



Cl Cheri Brunvand-Summit County Recorder 4/19/2001 12:41 DF:

EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

4/19/01
 THIS EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT ("Employee Housing Covenant") is made and entered into at Breckenridge, Colorado this 9TH day of April, 2001, by and between FARMERS GROVE, LLC, a Colorado limited liability company ("Owner"), the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town"), and The Board of County Commissioners, Summit County, Colorado ("County"). The Town and the County are sometimes referred to collectively herein as "the Governmental Entities."

Recitals

A. Owner is owner of record of the hereinafter described real property situate in the County of Summit and State of Colorado.

B. Owner's predecessor, Hydraulic Links Company, LLC, heretofore entered into a Water Service Agreement with the Town dated October 15, 1999, which Water Service Agreement has been assigned to and assumed by Owner, pursuant to which Water Service Agreement the Town has agreed to sell treated water to Owner for use at the real property hereinafter described.

C. It is a condition of the Water Service Agreement that the Owner create a valid and enforceable covenant running with the land, enforceable by the Governmental Entities, which assures that the hereinafter described real property will be used solely by a Qualified Occupant as that term is hereinafter defined in this Employee Housing Covenant.

D. Under this Employee Housing Covenant Owner intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use of the hereinafter described real property shall be and are covenants running with the land and are intended to be and shall be binding upon the Owner and all subsequent owners of the hereinafter described real property for the stated term of this Employee Housing Covenant, unless and until this Employee Housing Covenant is released and terminated by the Governmental Entities in the manner hereafter described.

NOW, THEREFORE, in partial consideration of the agreement of the Town to provide treated water to the real property hereinafter described, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Owner, the Owner, the Town and the County agree and covenant as follows:

1. Property Subject To Covenant. The real property which is to be subject to the provisions of this Employee Housing Covenant is described as follows:

(a) Lots 1, 4, 11, 14, 15, and 32, Farmer's Grove, according to the plat thereof recorded in the records of Summit County, Colorado, all of which Lots are designated on said plat as single family residential Lots.

(b) Lots 34, 35, 40 and 41, Farmer's Grove, according to the plat thereof recorded in the records of Summit County, Colorado, all of which Lots are designated on said plat as

duplex residential Lots. All lots created by any future subdivision of these Lots shall be subject to this Employee Housing Covenant.

(c) Lot 38, Farmer's Grove, according to the plat thereof recorded in the records of Summit County, Colorado, which Lot is designated on said plat as a duplex residential Lot. Upon the future subdivision of said Lot 38, only the southerly lot or unit, and not the northerly lot or unit, shall be subject to this Employee Housing Covenant.

2. Definitions. As used in this Employee Housing Covenant:

"Property" means the real property described in Paragraph 1 of this Employee Housing Covenant.

"Lot" means the Lots which are burdened by this Employee Housing Covenant as described in paragraph 1 of this Employee Housing Covenant.

"Qualified Occupant" means a person eighteen (18) years of age or older who, during the entire period of his or her occupancy of the Property, earns his or her living by working in Summit County, Colorado, at least thirty (30) hours per week, together with such person's spouse and minor children, if any.

"Lot Owner" means the person or persons, or any entity, at any time taking and holding title to any Lot described in paragraph 1 of this Employee Housing Covenant. Such natural person or persons, or entity, shall be deemed a "Lot Owner" hereunder only during the period of his, her, their, or its ownership interest in the Lot. "Lot Owner" does not include a person or entity having an interest in a Lot solely as security for the performance of an obligation.

3. Occupancy Restriction. Except as expressly provided in Paragraph 4 of this Employee Housing Covenant, the Property shall be used and occupied only by a Qualified Occupant, and by no one else.

4. Exceptions. Notwithstanding the provisions of Paragraph 3, it shall not be a violation of this Employee Housing Covenant if the Property is occupied or used by: (i) a person age fifty five (55) years or older who works at paid employment in Summit County, Colorado at least fifteen (15) hours per week on an annual basis during the entire period of his or her occupancy of the Property, together with such person's spouse and minor children, if any, or (ii) a person otherwise authorized to occupy the Property pursuant to this Employee Housing Covenant who becomes disabled after commencing lawful occupancy of the Property under the terms of this Employee Housing Covenant such that he or she cannot work the required number of hours each week required by this Employee Housing Covenant; provided, however, that such person shall be permitted to occupy the Property

for a maximum period of one (1) year following the commencement of such person's disability unless a longer period of occupancy is authorized by the Governmental Entities.

5. Records: Inspection: Monitoring.

(a) The Lot Owner's records with respect to the use and occupancy of the Property shall be subject to examination, inspection and copying by the Governmental Entities, or either of them, or by their authorized agent, upon reasonable advance notice. The Governmental Entities, or either of them, or their authorized agent shall also have the right to enter into the Property for the purpose of determining compliance with the provisions of this Employee Housing Covenant; provided, however, that the Governmental Entities, or either of them, or their authorized agent, shall first attempt to secure the permission of any occupants of the Property prior to making entry.

(b) The Lot Owner shall submit any information, documents or certificates requested from time to time by the Governmental Entities, or either of them, with respect to the occupancy and use of the Property which the Governmental Entities, or either of them, reasonably deems necessary to substantiate the Lot Owner's continuing compliance with the provisions of this Employee Housing Covenant.

6. Default: Notice. In the event of any failure of any Lot Owner to comply with the provisions of this Employee Housing Covenant, the Governmental Entities, or either of them, may inform the Lot Owner by written notice of such failure and provide the Lot Owner a period of time within which to correct such failure. If any such failure is not corrected to the satisfaction of the Governmental Entities, or either of them, within the period of time specified by the Governmental Entities, or either of them, which shall be at least thirty (30) days after the date any notice to the Lot Owner is mailed, or within such further time as the Governmental Entities, or either of them, determines is necessary to correct the violation, but not to exceed any limitation set by applicable law, the Governmental Entities, or either of them, may without further notice declare a default under this Employee Housing Covenant effective on the date of such declaration of default; and the Governmental Entities, or either of them, may then proceed to enforce this Employee Housing Covenant as hereafter provided.

7. Equitable Relief. Each Lot Owner agrees that in the event of a Lot Owner's default under or non-compliance with the terms of this Employee Housing Covenant, the Governmental Entities, or either of them, shall have the right of specific performance of this Employee Housing 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 Paragraph may be sought singly or in combination with such legal remedies as the Governmental Entities, or either of them, may be entitled to, either pursuant to the provisions of this Employee Housing Covenant or under the laws of the State of Colorado.

8. Liquidated Damages. Each Lot Owner acknowledges that the unavailability of adequate employee housing within the Town of Breckenridge and within Summit County requires the expenditure of additional Town and County funds to provide required governmental services

and thereby results in an economic loss to the Town and County. The Town, the County, and each Lot Owner further recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Town and/or the County in such circumstance. Accordingly, instead of requiring such proof, the Governmental Entities and Owner agree that Lot Owner shall pay to the Town or the County the sum of \$100 per day for each day in which the Property is not used in strict compliance with the provisions of Paragraph 3 of this Employee Housing Covenant. Such amount is agreed to be a reasonable estimate of the actual damages which the Town or County would suffer in the event of a violation of Paragraph 3 of this Employee Housing Covenant. The provisions of this Paragraph shall not apply to any violation of this Employee Housing Covenant other than a violation of Paragraph 3. The liquidated damages provided herein shall commence as of the date on which the Property is first used in violation of Paragraph 3 of this Employee Housing Covenant, and not on the date when the Town or County learns of such violation or on the date when the Town or County gives notice of default as provided in Paragraph 6. Further, the total amount of liquidated damages payable to the Town or County under this Paragraph shall in no event exceed the then-current value of the Property. The liquidated damages provided for in this Paragraph may be collected personally from the Lot Owner by the Town or County, either singly or in combination with an action for equitable enforcement of this Employee Housing Covenant as provided in Paragraph 7 of this Employee Housing Covenant. Town or County may, in its discretion, waive the liquidated damages as provided herein and recover any actual damages suffered by Town or County as a result of a breach of this Employee Housing Covenant. In no event, however, shall both the Town and the County collect duplicate actual or liquidated damages for a violation of Paragraph 3.

9. Town and County Authority To Enforce. The restrictions, covenants and limitations created herein are for the benefit of the Town and County, which are given the sole power to enforce this Employee Housing Covenant in the manner herein provided.

10. Enforcement in Municipal Court. In addition to such other methods of enforcement as may be available to Town, in the event of any Lot Owner's default hereunder, which default is not cured as provided in Paragraph 6, above, Town may enforce this Employee Housing Covenant by bringing an appropriate action in the Breckenridge Municipal Court in accordance with the provisions of Section 9-1-26 of the Breckenridge Town Code, or any successor municipal Ordinance provision of the Town of Breckenridge.

11. Waiver; Termination; Modification Of Covenant. The restrictions, covenants and limitations created herein may be waived, terminated or modified with the written consent of the Lot Owner of said Property, the Town and the County. No such waiver, modification, or termination shall be effective until the proper instrument in writing shall be executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado. The Town and County may also terminate this instrument by recording a release in recordable form without the signature of Lot Owner. For convenience, such instrument may run to "the owner or owners and parties interested" in the Property.

12. Statute of Limitations. Each Lot Owner hereby waives the benefit of, and agrees not to assert in any action brought by the Town or County to enforce the terms of this Employee

Housing Covenant, any applicable statute of limitation which might otherwise operate to bar the ability of the Town or County to enforce this Employee Housing Covenant, including, but not limited to, the provisions of §38-41-119, C.R.S. In the event that any statute of limitations may lawfully be asserted by Lot Owner in connection with an action brought by the Town or the County to enforce the terms of this Employee Housing Covenant, it is agreed between Owner, the Town, and the County that each and every day during which any violation of the terms of this Employee Housing Covenant occurs shall be deemed to be a separate breach of this Employee Housing Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

13. No Conflicting Agreement. Owner covenants, represents and warrants to the Town and the County that the execution and delivery of this Employee Housing Covenant to the Town and the County will not violate any agreement now existing with respect to the Property. Owner shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Employee Housing Covenant, and, in any event, it is agreed that the provisions of this Employee Housing Covenant are paramount and controlling as to the rights, obligations and limitations herein set forth and shall supersede any other provision in conflict herewith.

14. Entire Agreement. This Employee Housing Covenant constitutes the entire agreement and understanding between the parties relating to the subject matter of this Employee Housing Covenant, and supersedes any prior agreement or understanding relating thereto.

15. Severability. In case one or more of the provisions contained in this Employee Housing Covenant or any application hereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Employee Housing Covenant and the application thereof shall not in any way be affected or impaired thereby.

16. Attorney's Fees. If any action is brought in a court of law by either party to this Employee Housing Covenant concerning the enforcement, interpretation or construction of this Employee Housing 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's fees, incurred in the prosecution or defense of such action.

17. Notices. Except as otherwise provided, all notices provided for or required under this Employee Housing Covenant shall be in writing, signed by the party giving the same, and shall be deemed properly given when actually received or three (3) days after mailed, postage prepaid, certified, return receipt requested, addressed to the parties hereto at their addresses appearing on the signature pages. Each party, by written notice to the other party, may specify any other address for the receipt of such instruments or communications.

18. Applicable Law. This Employee Housing Covenant shall be interpreted in all respects in accordance with the laws of the State of Colorado.

19. Recording And Filing: Covenant Running With The Land.

(a) This Employee Housing Covenant shall be placed of record in the real property records of Summit County, Colorado, and, except as otherwise provided herein, the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and Owner's successors and assigns, and all subsequent Lot Owners of the Property or any interest therein, the Town and the County, in perpetuity as provided in Paragraph 21 of this Employee Housing Covenant.

(b) The Owner hereby agrees that any and all requirements of the laws of the State of Colorado to be satisfied in order for the provisions of this Employee Housing Covenant to constitute a restrictive covenant running with the land shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land. During the term of this Employee Housing Covenant, each and every contract, deed or other instrument hereafter executed conveying the Property provided, or portion thereof, shall expressly provide that such conveyance is subject to this Employee Housing Covenant; provided, however, that the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Property, regardless of whether such contract, deed or other instrument hereafter executed conveying the Property, or portion thereof, provides that such conveyance is subject to this Employee Housing Covenant.

20. Owner's Covenant Of Title And Authority. Owner covenants, represents and warrants to the Town that Owner has good and marketable title to the Property and full and complete legal authority to execute and deliver this Employee Housing Covenant to the Town; subject only to a deed of trust in favor of Community First National Bank, and taxes for 2000 and subsequent years.

21. Vesting and Term. Owner, the Town and the County agree that the Town's and the County's rights and interests under this Employee Housing Covenant are vested immediately and that this Employee Housing Covenant, and any amendments hereto, shall be binding and in full force and effect in perpetuity, unless terminated as herein provided.

22. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Employee Housing Covenant.

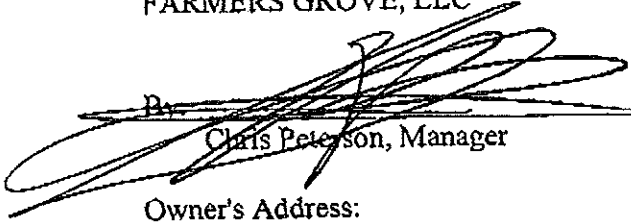
23. Terminology. Wherever applicable, the pronouns in this Employee Housing Covenant designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Agreement, the singular shall include the plural, and the plural shall include the singular.

24. Binding Effect. This Employee Housing Covenant shall be binding upon, and shall inure to the benefit of, the parties, and their respective heirs, successors, assigns, legal representatives, and personal representatives, and all subsequent owners of the Property, or any interest therein, during the term of this Employee Housing Covenant as herein provided.

IN WITNESS WHEREOF the parties have executed this Employee Housing Covenant the date first written above.

OWNER:

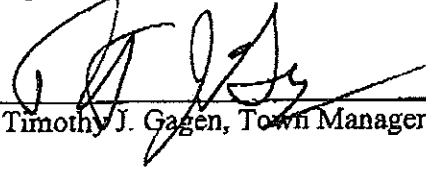
FARMERS GROVE, LLC

By: 
Chris Peterson, Manager

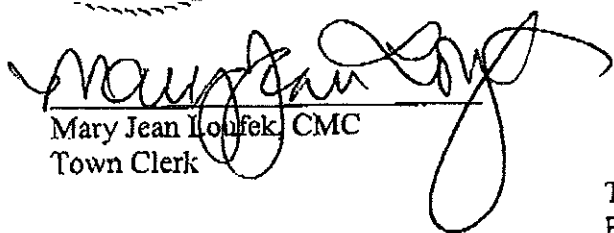
Owner's Address:

P.O. Box 23217
Silverthorne, CO 80498

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation


By: 
Timothy J. Gagen, Town Manager




Mary Jean Loufek, CMC
Town Clerk

Town's Address:
P. O. Box 168
Breckenridge, CO 80424

BOARD OF COUNTY COMMISSIONERS,
SUMMIT COUNTY, COLORADO

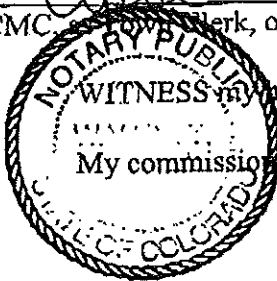
By: 
William C. Wallace, Chairman

County's Address:
P.O. Box 68
Breckenridge, CO 80424

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

Employee Housing Destructive Covd Agn.

The foregoing instrument was acknowledged before me this 9th day of April, 2001, by Timothy J. Gagen, Town Manager, and Mary Jean Loufek, CMC [Signature] Clerk, of the Town of Breckenridge, a Colorado municipal corporation.



WITNESS my hand and official seal.

My commission expires: June 8, 2002

[Signature]
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, William C. Wallace, Chairman of the Board of County Commissioners Chairman.

WITNESS my hand and official seal.

My commission expires: _____

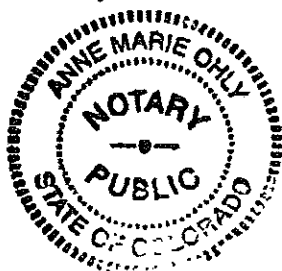
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 4th day of April, 2001, by Chris Peterson as Manager of Farmers Grove, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 11/24/2001



[Signature]
Notary Public

