



**RESTRICTIVE COVENANT
(Employee Housing)**

THIS RESTRICTIVE COVENANT (“**Restrictive Covenant**”) is dated October 10, 2019 and is made and executed by the Town of Breckenridge, a Colorado municipal corporation (“**Town**”).

Recitals

A. Town owns the real property described in Section 1 of this Restrictive Covenant (“**Property**”).

B. Town desires to create a valid and enforceable covenant running with the land assuring that the Property will be owned, used, occupied, rented, sold, transferred, and conveyed in accordance with the terms, conditions, requirements, and limitations of this Restrictive Covenant.

C. Under this Restrictive Covenant Town intends and declares that the regulatory and restrictive covenants contained in this Restrictive Covenant governing the ownership, use, occupancy, rental, sale, transfer, and conveyance of the Property are covenants running with the land and are binding upon all owners of the Property subsequent to the Town, unless and until this Restrictive Covenant is released and terminated by the Town in the manner described in this Restrictive Covenant.

NOW, THEREFORE, the Town, for itself and its successors and assigns, hereby declares that the Property will at all times be purchased, owned, used, occupied, rented, sold, resold, and conveyed subject to the provisions of this Restrictive Covenant, which runs with the Property and binds all parties having any right, title, or interest in the Property, or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives.

1. Property Subject to Covenant. This Restrictive Covenant applies to the following real property located in Summit County, Colorado:

CONDOMINIUM UNIT A-8 NOW COLORADO AT WARRIOR’S MARK CONDOMINIUMS, ACCORDING TO THE MAP RECORDED JANUARY 30, 1984 AT RECEPTION NO. 139532 AND ACCORDING TO THE CONDOMINIUM DELCLARATION RECORDED FEBRUARY 5, 1973 IN BOOK 230 AT PAGE 448 AS RECEPTION NO. 131452, AND EXHIBITS A AND B RECORDED JANUARY 30, 1974 IN BOOK 249 AT PAGE 789 AS RECEPTION NO. 139533; AND IN BOOK 249 PAGE 790 AS RECEPTION NO. 139534; AMENDED DECLARATION RECORDED DECEMBER 18, 1978 AS RECEPTION NO. 185382; AND SECOND AMENDMENT THERETO RECORDED SEPTEMBER 24, 1982 AS RECEPTION NO. 245807 AND ANY AND ALL AMENDMENTS AND/OR SUPPLEMENTS THERETO, COUNTY OF SUMMIT, STATE OF COLORADO

also known as: 50 Now Colorado Court, Unit A-8, Breckenridge, CO 80424.

2. Definitions. As used in this Restrictive Covenant:

“Owner (or an Owner)” means a person who takes and holds holding title to the Property subsequent to the Town. An “Owner” does not include a person or entity having an interest in the Property solely as security for the performance of an obligation.

“Person” means a natural person, and excludes any type of entity.

“Property” means the real property described in Section 1 of this Restrictive Covenant.

“Principal Place of Residence” means the home or place in which one’s habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom. To determine a person’s Principal Place of Residence, the criteria set forth in § 31-10-201(3), C.R.S., or any successor statute, shall apply.

“Qualified Occupant” means a person 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 at least 30 hours per week, together with such person’s spouse and minor children, if any.

3. Occupancy Restriction. Except as provided in Section 4, the Property shall at all times be occupied by at least one (1) Qualified Occupant as his or her principal place of residence.

4. Exceptions. Notwithstanding Section 3, it is not a violation of this Restrictive Covenant if the Property is occupied or used as the principal place of residence by:

- A. A person who is partially or fully retired as described in the Town’s Housing Guidelines (see Section 18, below); or
- B. A person otherwise authorized to occupy the Property pursuant to this Restrictive Covenant who becomes disabled after commencing lawful occupancy of the Property such that he or she cannot work the required number of hours each week required by this Restrictive Covenant; provided, however, that such person is permitted to occupy the Property only for a maximum period of one year following the commencement of such person’s disability unless a longer period of occupancy is authorized by Town.

5. Rent or Lease of the Property. Each Owner may rent or lease the Property provided that: (i) the Property is rented or leased only to a Qualified Occupant(s); (ii) a tenant may not sublease all or any portion of the Property; and (iii) the Property may not be rented or leased for a term of less than 90 days (no short term rental). All leases or rentals of the Property not in

compliance with the requirements of this Section 5 are void, and a violation of this Restrictive Covenant.

6. Annual Verification; Other Information.

- A. No later than November 1st of each year, beginning in the year following the execution of this Restrictive Covenant, each Owner shall submit a written statement to Town including the following information and stating that such information is true and correct to the best of such Owner's knowledge and belief:
- i. Evidence establishing that the Property was occupied by at least one Qualified Occupant during all of the prior calendar year. Such evidence shall be satisfactory to the Town, and shall include, at a minimum, the following information: (i) verification (e.g., wage stubs, employer name, address, telephone number and other appropriate documentation) of the person's current employment with a business in Summit County that holds a valid and current business license, or pays sales taxes; (ii) acceptable evidence that the person has actually worked the required number of hours per week for one or more of such businesses; and (iii) a valid form of identification, such as a driver's license, state-issued identification, passport or military identification. The Town may further describe acceptable proof of Qualified Occupant status in its Housing Guidelines.
 - ii. If applicable, a copy of the lease form currently used for the Property; and
 - iii. If applicable, a list of all of tenants who occupied the Property during the prior calendar year and the evidence submitted by each tenant to establish that they were a Qualified Occupant .
- B. Each Owner shall submit to Town any additional information, document, or certificate regarding the occupancy and use of the Property that Town reasonably deems to be necessary to confirm such Owner's compliance with the provisions of this Restrictive Covenant.

7. Inspection of the Property. Each Owner agrees that Town may enter the Property to determine compliance with this Restrictive Covenant without an inspection warrant or other legal authorization, subject to the following requirements: (i) entry may be made by Town only between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday; and (ii) Town shall provide the Owner with not less than 24 hours' prior written notice before entering the Property. If Town complies with these requirements the Owner shall permit Town's entry into the Property. Town's rights under this Section 7 may also be exercised by Town's authorized agent. If an Owner fails or refuses to comply with the requirements of this Section 7 Town shall have the right to obtain access to the Property in the manner provided by law.

8. Payment of Taxes and Prior Encumbrances. During the term of this Restrictive Covenant each Owner shall pay, prior to delinquency, all taxes and assessments levied against the Property, and all amounts due or to become due on account of principal and interest on any prior encumbrance against the Property.

9. Advances by Town for Owner. If an Owner fails to do anything required to be done by such Owner under the terms of this Restrictive Covenant Town may, at its sole option, but without any obligation to do so, do or perform such act or thing on behalf of such Owner, and in doing so Town shall not be deemed to be a volunteer; provided, however, that before exercising its rights under this Section 9, Town shall give the Owner written notice and afford the Owner not less than five (5) days from the giving of such notice within which to do or perform the act required by the Owner. Upon notification to such Owner of the costs incurred by Town the Owner shall promptly pay to Town the full amount of costs and/or expenses incurred by Town pursuant to this Section 9, together with interest thereon at the legal rate.

10. Default; Notice. If an Owner fails to comply with this Restrictive Covenant, Town may inform such Owner by written notice of such failure and provide such Owner a period of time to correct such failure. If the failure is not corrected to the satisfaction of Town within the specified time, which shall be at least 30 days after Town mails written notice to such Owner, or within such further time as Town determines is necessary to correct the violation (but not to exceed any limitation set by applicable law), Town may without further notice declare a default under this Restrictive Covenant effective on the date of such declaration of default. Town may then proceed to enforce this Restrictive Covenant.

11. Equitable Relief. Town may specifically enforce this Restrictive Covenant. Town may obtain from any court of competent jurisdiction a temporary restraining order, preliminary injunction, and permanent injunction to obtain specific performance. Any equitable relief provided for in this Section 11 may be sought singly or in combination with such legal remedies as Town may be entitled to, either pursuant to the provisions of this Restrictive Covenant or under the laws of the State of Colorado.

12. Town Authority To Enforce. The restrictions, covenants, and limitations created by this Restrictive Covenant are only for the benefit of Town, and only Town may enforce this Restrictive Covenant. Provided, however, Town may assign its rights to Town of Breckenridge Housing Authority without prior notice to the Owner of the Property at the time of such assignment.

13. Waiver; Termination; Modification of Covenant. The restrictions, covenants, and limitations of this Restrictive Covenant may be waived, terminated, or modified only with the written consent of Town and the then-current owner of the Property as of the date of such waiver, termination, or modification. No waiver, modification, or termination shall be effective until the proper instrument is executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado. Town may also terminate this instrument by recording a release in recordable form without the signature of the then-current owner of the Property. For

convenience, such instrument may run to the “Owner or owners and parties interested” in the Property.

14. Statute of Limitations. Each Owner hereby waives the benefit of and agrees not to assert in any action brought by Town to enforce this Restrictive Covenant any applicable statute of limitation, including, but not limited to, the provisions of §38-41-119, C.R.S. If any statute of limitation may be lawfully asserted by such Owner in connection with an action brought by Town to enforce this Restrictive Covenant, each and every day during which any violation of this Restrictive Covenant occurs shall be deemed to be a separate breach of this Restrictive Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

15. Attorney’s Fees. If any action is brought in a court of law concerning the enforcement, interpretation, or construction of this Restrictive Covenant, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney’s fees, as well as costs, including expert witness fees, incurred in the prosecution or defense of such action.

16. Notices. All notices provided for or required under this Restrictive Covenant must be in writing, signed by the party giving the notice, and shall be deemed properly given when actually received or two (2) days after having been mailed, postage prepaid, certified, return receipt requested. Notice to the Town shall be sent to the Town’s address appearing on the signature page. A notice to an Owner may be sent to the address to which tax notices are sent according to the records of the Summit County Treasurer.

17. Recording; Covenant Running With the Land. The Restrictive Covenant is to be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado, and shall run with the land and shall be binding upon each Owner and all owners of the real property described in Section 1 subsequent to the Town until this Restrictive Covenant is lawfully terminated in the manner provided in this Restrictive Covenant.

18. Town’s Housing Guidelines. This Restrictive Covenant shall be interpreted in accordance with, and each Owner shall comply with, the Town of Breckenridge Housing Guidelines in effect from time to time throughout the term of this Restrictive Covenant¹; provided, however, that in the event of a conflict between the restrictions, terms and conditions of this Restrictive Covenant and the Housing Guidelines, this Restrictive Covenant shall control.

19. Town’s Right of First Offer. Town shall have the right of first offer with respect to each Owner’s sale of the Property as more fully set forth on Exhibit “A”, which is attached

¹ The most current version of the Town of Breckenridge Housing Guidelines are available for inspection and copying at the Town’s Department of Community Development. For further information about the Town’s Housing Guidelines, and contact information for the Town’s Department of Community Development, see the “Notice Concerning the Town of Breckenridge Housing Guidelines” recorded October 8, 2019 at Reception No. 1209897 of the records of the Clerk and Recorder of Summit County, Colorado, and any subsequent Notice recorded by the Town with the Clerk and Recorder.

hereto and incorporated into this Restrictive Covenant by reference. Each Owner shall comply with the requirements of Exhibit "A". Provided, however, the right of first offer provisions of Exhibit "A" to this Restrictive Covenant shall not apply if the Property is subject to a "right of first refusal" provision in the Declaration of Covenants, Conditions and Restrictions, also known as a "Declaration," or other similar document.

20. Miscellaneous.

A. Applicable Law. This Restrictive Covenant shall be interpreted in accordance with the laws of the State of Colorado regardless of any law that might require to be interpreted under the laws of any other state.

B. Vesting and Term. Town's rights under this Restrictive Covenant vest upon the execution of this Restrictive Covenant. This Restrictive Covenant shall remain in full force and effect in perpetuity unless terminated in accordance with Section 13. Provided, however, if any of the terms, covenants, conditions, restrictions, uses, limitations, or obligations created by this Restrictive Covenant are held to be unlawful or void for violation of: (i) the rule against perpetuities or some analogous statutory provision; (ii) the rule restricting restraints on alienation; or (iii) any other statutory or common law rule imposing like or similar time limits, then such provision shall continue only for the period of the lives of the duly elected and seated members of the Breckenridge Town Council in office on the date of the execution of this Restrictive Covenant, their now living descendants, if any, and the survivor of them, plus 21 years.

C. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Restrictive Covenant.

D. Terminology. This Restrictive Covenant applies to all genders. Unless the context clearly requires otherwise, the singular includes the plural, and the plural includes the singular.

E. Severability. If any provision of this Restrictive Covenant is finally determined to be invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Restrictive Covenant to fulfill as closely as possible the original intents and purposes of this Restrictive Covenant.

F. Construction. The rule of strict construction does not apply to this Restrictive Covenant. This Restrictive Covenant is to be given a reasonable construction so that the intention of the Parties as expressed in this Restrictive Covenant is carried out.

G. Entire Agreement. This Restrictive Covenant constitutes the entire agreement and understanding between the Parties relating to the subject matter of this Restrictive Covenant, and supersedes any prior agreement or understanding relating thereto.

Exhibit "A"
Town's Right of First Offer

1. Except as provided in Section 19 of this Restrictive Covenant with respect to real property that is subject to a right of first refusal provision in its Declaration or other governing document, during the term of this Restrictive Covenant each Owner agrees not to sell the Property, or any part thereof, without first offering the same to Town for purchase. This provision creates in Town a right of first offer to purchase the Property, or any portion thereof, according to the terms and conditions hereof.

2. The right of first offer granted above shall be honored by each Owner and exercised by Town in the following manner:

- A. If an Owner desires to sell the Property, or any portion thereof, such Owner shall first send a written offer to Town. Said offer shall state a specified price and all terms and conditions of the proposed sale.
- B. If Town desires to accept said offer, Town shall, within 30 days from receipt thereof, send its acceptance in writing to the Owner.
- C. If a valid offer of sale is made by the Owner to Town, and the offer is not accepted by Town as provided in subsection (B) above, then and for a period of one year from the date of mailing of the offer, such Owner shall be free to sell the Property, or the portion thereof offered to Town, to any party whomsoever, but not at a greater price than offered to Town.

3. If the Owner does not sell the Property, or the portion thereof offered, before the expiration of said one-year period, then, before the Property or portion offered may be sold to any other party, the Owner shall make a new offer to Town of the Property, or any portion thereof, under the provisions of this Restrictive Covenant.

4. Town's failure to exercise, or Town's disclaimer of, its right of first offer with respect to any transfer of less than all of the Property shall not be deemed a waiver of such right with respect to that part of the Property owned by such Owner after such transfer.

5. If any offer made to Town by an Owner according to the terms and conditions herein stated is rejected or is allowed to expire without acceptance by Town, Town agrees, within 10 days of receipt of a written request from such Owner, to give to the Owner or to any third person the Owner shall designate, a written statement properly signed and acknowledged in recordable form that:

- A. an offer has been made by the Owner in accordance with the terms and conditions of this Restrictive Covenant, together with disclosure of the offering price and the terms of a proposed sale;

- B. Said offer has been rejected by Town or has been allowed to expire; and
- C. The Owner or any designated third person may rely upon such statement by Town as evidence of the submission and rejection or expiration of a valid offer made to Town pursuant to and in accordance with this Restrictive Covenant.

5. This right of first offer shall apply to all transactions involving a conveyance of title to the Property or any portion thereof, during the term of this Restrictive Covenant, including but not limited to a purchase, an exchange, or any other transfer of an interest in the Property for consideration, other than a lease of no more than three years' duration.