupation, notify the SHA of the same and the Unit shall, within 30 days of the Owner having vacated the Unit, make the Unit available for purchase pursuant to the terms of this Agreement. Any Owner who fails to occupy his or her Unit for a period of 180 consecutive days shall be deemed to have ceased to occupy the Unit as his or her principal place of residence; however, an Owner who has established a Unit as his or her principal place of residence shall not be considered to have ceased occupancy of the Unit during such period of time as the Owner is serving on active duty with the United States Armed Services.

Section 5.2. Occupancy Exceptions. Notwithstanding the provisions of Section 5.1. above, it shall not be a violation of this Agreement if: (a) rooms within a Unit are rented to Qualified Occupants sharing the Unit with the Unit Owner; (b) a Unit is rented for use and occupancy as Employee Housing for a maximum cumulative total of twelve (12) months during the time of ownership by a Unit Owner; (c) a Unit is owned or occupied by a person age fifty five (55) years or older who works at paid employment in Summit County, Colorado at least fifteen (15) hours per week on an annual basis during the entire period of his or her ownership or occupancy of the Unit, together with such person's spouse and minor children, if any; (d) a Unit is owned or occupied by a person otherwise authorized to own or occupy the Unit pursuant to this Agreement who becomes disabled after commencing ownership or occupancy of the Unit such that he or she cannot work the required number of hours each week required by this Agreement, provided, however, that such person shall be permitted to own or rent the Unit for a maximum period of one (1) year following the commencement of such person's disability unless a longer period of ownership or occupancy is authorized by the SHA or County; and (e) guests visiting a Qualified Occupant and paying no rent or other consideration.

Section 5.3. Rental. Under no circumstances shall any portion of a Unit be leased or rented for any period of time without the prior written approval of the SHA or the County. Prior to occupancy, any tenant must be approved by the SHA as a Qualified Resident. The SHA shall not approve a lease with a rental term of less than six (6) months. A signed copy of the lease must be provided to the SHA by the Owner. In the event that any Unit, or any portion thereof, is leased or rented without compliance with this Agreement, such rental or lease shall be wholly

null and void and shall confer no right or interest whatsoever to or upon the purported tenant or lessee. Any rental approved by the SHA or the County shall be to a Qualified Resident and his or her dependents, and at such rental rates as shall be established by the SHA or the County.

ARTICLE VI
RESALE OF UNITS

Section 6.1. Resale. No Unit within the Property purchased by a Qualified Resident shall be resold subsequent to the initial purchase and sale except upon full compliance with the procedures set forth in this Article VI.

Section 6.2. Notice. In the event that an Owner desires to sell his Unit, or in the event that an Owner shall be required to sell his Unit pursuant to the terms of this Agreement, he shall notify the SHA, or such other person or entity as may be designated by the County, in writing of his intention to sell his Unit. The Unit may be offered, advertised, or listed for sale by such Owner at such Owner's cost and expense, in any manner which such Owner may choose. The Unit shall not, however, be sold, transferred and/or conveyed to any person, entity, or entities, other than a Qualified Resident qualified and approved by the SHA or the County and the consideration to be paid by such Qualified Resident shall not exceed the Maximum Resale Price as such is determined pursuant to the provisions of this Article VI.

Section 6.3. Maximum Resale Price Limit. Upon the sale of any unit the selling Unit Owner may increase the Adjusted Purchase Price he paid for his unit by an amount not to exceed any permitted Price Increase calculated as follows. The "Maximum Resale Price Limit" upon the sale of any Unit shall be limited to the sum of the Adjusted Purchase Price and any permitted Price Increase.

- A. *Adjusted Purchase Price*. The selling Unit Owner's purchase price less any sales commissions or referral fees to SHA that may have been paid out of the sale proceeds at the time the selling Unit Owner purchased his Unit.
- B. *Price Increase*. Based on the following calculations the Adjusted Purchase Price may be increased by the addition of a cost of living appreciation ("COLA") and the selling Unit Owner's Sales Expense (collectively the "Price Increase").

1. COLA shall be determined by the lesser of the following:

- a. The Adjusted Purchase Price times the percentage determined by multiplying one-quarter of one percent (0.25%) times the number of whole months from the date of a Unit Owner's purchase of the Unit and the date of the Owner's execution of the Listing Contract for the sale of the Residential Unit; or

b. The Adjusted Purchase Price times the percentage determined by dividing the amount equal to 100% of AMI most recently released prior to a Unit Owner's sale by the amount equal to 100% of AMI in effect at the time of a Unit Owner's Purchase.

2. Sales Expense shall be equal to the *bona fide* sales commissions the selling Unit Owner pays licensed Realtors and/or referral fees paid to the SHA plus customary closing costs including, but not limited to, title insurance premiums, tax prorations, costs to deliver clear title and title company expenses but in no event greater than five percent (5%) in the aggregate.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE COUNTY, THE DEVELOPER, OR ANY OTHER PARTY, THAT THE UNIT OWNER WILL BE ABLE TO OBTAIN THE MAXIMUM SALE PRICE, AND THE COUNTY AND DEVELOPER HEREBY DISCLAIM ANY SUCH REPRESENTATION OR WARRANTY THAT MIGHT OTHERWISE BE ALLOWED OR ATTRIBUTED.

Section 3.6. Compliance. Any sale, transfer, or conveyance of any Unit shall be deemed to be in compliance with this Agreement so long as the instrument of conveyance evidencing such sale, transfer, or conveyance, or some other instrument referencing same, contains the following language followed by the acknowledged signature of either the director or some other authorized representative of the SHA or authorized representative of the County:

The conveyance evidenced by or referenced in this instrument has been approved by the Summit Housing Authority or the County of Summit as being in compliance with the Affordable Housing Restrictive Covenants Agreement for Unit _____, Soda Creek Condominiums, a Condominium Project, County of Summit, State of Colorado, recorded in the records of Summit County, Colorado, on the 2ND day of DECEMBER, 2003, at Reception No. 738202.

Each sales contract for a Unit shall also (a) recite that the proposed purchaser has read, understands and agrees to be bound by the terms of the this Affordable Housing Restrictive Covenants Agreement; and (b) require the proposed purchaser submit such information as may be required by the County or the SHA under its rules and regulations.

ARTICLE VII
FORECLOSURE PROCEEDINGS

Section 7.1. Lien. Declarant, each and every Owner, and each and every holder of any Mortgage or other lien upon or interest in the property, hereby grants and conveys, for a period of twenty years from the date of the recording of this Agreement, to the SHA and the County a lien upon and against each and every Unit in the Property described in this Agreement, which lien shall be for the purpose of securing for the SHA and the County cure and redemption rights in the event of a foreclosure of a Purchase Money Mortgage, or any lien right which is superior thereto, so as to allow the Property to remain and continue as affordable housing. The lien granted and conveyed by this Section 6.1. shall be superior to all other liens against the property except for the lien for general taxes and the lien arising from any Purchase Money Mortgage granted by a Residential Owner of any Unit.

Section 7.2. Notice. In the event that any holder of a mortgage, deed of trust, or other lien against a Unit shall initiate foreclosure, collection, or any other enforcement proceedings against such Unit, such party shall for a period of 20 years from the date of the recording of this Agreement give notice of such foreclosure, collection or enforcement action to SHA and the County. Said notice shall be given in writing via certified mail return receipt requested, postage prepaid, within five days of the date such action is commenced.

Section 7.3. Cure. So long as this Agreement shall remain in effect, upon the initiation of foreclosure, collection, or enforcement proceedings against any Unit or Owner by a holder of a Purchase Money Mortgage, or any lien right which is superior thereto, the SHA and/or the County for a period of twenty years from the date of the recording of this Agreement, shall have the right to cure the default of an Owner in the same manner as the Owner is entitled to cure such default. All sums paid by the SHA and/or the County to cure the default of the Owner under any such Purchase Money Mortgage, or other lien, together with any costs or expenses incurred in conjunction therewith, and including any costs and expenses incurred with regard to maintaining the Unit, and the cure parties' interest therein, including reasonable attorney's fees and costs, together with interest thereon at the rate being applied to such obligation immediately prior to such cure, or at the rate of twelve percent (12%) per annum, whichever is greater, shall be a lien against the Unit of such Owner superior to all other liens against the property, except for the lien for general taxes and the lien arising from any Purchase Money Mortgage which was in default. The curing party shall thereafter be entitled to foreclose such lien against the interest of Owner of the Unit, and all persons having any interest therein, in the same manner, and with all rights attendant thereto, as mortgages may be foreclosed in the State of Colorado.

Section 7.4. Redemption. So long as this Agreement shall remain in effect, the SHA and the County shall have redemption rights, as otherwise provided under Colorado law, immediately following the redemption rights of the Owner of the Unit, and prior to the redemption rights of

any holder of a lien against the Unit which lien is not a Purchase Money Mortgage, in any foreclosure, collection, or enforcement proceeding.

Section 7.5. Resale Following Redemption. Except as provided in Section 7.6. of this Agreement, any person or entity that becomes an Owner of a Unit as the result of any foreclosure proceeding, or as the result of any tax sale, shall, unless such Owner would otherwise qualify to purchase the Unit had such Unit been offered for resale pursuant to the provisions of this Agreement, immediately offer the Unit for sale subject to the terms and conditions of Article VI set forth hereinabove.

Section 7.6. Termination of Restriction. In the event that any holder of a Purchase Money Mortgage shall, as the result of the default by an Owner of the terms of such Mortgage, initiate foreclosure proceedings, and as the result of such foreclosure proceedings obtain title to the Unit by either a Public Trustee's Deed, a Sheriff's Deed or a Deed in Lieu of Foreclosure, all restrictions, and conditions set forth in this Agreement shall thereafter, with respect only to said Unit, be null and void and of no effect.

ARTICLE VIII GENERAL PROVISIONS

Section 8.1. Equal Housing Opportunity. Pursuant to the Fair Housing Act, Declarant, the SHA, and the County shall not discriminate on the basis of race, creed, color, sex, national origin, familial status or disability in the lease, sale, use or occupancy of the Property.

Section 8.2. Rules, Regulations, and Standards. The SHA and/or the County shall have the authority to promulgate and adopt such rules, regulations and standards as it may deem appropriate, from time to time, for the purpose of carrying out its obligations and responsibilities described herein, all of which rules, regulations and standards, and any amendments thereof, shall be subject to approval of the County.

Section 8.3. Waiver of Exemptions. Every Owner, by taking title to any Unit, shall be deemed to have subordinated to this Agreement any and all right of homestead and any other exemption in, or with respect to, such Unit under state or federal law presently existing or hereafter enacted.

Section 8.4. Enforcement. Except as otherwise provided herein, the SHA, the County, the Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, and reservations imposed by the provisions of this Agreement. Failure by any party described in this paragraph to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right by such party or any other party to do so thereafter.

Section 8.5. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provision which shall remain in full force and effect.

Section 8.6. Term. The restrictions contained herein shall run with the land and bind the land for a term of 99 years from the date that this covenant is recorded, after which time the terms of this Agreement shall be automatically extended for successive periods of 10 years.

Section 8.7. Amendment. This Agreement may be amended only by an instrument recorded in the records of Summit County executed by the SHA or the County and the Owner of the Property as a Unit.

Section 8.8. Expenses of Enforcement. In the event that any party entitled to enforce the terms of this Agreement shall be required to bring any action as the result of any breach of the terms of this Agreement by any Owner, the party bringing such action shall be entitled to recover from and against the Owner in breach of this Agreement, in addition to any and all other remedies available at law or in equity, reasonable attorney's fees and costs incurred in the enforcement of this Agreement and in the bringing of such action, and the party against whom such fees and costs are awarded shall be personally liable for the payment of such fees and costs, and such award and judgment shall constitute a lien against the Unit owned by the party in breach of this Agreement which lien may be enforced by foreclosure of the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado.

Section 8.9. Successor to SHA. In the event that, at any time during the duration of this Agreement, the SHA ceases to exist, all reference in this Agreement to SHA shall, thereafter, mean the County, its successors, assigns, or any other entity designated by the County to administer or enforce the provisions hereof, or to perform the functions of the SHA as described herein.

Section 8.10. Status of Agreement. This Agreement in no way supersedes any ordinance, code, rule or regulation, but is in addition to any such other government regulations and requirements.

Section 8.11. Conflict. To the extent this Agreement is in conflict with the Soda Creek Condominium project documents including the Declarations of Covenants, Conditions and Restrictions for Soda Creek Condominiums recorded in the Summit County Clerk and Recorder's Office at Reception No. 738202, this Agreement will prevail relative only to its restrictions for the covered affordable units in the Property.

IN WITNESS WHEREOF, the undersigned being the Declarant has set its hand and seal this 31st day of October, 2003.

Apartments at Soda Creek, LLC

By: Lawrence Feldman
Lawrence Feldman, Manager

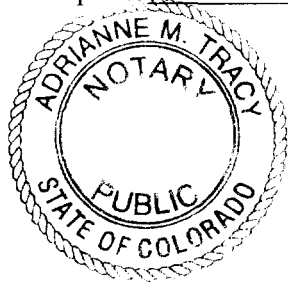
STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 31st day of

October, 2003 by Lawrence Feldman as Manager of Apartments at Soda Creek, LLC.

Witness my hand and official seal.
My Commission Expires 09/05/06

My commission expires: _____



Adrienne M. Tracy
Notary Public

CONSENT

Colorado Business Bank of Boulder, N.A., as beneficiary of the Deed of Trust given by Apartments at Soda Creek, LLC dated March 28, 2002 and recorded April 1, 2002 at Reception No. 680019 of the Summit County, Colorado records, hereby consents to the recording of the foregoing Affordable Housing Restrictive Covenants Agreement (the "Agreement") for Units 1-A; 1-D; 1-E; 1-H; 2-A; 2-D; 2-E; 2-H; 3-A; 3-D; 3-E; 3-H; 4-A; 4-D; 4-E; 4-H; 5-A; 5-D; 5-E; and 5-H, according to the Map now on file in the Office of the Clerk and Recorder for Summit County, Colorado, under Reception No. 738203 and agrees that the lien of its Deed of Trust shall be junior and subordinate to the Restriction, provided, however, that the lien of its Deed of Trust shall continue in full force and effect as to the property described in the Deed of Trust, including the property subject to the Restriction.

IN WITNESS WHEREOF, this Consent has been executed this 31st day of October, 2003.

Colorado Business Bank of Boulder, N.A.

By: *Robert J. Gaddis*

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing Consent was acknowledged before me this 4th day of November, 2003, by Robert J. Gaddis as Senior Vice President of Colorado Business Bank of Boulder, N.A.

Witness my hand and official seal.
 My Commission Expires 09/05/06
My commission expires: _____

Adrienne M. Tracy
Notary Public

