



**THIRD AMENDMENT
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANTS AND AGREEMENT
(Gibson Heights)**

This Third Amendment to Affordable Housing Restrictive Covenant and Agreement (Gibson Heights) ("Third Amendment") is made and entered into at Breckenridge, Colorado this 12th day of July, 2007 by and among SUMMIT COMBINED HOUSING AUTHORITY, a political subdivision of the State of Colorado, as successor in interest to the Summit Housing Authority ("Housing Authority") and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town").

WITNESSETH:

WHEREAS, Housing Authority and Town entered into that "Affordable Housing Restrictive Covenant and Agreement", dated June 25, 2002 and recorded June 25, 2002 under Reception No. 689106 of the records of the Clerk and Recorded of Summit County, Colorado ("Restrictive Covenant"); and

WHEREAS, Subsection VII.B of the Restrictive Covenant authorizes Housing Authority and Town to amend the Restrictive Covenant; and

WHEREAS, Housing Authority and Town entered into that Amendment To Affordable Housing Restrictive Covenant and Agreement (Gibson Heights), dated September 10, 2002 and recorded September 11, 2002 under Reception No. 695427 of the records of the Clerk and Recorded of Summit County, Colorado ("First Amendment"); and

WHEREAS, Housing Authority and Town also entered into that Second Amendment To Affordable Housing Restrictive Covenant and Agreement (Gibson Heights), dated May 31, 2005 and recorded June 29, 2005 under Reception No. 793544 of the records of the Clerk and Recorded of Summit County, Colorado ("Second Amendment"); and

WHEREAS, Housing Authority and Town desire to further amend the Restrictive Covenant as hereafter set forth; and

WHEREAS, Housing Authority and Town find, determine and declare that the amendments contained in this Third Amendment: (i) provide clarification to portions of the Restrictive Covenant which are unclear or subject to differing interpretations; (ii) correct errors as identified in this Third Amendment; and/or (iii) reduce or eliminate such of the Affordability Restrictions as Housing Authority and Town deem to be in the best interests of the Project or for the Unit Owners (as defined in the Restrictive covenant).

**THIRD AMENDMENT
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANTS AND AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained, and intending to be legally bound, the parties agree as follows:

1. Subsection III.C of the Covenant shall be amended so as to read in its entirety as follows:

C. Exceptions. Notwithstanding the provisions of the preceding Subsection 3.A., it shall not be a violation of this Restrictive Covenant if: (i) rooms within a Residential Unit are rented to Qualified Occupants sharing the Residential Unit with the Unit Owner; (ii) a Residential Unit is rented for use and occupancy to a Qualified Occupant for a maximum cumulative total of twelve (12) months during the time of ownership by a Unit Owner; (iii) a Residential 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 a year-round basis during the entire period of his or her ownership or occupancy of the Residential Unit, together with such person's spouse and minor children, if any; (iv) a Residential Unit is occupied by a person age six two (62) years or older who is no longer a Qualified Occupant because he or she no longer works the required number of hours as described in Subsection I.H, if such person occupied the Residential Unit as a Qualified Occupant for a minimum of seven (7) consecutive years at anytime while owning the Residential Unit; (v) a Residential Unit is owned or occupied by a person otherwise authorized to own or occupy the Residential Unit pursuant to this Restrictive Covenant who becomes disabled after commencing ownership or occupancy of the Residential Unit such that he or she cannot work the required number of hours each week required by this Restrictive Covenant, provided, however, that such person shall be permitted to own or rent the Residential 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 Town; and (vi) guests visiting a Qualified Occupant and paying no rent or other consideration.

2. Subsection IV.B of the Restrictive Covenant is hereby amended so as to read in its entirety as follows:

B. Resale Price Limit. The total price for which a Residential Unit may be sold by a Unit Owner shall be the total of:

(i) *Purchase Price*. The selling Unit Owner's purchase price, exclusive of any real estate commission paid at the time of the selling Unit Owner's acquisition of the Unit; and

**THIRD AMENDMENT
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANTS AND AGREEMENT**

(ii) *Permitted Improvements*. The cost of Permitted Improvements to any Residential Unit, provided, however, that in no event shall said additional amount hereunder exceed cumulatively fifteen percent (15%) of the original purchase price for such Residential Unit paid by the first Unit Owner to the Developer. The calculation of the amount of Permitted Improvements shall be subject to the monetary limitation on decks, patios and stairs provided in the definition of "Permitted Improvements" set forth in Article I of this Restrictive Covenant. In calculating the cost of such improvements for purpose of resale price calculation under this Subsection, only a Unit Owner's actual out-of-pocket costs and expenses for labor and materials shall be eligible for inclusion, provided, however, that if a Unit Owner purchases only materials and does not pay any third party for labor, then such amount to be added for Permitted Improvements shall include an amount attributable to the Unit Owner's personal labor or "sweat equity" which shall be determined by: (i) multiplying the amount paid for materials times two (2) as compensation for the selling Unit Owner's personal labor in making the Permitted Improvements; and (ii) adding to such sum the amount paid for materials. To be allowed to recover for Permitted Improvements, a selling Unit Owner must submit to the Town prior to selling the Residential Unit a copy of a development or other permit and a certificate of occupancy or compliance issued by the Town for the Permitted Improvements that documents when the improvement was made/completed by the Unit Owner during the Unit Owner's period of ownership of the Residential Unit, together with copies of invoices, receipts or other similar evidence of the costs and expenses for labor and materials or materials alone. The Town shall provide each Unit Owner making a proper submission for Permitted Improvements with a receipt or certificate verifying the amount of such Permitted Improvements and, after such receipt or certificate is issued to a Unit Owner by the Town, no subsequent Unit Owner may challenge the verified amount for those Permitted Improvements. Notwithstanding any provision of this Restrictive Covenant to the contrary, if a Permitted Improvement is not made within five (5) years of the date of the purchase by the first Unit Owner of a Residential Unit from the Developer, such Permitted Improvement shall not be subject to the Adjustment to Price Limit set forth in Subsection 4.C of this Restrictive Covenant.

The sum of the foregoing Subsections IV.B.(i) and (ii) shall be referred to as the "Base Price Limit" for any applicable Residential Unit.

3. Subsection 5.A of the Restrictive Covenant shall be amended so as to read in its entirety as follows:

**THIRD AMENDMENT
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANTS AND AGREEMENT**

A. Records; Inspection; Monitoring.

1. For so long as the Developer owns any of the Property, the Developer's records with respect to the use and occupancy of the Property shall be subject to examination, inspection and copying by the Town or its authorized agent upon reasonable advance notice.

2. A Unit Owner's records with respect to the Unit Owner's use and occupancy of a Residential Unit shall be subject to examination, inspection and copying by the Town or its authorized agent upon reasonable advance notice.

3. For so long as the Developer owns any of the Property, the Developer shall submit any information, documents or certificates requested from time to time by the Town with respect to the occupancy and use of the Property which the Town reasonably deems necessary to substantiate the Developer's continuing compliance with the provisions of this Restrictive Covenant. Such information shall be submitted to the Town within such reasonable time period as the Town may establish. Without limiting the generality of the foregoing, for so long as the Developer owns any of the Property, not later than December 31st of each year the Developer shall submit to the Town verification, under oath, of Developer's continuing compliance with the provisions of this Restrictive Covenant.

4. A Unit Owner shall submit any information, documents or certificates requested from time to time by the Town with respect to the occupancy and use of the Unit Owner's Residential Unit which the Town reasonably deems necessary to substantiate the Unit Owner's continuing compliance with the provisions of this Restrictive Covenant. Such information shall be submitted to the Town within such reasonable time period as the Town may establish.

4. Subsection 5.B of the Restrictive Covenant shall be amended so as to read in its entirety as follows:

B. Default; Notice. In the event of any failure of the Developer or a Unit Owner to comply with the provisions of this Restrictive Covenant, the Town may inform the Developer or the defaulting or non-complying Unit Owner by written notice of such failure and provide the Developer or the defaulting or non-complying Unit Owner a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of the Town within the period of time specified by the Town, which shall be at least thirty (30) days after the date any notice to the Developer or the defaulting or non-complying Unit Owner is mailed, or within such further time as the Town determines is necessary to correct the violation, but

**THIRD AMENDMENT
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANTS AND AGREEMENT**

not to exceed any limitation set by applicable law, the Town may without further notice declare a default under this Restrictive Covenant effective on the date of such declaration of default; and the Town may then proceed to enforce this Restrictive Covenant as hereafter provided.

5. Subsection V.E of the Restrictive Covenant shall be amended so as to read in its entirety as follows:

E. Equitable Relief. Developer and each Unit Owner agree that in the event of the Developer's or a Unit Owner's default under or non-compliance with the terms of this Restrictive Covenant, the Town shall have the right of specific performance of this Restrictive Covenant, and the right to obtain from any court of competent jurisdiction a temporary restraining order, preliminary injunction and permanent injunction to obtain such performance. Any equitable relief provided for in this subsection may be sought singly or in combination with such legal remedies as the Town may be entitled to, either pursuant to the provisions of this Restrictive Covenant or under the laws of the State of Colorado.

6. Subsection V.F of the Restrictive Covenant shall be amended so as to read in its entirety as follows:

F. Liquidated Damages. Each Unit Owner acknowledges that the unavailability of adequate employee and affordable housing within the Town of Breckenridge requires the expenditure of additional Town funds to provide required governmental services and thereby results in an economic loss to the Town. The Town and each Unit Owner further recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Town in such circumstance. Accordingly, instead of requiring such proof, the Town and each Unit Owner agree that a Unit Owner who violates the Occupancy Restrictions shall pay to Town the sum of \$100 per day for each day in which the Unit Owner's Residential Unit is not used in strict compliance with the provisions of Article III of this Covenant. Such amount is agreed to be a reasonable estimate of the actual damages which the Town would suffer in the event of a violation of Article III of this Restrictive Covenant. The provisions of this subsection shall not apply to any violation of this Restrictive Covenant other than a violation of Article III. The liquidated damages provided herein shall commence as of the date on which the Unit Owner's Residential Unit is first used in violation of Article III of this Restrictive Covenant, and not on the date when the Town learns of such violation or on the date when the Town gives notice of default as provided herein. Further, the total amount of liquidated damages payable to the Town under this subsection shall in no event exceed the then-current value of the

**THIRD AMENDMENT
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANTS AND AGREEMENT**

Residential Unit owned by the defaulting or noncomplying Unit Owner. The liquidated damages provided for in this subsection may be collected by the Town personally from the defaulting or noncomplying Unit Owner, either singly or in combination with an action for equitable enforcement of this Restrictive Covenant as provided in Section V.E of this Restrictive Covenant.

7. Subsection VII.B of the Restrictive Covenant is renumbered as Subsection VIII.Q, and as renumbered shall be amended so as to read in its entirety as follows:

Q. Waiver, Termination and Modification of Covenant. The restrictions, covenants and limitations created herein may be waived, terminated or modified with the written consent of both the Developer and the Town. In addition, after Residential Units have been sold to Unit Owners and mortgages or deeds of trust have been filed of record against Residential Units, the Developer and the Town reserve the right to amend this Restrictive Covenant: to provide clarification to any provisions hereof which may be unclear or subject to differing interpretations; to correct any errors identified herein; or to amend this Restrictive Covenant as the Developer and the Town may deem to be in the best interests of the Project or the Unit Owners. No such waiver, modification, or termination shall be effective until the property instrument in writing shall be executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado. The Town and Developer may also terminate this instrument by recording a release in recordable form. For convenience, such instrument may run to "the owner or owners and parties interested" in the Property.

8. Defined terms used in this Third Amendment shall have the same meaning as provided in the Restrictive Covenant, as previously amended.

9. All previous amendments to the Restrictive Covenant are hereby ratified, confirmed and approved.

10. Except as amended by this Third Amendment, the Restrictive Covenant, as previously amended by the First Amendment and Second Amendment, shall continue in full force and effect.

11. In case any one or more of the provisions of this Third Amendment, or any application hereof, shall be finally declared by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, then:

- (i) such provision shall be stricken from this Third Amendment;

**THIRD AMENDMENT
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANTS AND AGREEMENT**

- (ii) the Restrictive Covenant (or the First or Second Amendment, if applicable) shall continue in full force and effect as if the stricken portion of this Third Amendment had not been executed; and
- (iii) the validity, legality and enforceability of the remaining provisions of this Third Amendment shall not in any way be affected or impaired thereby.

If the entirety of this Third Amendment, or any application hereof, shall be finally declared by a court of competent jurisdiction invalid, illegal or unenforceable for any reason, then:

- (i) the Restrictive Covenant (as amended by the First Amendment or Second Amendment) shall continue in full force and effect as if this Third Amendment had not been executed; and
- (ii) the validity, legality and enforceability of the Restrictive Covenant and First Amendment or Second Amendment, or any application thereof, shall not in any way be affected or impaired thereby

Executed as of the date set forth above.

SUMMIT COMBINED HOUSING AUTHORITY

By *Bonita G. Osborn*
_____, Executive Director
P.O. Box 188
Breckenridge, CO 80424

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By *T. J. Gagen*
_____, Timothy J. Gagen, Town Manager
P. O. Box 168
Breckenridge, CO 80424

**THIRD AMENDMENT
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANTS AND AGREEMENT**

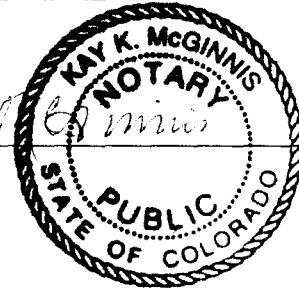
STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 11th day of July, 2007, by Bonita A. Osborn, Executive Director of Summit Combined Housing Authority.

WITNESS my hand and official seal.

My commission expires: May 19, 2008

Kay K. McGinnis
Notary Public



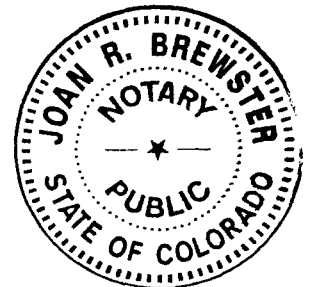
STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 12th day of July, 2007, by Timothy J. Gagen, Town Manager of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: 5/3/2011

Joan R. Brewster
Notary Public



My commission expires:
May 3, 2011

Brk\Gibson Heights\Third Amendment_3 (FINAL)
July 9, 2007 - 1800-231

**THIRD AMENDMENT
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANTS AND AGREEMENT**