

DEED RESTRICTION AGREEMENT
FOR THE OCCUPANCY AND TRANSFER OF TIMBER RIDGE VILLAGE
RESIDENTIAL DWELLING UNITS

THIS DEED RESTRICTION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 20__ (the "Effective Date") by and between the Town of Vail, Colorado, a Colorado home rule municipality with an address of 75 South Frontage Road, Vail, CO 81657 (the "Town"), and _____, an individual with an address of _____ ("Buyer") (each a "Party" and collectively the "Parties").

WHEREAS, Buyer is purchasing the real property described as Unit ____, Timber Ridge Village, Town of Vail, Colorado (the "Property");

WHEREAS, the Property is currently subject to a deed restriction agreement dated July 17, 2003 and recorded with Eagle County at Reception No. 840811 (the "Original Deed Restriction");

WHEREAS, the Parties wish to permanently restrict the occupancy, use and resale of the Property as set forth in this Agreement, which is intended to replace the Original Deed Restriction.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Property. The Property is hereby burdened with the covenants and restrictions specified in this Agreement, in perpetuity.

2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

a. *Guidelines* means the current version of the Timber Ridge Village Employee Housing Guidelines adopted by the Town. The version adopted as of the Effective Date is attached hereto as **Exhibit 1** and incorporated herein by this reference.

b. *Owner* means any person who acquires an ownership interest in the Property.

c. *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. In determining what is a Principal Place of Residence, the Town shall consider the criteria set forth in C.R.S. § 31-10-201(3), as amended.

d. *Qualified Occupant* means an individual who: works an average of 30 hours or more per week at a business in Eagle County, Colorado that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business; and earns at least 75% of their income from such business. For example, if an individual worked 60 hours per week for one half of the year at such a business in Eagle

County, Colorado, and worked elsewhere for the other half of the year, such person would be a Qualified Occupant. A Qualified Occupant also includes an individual who: was a Qualified Occupant when the individual purchased the Property, but then retired while owning the Property; was 60 years of age or older at the time of retirement; for the 5 years immediately prior to retirement, worked an average of 30 hours or more per week at a business in Eagle County, Colorado that held a valid and current business license, or paid sales taxes, or was otherwise generally recognized as a legitimate business; earned at least 75% of their income from such business during such 5-year period; and does not work for a business outside of Eagle County, Colorado.

e. *Transfer* means any sale, conveyance, assignment or transfer, voluntary or involuntary, of any interest in the Property, including without limitation a fee simple interest, a joint tenancy interest, a life estate, and an interest evidenced by any contract by which possession of the Property is transferred and an Owner retains title; provided that the lease of the Property to a Qualified Occupant in accordance with this Agreement shall not constitute a Transfer.

3. Occupancy Restrictions.

a. The Property shall be continuously occupied by at least one Qualified Occupant as their principal place of residence. For purposes of this Agreement, the Property will be considered to be continuously occupied if the Property is not vacant for more than 90 total days in any calendar year.

b. No business activity shall occur on or within the Property, other than as permitted within the zone district applicable to the Property.

c. Occupancy of the Property shall comply with the Guidelines at all times.

4. Transfer.

a. An Owner shall first notify the Town that the Owner wishes to Transfer the Property. The Town shall have the first option to purchase the Property, exercisable within a period of 15 days after receipt of notice.

b. Should the Town determine not to purchase the Property, the Owner may list the Property for sale.

c. At closing, the buyer shall execute, in a form satisfactory to the Town and for recording with the Eagle County Clerk and Recorder, a document acknowledging this Deed Restriction and expressly agreeing to be bound by it.

5. Consensual Lien; Right to Redeem. For the purpose of securing performance under this Agreement and creating in favor of the Town a right to redeem in accordance with Part 3 of Article 38 of Title 38, C.R.S., as amended, Owner hereby grants to Town a consensual lien on the Property. Such lien shall not have a lien amount.

6. Breach.

a. It shall be a breach of this Agreement for an Owner or a Qualified Occupant to violate any provision of this Agreement, or to default in payment or other obligations due to be performed under a promissory note secured by a first deed of trust encumbering the Property.

b. If the Town has reasonable cause to believe that an Owner is violating this Agreement, the Town may inspect the Property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with 24 hours written notice. This Agreement shall constitute permission to enter the Property during such times upon such notice.

c. If the Town discovers a violation of this Agreement, the Town shall notify the Owner of the violation and allow 15 days to cure.

7. Remedies.

a. Any Transfer in violation of this Agreement shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every Transfer, for all purposes, shall be deemed to include and incorporate by this reference the covenants contained in this Agreement, even if the Transfer documents fail to reference this Agreement.

b. The Town may pursue all available remedies for violations of this Agreement, including without limitation specific performance or a mandatory injunction requiring a Transfer of the Property, with the costs of such Transfer to be paid out of the proceeds of the sale.

c. Upon request by the Town, each Owner authorizes the holder of any mortgage or deed of trust against the Property to disclose to the Town if any payments due are delinquent and the duration and amount of such delinquency.

d. In addition to the specific remedies set forth herein, the Town shall have all other remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy.

8. Foreclosure.

a. The Owner shall notify the Town, in writing, of any notification received from a lender of past due payments or defaults in payments or other obligations within 5 days of receipt of such notification.

b. The Owner shall immediately notify the Town, in writing, of any notice of foreclosure under the first deed of trust or any other subordinate security interest in the Property, or when any payment on any indebtedness encumbering the Property is required to avoid foreclosure of the first deed of trust or other subordinate security interest in the Property.

c. Within 60 days after receipt of any notice described herein, the Town may (but shall not be obligated to) proceed to make any payment required to avoid foreclosure. Upon making any such payment, the Town shall place a lien on the Property in the amount paid to cure the default and avoid foreclosure, including all fees and costs resulting from such foreclosure.

d. Notwithstanding any other provision of this Agreement, in the event of a foreclosure, acceptance of a deed-in-lieu of foreclosure, or assignment, this Agreement shall remain in full force and effect.

e. The Town shall have 30 days after issuance of the public trustee's deed or the acceptance of a deed in lieu of foreclosure by the holder in which to purchase by tendering to the holder, in cash or certified funds, an amount equal to the redemption price which would have been required of the borrower or any person who might be liable upon a deficiency on the last day of the statutory redemption period(s) and any additional reasonable costs incurred by the holder related to the foreclosure.

9. Miscellaneous.

a. *Modification.* This Agreement may only be modified by subsequent written agreement of the Parties; provided that, if the Town obtains title to the Property, the Town may modify or terminate this Agreement at any time.

b. *Integration.* This Agreement and any attached exhibits constitute the entire agreement between the Parties, superseding all prior oral or written communications.

c. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

d. *Severability.* If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Eagle County, Colorado.

f. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

g. *No Joint Venture.* Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

h. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement, or, if the Property

EXHIBIT 1

TIMBER RIDGE VILLAGE EMPLOYEE HOUSING GUIDELINES

1. General. These Guidelines are intended to supplement the Deed Restriction Agreement for the Occupancy and Transfer of the Timber Ridge Village Residential Dwelling Units (the "Deed Restriction"). These Guidelines may be updated by Town staff as necessary, and the current version of these Guidelines shall always control over any prior version. In the event of any conflict between these Guidelines and the Deed Restriction, the Deed Restriction shall control.

2. Occupancy.

a. Leasing. Each lease shall include a clear reference to the Deed Restriction and a brief summary of the Deed Restriction, and shall by reference incorporate the terms and conditions of this Deed Restriction. No lease shall be for a period of less than 30 days.

b. Occupants. Each adult individual occupying the Property shall be named in a lease, and no other occupants are permitted. An individual shall be considered to be occupying the Premises if the individual reasonably appears to be using the Property as a place to live. Indications of occupancy shall include without limitation: coming and going to the Property with the use of a key, providing any third-party with the address of the Property as that person's residential address, receiving mail or deliveries at the Property, keeping clothes or personal effects at the Property, commonly being present in the Premises, or commonly parking a vehicle at or near the Property. An individual may establish unauthorized occupancy of the Premises even if they own or lease other real property.

c. Leave of Absence. The Town may grant a leave of absence to a Owner for up to one year, upon clear and convincing written evidence that shows a reason for leaving and a commitment to return to the Property. Such written evidence shall be presented to the Town at least 30 days prior to leaving. The leave of absence may, in the sole discretion of the Town, be extended for up to 2 years. During the leave, the Property must be rented to one or more Qualified Occupants in accordance with the Deed Restriction.

c. Disability. Should a Qualified Occupant become an individual with a disability and, because of such disability, be unable to meet the requirements of the Deed Restriction to remain a Qualified Occupant, the Qualified Occupant shall notify the Town, in writing, of the nature of the disability. If the disability is permanent, the Qualified Occupant shall remain a Qualified Occupant despite the disability. If the disability is temporary and the Qualified Occupant becomes able to return to work, then to remain a Qualified Occupant, the Qualified Occupant must return to work when the disability ceases. Notwithstanding anything to the contrary in these Guidelines or the Deed Restriction, the Town will make all reasonable accommodations necessary under the Americans with Disabilities Act.

3. Annual Verification.

a. Affidavit. No later than February 1st of each year, each Owner shall submit a sworn affidavit, on a form provided by the Town, verifying that the Property was occupied in accordance with the Deed Restriction and these Guidelines for the prior calendar year.

b. Additional Documentation. The affidavit shall be accompanied by the following supporting documentation:

i. Verification of each Qualified Occupant's current employment and employment during the prior year (paystubs with employer's name, address and contact information);

ii. Signed authorization allowing the Town to discuss employment details with each Qualified Occupant's employer;

iii. Each Qualified Occupant's federal income tax return from the prior year, together with an executed Internal Revenue Service Form 8821 or equivalent;

iv. Copies of all leases of the Property during the prior year; and

v. Any other documentation deemed necessary by the Town to aid in the verification of compliance with the Deed Restriction.