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Kathleen Neel - Summit County Recorder

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**RESIDENTIAL HOUSING RESTRICTION AND NOTICE OF LIEN  
FOR VALLEY BROOK TOWNHOMES,  
TOWN OF BRECKENRIDGE, SUMMIT COUNTY, COLORADO**

This Residential Housing Restriction and Notice of Lien for Valley Brook Townhomes, Town of Breckenridge, Summit County, Colorado, (this "Restriction") is made this August 3, 2010, by Town of Breckenridge, a Colorado, hereinafter referred to as "Town"

**RECITALS:**

WHEREAS, Town is the owner of that certain real estate located in the County of Summit (the "County"), State of Colorado, and legally described in **Exhibit A** attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, Town, acting as the declarant, intends to create a valid and enforceable covenant running with the land that assures that all of the units to be developed on the Property will be used solely by individuals who are both Residents and Eligible Households (as such terms are hereinafter defined), subject to limited exceptions provided for herein.

WHEREAS, under this Restriction Town intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use of the units described and provided for herein shall be and are hereby made covenants running with the land and are intended to be and shall be binding upon Town, any entity to whom the Town conveys the Property for the purpose of construction of the units (as hereafter defined), and all subsequent owners of such units for the stated term of this Restriction, unless and until this Restriction is released and terminated in the manner hereafter described.

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Town 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 working in the County as affordably priced housing for low to moderate income persons, 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 inure to the benefit of each Owner (as defined in Article 1) of a Unit (as defined in Article 1) within the Property, the SCHA (as defined in Article 1), and Town.

**ARTICLE 1  
DEFINITIONS**

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 the County (or such next larger statistical area calculated by HUD that includes the County, if HUD does not calculate the area median income for the County 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 the Town, 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. "Authorized Lessee" means any tenant approved by the Town, who shall meet the definitions of both Resident and Eligible Household, and who shall lease a Unit at such rental rates as shall be established by the Town, but in any event at a monthly rental rate that shall not exceed one-hundred and twenty percent (120%) of the most recent fair market rent amounts published by the HUD (or any successor index thereto acceptable to the Town, in its reasonable discretion).

C. "Dependent" means 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, in each case 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.

D. "Director" means the Director of the Department of Community Development of the Town of Breckenridge, Colorado, or such person's designee.

E. "Eligible Household" means Households approved by the Town or its designee so as to allow for the execution by the Town or its designee of the form of Notice of Lien and Memorandum of Acceptance of Residential Housing Restriction and Notice of Lien for the Valley Brook Townhomes, Town of Breckenridge, Summit County, Colorado set forth in **Exhibit D** of this Restriction, and shall include (i) the twenty-two (22) Units identified on **Exhibit B** attached hereto and made a part hereof by this reference, which shall be Households earning not more than seventy five percent (75%) of the Area Median Income (an "75% HUD low income Household"), and (ii) the twenty (20) Units identified on **Exhibit C** attached hereto and made a part hereof by this reference, which shall be Households earning not more than one hundred and twenty percent (120%) of the Area Median Income (a "120% Household"). Once a Unit is designated as either an 75% HUD low income Household or a 120% Household, it shall remain an 75% HUD low income Household or 120% Household throughout the term of this Restriction unless otherwise approved by the Town. A Household's income for purposes of determining whether such household meets this definition of eligibility shall be determined in accordance with the Town's rules and regulations at the time of purchase or, as the case may be, commencement of leasehold occupancy. 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.

F. "First Mortgage" means a deed of trust or mortgage that is recorded senior to any other deeds of trust or liens against the Property to secure a loan used to purchase the Property made by a Mortgagee.

G. "Household" means one or more persons who intend to live together in a Unit as a single housekeeping unit.

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

I. "Key Employee" means a Resident that is also an employee of a business, private organization or government entity providing essential services in the County as determined by the Town, including, but not limited to: municipal employees, school district employees and emergency and medical personnel.

J. "Maximum Resale Price" means the maximum Purchase Price that shall be paid by any purchaser of the Property, other than the initial purchaser who acquires the Property from Town, that is determined in accordance with the provisions of Section 8.3 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 the Property.

K. "Mortgagee" means any bank, savings and loan association, or any other institutional lender that is licensed to engage in the business of providing purchase money mortgage financing for residential real property and that is the beneficiary of a deed of trust or mortgage encumbering any Unit.

L. "Non-Qualified Transferee" means an Owner that is not a Qualified Owner.

M. "Owner" means the record owner at any time taking and holding fee simple title to a Unit.

N. "Purchase Money Mortgage" means a First Mortgage given by an Owner to the extent that it is: (a) taken or retained by the seller of the Property 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 Property if such value is in fact so used.

O. "Purchase Price" shall mean all consideration paid by the purchaser to the seller for a Unit, but shall EXCLUDE 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, real estate purchase and/or sales commission(s) or other fees and costs related to the purchase of a Unit but not paid directly to Seller.

P. "Qualified Owner" means natural person(s) that meet(s) the definitions of both a Resident and an Eligible Household, or non-qualified Owner under Section 5.1.B., qualified and approved by the Town, in such a manner as will allow the Town to execute the Notice of Lien and Memorandum of Acceptance of Residential Housing Restriction and Notice of Lien for the Valley Brook Townhomes, Town of Breckenridge, Summit County, Colorado set forth in **Exhibit D** of this Restriction.

Q. "Resident" means a person and his or her Dependents, if any, who (i) at all times during ownership or occupancy of the Unit, earns his or her living from a business operating in and serving the County, by working in the County at such business an average of at least 30 hours per week on an annual basis, or (ii) is a person who is approved in writing by the Town, which approval shall be based upon criteria including, but not limited to, total income, percent of income earned within the County, place of voter registration, place of automobile registration, and driver's license address and other qualifications established by the Town from time to time. (compliance with each of these criteria is not necessary; in certifying Residents, the Town shall consider the criteria cumulatively as they relate to the intent and purpose of this Restriction). A person over 65 years of age shall remain a Resident regardless of his or her working status, so long as he or she has owned and occupied a Unit, or leased a Unit as an Authorized Lessee, for a time period of not less than seven (7) years. A Resident or Authorized Lessee who becomes disabled after commencing ownership or occupancy of a Unit such that he or she cannot work the required number of hours each week required by this Restriction shall remain a Resident or Authorized Lessee; provided that such person is permitted to occupy the Unit only for a maximum period of one (1) year following the commencement of said person's disability, unless a longer period of occupancy is authorized by the Town. The term "business" as used in this Article 1, Subsection P, and Section 5.1.B. shall mean an enterprise or organization providing goods and/or services, whether or not for profit, and shall include, but not be limited to, educational, religious, governmental and other similar institutions.

R. "SCHA" means the Summit Combined Housing Authority.

S. "Town Clerk" means the Town Clerk of the Town of Breckenridge, Colorado, or such person's designee.

T. "Town Council" means the Town Council of the Town of Breckenridge, Colorado.

U. "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.

V. "Unit" means a physical portion of the Property to be constructed for purposes of residential use only and to be created as a separate transferable real property interest by the filing of subdivision or similar plat(s) or map(s) for some or all of the Property. There will be a total of forty-two (42) Units built within the Property.

W. "Upper Blue Employee" means a Resident that is also an employee of a business physically located in and serving the Upper Blue Valley River Basin as defined from time to time by the Town's development code or other applicable land use regulation.

**ARTICLE 2**  
**PURPOSE**

2.1 The purpose of this Restriction is to restrict ownership, occupancy and sale of each Unit in such a fashion as to provide, on a permanent basis, affordably priced housing for low to moderate income persons to be occupied by Qualified Owners or Authorized Lessees, which Qualified Owners or Authorized Lessees, because of their income, may not otherwise be in a position to afford to purchase, own, occupy or lease other similar properties, and to help establish and preserve a supply of affordably priced housing to help meet the needs of the locally employed residents of the County.

**ARTICLE 3**  
**RESTRICTION AND AGREEMENT BINDS THE PROPERTY**

3.1 This Restriction shall constitute covenants running with title to the Property as a burden thereon, for benefit of, and enforceable by, the Town, and its successors and assigns, including, without limitation the SCHA acting as Town's designee, and this Restriction shall bind Town and all subsequent Owners and occupants of a Unit. Each Owner and Authorized Lessee, upon acceptance of a deed or lease to a Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner's period of ownership or Authorized Lessee's tenancy, as may be appropriate. Each and every Transfer or lease of a Unit, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Restriction, even without reference to this Restriction any document of conveyance.

**ARTICLE 4**  
**NATURAL PERSONS**

4.1 Other than by the Town, the use and occupancy of a Unit shall be limited exclusively to housing for natural persons who meet the definition of Qualified Owner or Authorized Lessee.

**ARTICLE 5**  
**OWNERSHIP RESTRICTIONS**

5.1 Ownership and Occupancy Obligation.

A. Ownership of a Unit is hereby limited exclusively to a Qualified Owner, which shall include the parties described and approved as set forth in Section 5.1.B. In the event that a Unit is occupied without compliance with this Restriction, the Town shall have the remedies set forth herein, including, but not limited to, the rights under Section 8.5.

B. Upon the written consent of the Town, which consent may be recorded, a non-qualifying natural person or entity that owns and/or operates a business located in and serving the County may purchase a Unit; provided, however, that by taking title to a Unit, such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that any Owner who does not meet the definitions of both a Resident and an Eligible Household shall rent the Unit to a natural person(s) that does meet the definitions of both a Resident and Eligible Household, and shall not occupy or use such Unit for such Owner's own use or leave such Unit

vacant except as otherwise provided herein. Any occupancy of a Unit pursuant to this Section 5.1.B shall not exceed two persons per bedroom, unless the Town approves otherwise.

5.2 Sale, Resale and Lease. In the event that a Unit is Transferred or leased without compliance with this Restriction, the Town shall have the remedies set forth herein, including but not limited to, the rights set forth in Section 8.5. Except as otherwise provided herein, each and every Transfer or lease of a Unit, for any and all purposes, shall be deemed to include and incorporate the terms and conditions of this Restriction.

5.3 Compliance. Along with the recorded instrument of conveyance evidencing a Transfer of a Unit, any such Transfer of a Unit shall include a completed copy of the "Notice of Lien and Memorandum of Acceptance of Residential Housing Restriction and Notice of Lien for the Valley Brook Townhomes, Town of Breckenridge, Summit County, Colorado" attached hereto as **Exhibit D**, which copy is executed by the transferee and acknowledged by the transferee before a notary public. The instrument of conveyance evidencing such Transfer, or some other instrument referencing the same shall bear the following language followed by the acknowledged signature of the mayor or authorized officer of the Town or its designee, to wit:

"The conveyance evidenced by or referenced in this instrument has been approved by the Summit Combined Housing Authority or Town as being in compliance with the Residential Housing Restriction and Notice of Lien for the \_\_\_\_\_ Townhomes, Town of Breckenridge, Summit County, Colorado, recorded in the records of Summit County, Colorado, on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_."

Each sales contract, or lease as the case may be, for a Unit shall also (a) recite that the proposed purchaser or lessee, as applicable, has read, understands and agrees to be bound by the terms of this Restriction, and (b) require the proposed purchaser and/or lessee to submit such information as may be required by the Town, under its rules and regulations or policies adopted for the purpose of ensuring compliance with this Restriction.

5.4 Refinance Restriction. An Owner shall not encumber a Unit in a principal amount in excess of the Purchase Price.

5.5 Records and Inspection. An Owner's records with respect to the Owner's use and occupancy of a Unit shall be subject to examination, inspection and copying by the Town, or their authorized agents, upon reasonable advance notice. The Town, or its authorized agent, shall also have the right to enter into or upon a Unit for the purpose of determining compliance with the provisions of this Restriction; provided, however, that the Town, or its agent, shall first attempt to secure the permission of any occupants of the Unit prior to making entry. An Owner shall submit any information, documents or certificates requested from time to time by the Town with respect to the occupancy and use of the Owner's Unit that the Town reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Restriction. Such information shall be submitted to the Town within such reasonable time period

as the Town may establish. All lessee's of a Unit shall be bound by the terms of this Section 5.5 and shall cooperate with all requirements herein.

5.6 Relief In Extraordinary Circumstances. The Director may grant a variance, exception or waiver from the requirements of this Section 5 based upon the written request of the Owner or prospective Owner of a Unit. Such variance, exception or waiver may be granted by the Director only upon a finding that: (i) the circumstances justifying the granting of the variance, exception or wavier are unique; (ii) a strict application of this Section 5 would result in an extraordinary hardship; and (iii) the variance, exception or waiver is consistent with the intent and purpose of this Restriction. No variance, exception or wavier shall be granted by the Director if its effect would be to nullify the intent and purpose of this Restriction. In granting a variance, exception or wavier of the provisions of this Section 5 the Director may impose specific conditions of approval, and shall fix the duration of the term of such variance, exception or waiver. Any Owner or prospective Owner of a Unit who is dissatisfied with the decision of the Director with respect to a request for a variance, exception or waiver from the requirements of this Section 5 may appeal the Director's decision to the Town Council by submitting a written letter of appeal to the Town Clerk within ten (10) days of the date of the Director's decision. The Town Council shall make a final determination of such appeal within forty five (45) days after the Town Clerk's receipt of the letter of appeal.

**ARTICLE 6**  
**ORIGINAL SALE OF A UNIT**

6.1 Initial Purchase Price. Upon completion of construction of each Unit by Town, a Unit shall be sold to a Qualified Owner at a Purchase Price that is affordable. For purposes of this section, a Purchase Price shall be "affordable" if the monthly housing payment, inclusive of principal and interest on any loan, taxes, insurance, utilities and homeowners' association dues and assessments are not more than 30% of a Qualified Owner's Household income. A Household's income shall be determined in accordance with the Town's rules and regulations, as adopted and amended from time to time. At the time of the initial sale and any subsequent resale, Upper Blue Employees and Key Employees will receive priority in the purchase of the Units in accordance with the Town's rules, regulations policies and ordinances.

**ARTICLE 7**  
**USE RESTRICTIONS**

7.1 Occupancy. Except as otherwise provided in this Restriction, each Unit shall, at all times, be occupied as a principal place of residence by a Qualified Owner (along with Dependents), or as the case may be an Authorized Lessee (along with Dependents) who, at the time of purchase, or in the case of an Authorized Lessee at the time of occupancy, of a Unit, is qualified as a Resident and an Eligible Household. Notwithstanding anything contained herein to the contrary, in no event shall any Household consist of a group of four or more persons unrelated by blood, adoption or marriage.

7.2 Rental. Under no circumstances shall any Unit be leased or rented for any period of time without the prior written approval of the Town. In the event that any Unit, or any portion thereof, is leased or rented without compliance with this Restriction, the Town shall have the

remedies set forth herein, including but not limited to the rights set forth in Section 8.5. Any tenancy approved by the Town shall be to an Authorized Lessee.

7.3 Vacancy. In the event that a Qualified Owner ceases to occupy a Unit as his or her principal place of residence for a period of ninety (90) consecutive days (as reasonably determined by the Town), or any non-qualified Owner permitted to purchase a Unit as set forth in Section 5.1.B leaves a Unit unoccupied by an Authorized Lessee for a period of ninety (90) consecutive days (as reasonably determined by the Town), the Town may, in its sole discretion and in addition to any other remedies the Town may have hereunder, determine that the Unit shall be offered for sale pursuant to the provisions of Section 8.5 or require the Qualified Owner or non-qualified Owner to rent the Unit to an Authorized Lessee.

7.4 Ownership Interest in Other Residential Property. Except with respect to a non-qualified Owner permitted to purchase a Unit as set forth in Section 5.1.B, if at any time the Owner also owns any interest alone or in conjunction with others in any other developed residential property in the County, the Owner shall immediately list such other property interest for sale and sell his or her interest in such property. In the event said other property has not been sold by the Owner within one hundred twenty (120) days of its listing required hereunder, then the Owner shall immediately list his or her Unit for sale pursuant to Section 8.5 of this Restriction. It is understood and agreed between the parties hereto that, in the case of an Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties that constitute inventory in such Owner's business shall not constitute "other developed residential property" as that term is used in this Section 7.4.

## **ARTICLE 8**

### **RESALE OF A UNIT**

8.1 Resale. No Unit shall be Transferred subsequent to the original purchase from Town except upon full compliance with the procedures set forth in this Article 8.

8.2 Notice. In the event that an Owner shall desire to Transfer a Unit, or in the event that an Owner shall be required to Transfer such Unit pursuant to the terms of this Restriction, the Owner shall notify the Town, or such other person or entity as may be designated by the Town, in writing of Owner's intention to Transfer such Unit. The Unit shall be offered, advertised, or listed for sale by such Owner through SCHA, as exclusive listing agent, for a commission equal to 2.0% of the sales price, which commission shall be paid by the Owner. The Unit shall not, however, be Transferred to (i) any person, entity, or entities other than a Qualified Owner, and (ii) for consideration to be paid by such Qualified Owner that exceeds the Maximum Resale Price as such is determined pursuant to the provisions of this Article 8.



8.3 Maximum Resale Price.

A. The Maximum Resale Price of a Unit may not exceed the lesser of:

1. the Purchase Price paid by the Owner for the Unit, plus: (i) an increase of three percent (3%) of such Purchase Price per year (prorated at the rate of 1/12 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; (ii) plus capital improvements made by the Owner (if such improvements are approved by the Town); (iii) plus sales commissions paid by the Owner to procure a ready, willing and able purchaser of the Unit if such sales commission is approved by the Town; and (iv) plus any accrued negative amortization if the Unit was financed with a graduated payment mortgage; or
2. the Purchase Price paid by the Owner for the Unit, plus: (i) 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; (ii) plus capital improvements made by the Owner (if such improvements are approved by the Town); (iii) plus sales commissions paid by the Owner to procure a ready, willing and able purchaser of the Unit if such sales commission is approved by the Town; and (iv) plus any accrued negative amortization if the Unit was financed with a graduated payment mortgage.

B. Each Owner shall be responsible for ensuring that at the Transfer of his or her Unit, the same is clean, the appliances are in working order, and that there are no health or safety violations regarding such Unit. During the period of the listing contract, the Town is authorized to take necessary actions and incur necessary expenses for bringing the relevant Unit into saleable condition. Such actions and expenses include, but are not limited to, cleaning the Unit and making necessary repairs to or replacements of appliances and/or Unit fixtures, such as windows, doors, cabinets, countertops, carpets, flooring and lighting fixtures, and/or correcting any health or safety violations on such Unit. Expenses incurred by the Town to bring a Unit into a saleable condition shall be itemized and documented by the Town and deducted from Owner's proceeds at closing of the Transfer of such Unit.

C. No Owner shall permit any prospective buyer to assume any or all of the Owner's customary closing costs.

D. Nothing in this Restriction represents or guarantees that a Unit will be re-sold at an amount equal to the Maximum Resale Price. Depending upon conditions affecting the real estate market, the Unit may be re-sold for less than the Maximum Resale Price.

8.4 Non-Qualified Transferees. In the event that title to a Unit vests in a Non-Qualified Transferee by descent, by foreclosure and/or redemption by any lien or mortgage holder (except any holder of a HUD-insured First Mortgage), or by operation of law or any other event, the Town may elect to notify the Non-Qualified Transferee that it must sell the Unit in accordance with Section 8.5. The Non-Qualified Transferee(s) shall not: (i) occupy a Unit; (ii) rent all or any part of a Unit, except in strict compliance with this Restriction; (iii) engage in any business activity on or in a Unit; (iv) sell or otherwise Transfer a Unit except in accordance with this Restriction; or (v) sell or otherwise Transfer a Unit for use in trade or business.

8.5 Sales to Preserve Unit as Affordable Housing.

A. In the event a Unit is occupied, used, transferred, leased, or rented in violation of this Restriction, or whenever the provisions of this Section 8.5 are expressly made applicable by any section or provision of this Restriction, the Town may, at its sole discretion, notify an Owner that it must immediately list the Unit for sale (including the execution of a listing contract with, and the payment of the specified fees) by the SCHA. The highest bid by a Qualified Owner for not less than ninety-five percent (95%) of the Maximum Sale Price shall be accepted by the Owner; provided, however, if the Unit is listed for a period of at least ninety (90) days and all bids are below ninety-five percent (95%) of the Maximum Sale Price, the Unit shall be sold to a Qualified Owner that has made the highest offer for at least the appraised market value of the Unit, as determined by the Town in its reasonable good faith judgment, after such ninety (90) day period.

B. If required by the Town, the Owner shall: (i) consent to any sale, conveyance or transfer of such Unit to a Qualified Owner; (ii) execute any and all documents necessary to do so; and (iii) otherwise reasonably cooperate with the Town to take actions needed to accomplish such sale, conveyance or transfer of such Unit. For this purpose Owner constitutes and appoints the Town its true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions required under this Section 8.5.B. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees that all power granted to the Town under this Restriction may be assigned by it to its successors or assigns.

C. In order to preserve the affordability of the Units for persons of low to moderate income, the Town, or its respective successor, as applicable, shall also have and is hereby granted the right and option to purchase a Unit, exercisable within a period of fifteen (15) calendar days after notice is sent by the Town to the Owner that requires the Owner to sell the Unit pursuant to this Section 8.5. The Town shall complete the purchase of such Unit within thirty (30) calendar days after exercising its option hereunder for a price equal to the lesser of the appraised market value of the Unit, as determined by the Town in its reasonable good faith judgment, or the Maximum Sale Price. The Town may assign its option to purchase hereunder to an eligible purchaser that, for the purpose of this Section 8.5(c), shall be a Qualified Owner.

D. In all situations in which the provisions of this Section 8.5 apply, the Town may alternatively require the Owner to rent a Unit to an Authorized Lessee in accordance with the requirements of this Restriction.

**ARTICLE 9**  
**FORECLOSURE**

9.1 Release. Notwithstanding anything herein to the contrary, this Restriction shall be deemed released as to a Unit in the event of (i) the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Unit in connection with a foreclosure by the holder of a HUD-insured First Mortgage, or (ii) the acceptance of a deed in lieu of foreclosure by the holder of a HUD-insured First Mortgage. This Restriction shall also automatically terminate and be released as to a Unit upon the assignment to HUD of an HUD-insured mortgage encumbering a Unit. The Town, in its sole discretion, may elect to release a Unit from this Restriction in the event of (1) the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Unit in connection with a foreclosure of the Town's Lien, as defined in Section 9.2, or (2) the acceptance of a deed in lieu of foreclosure by the Town in connection with the Town's Lien. If the Town chooses to terminate this Restriction with respect to a particular Unit, the Town shall record a document referencing such termination in the real property records of the County. Any and all claims of the Town available hereunder against the Owner personally shall survive any release or termination of this Restriction.

9.2 Lien.

A. The Town shall have, and is hereby granted, a lien against a Unit ("Town's Lien") to secure payment of any amounts due and owing the Town pursuant to this Restriction including, but not limited to, all sales proceeds over and above the Maximum Sales Price. The Town's Lien on the respective Unit shall be superior to all other liens and encumbrances except the following:

- (1) liens and encumbrances recorded prior to the recording of this Restriction;
- (2) real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts;
- (3) liens given superior priority by operation of law; and
- (4) the lien of any First Mortgage against such Unit.

B. Recording of this Restriction constitutes record notice and perfection of the Town's Lien. No further recordation of any claim of lien is required. However, the Town may elect to prepare, and record in the office of the County Clerk and Recorder of the County, a written notice of lien. By virtue of the Town's Lien, the Town shall have all of the rights that a mortgage holder may have against a Unit, including, but not limited to, the right to judicially foreclose upon a Unit. The Town shall be entitled to file such notices and other information necessary to preserve its rights, as a lienor, to cure and redeem in foreclosure of a Unit, as provided by C.R.S. . §38-38-101 et seq. In addition, unless otherwise instructed by the Town in writing, the Owner shall sign, acknowledge, and cooperate in the Town's recording in the County Clerk and Recorder's Office immediately subsequent to the recording of the First Mortgage, a notice of the Town's Lien, substantially in the form attached hereto as **Exhibit D**, in order to assure that the Town receives notice in the event of the foreclosure of the First Mortgage pursuant to this Article. The notice shall not alter the priority date of the Town's Lien as established herein.

C. The sale or other Transfer of a Unit shall not affect the Town's Lien. No sale or deed in lieu of foreclosure shall relieve the Owner from continuing personal liability for payment of his or her obligations hereunder. The Town's Lien does not prohibit actions or suits to recover sums due pursuant to this Restriction, or to enforce the terms of this Restriction, or to prohibit the Town from taking a deed in lieu of foreclosure.

D. Upon request, the Town shall agree to subordinate the Town's Lien to a bona fide mortgage or deed of trust provided that the total principal indebtedness secured by those mortgages or deed or trust with priority over the Town's Lien shall not exceed one hundred percent (100%) of the current allowed Maximum Resale Price under this Restriction as of the date of subordination. To the extent that **Exhibit D** is inconsistent with this provision, the provisions of this Section 9.2.D. shall control.

### 9.3 Town's Option to Redeem.

A. Notice of Default to Town. Within ten (10) days after Owner's receipt of any notice of default from a Mortgagee or the home owner's association governing the Units, the Owner shall give written notice of such default to the Town.

B. Foreclosure/Town's Option to Redeem. In the event of a foreclosure of a First Mortgage or the assessment lien of the home owner's association governing the Units, the Town shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of a Unit that are junior to the First Mortgage (as provided in C.R.S. §38-38-101 et seq., or any succeeding statute). The Town shall have a right of redemption, and such other rights as a lienor in foreclosure, as its interest appears, in accordance with Colorado law governing foreclosure. The Town's lien is created pursuant to Section 9.2.

C. Upon Exercising Option. In the event that the Town obtains title to a Unit pursuant to this Article 9, the Town or its designee may sell such Unit to a Qualified Owner, or rent such Unit to an Authorized Lessee until such time that such Unit can be sold to a Qualified Owner. In the Town's sole discretion, the Town's subsequent sale of such Unit in these circumstances shall not be subject to the Maximum Sale Price restrictions set forth in Article 8 hereof.

9.4 Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Restriction shall 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 rules imposing like or similar time limits, then such provision shall continue only for the shorter of (x) the term of this Restriction, or (y) the period of the lives of the current duly elected and seated members of the Town Council, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

**ARTICLE 10**  
**Enforcement**

10.1. Enforcement of This Restriction. The Town and each Owner hereby grants and assigns to the Town the right to review and enforce compliance with this Restriction. Compliance may be enforced by the Town by any lawful means, including without limitation, seeking any equitable relief (including, without limitation, specific performance and other equitable relief as set forth in Section 10.2 below ), as well as a suit for damages; provided, however, in the event a Unit is financed by a HUD-insured First Mortgage and is sold in violation of Section 8.3 hereof, such enforcement shall not include:

- a. acceleration of a mortgage;
- b. voiding a conveyance by an Owner;
- c. terminating an Owner's interest in a Unit; or
- d. subjecting an Owner to contractual liability.

Notwithstanding the foregoing, in no event shall the Town have any equitable remedies (including, but not limited to, the right to sue for specific performance or seek other equitable relief as set forth in Section 10.2) or the right to sue for damages if the Owner of a Unit that was financed with a HUD-insured First Mortgage breaches or violates the terms, covenants and other provisions of Section 8.3 hereof and if to do so would violate any existing or future requirement of HUD, it being understood, however, that in such event, the Town shall retain all other rights and remedies hereunder for enforcement of any other terms and provisions hereof, including, without limitation: (i) the right to sue for damages to reimburse the Town, or its agents, for its enforcement costs and to require an Owner to repay with reasonable interest (not to exceed ten percent (10%) per annum) any assistance received in connection with the purchase of a Unit; (ii) the right to prohibit an Owner from retaining sales or rental proceeds collected or received in violation of this Restriction; and (iii) the option to purchase granted to the Town in Section 8.5(c) hereof. Venue for a suit enforcing compliance shall be proper in the County and service may be made or notice given by posting such service or notice in a conspicuous place on the applicable Unit. As part of any enforcement action on the part of the Town, the applicable Owner shall pay all court costs and reasonable legal fees incurred by the Town, or its agents, in connection with these claims, actions, liabilities or judgments, including an amount to pay for the time, if any, of the Town's, or its agents, attorney spent on such claims at the rates generally charged for similar services by private practitioners within the County.

10.2 Injunctive and other Equitable Relief. Each Owner agrees that in the event of his or her default under or non-compliance with the terms of this Restriction, the Town shall have the right to seek such equitable relief as it may deem necessary or proper, including, without limitation, the right to: (a) seek specific performance of this Restriction; (b) obtain a judgment from any court of competent jurisdiction granting a temporary restraining order, preliminary injunction and/or permanent injunction; and (c) set aside or rescind any sale of a Unit made in violation of this Restriction. Any equitable relief provided for in this Section 10.2 may be sought singly or in

combination with such legal remedies as the Town may be entitled to, either pursuant to this Restriction, under the laws of the State of Colorado or otherwise.

## **ARTICLE 11**

### **GENERAL PROVISIONS**

11.1 Equal Housing Opportunity. Pursuant to the Fair Housing Act and the Town's public policy, the Town shall not discriminate on the basis of race, creed, color, sex, national origin, familial status, disability or sexual orientation in the lease, sale, use or occupancy of a Unit.

11.2 Rules, Regulations, and Standards. The Town 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.

11.3 Waiver of Exemptions. Every Owner, by taking title to a 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 Property under state or federal law presently existing or hereafter enacted.

11.4 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 Town that such invalidated provision be severable.

11.5 Term. Subject to Section 9.4 and the other termination or release provisions contained herein, the restrictions contained herein shall run with the land and bind the land in perpetuity.

11.6 Amendment. This Restriction may be amended only by an instrument recorded in the records of the County executed by the Town and the then-Owner of a Unit; provided, however, the Town reserves the right to unilaterally amend this Restriction without the approval or consent of any Owner, Mortgagee, or any other person or entity for the purpose of either: (a) making non-material changes (such as for correction of technical, typographical, or clerical errors), or for clarification of a statement; or (b) without regard to (a), if such amendment lessens the ownership, use, sales and lease restrictions placed upon the Owners as provided herein. The Town may unilaterally execute and record such amendments at any time.

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

11.8 No Third Party Beneficiaries. This Restriction is made and entered into for the sole protection and benefit of the Town, the SCHA and the Owner. Except as otherwise specifically provided for herein, no other person, persons, entity or entities, including without limitation prospective buyers of a Unit, shall have any right of action with respect to this Restriction or right to claim any right or benefit from the terms provided in this Restriction or be deemed a third party beneficiary of this Restriction.

11.9 Non-Liability. The Town and its respective employees, members, officers and agents shall not be liable to any Owner or third party by virtue of the exercise of their rights or the

performance of their obligations under this Restriction. The parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this Restriction, the monetary limitations or any other rights, immunities or protections afforded by the Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as they may be amended, or any other limitation, right, immunity or protection otherwise available to the parties.

11.10 Exhibits. All exhibits attached hereto are incorporated herein and by this reference made part hereof.

11.11 Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and use of the singular shall include the plural and vice versa.

11.12 Personal Liability. Each Owner shall be personally liable for any of the transactions contemplated herein, jointly and severally with his or her co-owners.

11.13 Further Actions. The Owner and Owner's successors and assigns agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Restriction or any agreement or document relating hereto or entered into in connection herewith.

11.14 Notices. Any notice, consent or approval that 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 Town:                                 Town of Breckenridge  
   P.O. Box 168  
   Breckenridge, CO 80424  
   Attention: Town Manager

To an Owner:                             The address for an Owner shall be determined pursuant to the Notice of Lien and Memorandum of Acceptance (as shown on **Exhibit D**) recorded with respect to each transfer of a Unit.

11.15 Choice of Law. This Restriction and each and every related document shall be governed and constructed in accordance with the laws of the State of Colorado, exclusive of its conflict of law rules.

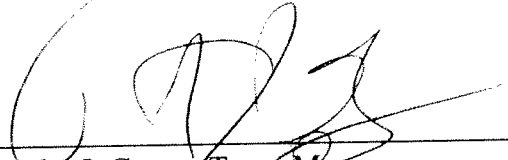
11.16 Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

11.17 Headings. Article and Section headings within this Restriction are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

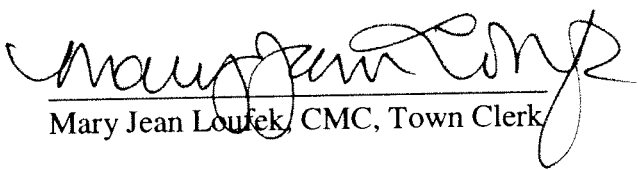
11.18 Signatures. Signatures to this Restriction may be in counterparts and by facsimile or scanned emailed document.

IN WITNESS WHEREOF, the undersigned, has set its hand unto this Restriction this 4TH day of AUGUST, 2010.

TOWN OF BRECKENRIDGE

By:   
Timothy J. Gagen, Town Manager

ATTEST:

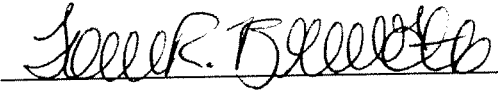
  
Mary Jean Loufek, CMC, Town Clerk

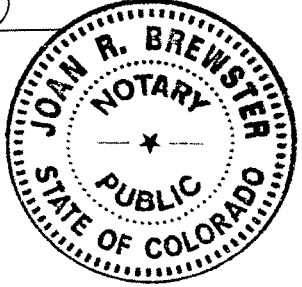
STATE OF COLORADO    )  
  ) ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this 4th day of August, 2010, by Timothy J. Gagen, Town Manager, and Mary Jean Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: 5/3/2011.

Notary Public 



My commission expires: **May 3, 2011**



**EXHIBIT A**

**Property**

**TRACTS 1, 2, and 3 VALLEY BROOK SUBDIVISION, TOWN OF  
BRECKENRIDGE, COUNTY OF SUMMIT AND STATE OF  
COLORADO, ACCORDING TO THE PLAT RECORDED  
August 5, 2010 UNDER RECEPTION NO. 943931 OF  
THE RECORDS OF THE CLERK AND RECORDER OF SUMMIT  
COUNTY, COLORADO**

**EXHIBIT B**

**80% Households**

**Units 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 20, 21, 28, 31, 32, 33, 35, 36, 37, 40, 41, 42**

**EXHIBIT C**

**120% Households**

**Units 7, 8, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 29, 30, 34, 38, 39**



**EXHIBIT D**  
**NOTICE OF LIEN AND MEMORANDUM OF ACCEPTANCE**  
**OF**  
**RESIDENTIAL HOUSING RESTRICTION AND NOTICE OF LIEN**  
**FOR THE VALLEY BROOK TOWNHOMES**  
**TOWN OF BRECKENRIDGE, 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 Restriction and Notice of Lien for the \_\_\_\_\_ Townhomes, Summit County, Colorado," recorded on \_\_\_\_\_, 200\_\_\_\_, under Reception No. \_\_\_\_\_, in the real property records of the County of Summit, Colorado (the "Restriction").

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

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

2. Agrees to be bound by and to comply with the terms, conditions and requirements of the Restriction.

3. Acknowledges that the Restriction creates a lien on the Unit in favor of the Town of Breckenridge, Colorado, which may be foreclosed upon the occurrence of certain events, as more particularly described in the Restriction.

4. States that the Notice to Buyer should be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. 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 Town of Breckenridge, Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BUYER(S):

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_