

DEED RESTRICTION AGREEMENT

THIS DEED RESTRICTION AGREEMENT (referred to herein as the "Agreement" or "Deed Restriction") is entered into this ___ day of _____, 20___ (the "Effective Date") by and between the Town of Fraser, Colorado, a Colorado municipality with an address of 153 Fraser Avenue, P. O. Box 370, Fraser, Colorado 80442 (the "Town"), and _____, an individual with an address of _____ ("Owner") (each a "Party" and collectively the "Parties").

WHEREAS, in exchange for compensation as set forth in a Deed Restriction Purchase Agreement, Owner has agreed to place certain restrictions on the use of the Property for the benefit of the Town by requiring occupancy of the Property by at least one qualified resident, as defined below.

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 following real property is hereby burdened with the covenants and restrictions specified in this Agreement: _____ [address], as more specifically described in **Exhibit A**.

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

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

b. *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 C.R.S. § 31-10-201(3) shall apply.

c. *Qualified Household* means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants that are not Qualified Residents as long as at least one occupant is a Qualified Resident.

d. *Qualified Business* means a business located within the boundaries of _____, as such boundaries may be amended from time to time, which holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business.

e. *Qualified Resident* means a person who works an average of 30 hours or more per week at a Qualified Business. For example, if a person worked 60 hours per week for one half of the year at such a Qualified Business and worked elsewhere for the other half of the year, such person would constitute a Qualified Resident. To determine

that a person is a Qualified Resident, the Qualification Guidelines set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, shall apply.

f. *Town* means the Town of Fraser, Colorado, and its duly authorized agents.

3. Occupancy Restrictions.

a. At least one Qualified Resident shall continuously occupy the Property as his or her principal place of residence.

b. Owner may *rent* the Property as long as the Property is continuously occupied by a Qualified Household; provided, however, that the Property shall not be used for rentals of less than 30 days in duration.

c. A Qualified Resident may lease a room or rooms in the Property to one or more persons, *provided that* the Qualified Resident still occupies the Property as his or her principal place of residence.

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

4. Annual Verification. No later than February 1st of each year, beginning in the year following the first year of occupancy of the Property, Owner shall submit a written statement to the Town including the following information and stating that such information is true and correct to the best of Owner's knowledge and belief:

a. Evidence to establish that the Property was occupied by a Qualified Household during all of the prior calendar year;

b. If applicable, a copy of the lease form currently used for the Property; and

c. If applicable, a list of tenants who occupied the Property in the prior calendar year and the evidence submitted by each tenant to establish that they were a Qualified Resident, as set forth in the Qualification Guidelines.

5. Consent for Information. Owner agrees to provide, upon request of the Town, all documents and information necessary for the Town to establish continued compliance with this Agreement as amended from time to time. Documents may include but are not limited to federal and state income tax returns, W2's, 1099's, bank and credit card statements, release forms for employment and tax information, and invoices for utility payments. The Town shall maintain the confidentiality of financial information provided by or obtained concerning Owner, subject to the requirements of the Colorado Open Records Act, CRS §§ 24-72-201 *et seq.*, and except for such disclosures as are necessary with respect to any litigation, enforcement, or other legal proceedings.

6. Fines. The Town may impose fines for violations of the restrictions provided in this Agreement, which fines shall be in accordance with the fine schedule attached hereto as **Exhibit C**.

7. Consensual Lien; Right to Redeem. For the purpose of securing Owner's performance under the Deed Restriction 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.

8. Town's Option. Owner shall first notify the Town if Owner wishes to sell the Property. The Town shall have the first option to purchase the Property for the price and upon the terms contained in a *bona fide* written purchase offer that Owner desires to accept.

9. Breach.

a. It is a breach of this Agreement for Owner 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. Owner shall notify the Town, in writing, of any notification received from any lender of past due payments or defaults in payments or other obligations within 5 days of receipt.

b. If the Town has reasonable cause to believe 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 Owner with 24 hours written notice. This Agreement shall constitute Owner's permission to enter the Property during such times upon such notice.

10. Remedies.

a. The Town shall have any and all remedies provided by law and in equity for a violation of this Deed Restriction, including without limitation: (i) damages; (ii) specific performance; and (iii) injunctions, including without limitation an injunction requiring eviction of the occupant(s) and an injunction to prohibit the occupancy of the Property in violation of this Deed Restriction. In addition, fines may be imposed for violations as provided in Exhibit C. All remedies shall be cumulative.

b. The cost to the Town of any activity taken in response to any violation of this Deed Restriction, including reasonable attorney fees, shall be paid promptly by Owner.

11. Foreclosure.

a. 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.

b. Owner shall give immediate notice to the Town: 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 may 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. If the Property is sold at a foreclosure sale or acquired by any person or entity in lieu of foreclosure, the Town has the option to acquire such Property within 30 days after: i) the issuance of a confirmation deed to the purchaser, or ii) receipt by the Town of written notice from such person or entity of the acquisition of such property in lieu of foreclosure, as applicable, for an option price not to exceed: iii) in the event of a foreclosure, the redemption price on the last day of all statutory redemption periods and any additional reasonable costs incurred by the holder during the option period which are directly related to the foreclosure, or iv) in the event of a transfer in lieu of foreclosure, the amount paid, or the amount of debt forgiven, by the transferee plus the reasonable costs incurred by the transferee with respect to its acquisition of such Property.

12. Miscellaneous.

a. Modification. This Agreement may only be modified by subsequent written agreement of the Parties.

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

c. Runs with the Land. The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on any subsequent holder of an ownership interest in the Property.

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. Agreement Binding; Assignment. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties.

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

h. 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.

i. 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.

j. Recording. This Agreement shall be recorded with the Grand County Clerk and Recorder.

k. Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement are held to be unlawful or void for violation of: the rule against perpetuities or some analogous statutory provision; the rule restricting restraints on alienation; or any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated members of the Fraser Board of Trustees, their now living descendants, if any, and the survivor of them, plus 21 years.

l. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF FRASER, COLORADO

Mayor

ATTEST:

Town Clerk

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

QUALIFICATION GUIDELINES

1. Purpose. The purpose of these Qualification Guidelines is to set forth the occupancy requirements for the Property pursuant to the Deed Restriction.
2. Definitions. All capitalized terms herein shall have the meanings set forth in the Deed Restriction.
3. Application. To become a Qualified Resident, a person must provide the following information:
 - a. Verification (e.g., wage stubs, employer name, address, telephone number and other appropriate documentation) of the person's current employment with a Qualified Business;
 - b. Evidence that the applicant has worked, or will work, an average of 30 hours per week or more per year for one or more of such Qualified Businesses;
 - c. A valid form of identification, such as a driver's license, state-issued identification, passport or military identification; and
 - d. A signed statement certifying and acknowledging that all information submitted in such application is true to applicant's best knowledge and authorizing verification of all information submitted.

EXHIBIT C

FINE SCHEDULE

The Town may impose fines for violations of the Deed Restriction in accordance with the following schedule:

1. First violation: \$100.00;
2. Second violation: \$250.00;
3. Third and subsequent violations: \$500.00.

Prior to imposing a fine, the Town shall give notice to Owner of the violation and the fine to be imposed, and shall allow Owner 15 days from the date of the notice to either cure the violation or respond in writing contesting the violation or fine and requesting a hearing before a hearing officer appointed by the Town. If no hearing is requested and the violation is not satisfactorily cured within said 15-day period, then the violation identified in the notice and the fine imposed shall be deemed final. If a hearing is requested, the hearing officer appointed by the Town shall give notice of the time and place of the hearing, and the determination of the hearing officer regarding the violation and fine shall be final.

Unless a contest is filed, Owner shall pay all fines imposed by the Town within 15 days after notification is sent by the Town, and any amounts not paid within such time shall bear interest at the rate of 1% per month, compounded monthly, until paid in full.

The imposition of a fine shall not preclude the Town from pursuing any other remedy for a violation of the Deed Restriction.

The Town may increase the amount of the fines set forth in the above schedule for each violation by an amount not to exceed 5% each year during the time this Agreement is in effect. If the fines are so increased, the Town shall provide written notice to Owner at least 30 days prior to the effective date of such increase.