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AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

THIS AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT ("Restrictive Covenant" or "Agreement" to be used intermittently herein) is made and entered into at Breckenridge, Colorado this 25th day of June, 2002, by and between Summit County Housing Authority, a political subdivision of the State of Colorado ("Developer" or "Housing Authority" to be used intermittently herein) and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town").

RECITALS

A. Developer is owner of record of the real property situate in the County of Summit and State of Colorado and described in **Exhibit A** attached hereto and incorporated herein by this reference ("Property").

B. Town has previously agreed to the annexation of the Property and to concomitantly issue to Developer Development Permit No. 2001011, ("Development Permit") for the Development of said Property.

C. It is a condition of the Annexation Agreement and the Development Permit that the Developer create a valid and enforceable covenant running with the land which assures that the residential units to be developed on the Property will be used solely by Qualified Occupants, as defined herein, subject to such limited exceptions as are provided for herein.

D. Under this Restrictive Covenant Developer 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 covenants running with the land and are intended to be and shall be binding upon the Developer and all subsequent owners of such units for the stated term of this Restrictive Covenant, unless and until this Restrictive Covenant is released and terminated by the Town and the Housing Authority in the manner hereafter described.

E. The parties acknowledge that by entering into this Covenant the Town has acted in its proprietary capacity for the management of the Project in which it has an interest, and for the private advantage of its residents and for itself as a legal entity. Similarly, the parties acknowledge that by entering into this Covenant the Housing Authority has acted in its proprietary capacity for the management of the Project in which it has an interest, and for the private advantage of its constituents and for itself as a legal entity.

NOW, THEREFORE, in satisfaction of the conditions in the Annexation Agreement and Development Permit and in consideration of the issuance of the Development Permit, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Developer and the Town, the Developer and the Town agree as follows:

AGREEMENT

ARTICLE I DEFINITIONS

As used in this Restrictive Covenant:

A. "*AMI*" means the annual median income for Summit County, Colorado as determined by the United States Department of Housing and Urban Development from time to time, or such successor index or figure as said Department may establish.

B. "*Affordability Restrictions*" means, collectively, the Ownership Restrictions, Occupancy Restrictions and Resale Restrictions which shall apply to units developed on the Property.

C. "*Occupancy Restrictions*" means those restrictions on the occupancy of the Units as set forth in Section 3 hereof.

D. "*Ownership Restrictions*" means those restrictions on the ownership of the Units as set forth in Section 2 hereof.

E. "*Permitted Improvements*" means the addition of a garage or storage space to a Residential Unit or the improvement of unfinished space in a Residential Unit allowed to be finished and occupied pursuant to the Building Code of the Town of Breckenridge in effect at the time of such improvement, but does not include any other improvements, upgrades or work on or expenses incurred in connection with the Residential Unit.

F. "*Project*" means the affordable housing development to be constructed on the Property, consisting of: up to forty (40) Residential Units subject to the Affordability Restrictions, collectively to be known as Gibson Heights.

G. "*Property*" means any and all interests, either partial or in the entirety, in the real property located in the County of Summit and State of Colorado, as further described on **Exhibit A** attached hereto, against which this Covenant shall be recorded.

H. "*Qualified Occupant*" means a natural person or persons 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 an average of at least thirty (30) hours per week.

I. "*Resale Restrictions*" means those restrictions which shall apply to the subsequent resale of any Residential Unit by the existing Unit Owners of such unit as set forth in Article IV hereof.

J. "*Residential Unit*" means a physical portion of the Project to be constructed for purposes of residential use only and to be created as a separate transferrable real property interest by the filing of subdivision plat(s), condominium map(s) or similar plat(s) or map(s) for some or all of the Property, and does not mean or include any physical portion of the Project constructed for purposes of commercial use.

K. "Unit Owner" means any Qualified Occupant who at any time takes and holds title to a Residential Unit, but shall not include any entity, whether a corporation, partnership, limited liability company or similar entity which is not a natural person or an individual, except the Town of Breckenridge or the Summit County Housing Authority. Such natural person or persons shall be deemed a "Unit Owner" hereunder only during the period of his, her or their ownership interest in the Residential Unit. "Unit Owner" shall not include a person or entity having an interest in a Residential Unit solely as security for the performance of an obligation. At the time of purchase of a Residential Unit, the Unit Owner's gross annual household income cannot exceed 80% of the area median income for the appropriate household size. All prospective purchasers must submit evidence of employment and income to the Town or its designee for review and approval. This "income test" applies only to the time of purchase of the unit by a Unit Owner and is not intended to discourage career advancement or additional earnings after the time of purchase. There is no additional "income test" applied to a Unit Owner after the Unit Owner's purchase of the unit, for the duration of their ownership of the unit.

ARTICLE II OWNERSHIP RESTRICTION

Title to each Residential Unit shall be taken and held only in the name of a Unit Owner, except in the event title is transferred by means of a public trustee's, treasurer's, or sheriff's deed, or by a deed in lieu of foreclosure of a deed of trust or mortgage, in which case such an entity shall take, hold and transfer title subject to the terms and conditions of this Restrictive Covenant, including specifically, but not limited to, the Resale Restrictions and the Occupancy Restrictions.

ARTICLE III. OCCUPANCY RESTRICTION

A. **General Restriction.** Except as expressly provided in Subsection III.C hereof, each Residential Unit shall be used and occupied only by Unit Owners, and any other spouse, domestic partner, family member or other Qualified Occupants, and by no one else. The use and occupancy of the Units shall be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers or Qualified Occupants subject to all occupancy restrictions set forth by rules and regulations of the Town of Breckenridge.

B. **Specific Restrictions.** At all times relevant hereto, a Unit Owner shall:

1. occupy the Unit as his or her sole place of residence, except as otherwise provided herein;
2. not engage in any business activity on or in such Unit, other than permitted in the applicable zone district or by applicable ordinance;
3. sell or otherwise transfer such Unit only in accordance with this Agreement;
4. not sell or otherwise transfer such Unit for use in a trade or business;
5. not permit any use or occupancy of such Unit except in compliance with the Agreement; and
6. not encumber the Unit in an amount in excess of the purchase price.

C. Exceptions. Notwithstanding the provisions of the preceding Subsection 3.A., it shall not be a violation of this Covenant if: (i) rooms within a Residential Unit are rented to Qualified Occupants sharing the Residential Unit with the Unit Owner; (ii) a Residential Unit is rented for use and occupancy as Employee Housing for a maximum cumulative total of twelve (12) months during the time of ownership by a Unit Owner; (iii) a Residential Unit is owned or occupied by 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 ownership or occupancy of the Residential Unit, together with such person's spouse and minor children, if any; (iv) a Residential Unit is owned or occupied by a person otherwise authorized to own or occupy the Residential Unit pursuant to this Restrictive Covenant who becomes disabled after commencing ownership or occupancy of the Residential Unit such that he or she cannot work the required number of hours each week required by this Restrictive Covenant, provided, however, that such person shall be permitted to own or rent the Residential Unit for a maximum period of one (1) year following the commencement of such person's disability unless a longer period of ownership or occupancy is authorized by the Town; and (v) guests visiting a Qualified Occupant and paying no rent or other consideration.

ARTICLE IV. VOLUNTARY RESALE RESTRICTIONS

A. Unit Owners must notify, in writing, the Town and Developer of all resales of any and all units prior to making such unit available for resale through any means.

B. Resale Price Limit. The total price for which a Residential Unit may be sold by a Unit Owner shall be the total of:

- (i) *Purchase Price*. The selling Unit Owner's purchase price; and
- (ii) *Permitted Improvements*. The cost of Permitted Improvements to any Residential Unit made within five (5) years of the date of the purchase by the first Unit Owner of each such Residential Unit from Developer, provided, however, that in no event shall said additional amount hereunder exceed cumulatively fifteen percent (15%) of the original purchase price for such Residential Unit paid by the first Unit Owner to the Developer. In calculating the cost of such improvements for purposes of resale price calculation under this Subsection, only a Unit Owner's actual out-of-pocket costs and expenses for labor and materials 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). A Unit Owner must submit to the Town a copy of a development or other permit and a certificate of occupancy or compliance for the Permitted Improvements and copies of invoices, receipts or other similar evidence of the costs and expenses for labor and materials or materials alone on or before the end of five (5) years from the date of the purchase of a Residential Unit by the first Unit Owner from Developer. The Town shall provide each Unit Owner making a proper submission for Permitted Improvements with a receipt or certificate verifying the amount of such Permitted Improvements and, after such receipt or certificate is issued to a Unit Owner by the Town, no subsequent Unit Owner may challenge the verified amount for those Permitted Improvements.

The sum of the foregoing Subsections IV.B.(i) and (ii) shall be referred to the “Base Price Limit” for any applicable unit.

C. Adjustment to Price Limit. The amount of the Base Price Limit determined in accordance with the preceding Subsection IV.B may be increased by the addition of a cost of living appreciation (“COLA”). Said appreciation shall be determined by multiplying the Price Limit times the lesser hereof:

(i) The Base Price Limit times the percentage determined by multiplying one-quarter of one percent (0.25%) times the number of whole months from the date of a Unit Owner’s purchase to the date of a Unit Owner’s sale of the Residential Unit; or

(ii) The Base Price Limit times the percentage determined by dividing the amount equal to 100% of AMI most recently released prior to a Unit Owner’s sale by the amount equal to 100% of AMI in effect at the time of a Unit Owner’s Purchase.

(iii) The resale price so calculated by adding such COLA to the Base Price Limit shall be the “Adjusted Price Limit”. The sales price of any unit at resale shall not exceed such Adjusted Price Limit under any circumstances. NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE TOWN, THE DEVELOPER, OR ANY OTHER PARTY, THAT THE UNIT OWNER WILL BE ABLE TO OBTAIN THE MAXIMUM SALE PRICE, AND THE TOWN AND DEVELOPER HEREBY DISCLAIM ANY SUCH REPRESENTATION OR WARRANTY THAT MIGHT OTHERWISE BE ALLOWED OR ATTRIBUTED.

D. Resale Procedure. Any subsequent purchaser must be deemed eligible, by the Town or its designee, to purchase the unit in accordance with the restrictions set forth herein. The prospective purchaser must submit satisfactory evidence of work and income to the Town or its designee for review and approval. The costs for such review and approval shall be borne by the Unit Owner selling the Unit.

E. Housing Authority as Listing Agent. If the Unit Owner wishes the Summit Housing Authority (SHA) to act as listing agent on the resale of the Unit, then after execution of the SHA’s Listing Contract naming the SHA as exclusive listing agent, the SHA may review potential purchaser’s qualifications within the scope of the Listing Contract.

F. Appreciating Limiting Promissory Note and Deed of Trust. At the time of each sale of a Residential Unit, beginning with the first such sale by Developer to a Unit Owner, the purchaser(s) of each Residential Unit shall execute an Appreciating Limiting Promissory Note in the form attached hereto as **Exhibit B** (“Note”) and a form of Deed of Trust to a public trustee encumbering the Residential Unit to secure strict compliance with the terms of the Note, containing a strict due on sale provision and acceptable to the Town Attorney of the Town (“Deed of Trust”). At the time of each closing of the transfer of title to a Residential Unit, a new Note shall be executed by the purchaser(s) and delivered to the Town and a Deed of Trust shall be executed by the purchaser(s) and recorded in the Summit County, Colorado real estate

records. At the time of closing of each transfer of title to a Residential Unit subsequent to the first transfer by Developer, the Adjusted Price Limit shall be determined by the Town in accordance with this Section 4. The Town shall mark each Note as paid and execute a request for release of deed of trust on verification to the Town, by the title company or other independent agent responsible for closing on the transfer of title to a Residential Unit, that the amount paid for the purchase of the Residential Unit does not exceed the Adjusted Price Limit or that, if the price exceeds the Adjusted Price Limit, the amount of such excess will be paid to the Town. If title to a Residential Unit is transferred without obtaining the release of a Deed of Trust securing a Note in favor of the Town, the Town, among other rights available to it, shall have the right to foreclose said Deed of Trust.

ARTICLE V REMEDIES

A. Records; Inspection; Monitoring.

1. The Developer's records with respect to the use and occupancy of the Property shall be subject to examination, inspection and copying by the Town or its authorized agent upon reasonable advance notice. The Town or its authorized agent shall also have the right to enter into the Property for the purpose of determining compliance with the provisions of this Restrictive Covenant; provided, however, that the Town or its agent shall first attempt to secure the permission of any occupants of the Property prior to making entry.

2. The Developer shall submit any information, documents or certificates requested from time to time by the Town with respect to the occupancy and use of the Property which the Town reasonably deems necessary to substantiate the Developer's continuing compliance with the provisions of this Covenant. Without limiting the generality of the foregoing, not later than December 31st of each year the Developer shall submit to the Town verification, under oath, of Developer's continuing compliance with the provisions of this Covenant.

B. Default; Notice. In the event of any failure of the Developer, or any successor, assign, grantee or other party in subsequent interest to any part or the entirety of the Property, either through ownership of a Residential Unit or through any other means whatsoever, to comply with the provisions of this Restrictive Covenant, the Town may inform the Developer or such other defaulting party by written notice of such failure and provide the Developer a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of the Town within the period of time specified by the Town, which shall be at least thirty (30) days after the date any such notice is mailed, or within such further time as the Town determines is necessary to correct the violation, but not to exceed any limitation set by applicable law, the Town may without further notice declare a default under this Restrictive Covenant effective on the date of such declaration of default; and the Town may then proceed to enforce this Restrictive Covenant as hereafter provided.

- C. All Remedies Available. The Town shall have any and all remedies provided by law for violation or other breach of this Agreement or any of its terms, including but not limited to specific performance, an injunction requiring sale of the Unit by the Unit Owner as set forth in Article VI of this Agreement or as may be otherwise provided hereunder, reversion, or eviction of non-complying Unit Owners and/or occupants. The costs to the Town of any such sale or other activity taken in response to such violation or breach, including attorney fees, shall be taxed against the proceeds of the sale of the Unit, with the balance being paid to the Unit Owner. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorney fees.
- D. Notice of Violation and Hearing. In the event a violation of this Agreement is discovered, the Town shall send a notice of violation to the Unit Owner as contemplated in subsection V.B above. Said notice shall state that the Unit Owner may request a hearing before the Town within thirty (30) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the thirty (30) day period, the Unit Owner shall be considered in violation of this Agreement. If a hearing is held before the Town, the decision of the Town based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.
- E. Equitable Relief. Developer agrees that in the event of default or non-compliance with the terms of this Restrictive Covenant, by Developer or any successor, assign, grantee or other party in subsequent interest to any part or the entirety of the Property, the Town shall have the right of specific performance of this Restrictive 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 Subsection may be sought singly or in combination with such legal remedies as the Town may be entitled to, either pursuant to the provisions of this Restrictive Covenant or under the laws of the State of Colorado.
- F. Liquidated Damages. The Developer acknowledges that the unavailability of adequate employee housing within the Town of Breckenridge requires the expenditure of additional Town funds to provide required governmental services and thereby results in an economic loss to the Town. The Town and the Developer further recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Town in such circumstance. Accordingly, instead of requiring such proof, Town and Developer agree that any Unit Owner in default at any time shall pay to Town the sum of \$100 per day for each day in which the Property is not used in strict compliance with the provisions of Article III of this Covenant. Such amount is agreed to be a reasonable estimate of the actual damages which the Town would suffer in the event of a violation of Article III of this Covenant. The provisions of this Subsection shall not apply to any violation of this Covenant other than a violation of Article III. The liquidated damages provided herein shall commence as of the date on which the Property is first used in violation of Article III of this Restrictive Covenant, and not on the date when the Town learns of such violation or on the date when the Town gives notice of default as provided herein. Further, the total amount of liquidated damages payable to

the Town under this Subsection shall in no event exceed the then-current value of the Property. The liquidated damages provided for in this Subsection may be collected personally from the Unit Owner by the Town, either singly or in combination with an action for equitable enforcement of this Covenant as provided in this Restrictive Covenant.

- G. Specific remedy of involuntary sale. In addition to, and not in abrogation of, the other rights and remedies set forth herein, the Town shall also have the specific remedy of involuntary sale for violations of this covenant, as set forth in Article VI, Involuntary Resale Remedies, directly hereunder.

ARTICLE VI INVOLUNTARY RESALE REMEDIES

- A. Involuntary sale or cure upon default of mortgage, property taxes, or other relevant liens.

1. Mortgage Default. It shall be a breach of this Agreement for an Owner to default in payment or other obligations to a Mortgagee. Unit Owners must notify the Town in writing, within five (5) calendar days of the Unit Owner's notification from a Mortgagee, of any notification from such Mortgagee of past due payments or default in payment or other obligations due or to be performed under a Mortgage. Unit Owners who take title to a unit subject to a FHA loan are required to instruct such lending institution to copy the Town and the Summit Housing Authority directly on all notices of past due payment or default.
2. Tax Lien Default. It shall be a breach of this Agreement for a Unit Owner to default in payment or other obligations with regards to property taxation of a Unit, including without limitation ad valorem taxes, special district assessments, homeowner's association debts, or any other debts or payments due of any kind which would allow a lien against the property which could result in the unilateral divestment of the unit held by the Unit Owner. Unit Owners must notify the Town in writing, within five (5) calendar days of the Unit Owner's notification from the Summit County Treasurer, Summit County Public Trustee, or any other applicable entity, of past due payments or default in payment or other obligations due or to be performed under any such obligation.
3. Sale Upon Breach. Upon notification from an Unit Owner, as provided in Sections VI.A.1 or 2 above, or other notice of such default, the Town, at its sole discretion, may offer loan counseling or distressed loan services to the Unit Owner, if any of these services are available. In the alternative, the Town may require the Unit Owner to sell the Unit to avoid the commencement of any foreclosure proceeding against the Unit.
4. Town's Right to Cure. Upon receipt of notice regarding a default in the Mortgage as provided in Sections VI.A.1 or 2 above, the Town shall have the additional right, in its sole discretion, to directly cure the default or any portion thereof. In such event,

the Unit Owner shall be required to execute a promissory note ("Town Note") in favor and to the order of the Town for the amount expended by the Town to cure the default, including attorneys' fees and costs incurred by the Town, and any future advances made for such purposes, plus a deed of trust securing such payments as so rendered, encumbering the Unit in favor and for the use and benefit of the Town. The Unit Owner shall be personally liable to the Town for, and the amount of the Town Note shall reflect, all payments made by the Town to cure the default, all actual expenses of the Town incurred in curing the default, including attorneys' fees and costs made or incurred by the Town, plus an amount equal to one percent (1%) of the costs so expended, together with interest thereon at the rate specified in the Town Note. The Unit Owner may cure the default and satisfy its obligation to the Town under this Subsection at any time prior to execution of a contract for sale of the Unit to a Qualified Buyer. Otherwise, the Unit Owner's indebtedness to the Town shall be satisfied from the Unit Owner's proceeds from the sale of the Unit at the closing thereof.

- B. Involuntary Sale Upon Change in Residence. In the event a Unit Owner changes residence or ceases to utilize the Unit as his or her exclusive and permanent place of residence, as determined by the Town, the Unit shall be offered for sale pursuant to the provisions of Article VI of this Agreement. The Town may further require the Unit Owner to rent the Unit in accordance with the provisions of this Restrictive Covenant.
- C. Involuntary Sale Due to Ownership Interest in Other Summit County Property. If at any time the Unit Owner also owns any interest alone or in conjunction with others in any other developed residential property located in Summit County, the Unit 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 Unit Owner within one hundred twenty (120) days of its listing required hereunder, then the Unit Owner shall immediately list his or her Unit for sale pursuant to the provision of Section VIII.B. of this Agreement. It is understood and agreed between the parties hereto that, in the case of a Unit Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties which constitute inventory in such a Unit Owner's business shall not constitute "other developed residential property" as that term is used in this Section VIII.C.
- D. Non-Complying Sale Void. In the event a Unit is sold and/or conveyed without compliance herewith, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer.

E. Non-Qualified Transferees.

1. In the event that title to the Unit vests or transfers by descent or any other means or manner in individuals and/or entities who are not Qualified Buyers (hereinafter “Non-Qualified Transferee(s)”), a mandatory offer to sell shall be delivered by the Non-Qualified Transferee to the Town within fifteen (15) days of acquisition of the Unit and the Unit shall immediately be listed for sale as provided herein. The highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Sale Price or the appraised market value, whichever is less, shall be accepted by the Non-Qualified Transferee(s). If all bids are below ninety-five (95%) of the Maximum Sale Price and the appraised market value, the Unit shall continue to be listed for sale until a bid in accordance with this Subsection is made, which bid must be accepted. The cost of any appraisal shall be paid by the Non-Qualified Transferee(s).

2. The Non-Qualified Transferee(s) shall consent to any sale, conveyance or transfer of the Unit to a Qualified Buyer and shall execute any and all documents necessary to do so. The Non-Qualified Transferee(s) shall not: (a) occupy the Unit; (b) rent all or any part of the Unit, except in strict compliance with the use and occupancy restrictions of this Restrictive Covenant; (c) engage in any business activity on or in the Unit; (d) sell or otherwise transfer the Unit except in accordance with this Agreement; or (e) sell or otherwise transfer the Unit for use in a trade or business.

3. The Town, or its respective successor, as applicable, shall have the right and option to purchase the Unit, exercisable within a period of fifteen (15) calendar days after receipt by the Town of the Non-Qualified Transferee(s)’ mandatory offer to sell. In the event of exercising this right and option, the Town shall purchase the Unit from the Non-Qualified Transferee(s) for a price equal to ninety-five percent (95%) of the Maximum Sale Price, or the appraised market value, whichever is less.

4. Where the provisions of this Section VII.E. apply, the Town may require the Unit Owner to rent the Unit in accordance with the provisions of Subsection VI.G directly below, and all other use and occupancy restrictions contained herein.

F. Eliminating Resale Gain. In the event of a breach of any of the terms or conditions contained herein by a Unit Owner, his or her heirs, successors or assigns, the Unit Owner’s initial purchase price of the Unit shall, upon the date of such breach as determined by the Housing Authority, automatically cease to increase as set out in Article VII of this Agreement, and shall remain fixed until the date of cure of said breach.

G. Town May Sell or Rent. In the event that the Town exercises its option pursuant to the terms of the Option, this Agreement and the restriction contained herein shall remain in full force and effect and the Town and/or its designee, may sell the Unit to Qualified Buyers, or rent the Unit in accordance with the occupancy restrictions herein until such time that the Unit can be sold to a Qualified Buyer in accordance with this Agreement.

ARTICLE VII ENFORCEMENT

- A. Town Authority To Enforce. The restrictions, covenants and limitations created herein are for the benefit of the Town which is given the power to enforce this Restrictive Covenant, in the exercise of its sole discretion, in the manner herein provided.
- B. Waiver; Termination; Modification Of Covenant. The restrictions, covenants and limitations created herein may be waived, terminated or modified with the written consent of both the Developer and the Town. In addition, after Residential Units have been sold to Unit Owners and mortgages or deeds of trust have been filed of record against Residential Units, the Developer and the Town reserve the right to amend this Restrictive Covenant: to provide clarification to any provisions hereof which may be unclear or subject to differing interpretations; to correct any errors identified herein; or to amend the Affordability Restrictions to reduce or eliminate such restrictions as the Developer and the Town may deem to be in the best interests of the Project or for the Unit Owners. 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 Developer may also terminate this instrument by recording a release in recordable form. For convenience, such instrument may run to "the owner or owners and parties interested" in the Property.
- C. Statute of Limitations. Developer, its grantees, assigns, and purchasers of any or all property interests contemplated herein hereby waive the benefit of, and agree not to assert in any action brought by the Town to enforce the terms of this Restrictive Covenant, any applicable statute of limitation which might otherwise operate to bar the ability of the Town to enforce this Restrictive 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 in connection with an action brought by the Town to enforce the terms of this Restrictive Covenant, it is agreed between Developer and Town that each and every day during which any violation of the terms of this Restrictive Covenant occurs shall be deemed to be a separate breach of this Restrictive Covenant for the purposes of determining the commencement of the applicable statute of limitations period.
- D. Housing Authority may enforce. Upon conveyance of all Residential Units constructed upon the Property, Developer hereby reserves all rights of enforcement and concomitant benefits of this Restrictive Covenant, as against all successors, assigns, beneficiaries and other successors in interest to all or part of the Property granted to the Town, including without limit those rights and benefits as set forth specifically pursuant to Articles III through VII herein. A waiver, failure to act, or other action or election on behalf of either the Developer or the Town shall not act to bind the other party as to a course of action in regards to such specific incidents. Moreover, neither the Developer nor the Town may act to modify or release any of the obligations contemplated hereunder without the express written consent of the other party hereto.

ARTICLE VIII. GENERAL PROVISIONS

- A. No Conflicting Agreement. Developer and all successors, assigns, grantees or other parties in subsequent interest to any part or the entirety of the Property hereby covenants, represents and warrants to the Town that the execution and delivery of this Restrictive Covenant to the Town will not violate any agreement now existing with respect to the Property. Neither Developer nor any and all successors, assigns, grantees or other parties in subsequent interest to any part or the entirety of the Property may execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Restrictive Covenant, and in any event, it is agreed that the provisions of this Restrictive Covenant are paramount and controlling as to the rights, obligations and limitations herein set forth and shall supersede any other provision in conflict herewith.
- B. Entire Agreement. This Restrictive Covenant constitutes the entire agreement and understanding between the parties relating to the subject matter of this Restrictive Covenant, and supersedes any prior agreement or understanding relating thereto.
- C. Severability. The provisions of this Restrictive Covenant are intended to be severable in nature. In the event that one or more of the provisions contained in this Restrictive Covenant or any application hereof shall be deemed invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Restrictive Covenant and the application thereof shall not in any way be affected or impaired thereby.
- D. Attorney's Fees. If any action is brought in a court of law by either party to this Restrictive Covenant concerning the enforcement, interpretation or construction of this Restrictive Covenant, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.
- E. Notices. Except as otherwise provided, all notices provided for or required under this Restrictive Covenant shall be in writing, signed by the party giving the same, and shall be deemed properly given when actually received or two (2) 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.
- F. Applicable Law. This Restrictive Covenant shall be interpreted in all respects in accordance with the laws of the State of Colorado, and all other applicable local jurisdictions, specifically including the Town. Venue shall only be proper in the District Court of Summit County, Colorado.
- G. Recording. This Restrictive Covenant shall be placed of record in the real property records of Summit County, Colorado.

- H. **Binding Effect and Running with the Land.** This Restrictive covenant shall be binding upon, and inure to the benefit of the parties, their respective heirs, successors, assigns, legal representatives and personal representatives, and all subsequent owners of the Property or any interest therein, and shall run with the land. The Developer agrees that this Restrictive Covenant does not constitute an unreasonable restraint on alienation of the Property or interests therein and that any and all requirements of the laws of the State of Colorado to be satisfied in order for the provisions of this Restrictive 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 the covenants, conditions and restrictions set forth herein run with the land. Each and every contract, deed or other instrument hereafter executed conveying the Property or any portion thereof shall expressly provide that such conveyance is subject to this Restrictive Covenant; provided, however, that the covenants, conditions and restrictions 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 any portion thereof provides that such conveyance is subject to this Restrictive Covenant.
- I. **FHA Exception.** Notwithstanding any other provision to the contrary, if any Unit encumbered by this document is subject to foreclosure or a deed in lieu of a foreclosure under a FHA loan at any point in time, this Restrictive Covenant and all such limitations upon the property as set forth herein shall terminate and cease to have any affect on said property at the time of the issuance of a Public Trustee's Deed or the acceptance of a Deed in Lieu of Foreclosure. Such termination shall in no way ameliorate any personal responsibility assumed by the individual unit owner acting as signatory party below under the terms of this Restrictive Covenant. This provision is drafted to in compliment with and not in abrogation of all laws and regulations regarding such FHA loans as presently govern the administration of such loans.
- J. **Vesting and Term.** Developer and Town agree that the Town's rights and interests under this Restrictive Covenant are vested immediately and that this Restrictive Covenant, and any amendments hereto, shall be binding and in full force and effect in perpetuity, unless terminated as herein provided.
- K. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Restrictive Covenant.
- L. **Developer's Covenant Of Title And Authority.** Developer covenants, represents and warrants to the Town that Developer has good and marketable title to the Property and full and complete legal authority to execute and deliver this Restrictive Covenant to the Town; subject only to the following liens or encumbrances: and taxes for all relevant years.

- M. Terminology. Wherever applicable, the pronouns in this Restrictive 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.

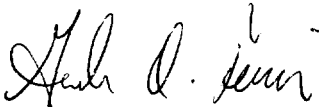
- N. Appropriation of Funds. Notwithstanding anything to the contrary contained herein, the payment of all direct and indirect obligations hereunder, in fiscal years subsequent to the current year, are contingent upon funds for this Agreement being duly appropriated and budgeted by each of the governmental entities which act as parties to this Agreement. If funds for this Agreement are not so appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement by either party, such party may terminate that affected portion of this Agreement upon written notice to the other party. The fiscal year for each party is currently the calendar year. This Agreement is intended to be in compliance with the provisions of Article 25 of Title 30 of the Colorado Revised Statutes, and with the Local Government Budget Law (C.R.S. 29-1-101 et. seq.)

- O. Governmental Immunity. Neither party hereto intends to waive, by any provision of this Agreement, the monetary limits or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended from time to time.


- P. No Benefit to Inure to Third Parties. This agreement 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 party hereto because of any breach hereof, or because of any terms, covenants, agreements or conditions contained herein.

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

Summit Housing Authority

By 
 Gordon D. Ferris, Executive Director
 PO Box 188 Breckenridge, CO 80424

**TOWN OF BRECKENRIDGE, a Colorado
 municipal corporation**

By 
 Timothy J. Gagen, Town Manager
 Town's Address:
 P. O. Box 168
 Breckenridge, CO 80424

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 20th day of June, 2002, by Gordon D. Ferris, Executive Director Summit Housing Authority

WITNESS my hand and official seal.

My commission expires: 4/3/04

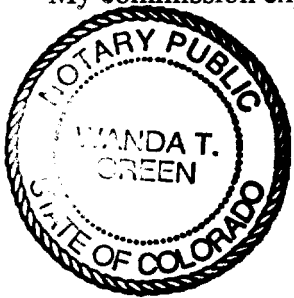
Illean Friedman
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of June, 2002 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: June 8, 2006



Wanda T Green
Notary Public

EXHIBIT A
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

Description of property subject to Restrictive Covenant

**Parcel 2 Vista Point Subdivision filing No. 1
filed August 13, 2001 under reception No. 659674**

EXHIBIT B
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT
Appreciation Limiting Promissory Note
(the "Note")

**For Amounts collected by Maker in Excess
Of Adjusted Price limit**

Breckenridge, Colorado

Date

_____ (the "Maker") after date, for value received, promise to pay to the order of the TOWN OF BRECKENRIDGE, PO Box 168, Breckenridge, CO 80424, immediately upon any Sale of the Property an amount equal to the Gross Proceeds in excess of the Adjusted Price Limit plus Permitted Sales Costs.

As used in this Note the terms set forth below shall have the meanings provided:

"Residential Unit" means the property subject to the Deed of Trust securing compliance with this Note.

"Sale" means the sale or transfer of the Residential Unit or any interest therein.

"Gross Proceeds" means the total value of all consideration given Purchaser in connection with a Sale.

"Adjusted Price Limit" means an amount determined in accordance with the following:

The total consideration paid by
Maker for the purchase of the
Residential Unit

Permitted Improvements as
provided for in subsection
4.B.(ii) of the Affordable Housing
Restrictive Covenant and Agreement
filed in the Summit County, Colorado
Real Estate Records on the _____
day of _____, 2002 at
Reception No. _____
("Restrictive Covenant")

+ _____

The Price Limit

= _____

Adjustment to Price Limit of .25% per
Month or percent increase in AMI as provided
for in Subsection 4.C. of the Restrictive
Covenant

x _____

Adjusted Price Limit

=

=====

Purchaser may, at its election, reduce the amount of the Gross Proceeds so as to reduce any amounts owing hereunder.

The note shall not bear interest and shall be due and payable upon Sale of the Property.

This note shall be subordinate to a conventional first deed of trust where 100% of the proceeds are used in connection with purchasing the Property. **Maker may not subordinate this Note to any other deed of trust without the prior written approval of the Town.**

It is agreed that if this Note is not paid when due or declared due hereunder, the amount due shall draw interest at the rate of 15% per annum, and that the failure to make any payment of principal or interest when due or any default under any encumbrance or agreement securing this Note shall cause the whole Note to become due at once, or the interest to be counted as principal, at the option of the holder of the Note. The makers and endorsers hereof severally waive presentment for payment, protest, notice of non-payment and of protest, and agree to any extension of time of payment and partial payments before, at or after maturity, and if this Note or interest thereon is not paid when due, or suit is brought, agree to pay all reasonable costs of collection including reasonable attorney fees, and if foreclosure is made by the Public Trustee, reasonable attorney fees to be added by the Public Trustee to the cost of foreclosure.

This Note is secured by a deed of trust on the Residential Unit described as Lot __, Building __, Unit __, Gibson Heights, according to the Plat thereof filed in the Summit County, Colorado Real Estate Records of the _____ day of _____, 2002 at Reception No. _____, which deed of trust shall be subordinate to a first Deed of Trust securing payment of the balance of the purchase price for such Residential Unit not paid in cash.

Maker

Maker

EXHIBIT C
TO
AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT
Affordability Benchmarks

<u>Building Type</u>	Purchase Price Affordable to Under 80% <u>AMI</u>
Single Family	10
Duplex	10
Town House	<u>20</u>
Total	40

Purchase Price Affordability calculated as follows: DESCRIPTION
EXAMPLE

ASSUME 1.5 PERSONS PER BEDROOM AND USE MOST RECENT AMI FIGURES FOR TARGETED AFFORDABILITY RANGE	2 BEDROOM UNIT USE FAMILY SIZE OF 3 CURRENT 80%AMI FIGURE = \$45,200
DIVIDE BY 12 TO ARRIVE AT MO. INCOME	$\$45,200 / 12 = \$3,766.70$
MULTIPLY BY 30% TO ARRIVE A MONTHLY MAXIMUM HOUSING EXPENSE	$\$3,766.70 \times .3 = \$1,130$
SUBTRACT OUT ESTIMATE (OR ACTUAL) FOR MONTHLY HOA DUES, TAXES AND INSURANCE	ESTIMATE \$250 $\$1,130 - \$250 = \$880$
INSERT REMAINDER INTO FINANCIAL CALCULATOR TO ARRIVE AT SALES PRICE. ASSUME A CURRENT INTEREST RATE FOR 30 YR FIXED MORTGAGES AS PUBLISHED BY FREDDIE MAC	$\$880 = \text{PAYMENT}$ 7% (CURRENT) = INTEREST RATE 30 YEAR = TERM RESULT = \$145,498
INCREASE RESULT BY 10% TO ALLOW FOR DOWNPAYMENT BY PURCHASER	$\$145,498 \times 1.1 = \mathbf{\$160,047 \text{ SALES PRICE}}$