

**RESTRICTIVE COVENANT AND AGREEMENT  
(Employee Housing)**

THIS RESTRICTIVE COVENANT AND AGREEMENT ("Restrictive Covenant") dated \_\_\_\_\_, 2013, is between \_\_\_\_\_ ("Owner") and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town").

Recitals

A. Owner owns the real property situate described in Section 1 of this Restrictive Covenant.

B. Owner requested the Town to issue a development permit for the development of certain real property located with the Town of Breckenridge. Such development is subject to the applicable laws, ordinances and regulations of the Town.

C. Town issued to Owner Development Permit No. \_\_\_\_\_ ("Development Permit").

D. It was a condition of the Development Permit that the Owner create a valid and enforceable covenant running with the land assuring that the real property described in Section 1 will be used solely by a "Qualified Occupant" as defined in this Restrictive Covenant.

E. Owner declares and covenants that the regulatory and restrictive covenants contained in this Restrictive Covenant are covenants running with the land and are binding upon the Owner and all subsequent owners of the real property described in Section 1 unless this Restrictive Covenant is released and terminated by the Town.

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

1. Property Subject To Covenant. This Restrictive Covenant applies to the following real property located in Summit County, Colorado:

Also known as:

2. Definitions. As used in this Restrictive Covenant:

**"Property"** means the real property described in Section 1 of this Restrictive Covenant.

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

3. Occupancy Restriction. Except as provided in Section 4, the Property will only be used and occupied by a Qualified Occupant.

4. Exceptions. It is not a violation of this Restrictive Covenant if the Property is occupied or used by:

- (i) a person age 55 years or older who works at paid employment in Summit County, Colorado at least 15 hours per week on an annual basis during the entire period of his or her occupancy of the Property, together with such person's spouse and minor children, if any, or
- (ii) a person otherwise authorized to occupy the Property pursuant to this Restrictive Covenant who becomes disabled after commencing lawful occupancy of the Property such that he or she cannot work the required number of hours each week required by this Restrictive Covenant; provided, that such person is permitted to occupy the Property only for a maximum period of 1 year following the commencement of such person's disability unless a longer period of occupancy is authorized by the Town.

5. Records; Inspection; Monitoring.

A. The Town may examine, inspect and copy the Owner's records concerning the use and occupancy of the Property upon reasonable advance notice. The Town may enter the Property to determine compliance with this Restrictive Covenant, but the Town will first attempt to secure the permission of any occupant of the Property before making entry. The Town's rights under this subsection may also be exercised by the Town's authorized agent.

B. The Owner will submit to the Town any information, document or certificate regarding the occupancy and use of the Property which the Town reasonably deems to be necessary to confirm the Owner's compliance with the provisions of this Restrictive Covenant.

6. Default; Notice. If the Owner fails to comply with this Restrictive Covenant, the Town may inform the Owner by written notice of such failure and provide the Owner a period of time to correct such failure. If the failure is not corrected to the satisfaction of the Town within the specified time, which will be at least 30 days after the date the Town mails the written notice to the Owner, 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. The Town may then proceed to enforce this Restrictive Covenant.

7. Equitable Relief. The Town may specifically enforce this Restrictive Covenant. The Town may obtain from any court of competent jurisdiction a temporary restraining order,

preliminary injunction and permanent injunction to obtain specific performance. Any equitable relief provided for in this Section 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.

8. Liquidated Damages. The Owner 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 Owner 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 Owner agree that Owner 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 Section 3 of this Restrictive Covenant. Such amount is agreed to be a reasonable estimate of the actual damages which the Town will suffer in the event of a violation of Section 3 of this Restrictive Covenant. The provisions of this Section do not apply to any violation of this Restrictive Covenant other than a violation of Section 3. The liquidated damages shall commence as of the date on which the Property is first used in violation of Section 3 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 in Section 6. Further, the total amount of liquidated damages payable to the Town under this Section may not exceed the then-current value of the Property. The liquidated damages provided for in this Section may be collected personally from the Owner by the Town, either singly or in combination with an action for equitable enforcement of this Restrictive Covenant as provided in Section 7 of this Restrictive Covenant. Town may, in its discretion, waive the liquidated damages as provided herein and recover any actual damages suffered by Town as a result of a breach of this Restrictive Agreement.

9. Town Authority To Enforce. The restrictions, covenants and limitations created by this Restrictive Covenant are only for the benefit of the Town. Only the Town may enforce this Restrictive Covenant.

10. Enforcement in Municipal Court. In addition to such other methods of enforcement as may be available to Town, the Town may enforce this Restrictive Covenant by bringing an appropriate action in the Breckenridge Municipal Court pursuant to Section 9-1-26 of the Breckenridge Town Code, or any successor municipal ordinance provision of the Town of Breckenridge.

11. Waiver; Termination; Modification Of Covenant. The restrictions, covenants and limitations of this Restrictive Covenant may be waived, terminated or modified only with the written consent of both the Town and the person who owns the Property on the date of the waiver, termination or modification. No waiver, modification, or termination will be effective until the proper instrument is executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado. The Town may also terminate this instrument by recording a release in recordable form without the signature of the owner of the Property. For convenience, such instrument may run to "the owner or owners and parties interested" in the Property.

12. Statute of Limitations. Owner hereby waives the benefit of and agrees not to assert in any action brought by the Town to enforce this Restrictive Covenant any applicable statute of limitation, including, but not limited to, the provisions of §38-41-119, C.R.S. If any statute of limitation may lawfully be asserted by Owner in connection with an action brought by the Town to enforce the terms of this Restrictive Covenant, each and every day during which any violation of this Restrictive Covenant occurs is to 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.

13. No Conflicting Agreement. Owner warrants to the Town that the execution and delivery of this Restrictive Covenant does not violate any existing agreement concerning the Property. Owner will not execute any agreement concerning the Property with provisions contradictory to, or in opposition to, the provisions of this Restrictive Covenant. In any event, the provisions of this Restrictive Covenant are paramount and controlling, and supersede any conflicting provision of any other agreement concerning the Property.

14. Attorney's Fees. If any action is brought in a court of law by either party concerning the enforcement, interpretation or construction of this Restrictive Covenant, the prevailing party, either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

15. Notices. All notices provided for or required under this Restrictive Covenant must be in writing, signed by the party giving the notice, and will be deemed properly given when actually received or 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. A notice to any owner of the Property subsequent to the Owner may be sent to the address to which tax notices are sent according to the records of the Summit County Treasurer.

16. Recording And Filing; Covenant Running With The Land.

A. This Restrictive Covenant is to be recorded in the real property records of Summit County, Colorado.

B. The Owner agrees that all of the requirements of the State of Colorado which must be satisfied for the provisions of this Restrictive Covenant to constitute a restrictive covenant running with the land are deemed to be fully satisfied. All requirements of privity of estate are intended to be satisfied, or in the alternative, an equitable servitude is created to insure that these restrictions run with the land. During the term of this Restrictive Covenant, each and every contract, deed or other instrument executed relating to the Property will expressly provide that such contract, deed or instrument is subject to this Restrictive Covenant. However, the covenants contained in this Restrictive Covenant survive and will continue to be effective as to successors and assigns of all or any portion of the Property regardless of whether such contract, deed or other instrument provides that it is subject to this Restrictive Covenant.

17. Mortgagee's Consent. Attached hereto as Exhibit "A" is the written consent to this Restrictive Covenant executed by all prior recorded lienholders on the Property as of the date of this Restrictive Covenant.

18. Owner's Covenant Of Title And Authority. Owner covenants, represents and warrants to the Town that Owner has good and marketable title to the Property and full and complete legal authority to execute and deliver this Restrictive Covenant to the Town, subject only to the following liens or encumbrances:

- (i) the deed of trust to the Public Trustee of Summit County, Colorado for the use and benefit of \_\_\_\_\_, dated \_\_\_\_\_ and recorded \_\_\_\_\_ under Reception No. \_\_\_\_\_ of the records of the Clerk and Recorder of Summit County, Colorado; and
- (ii) taxes for 2012 and subsequent years.

19. Applicable Law. This Restrictive Covenant is to be interpreted in accordance with the laws of the State of Colorado.

20. Vesting and Term. The Town's rights under this Restrictive Covenant vest upon the execution of this Restrictive Covenant. This Restrictive Covenant will remain in full force and effect in perpetuity unless it is terminated in accordance with Section 11.

21. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Restrictive Covenant.

22. Terminology. Wherever applicable, the pronouns in this Restrictive Covenant designating the masculine or neuter apply equally to the feminine, neuter and masculine genders. Wherever applicable within this Agreement, the singular includes the plural, and the plural includes the singular.

23. Severability. If any provision of this Restrictive Covenant is finally determined to be invalid, illegal or unenforceable, such determination does not affect the remaining provisions of this Restrictive Covenant.

24. 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.

25. Binding Effect. This Restrictive Covenant is binding upon, and inures to the benefit of parties, and their respective heirs, successors, assigns, legal representatives, and personal representatives, and all subsequent owners of the Property, or any interest therein.

OWNER:

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Owner's Address:

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

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By: \_\_\_\_\_  
Timothy J. Gagen, Town Manager

ATTEST:

\_\_\_\_\_  
Town Clerk

Town's Address:

P. O. Box 168  
Breckenridge, CO 80424



