



Cheri Brunvand-Summit County Recorder 3/13/2007 13:18 DF:

RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF LIEN
FOR CABIN #4, OF MELODY LODGE CABINS PUD
SUMMIT COUNTY, COLORADO

This Residential Housing Restrictive Covenant and Notice of Lien for Cabin #4, of Melody Lodge Cabins PUD, Summit County, Colorado, (this "Restriction,") is made this 2nd day of March, 2007, by Dale Mitchener and Debra Gregory-Mitchener, hereinafter referred to as "Declarant".

RECITALS:

WHEREAS, Declarant is the Owner of that certain real estate located in the County of Summit, State of Colorado, and legally described as follows: Cabin #4 of Melody Lodge Cabins PUD, according to the plat thereof now on file in the Office of the Clerk and Recorder for Summit County, Colorado, under Reception No. 849370 hereinafter referred to as the "Property"; and

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 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 covenants running with the land, and which are for the purposes of ensuring that the Property remains available for purchase and occupation by persons residing and working in Summit County, Colorado, as moderately priced housing, and protecting the value and desirability of the Property, and which covenants, restrictions, and conditions shall 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 to the benefit of the Owner of the Property, the Summit County Government ("County") the Summit County Housing Authority ("SCHA"), and Declarant.

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. The following words, when used in this Restriction, shall have the following meanings and the use of capitalization or lower case letters in references to the following terms shall have no bearing on the meanings of the terms:

A. "Area Median Income" or "AMI" means the median annual income for Summit County, Colorado, (or such next larger statistical area calculated by HUD that includes Summit County, Colorado, if HUD does not calculate the area median income for Summit County, Colorado, on a distinct basis from other areas), as adjusted for household size, that is calculated and published annually by HUD (or any successor index thereto acceptable to SCHA in its reasonable discretion). If AMI data pertaining to the date of sale of a Unit is yet not available as of the date the sale price is calculated, then the most recent data published by HUD shall be used in its place.

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 Resident, whose principal place of residence is in the same household as such Resident, and who is financially dependent upon the support of the 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.

C. "Eligible Household" means a household earning not more than one hundred percent (100%) of the area median income and that has been approved by the SCHA so as to allow for the execution by the SCHA of the form of approval set forth in Section 3.3 of this Restriction. For purposes of the determination of the number of people that constitute a household under this definition, any Resident or Dependent spouse of a Resident who is pregnant at the time of the determination of whether a household meets the income limitation provided in this definition shall be deemed to be two (2) people.

D. "Household" means one or more persons who intend to live together in the premises of a dwelling unit as a single housekeeping unit, but does not mean a group of three(3) or more persons unrelated by blood, adoption or marriage.

E. "HUD" means the U.S. Department of Housing and Urban Development.

F. "Maximum Resale Price" 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, that is determined in accordance with the provisions of Section 6.3 of this Restriction. The Maximum Resale Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of a Unit.

G. "Mortgage" means a consensual interest created by a real estate mortgage, a deed of trust on real estate, or the like.

H. "Mortgagee" means any grantee, beneficiary, or assignee of a Mortgage.

I. "Owner" means the record owner of the fee simple title to any Unit contained within the Property.

J. "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.

K. "Purchase Price" shall mean all consideration paid by the purchaser to the seller for a Unit, but shall not include any proration amounts, taxes, costs and expenses of obtaining financing, cost of furnishings or personal property, lenders fees, title insurance fees, closing costs, inspection fees, or other fees and costs related to the purchase of the property but not paid directly to Seller. Amounts paid by seller to provide clear title or as commissions or expenses of sale shall not be deducted from the sale price in determining the Purchase price.

L. "Resident" means a person and his or her Dependents, if any, who (i) at the time of purchase of a Unit, earns his or her living primarily within Summit County by working there either an average of at least 30 hours per week (determined on an annual basis, or as to seasonal employees, on a seasonal basis), or (ii) is a person who is approved, in writing, by SCHA 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 SCHA from time to time. (Compliance with each of these criteria is not necessary; in certifying Residents, the SCHA shall consider the criteria cumulatively as they relate to the intent and purpose of this Restriction).

M. "SCHA" means the Summit County Housing Authority.

N. "County" means the County of Summit, State of Colorado.

O. "Transfer" or "transferred" means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in a Unit, including, but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of a Unit is transferred and the Owner obtains title.

P. "Unit" shall mean the residential dwelling unit or units contained within the description of the Property as set forth hereinabove.

ARTICLE II PURPOSE

Section 2.1. Purpose. The purpose of this Restriction is to restrict ownership and sale of the Unit in such a fashion as to provide, on a permanent basis, moderately priced housing to be occupied by Resident Eligible Households, which Eligible Households, 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 moderately priced housing to help meet the needs of the locally employed residents of Summit County.

ARTICLE III OWNERSHIP RESTRICTIONS

Section 3.1. Ownership and Occupancy Obligation. The ownership and occupancy of a Unit is hereby limited exclusively to Eligible Households that include at least one Resident.

Section 3.2. Sale and Resale. In the event that any Unit is sold, resold, transferred and/or conveyed without compliance with this Restriction, such sale, transfer and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Except as otherwise provided herein, each and every conveyance of any Unit, for any and all purposes, shall be deemed to include and incorporate the terms and conditions of this Restriction, including, but not limited to, those provisions governing the sale, transfer or conveyance of the Property.

Section 3.3. Compliance. Any sale, transfer, and/or conveyance of any Unit shall be wholly null and void and shall confer no title whatsoever upon the purported transferee unless (i) there is recorded in the real property records for Summit County, Colorado, along with the instrument of conveyance evidencing such sale, transfer or conveyance, a completed copy of the "Memorandum of Acceptance of Residential Housing Restrictive Covenant and Notice of Lien for Cabin #4, of Melody Lodge Cabins PUD, County of Summit, Colorado" attached hereto as Exhibit A, which copy is executed by the transferee and acknowledged by a Notary Public, and (ii) the instrument of conveyance evidencing such sale, transfer, and/or conveyance, or some other instrument referencing the same, bears the following language followed by the acknowledged signature of either the director or some other authorized representative of the SCHA and County, to wit:

"The conveyance evidenced by or referenced in this instrument has been approved by the Summit County Housing Authority and the Summit County Government as being in compliance with the Residential Housing Restrictive Covenant for Cabin #4 of Melody Lodge Cabins PUD, County of Summit, Colorado, recorded in the records of Summit County, Colorado, on the _____ day of _____, 200_, at Reception No. _____."

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 this Restriction; and (b) require the proposed purchaser to submit such information as may be required by the SCHA or County under its rules and regulations or policies adopted for the purpose of ensuring compliance with this Restriction.

ARTICLE IV ORIGINAL SALE OF A UNIT

Section 4.1. Initial Purchase Price. The Unit, upon completion of the subdivision exemption by the Declarant, shall be sold to initial purchasers who qualify as a Resident and an Eligible Household at a Purchase Price that is affordable to a Household earning 100% of the Area Median Income. For purposes of this section, a Purchase Price is "affordable" as referenced above if a financial institution or group of financial institutions is willing to loan the Purchase Price to a Household earning not more than 100% of the AMI.

ARTICLE V USE RESTRICTIONS

Section 5.1. Occupancy. Except as otherwise provided in this Restriction, each Unit shall, at all times, be utilized and/or 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 Resident and Eligible Household. 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 SCHA and County 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 Restriction. 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. 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 SCHA and County. In the event that any Unit, or any portion thereof, is leased or rented without compliance with this Restriction, 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 SCHA and County shall be to a Resident Eligible Household at such rental rates as shall be established by the SCHA and County, but in any event at a monthly rental rate that shall not exceed the monthly payments on a Purchase Price that is affordable pursuant to the terms of Section 4.1 of this Restriction.

ARTICLE VI
RESALE OF UNITS

Section 6.1. Resale. No Unit shall be Transferred subsequent to the original purchase from the Declarant except upon full compliance with the procedures set forth in this Article VI.

Section 6.2. Notice. In the event that an Owner shall desire to Transfer his Unit, or in the event that an Owner shall be required to Transfer his Unit pursuant to the terms of this Restriction, he shall notify the SCHA in writing of his intention to Transfer his Unit. The Unit may be offered, advertised, or listed for sale by such Owner at such Owner's sole cost and expense, in any manner in which such Owner may choose. The Unit shall not, however, be sold, transferred and/or conveyed to any person, entity, or entities, (i) other than a Resident Eligible Household qualified and approved by the SCHA and County in such as manner as will allow the SCHA and County to execute the approval set forth in Section 3.3 of this Restriction, and (ii) for consideration to be paid by such qualified Resident Eligible Household that exceeds the Maximum Resale Price as such is determined pursuant to the provisions of this Article VI.

Section 6.3. Maximum Resale Price.

1. The Maximum Resale Price of a Unit may not exceed the greater of:

- a. the Purchase Price paid by the Owner for the Unit, plus an increase of five percent (5%) of such Purchase Price per year (prorated at the rate of 1/12 of said annual percentage increase for each whole month) from the date of the Owner's purchase of the Unit to the date of the Owner's execution of the listing contract, such percentage increase to not be compounded annually; and
- b. the Purchase Price paid by the Owner for the Unit, plus a percentage increase equal to the percentage increase in the Area Median Income from the date of the Owner's purchase of the Unit to the date of the Owner's execution of the listing contract (prorated at the rate of 1/12 for each whole month), such percentage increase to not be compounded annually.

2. Permitted Capital Improvements.

- A. Notwithstanding the foregoing limitations on maximum sales price, for the purpose of determining the Maximum Sale Price in accordance with this Article VI, the Unit Owner may also add to the amount specified in Section VI.A. above, the cost of **Permitted Capital Improvements**, as defined herein; *provided*, however, that in no event shall said additional amount under this subsection VI.2.A exceed fifteen percent (15%) of the original Unit Owner's initial purchase price for the Unit at the first sale of the unit subsequent to the effective date of this covenant. Notwithstanding the foregoing, for every ten (10) year period from and after the date of an Owner's original purchase, a maximum of an additional ten percent (10%) of the Unit Owner's initial purchase price for the Unit may be added to the value of the Unit for and to the extent of any further Permitted Capital Improvements under this subsection VII.B.1 installed during said period. In calculating such amount, only those Permitted Capital Improvements as defined herein shall qualify for inclusion. All such Permitted Capital Improvements installed or constructed over the

life of the Unit shall qualify.

- B. Permitted Capital Improvements shall not include any changes or additions to the Unit made by the Unit Owner during construction or thereafter, except in accordance with subsection VII.B.1. above. Permitted Capital Improvements shall not increase the base price, even if made or installed during original construction.
- C. In order to qualify as Permitted Capital Improvements, the Unit Owner must furnish to the Housing Authority the following information:
 - i. Original or duplicate receipts to verify the actual costs expended by the Unit Owner for Permitted Capital Improvements;
 - ii. Unit Owner's affidavit verifying that the receipts are valid and correct receipts tendered at the time of purchase; and
 - iii. True and correct copies of any building permit or certificate of occupancy required to be issued by the local building department with respect to the Permitted Capital Improvements.
- D. For the purpose of determining the Maximum Sale Price in accordance with this Article VII, the Unit Owner may also add to the amount specified in Section VII.A. and subsection VII.B.1., the cost of any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency, or by the established Melody Lodge Homeowner's Association (in whatever final corporate name such entity shall adopt, hereinafter the "Association"), provided that written certification is provided to the Housing Authority of both the applicable requirement and the information required by subsections VII.B.3., a-c.
- E. In calculating the costs under subsections VII.B.1. and VII.B.4., only the Unit Owner's actual out-of-pocket costs and expenses 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" determined by multiplying the amount paid for materials times two (2).
- F. Permitted Capital Improvements, as set forth herein, shall include any improvements to the Unit which comply with all use restrictions set forth in the Melody Lodge Cabins PUD, do not improperly alter the footprint or height of the Unit, and upon completion are properly deemed to be fixtures to the unit rather than accessories or appliances for the unit. By means of example, such alterations would include kitchen remodels, roof improvements, or other such improvements to the Unit which have the effect of augmenting the value of the unit itself.
- G. NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY SUMMIT COUNTY OR THE HOUSING AUTHORITY THAT THE UNIT OWNER WILL BE ABLE TO OBTAIN THE MAXIMUM SALE PRICE, AND EACH OF SUMMIT COUNTY AND THE HOUSING AUTHORITY HEREBY DISCLAIM ANY SUCH REPRESENTATION OR WARRANTY THAT MIGHT OTHERWISE BE ALLEGED OR ATTRIBUTED.

ARTICLE VII
SENIORITY OF COVENANT AND FORECLOSURE PROCEEDINGS

Section 7.1. This Restriction is senior to any Purchase Money Mortgage for the Property, except that this Restriction is subordinate to any Purchase Money Mortgage for the Property that is funded by the Federal National Mortgage Association. In the event of a foreclosure of a Purchase Money Mortgage by the holder of a first priority deed of trust against the Property (the "first lien holder"), which foreclosure is in accordance with the provisions of Colorado statutes concerning real estate foreclosure proceedings and that results in the first lien holder obtaining either a Public Trustee's Deed or a Sheriff's Deed to the Property, and only in such event, all restrictions, and conditions set forth in this Restriction shall, thereafter, only with respect to their application to the property described in such Public Trustee's Deed or Sheriff's Deed, be null and void and of no effect. If this Restriction shall become null and void pursuant to this section, the SCHA and County shall, upon written request, release this Restriction of record and waive its ability to enforce the provisions of this Restriction with respect to the property described in such Public Trustee's Deed or Sheriff's Deed. The first lien holder shall be the only party entitled to take the Property free of this Restriction.

Section 7.2. Lien. Declarant, each and every Owner, and each and every holder or beneficiary of any Mortgage, Deed of Trust or other lien or security interest upon or in the Property, by having taken title to or becoming the holder or beneficiary of such Mortgage, Deed of Trust or other security interest upon or in the Property, hereby grants and conveys to the SCHA and County and for a period of twenty years from the date of the recording of this Restriction, the Declarant, a lien upon and against each and every Unit described in this Restriction, which lien shall be for the purpose of securing for such SCHA and County and Declarant cure and redemption rights in the event of a foreclosure of a Purchase Money Mortgage, or any other lien right which is superior hereto, so as to allow the Property to remain and continue as affordable housing as more particularly described in Article II of this Restriction. The lien granted and conveyed by this Section 7.2 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 the Owner of any Unit.

Section 7.3. Notice. In the event that any holder of a mortgage, deed of trust, or other lien or security interest against a Unit shall initiate foreclosure, collection, or any other enforcement proceedings against such Unit, the Owner shall give notice of such foreclosure, collection or enforcement action to SCHA and County and, for a period of 20 years from the date of the recording of this Covenant, Declarant, which notice shall be given in writing via first class mail, postage prepaid, within five days of the date such action is commenced.

Section 7.4. Cure. So long as this Restriction 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 SCHA or County, and for a period of twenty years from the date of the recording of this Restriction, the Declarant, shall have the right to cure the default of an Owner under any Purchase Money Mortgage, or any lien right which is superior thereto, the same as Owner is entitled to cure such default, and any and all sums paid by the SCHA or County or Declarant in order 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, and such party which cured such default by Owner 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 7.5. Redemption. So long as this Restriction shall remain in effect, the following 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, in the following order:

- a. SCHA and County; and only if such parties do not redeem,
- b. For a period of 20 years from the date of the recording of this Restriction, Declarant, or Declarant's successors or assigns.

Section 7.6. Resale Following Redemption. Except as provided in Section 7.1. of this Restriction, 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 Restriction, immediately offer the Unit for sale subject to the terms and conditions of Article VI set forth hereinabove.

ARTICLE VIII GENERAL PROVISIONS

Section 8.1. Equal Housing Opportunity. Pursuant to the Fair Housing Act, Declarant, the SCHA and 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 SCHA and 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.

Section 8.3. Waiver of Exemptions. Every Owner, by taking title to any Unit, shall be deemed to have subordinated to this Restriction 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 SCHA and 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 Restriction and shall be entitled to specific enforcement of the same. 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 the covenants or restrictions contained herein by judgment or Court order shall in no way affect any other provisions, it being the intent of the Declarant that such invalidated provision be severable.

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 Covenant shall be automatically extended for successive periods of 10 years.

Section 8.7. Amendment. This restriction may be amended only by an instrument recorded in the records of Summit County executed by the SCHA and County and the then-Owner of the Property.

Section 8.8. Expenses of Enforcement. In the event that any party entitled to enforce the terms of this Restriction shall be required to bring any action as the result of any breach of the terms of this Restriction by any Owner, the party bringing such action shall be entitled to recover from and against the Owner in breach of these Restrictions, 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 these Restrictions 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 these Restrictions 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 SCHA. In the event that, at any time during the duration of this Restriction, the SCHA ceases to exist, all reference in this Restriction to SCHA shall, thereafter, mean the County of Summit, 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 SCHA as described herein.

Section 8.10. Notices. Any notice, consent or approval which is required or permitted to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Restriction. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:

Dale Mitchener and Debra Gregory-Mitchener
1534 Heeney Rd 30
Heeney CO 80498

To the Summit County Housing Authority:

Summit County Housing Authority
PO Box 188
Breckenridge CO 80424

To County:

Director, Summit County Planning Department
P.O. Box 5660
Frisco, Co 80443

To the Owner:

To be determined pursuant to the Memorandum of Acceptance (as shown on Exhibit A) recorded with respect to each transfer of a Unit.

IN WITNESS WHEREOF the undersigned, being the Declarant herein, has set its hand unto this Restriction this 2nd day of March, 2009.

Nora Gregory Dubler
Dale Mitchener

By: _____
Name: _____
Title: _____

STATE OF Colorado)
COUNTY OF Summit) ss

The foregoing instrument was acknowledged before me as of the 2 day of March 2009, by _____ as Notary of _____, a _____

WITNESS my hand and official seal.

Linda Lynch
Notary Public

My Commission Expires: 8-7-09

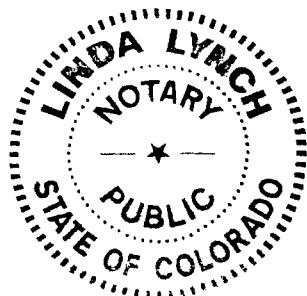


EXHIBIT A

**MEMORANDUM OF ACCEPTANCE OF
RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF LIEN
FOR CABIN #4, OF MELODY LODGE CABINS PUD,
SUMMIT COUNTY, COLORADO**

WHEREAS, _____ [Buyer Name] _____, the "Buyer" is purchasing from _____ [Seller Name] _____, the "Seller," at a price of \$ _____ [purchase price amount] _____, real property described as: _____ [Legal Description] _____, according to the plat recorded under Reception No. _____, in the real property records of the County of Summit, Colorado (the "Unit"); and

WHEREAS, the Seller of the Unit is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled "Residential Housing Restrictive Covenant and Notice of Lien for Unit D, of Melody Lodge Cabins PUD, Summit County, Colorado", recorded on _____, 2006, under Reception No. _____, in the real property records of the County of Summit, Colorado (the "Restrictive Covenant").

NOW, THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Restrictive Covenant, has had the opportunity to consult with legal and financial counsel concerning the Restrictive Covenant and fully understands the terms, conditions, provisions, and restrictions contained in the Restrictive Covenant.

2. States that the Notice to Buyer, pursuant to Section ____ of the Restrictive Covenant, should be sent to:

3. Directs that this memorandum be placed of record in the real estate records of the County of Summit, Colorado and a copy provided to the Summit Housing Authority (SCHA) and Summit County Government ("County") (as defined in the Restrictive Covenant).

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the _____ day of _____, 2006.

BUYER(S):

By: _____

Printed Name: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, by _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

SECONDARY UNIT COVENANT

This covenant is made this 2nd day of March 2008 between the Summit County Housing Authority of Summit County, Colorado hereinafter referred to as "SCHA" and Dale Mitchener & Debra Gregory Mitchener, whose address is 1554 Heaney Rd 30 Heaney CO 80498 hereinafter referred to as the "Applicant."

For and in consideration of the County's approval of the "secondary unit" on the property described below, as such unit is defined and permitted under section 5.1.3.44 of the Summit County Zoning Regulations, the Applicant hereby covenants and agrees to, with and for the benefit of the County as follows:

1. Property Affected. This Covenant and the restrictions imposed hereby shall apply to the real property located in Summit County, Colorado owned by the Applicant and particularly described as follows: Unit D, Melody Lodge Cabins PUD, Summit County, Colorado.
2. Use Restricted. The secondary unit on the subject property shall be used only for long-term rental to persons residing and employed in Summit County. "Long-term rental" shall mean a minimum term of two months, and "employed in Summit County" shall mean that such employment is the person's primary source of income. Short-term rental of the secondary unit is prohibited.
3. Separate Sale Prohibited. The secondary unit shall not be offered for sale or sold as a separate unit, or its ownership in any manner separated from ownership of the primary dwelling on the subject property.
4. Information Available. Upon request of the SCHA, the Applicant shall within ten(10) days of such request provide the SCHA with the names of the current or previous occupants of the secondary unit, their places of employment, and the rental term for the unit.
5. Enforcement. Should the Applicant violate or permit the violation of this Covenant, the SCHA shall be entitled to all costs, including reasonable attorneys fees, incurred in enforcing the same.
6. Binding effect. This Covenant shall run with the land and be binding upon the Applicant, its heirs, successors, representatives and assigns for 5 years from the time of recording and may be renewed for additional 5 years if mutually agreed by Applicant or current owners and SCHA. At the end of any 5 year period the Applicant or current owners have the right to eliminate the secondary unit and return the property to a single dwelling unit.

Executed as of the date first above written.

Summit County Housing Authority

BY: Santa D. Osborn

Applicants

Dale Mitchener

Debra Gregory Mitchener

RESTRICTIVE COVENANT FOR THE SALE AND USE OF VACATION CABIN UNITS

THIS RESTRICTIVE COVENANT ("Covenant") is entered this 2nd day of March, 2008, by and between Dale Mitchener and Debra Gregory-Mitchener, whose address is 1534 Heeney Road/County Road 30 ("Grantor") and the County of Summit, State of Colorado, by and through its Board of County Commissioners, whose address is Post Office Box 68, Breckenridge, CO 80424, Colorado, 80443 ("Grantee"), for the purpose of restricting the use of the subject property in perpetuity, according to the terms and conditions contained herein.

RECITALS

- A. Grantor warrants that it is the sole and lawful owner of property located in Summit County, Colorado, and referenced as:

Part of Lot 2 of Section 33 and part of Lot 5 of Section 34, Township 2 South, Range 79 West of the 6th P.M., more particularly described as follows:

Beginning at a point on the section line common to said sections 33 and 34, at the southeast corner of Lot 2 of said Section 33, which is also the southwest corner of Lot 5 of said Section 34; thence, with the south line of said Lot 2 north 89 degrees 53 minutes west, 300.0 feet; thence due north 681.02 feet; thence south 47 degrees 26 minutes east, 407.34 feet to a point on said section line; thence continuing south 47 degrees 28 minutes east, 192.9 feet; thence south 63 degrees 41 minutes east, 226.0 feet; thence south 49 degrees 29 minutes east, 269.0 feet to the south line of said Lot 5; thence with said south line, north 89 degrees 47 minutes west, 548.3 feet to the point of beginning and containing 5.79 acres more or less, County of Summit, State of Colorado.

(herein referred to as the "Property"), and is authorized to enter into this agreement.

B. The Property is currently located within a Planned Unit Development ("PUD") zoning district, as defined in the Summit County Land Use and Development Code, namely the Melody Lodge Cabins PUD. Such PUD zoning allows for the establishment of individually owned vacation cabin units on the Property, subject to certain conditions as enumerated in the Melody Lodge Cabins PUD, the Summit County Land Use and Development Code ("Code"), and related documents.

C. Grantee has approved such PUD zoning, allowing for the establishment of such individually owned cabin units, premised upon Grantor's agreement to the subject restriction on the duration of occupancy of such units by any individual.

D. Grantor further agrees to abide by the existing Melody Lodge Cabins PUD zoning designation on said Property, as such zoning may be revised from time to time in the future. Grantor enters into this restrictive covenant with full knowledge and understanding of the restrictions which will be imposed upon said Property as a result of this covenant.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby voluntarily covenants and agrees to restrict all future use of the Property, upon and subject to the following terms and conditions:

1. **Establishment of Vacation Cabin Units.** Grantor hereby agrees that the vacation cabin units provided for herein, specifically cabin units A, B and C on the East Side of Heeney Road (CR 30), which bisects the property, and Cabin Units 1, 2, 3, 4 and 5 on the West Side of Heeney Road (CR 30), as

such units are concomitantly permitted and restricted by the Melody Lodge Cabins PUD, shall be established, conveyed and utilized only in accordance with the restrictions on such property set forth in the Melody Lodge Cabins PUD, and subject to this Deed Restriction.

2. **Use and Occupancy of the Vacation Cabin Units.** This covenant shall expressly restrict the occupancy and use of each and every cabin unit addressed herein in paragraph 1 above, as such relates to any individual use, for a restricted continuous occupancy limited to six (6) consecutive months or less, and eight cumulative months in any one calendar year for any particular occupant. The sole exception shall be Cabin Unit 4, a deed-restricted affordable housing unit allowing for year-round occupancy as permitted and restricted by the Melody Lodge Cabins PUD

3. **Covenant Runs With the Land.** This Covenant shall constitute a restrictive covenant, which shall run with the land in perpetuity for the benefit of Grantee. The terms and obligations of this Covenant shall be binding upon all parties hereto, and their respective heirs, successors and assigns, particularly as applied to Grantor. Accordingly, "Grantor", as such term is utilized herein, shall initially pertain to the original Grantor, as signatory party to this agreement, but once recorded in the office of the Summit County Clerk and Recorder, said term "Grantor" shall reference any and all subsequent owners of any portion of the Property, in part or in its entirety, and enforcement actions shall be initiated against the owner of the Property in question at the time of enforcement.

4. **Benefit to Inure to Grantee.** This Covenant expressly inures to the benefit of and is enforceable by Grantee. Grantee shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Covenant. Grantee shall have the right to seek an injunction with respect to such activity, and to cause the restoration at Grantor's expense of that portion the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity. Nothing contained herein shall be construed to preclude Grantor from exhausting its legal remedies in determining whether the proposed activity to which the Grantee has objected is inconsistent with this Covenant.

5. **No Benefit to Third Parties.** This Declaration does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceedings against either Grantor or Grantee because of any breach hereof, or because of any terms, covenants, agreements or conditions contained herein, except as specifically provided for within the Declaration. Other than as specified herein, this Declaration is not intended to impose any legal or other responsibility on either the Declarant or the County.

6. **Enforcement.** Enforcement of the terms and provisions of this Covenant shall be at the discretion of the Grantee and any failure of Grantee to discover a violation or any forbearance to exercise its rights hereunder shall not be deemed or construed to be a waiver of such terms or of any subsequent breach of the same or any other term of this Covenant or of any of the Grantee's rights hereunder or an abandonment of any duties or responsibilities hereunder. In the event of any litigation, the prevailing party shall recover its costs and reasonable attorney's fees.

7. **Waiver of Estoppel and Laches.** Grantor waives any defenses of laches, estoppel, prescription, and any and all requirements in §38-41-119, C.R.S., that require Grantee to bring action to enforce the terms of this Covenant or to compel the removal of any building or improvement on the Property within one year from the date of the violation is or should have been discovered.

8. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of Summit County, at the Office of the Summit County Clerk and Recorder, and Grantee may re-record it at any time as may be required to preserve its rights in this Covenant.

