

**RESTRICTIVE COVENANT AND AGREEMENT
(Employee Housing-Housing Helps Program – Appreciation Cap)**

THIS RESTRICTIVE COVENANT AND AGREEMENT (“**Restrictive Covenant**”) is dated _____, 2023 and is between _____ (“**Owner**”) and TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”). Town and Owner are sometimes collectively referred to in this Restrictive Covenant as the “**Parties**,” and individually as a “**Party**.”

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, Owner and Town agree as follows:

1. Property Subject to Covenant. This Restrictive Covenant applies to the following real property located in Summit County, Colorado: _____, Breckenridge, CO 80424

also known as: _____, Breckenridge, CO 80424.

2. Definitions. As used in this Restrictive Covenant:

“**Appreciation Limiting Promissory Note**” means the promissory note to be executed by the purchaser of the Property and delivered to the Town as described in Section 7 of this Restrictive Covenant.

“**Appreciation Limiting Deed of Trust**” means the deed of trust to be executed by the purchaser of the Property and delivered to the Town for recording with the Clerk and Recorder of Summit County, Colorado as described in Section 7 of this Restrictive Covenant.

“**Guidelines**” means the administrative rules, regulations, policies, and standards adopted by the Town pursuant to Section 22 of this Restrictive Covenant, as amended from time to time.

“**Maximum Resale Price**” has the meaning provided in Section 6 of this Restrictive Covenant.

“**Owner (or an Owner)**” means a person who takes and holds holding title to the Property. An “Owner” does not include a person or entity having an interest in the Property solely as security for the performance of an obligation.

“**Person**” means a natural person, and excludes any type of entity.

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

“Principal Place of Residence” means the home or place in which one’s habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom. To determine a person’s Principal Place of Residence, the criteria set forth in § 31-10-201(3), C.R.S., or any successor statute, shall apply.

“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 **for a business located in and serving Summit County**, together with such person’s spouse and minor children, if any.

3. Occupancy Restriction. Except as provided in Section 4, the Property shall at all times be occupied by at least one (1) Qualified Occupant as his or her principal place of residence.
4. Exceptions. Notwithstanding Section 3, it is not a violation of this Restrictive Covenant if the Property is occupied or used as the principal place of residence by:
 - A. A person who is partially or fully retired as described in the Town’s Housing Guidelines (see Section 22, below); or
 - B. 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, however, that such person is permitted to occupy the Property only for a maximum period of one year following the commencement of such person’s disability unless a longer period of occupancy is authorized by Town.
5. Rent or Lease of the Property. Owner may rent or lease the Property provided that: (i) the Property is rented or leased only to a Qualified Occupant(s); (ii) a tenant may not sublease all or any portion of the Property; and (iii) the Property may not be rented or leased for a term of less than 90 days (no short term rental). All leases or rentals of the Property not in compliance with the requirements of this Section 5 are void, and a violation of this Restrictive Covenant.
6. Maximum Resale Price.
 - A. The Maximum Resale Price of the Property may not exceed the sum of: (i) the Purchase Price paid by the Owner for the Property, plus: (ii) an increase of three percent (3%) of such Purchase Price per year (prorated at the rate of 1/12 for each whole month, but not compounded annually) from the date of the Owner’s purchase of the Property to the date of the Owner’s sale of the Property; (iii) capital improvements made to the Property by the Owner (if and only if such improvements are allowed by the Town pursuant to the Guidelines); and (iv) a maximum of two percent (2.00%) of the sum of items (i), (ii), and (iii) of this Section A to provide the selling Owner with assistance in paying any sales commissions to a licensed real

estate broker, attorneys' fees, and closing costs incurred by the Owner in connection with the sale of the Property.

- B. Pursuant to the Guidelines, each Owner shall be responsible for ensuring that at the transfer of his or her Property, the same is clean, the appliances are in working order, and that there are no health or safety violations regarding such Property. Prior to the sale of the Property the Town is authorized to take necessary actions and incur necessary expenses for bringing the relevant Property into saleable condition. Such actions and expenses include, but are not limited to, cleaning the Property and making necessary repairs to or replacements of appliances and/or Property fixtures, such as windows, doors, cabinets, countertops, carpets, flooring and lighting fixtures, and/or correcting any health or safety violations on such Property. Expenses incurred by the Town to bring the Property 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 Property.
 - C. No Owner shall permit any prospective buyer to assume any or all of the Owner's customary closing costs.
 - D. Nothing in this Restrictive Covenant represents or guarantees that the Property will be re-sold at an amount equal to the Maximum Resale Price. Depending upon conditions affecting the real estate market, the Property may be re-sold for less than the Maximum Resale Price.
7. Appreciating Limiting Promissory Note and Deed of Trust. At the time of each sale of the Property subsequent to the recording of this Restrictive Covenant the purchaser(s) of the Property shall execute an Appreciating Limiting Promissory Note in the form provided for in the Guidelines, together with a form of Appreciating Limiting Deed of Trust to a public trustee in the form provided for in the Guidelines encumbering the Property, to secure strict compliance with the terms of this Restrictive Covenant. The Appreciating Limiting Deed of Trust shall contain a strict due on sale provision, and shall be in form and substance acceptable to the attorney for the Town. At the time of each subsequent closing of the transfer of title to a Property, a new Appreciation Limiting Promissory Note shall be executed by the purchaser(s) and delivered to the Town, and a new Appreciation Limiting 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 Property the Town shall determine whether the transfer complies with the requirements of this Restrictive Covenant. If the transfer complies with the requirements of this Restrictive Covenant, the Town shall mark the selling Property Owner's Appreciation Limiting Promissory Note as paid and execute a request for release of the Appreciation Limiting Deed of Trust upon verification to the Town by the title company or other independent agent responsible for closing on the transfer of title to a Property that the amount paid for the purchase of the Property does not exceed the Maximum Resale Price or that, if the price exceeds the Maximum Resale Price, the

amount of such excess will be paid to the Town. If title to a Property is transferred without obtaining the release of an Appreciation Limiting Deed of Trust securing an appreciation Limiting Promissory Note in favor of the Town, the Town, among other rights available to it, shall have the right to foreclose said Appreciation Limiting Deed of Trust.

8. Annual Verification; Other Information.

A. Owner shall submit to Town upon request any information, documents, or certificate regarding the occupancy and use of the Property that Town reasonably deems to be necessary to confirm Owner's compliance with the provisions of this Restrictive Covenant.

B. At the time of purchase, any prospective or new Owner shall execute a Memorandum of Understanding indicating that he or she has read this Covenant in its entirety and agrees to abide by the terms set forth herein.

9. Inspection of the Property. Owner agrees that Town may enter the Property to determine compliance with this Restrictive Covenant without an inspection warrant or other legal authorization, subject to the following requirements: (i) entry may be made by Town only between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday; and (ii) Town shall provide Owner with not less than 24 hours' prior written notice before entering the Property. If Town complies with these requirements the Owner shall permit Town's entry into the Property. Town's rights under this Section 9 may also be exercised by Town's authorized agent. If Owner fails or refuses to comply with the requirements of this Section 9 Town shall have the right to obtain access to the Property in the manner provided by law.

10. Relief in Extraordinary Circumstances: A Qualified Owner may request relief from the terms of the Restrictive Covenant for good cause, including but not limited to involuntary unemployment or separation from employment, confirmation of employment requiring a relocation, or other reasons; provided such request is made in writing and supported by documentation. The decision regarding the request for an exception to the occupancy requirements of a Covenant shall be made by Town within thirty (30) days of the completed application submittal with supporting information. An exception to an occupancy requirement or other term of the Restrictive Covenant may be granted with any conditions deemed necessary when: a. The qualifying circumstance(s) justifying the grant of an exception to an occupancy requirement of this Covenant is a circumstance that has transpired subsequent to occupancy of the Unit and/or is outside the control of the applicant to correct; and, b. Strict application of the terms of this Covenant would result in a significant hardship on the Qualified Owner; and, c. The grant of the requested exception is limited to the scope necessary to grant reasonable relief to the applicant,

consistent with the intent and purpose of this Covenant, and will not have an adverse effect on the community or surrounding neighborhood.

11. Payment of Taxes and Prior Encumbrances. During the term of this Restrictive Covenant Owner shall pay, prior to delinquency, all taxes and assessments levied against the Property, and all amounts due or to become due on account of principal and interest on any prior encumbrance against the Property.
12. Advances by Town for Owner. If Owner fails to do anything required to be done by Owner under the terms of this Restrictive Covenant Town may, at its sole option, but without any obligation to do so, do or perform such act or thing on behalf of Owner, and in doing so Town shall not be deemed to be a volunteer; provided, however, that before exercising its rights under this Section 12, Town shall give Owner written notice and afford Owner not less than five (5) days from the giving of such notice within which to do or perform the act required by Owner. Upon notification to Owner of the costs incurred by Town Owner shall promptly pay to Town the full amount of costs and/or expenses incurred by Town pursuant to this Section 10, together with interest thereon at the legal rate.
13. Default; Notice. If Owner fails to comply with this Restrictive Covenant, Town may inform Owner by written notice of such failure and provide Owner a period of time to correct such failure. If the failure is not corrected to the satisfaction of Town within the specified time, which shall be at least 30 days after Town mails written notice to Owner, or within such further time as Town determines is necessary to correct the violation (but not to exceed any limitation set by applicable law), Town may without further notice declare a default under this Restrictive Covenant effective on the date of such declaration of default. Town may then proceed to enforce this Restrictive Covenant.
14. Equitable Relief. Town may specifically enforce this Restrictive Covenant. 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 14 may be sought singly or in combination with such legal remedies as Town may be entitled to, either pursuant to the provisions of this Restrictive Covenant or under the laws of the State of Colorado.
15. Town Authority To Enforce. The restrictions, covenants, and limitations created by this Restrictive Covenant are only for the benefit of Town, and only Town may enforce this Restrictive Covenant. Provided, however, Town may assign its rights to Town of Breckenridge Housing Authority without prior notice to Owner.
16. 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 Town and the then-current owner of the Property as of the date of such waiver, termination, or modification. No waiver, modification, or

termination shall be effective until the proper instrument is executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado. Town may also terminate this instrument by recording a release in recordable form without the signature of the then-current owner of the Property. For convenience, such instrument may run to "Owner or owners and parties interested" in the Property.

17. Statute of Limitations. Owner hereby waives the benefit of and agrees not to assert in any action brought by 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 be lawfully asserted by Owner in connection with an action brought by Town to enforce this Restrictive Covenant, each and every day during which any violation 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.
18. Notice of Intent to Sell. In the event that an Owner desires to sell the Unit, 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 sell the Unit.
19. 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, shall be entitled to reasonable attorney's fees, as well as costs, including expert witness fees, incurred in the prosecution or defense of such action.
20. Notices. All notices provided for or required under this Restrictive Covenant must be in writing, signed by the Party giving the notice, and shall be deemed properly given when actually received or two (2) days after having been mailed, postage prepaid, certified, return receipt requested, addressed to the other Party at such Party's 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 Owner may be sent to the address to which tax notices are sent according to the records of the Summit County Treasurer.
21. Recording; Covenant Running With the Land. The Restrictive Covenant is to be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado, and shall run with the land and shall be binding upon Owner and all subsequent owners of the real property described in Section 1 until this Restrictive Covenant is lawfully terminated in the manner provided in this Restrictive Covenant.
22. Resale Process. The Town reserves the right to require that this Property be sold via a lottery process and/or thru the Summit Combined Housing Authority, with such process to be determined by the Town at the time of sale, in general conformance with the Town's Housing Guidelines. The Town shall have 7 days after receiving the Notice of

Intent to Sell to determine whether a lottery will be required. No private lotteries will be allowed. The Town will require lotteries when housing is in high demand.

23. Town's Housing Guidelines. This Restrictive Covenant shall be interpreted in accordance with, and Owner shall comply with, the Town of Breckenridge Housing Guidelines in effect from time to time throughout the term of this Restrictive Covenant; provided, however, that in the event of a conflict between the restrictions, terms and conditions of this Restrictive Covenant and the Housing Guidelines, this Restrictive Covenant shall control.

24. Town's Right of First Offer. Town shall have the right of first offer with respect to Owner's sale of the Property as more fully set forth on **Exhibit "A"**, which is attached hereto and incorporated into this Restrictive Covenant by reference. Owner shall comply with the requirements of **Exhibit "A"**. Provided, however, the right of first offer provisions of **Exhibit "A"** to this Restrictive Covenant shall not apply if the Property is subject to a "right of first refusal" provision in the Declaration of Covenants, Conditions and Restrictions, also known as a "Declaration," or other similar document.

25. Owner To Give Town Notice Of Default Under Other Encumbrance: Owner shall: (i) immediately notify the Town in writing of the receipt of any notice claiming a default under any mortgage, deed of trust, or other lien or encumbrance against the Property, or a default under any debt or other obligation secured by a mortgage, deed of trust, or other lien or encumbrance against the Property; and (ii) promptly forward to the Town a copy of any written notice of such default or foreclosure notice received by the Owner.

26. Consensual Lien; Right To Cure And Redeem. For the purpose of securing Owner's performance under the Restrictive Covenant, and creating in favor of the Town a right to cure and a right to redeem in accordance with Part 3 of Article 38 of Title 38, C.R.S., Owner hereby grants to Town a consensual lien on the Property. Such lien shall not have a lien amount.

27. Miscellaneous.

A. Applicable Law. This Restrictive Covenant shall be interpreted in accordance with the laws of the State of Colorado regardless of any law that might require to be interpreted under the laws of any other state.

B. Vesting and Term. Town's rights under this Restrictive Covenant vest upon the execution of this Restrictive Covenant. This Restrictive Covenant shall remain in full force and effect in perpetuity unless terminated in accordance with Section 16. Provided, however, if any of the terms, covenants, conditions, restrictions, uses, limitations, or obligations created by this Restrictive Covenant are held to 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 rule imposing like or similar time limits,

then such provision shall continue only for the period of the lives of the duly elected and seated members of the Breckenridge Town Council in office on the date of the execution of this Restrictive Covenant, their now living descendants, if any, and the survivor of them, plus 21 years.

C. 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.

D. Terminology. This Restrictive Covenant applies to all genders. Unless the context clearly requires otherwise, the singular includes the plural, and the plural includes the singular.

E. Severability. If any provision of this Restrictive Covenant is finally determined to be invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Restrictive Covenant to fulfill as closely as possible the original intents and purposes of this Restrictive Covenant.

F. Construction. The rule of strict construction does not apply to this Restrictive Covenant. This Restrictive Covenant is to be given a reasonable construction so that the intention of the Parties as expressed in this Restrictive Covenant is carried out.

G. 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.

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

Owner Signature:

Owner's Address:

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by _____.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

TOWN OF BRECKENRIDGE

By: _____
Rick G. Holman, Town Manager

Town's Address:

P.O. Box 168
150 Ski Hill Road
Breckenridge, Colorado 80424

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 by Rick G. Holman, Town Manager, of Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

Exhibit "A"
Town's Right of First Offer

1. Except as provided in Section 24 of this Restrictive Covenant with respect to real property that is subject to a right of first refusal provision in its Declaration or other governing document, during the term of this Restrictive Covenant Owner agrees not to sell the Property, or any part thereof, without first offering the same to Town for purchase. This provision creates in Town a right of first offer to purchase the Property, or any portion thereof, according to the terms and conditions hereof.

2. The right of first offer granted above shall be honored by Owner and exercised by Town in the following manner:

- A. If Owner desires to sell the Property, or any portion thereof, Owner shall first send a written offer to Town. Said offer shall state a specified price and all terms and conditions of the proposed sale.
- B. If Town desires to accept said offer, Town shall, within 30 days from receipt thereof, send its acceptance in writing to Owner.
- C. If a valid offer of sale is made by Owner to Town, and the offer is not accepted by Town as provided in subsection (B) above, then and for a period of one year from the date of mailing of the offer, Owner shall be free to sell the Property, or the portion thereof offered to Town, to any party whomsoever, but not at a greater price than offered to Town.

3. If Owner does not sell the Property, or the portion thereof offered, before the expiration of said one-year period, then, before the Property or portion offered may be sold to any other party, Owner shall make a new offer to Town of the Property, or any portion thereof, under the provisions of this Restrictive Covenant.

4. Town's failure to exercise, or Town's disclaimer of, its right of first offer with respect to any transfer of less than all of the Property shall not be deemed a waiver of such right with respect to that part of the Property owned by Owner after such transfer.

5. If any offer made to Town by Owner according to the terms and conditions herein stated is rejected or is allowed to expire without acceptance by Town, Town agrees, within 10 days of receipt of a written request from Owner, to give to Owner or to any third person Owner shall designate, a written statement properly signed and acknowledged in recordable form that:

- A. an offer has been made by Owner in accordance with the terms and conditions of this Restrictive Covenant, together with disclosure of the offering price and the terms of a proposed sale;
- B. Said offer has been rejected by Town or has been allowed to expire; and

C. Owner or any designated third person may rely upon such statement by Town as evidence of the submission and rejection or expiration of a valid offer made to Town pursuant to and in accordance with this Restrictive Covenant.

6. This right of first offer shall apply to all transactions involving a conveyance of title to the Property or any portion thereof, during the term of this Restrictive Covenant, including but not limited to a purchase, an exchange, or any other transfer of an interest in the Property for consideration, other than a lease of no more than three years' duration.