



RESIDENTIAL HOUSING DEED RESTRICTION (RENTAL)
FOR UNITS 3, 5, 7, 9, 13, 15, 17, **DRAKE LANDING**
BUILDING B, A CONDOMINIUM PROJECT,
TOWN OF FRISCO, COLORADO

This Residential Housing Deed Restriction, hereinafter referred to as "this Restriction," or the "Deed Restriction" is made this 1st day of October, 2004, by Drake Landing, L.L.C., hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of that certain real estate located in the County of Summit, State of Colorado, and legally described as follows: Building B, Units B3, B5, B 7, B9, B13, B15, B17, according to the plat thereof now on file in the Office of the Clerk and Recorder for Summit County, Colorado, under Reception No. 769768 hereinafter referred to as the "Property"; and

WHEREAS, On or about July 11, 2000, the Town Council of the Town of Frisco approved a development application permitting the construction of a complex of condominium buildings (the "Project") on real property legally described as Lot 4R, a resubdivision of Lot 2, Block 1, Lakepoint at Frisco, Frisco, Colorado, of which the Property is a part; and

WHEREAS, prior to the Town council's approval of the Project, the Declarant voluntarily offered to deed restrict seven (7) condominium units within the Project to be affordable rental housing units and requested that the execution of restrictive covenants to so restrict such units be made a condition of the Town's approval of the Project; and

WHEREAS, pursuant to the Declarant's request, the provision of seven (7) deed restricted affordable rental housing units within the Project by the Declarant was made a condition of approval of the Project;

NOW, THEREFORE, in consideration of the Town'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 moderately 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 Town of Frisco, and Declarant.

ARTICLE I
DEFINITIONS

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

- A. "Town" means the Town of Frisco, State of Colorado.
- B. "SCHA" means the Summit County Housing Authority.
- C. "Resident" means a person who during the period of his or her occupancy in a Unit, uses the unit as their principal place of residence.
- D. "Owner" means the record owner of the fee simple title to any Unit contained within the Property.
- E. "Unit" shall mean any of the condominium units contained within the description of the Property as set forth hereinabove.
- F. "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. Nothing contained herein shall, however, prevent a spouse of a Resident, which spouse is also gainfully employed, from also being a Dependent hereunder.
- G. "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.
- H. "Mortgage" means a consensual interest created by a real estate mortgage, a deed of trust on real estate, or the like.
- I. "Mortgagee" means any grantee, beneficiary, or assignee of a Mortgage.
- 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. "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, so long as this Restriction remains in effect. The Maximum Resale Price is not a guaranteed price, but merely the highest price a Resident Owner may obtain for the sale of a Unit.

ARTICLE II PURPOSE

Section 2.1. Purpose. The purpose of this Restriction is to restrict use and occupancy of the Units in such a fashion as to provide, on a permanent basis, rental housing whose rent rates, including utilities, will not exceed an amount calculated by the SCHA for renters earning 100% of the Summit County AMI and to help establish and preserve a supply of rental housing.

ARTICLE III OWNERSHIP AND RENTAL OBLIGATION

Section 3.1. Ownership and Rental Obligation. The ownership of a Unit is not restricted. However, any Owner who does not qualify as a Resident shall rent the Unit, and may not use the unit for their own use. Sales of a Unit shall be made only to buyers who agree to rent the Unit at a monthly rental rate, including utilities, not to exceed an amount calculated by the SCHA for Residents earning 100% of the Summit County AMI, pursuant to this Restriction.

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 deemed to be in compliance with this Restriction so long as the instrument of conveyance evidencing such sale, transfer, and/or conveyance, or some other instrument referencing same, bears the following language followed by the acknowledged signature of either the director or some other authorized representative of the SCHA or by the Mayor of the Town, to wit:

"The conveyance evidenced by or referenced in this instrument has been approved by the Summit County Housing Authority/Town of Frisco as being in compliance with the Residential Deed Restriction (Rental) for Units B3, B5, B7, B9, B13, B15, B17, Drake Landing, Building B, a Condominium Project, Town of Frisco, County of Summit, State of 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 contract purchaser to submit such information as may be required by the Town or the SCHA under its rules and regulations.

ARTICLE IV
RENTAL USE AND RATE RESTRICTIONS

Section 4.1. Occupancy. Except as otherwise provided for in this Restriction each Unit shall, at all times, be occupied by a Resident, and his or her Dependents, as his principal place of residence.

Section 4.2. Rental. The Unit shall be rented at a rate, including utilities, not to exceed an amount calculated by the SCHA for renters earning 100% of the Summit County AMI. The Unit may not be rented for nightly, weekly or short term use.

ARTICLE V
RESALE OF UNITS

Section 5.1. Resale. The only restrictions on the resale of a Unit are those described in Article III above.

ARTICLE VI
FORECLOSURE PROCEEDINGS

Section 6.1. 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 to the SCHA, the Town of Frisco, 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, the Town of Frisco, and Declarant 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 as more particularly described in Article II of this Restriction. 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 6.2. 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 give notice of such foreclosure, collection or enforcement action to SCHA, the Town of Frisco, 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 6.3. 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, the Town of Frisco, 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, the Town of Frisco, 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 6.4. 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. Town of Frisco; and only if the Town does not redeem,
- b. SCHA; and only if the SCHA does not redeem,
- c. For a period of 20 years from the date of the recording of this Restriction, Declarant, or Declarant's successors or assigns.

Section 6.5. Resale Following Redemption. Except as provided in Section 6.6. 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, immediately offer the Unit for rent subject to the terms and conditions of Article III set forth hereinabove.

Section 6.6. 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 such holder obtains either a Public Trustee's Deed or a Sheriff's Deed to the Unit, and only in such event, all restrictions, and conditions set forth in this Restriction shall, thereafter, only with respect to their application to the Unit described in such Public Trustee's Deed or Sheriff's Deed, be null and void and of no effect if, and only if, the said holder of said Purchase Money Mortgage, which holder has obtained title in the manner prescribed herein, has, within 90 days after having obtained such

title, paid to the Drake Landing Condominium Association all money due to the Drake Landing Condominium Association with respect to the subject Unit pursuant to that certain Condominium Declaration of Drake Landing Condominiums recorded in the real property records of Summit County on the 23rd day of September, 2004, at Reception No. 769767.

ARTICLE VII
GENERAL PROVISIONS

Section 7.1. Equal Housing Opportunity. Pursuant to the Fair Housing Act, Declarant, the SCHA, and the Town 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 7.2. Rules, Regulations, and Standards. The SCHA 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 Town of Frisco.

Section 7.3. 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 7.4. Enforcement. Except as otherwise provided herein, the SCHA, the Town of Frisco, 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. 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 7.5. 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 7.6. 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 7.7. Amendment. This restriction may be amended only by an instrument recorded in the records of Summit County executed by the SCHA or the Town of Frisco and the Owner of the Property as a Unit.

Section 7.8. 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 7.9. 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 Town of Frisco, its successors, assigns, or any other entity designated by the Town of Frisco to administer or enforce the provisions hereof, or to perform the functions of the SCHA as described herein.

Section 7.10. Status of Restriction. This Restriction in no way supersedes any ordinance, code, rule or regulation, but is in addition to any such other government regulations and requirements.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has herein to set its hand and seal this 1st day of October, 2004.

By: Thomas M. Silengo
Thomas Silengo, Manager/Member, Drake Landing L.L.C.

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 1st day of OCTOBER, 2004, by THOMAS SILENGO.

Witness my hand and official seal.

My commission expires: My Commission Expires
May 28, 2008

Heidi Kimsey
Notary Public



