

***THE SEPTEMBER 10, 2019 COUNCIL PACKET MAY BE VIEWED
BY GOING TO THE TOWN OF FRISCO WEBSITE.***

**RECORD OF PROCEEDINGS
WORK SESSION MEETING AGENDA OF THE
TOWN COUNCIL OF THE TOWN OF FRISCO
SEPTEMBER 10, 2019**

***THE TUESDAY, SEPTEMBER 10, 2019
WORK SESSION MEETING OF THE FRISCO TOWN COUNCIL HAS BEEN
CANCELLED.***

**RECORD OF PROCEEDINGS
REGULAR MEETING AGENDA OF THE
TOWN COUNCIL OF THE TOWN OF FRISCO
SEPTEMBER 10, 2019
7:00PM**

**STARTING TIMES INDICATED FOR AGENDA ITEMS ARE ESTIMATES ONLY AND
MAY CHANGE**

Call to Order:

Gary Wilkinson, Mayor

Roll Call:

Gary Wilkinson, Jessica Burley, Daniel Fallon, Rick Ihnken, Hunter Mortensen, Deborah Shaner, and Melissa Sherburne

Public Comments:

Citizens making comments during Public Comments or Public Hearings should state their names and addresses for the record, be topic-specific, and limit comments to no longer than three minutes.

NO COUNCIL ACTION IS TAKEN ON PUBLIC COMMENTS. COUNCIL WILL TAKE ALL COMMENTS UNDER ADVISEMENT AND IF A COUNCIL RESPONSE IS APPROPRIATE THE INDIVIDUAL MAKING THE COMMENT WILL RECEIVE A FORMAL RESPONSE FROM THE TOWN AT A LATER DATE.

Mayor and Council Comments:

Staff Updates:

Consent Agenda:

- Minutes August 27, 2019 Meeting
- Home Rule Charter Review, Chapter 61 – Brush, Grass, and Weeds

- Resolution 19-27, a Resolution of the Town of Frisco, Colorado, Residential Housing Restrictive Covenant and Notice of Lien

New Business:

Agenda Item #1: New Hotel and Restaurant Liquor License – Himalayan Cuisine Frisco LLC dba Himalayan Cuisine STAFF: DEBORAH WOHLMUTH 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #2: Excelsior House Options and Consideration STAFF: JOYCE ALLGAIER 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Old Business:

Agenda Item #3: Second Reading Ordinance 19-15, an Ordinance Amending Chapter 110 of the Code of Ordinances of the Town of Frisco, Concerning Business Licenses and Regulations, by the Addition of a New Article III, Concerning the Establishment of a Requirement for the Licensing of Tobacco Product Retailers, and Requirements and Limitations Concerning the Sale of Tobacco Products by Such Retailers, Including Limiting the Sale of Tobacco Products to Persons who are Twenty-One (21) Years of Age or Older; which Requirements are Necessary to Safeguard the Health of Individuals who are not of Legal Age to Purchase Tobacco Products STAFF: DIANE MCBRIDE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Adjourn:



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: BILL GIBSON, ASSISTANT DIRECTOR AND JOYCE ALLGAIER, DIRECTOR
RE: COMMUNITY DEVELOPMENT DEPARTMENT REPORT
DATE: SEPTEMBER 10, 2019

Planning Commission Activities: Planning Commission meeting on August 1, 2019:

1. Work Session for Planning Commissioner legal training

Thad Renaud, Town Attorney, provided training on the following three topics:

- *Quasi-Judicial Decision Making and Ex Parte Communications*
- *Colorado Open Meetings Law*
- *Ethics in Government – Conflicts of Interest*

2. Planning File No. 104-19-ORD: A code text amendment to Chapter 180 of the Code of Ordinances of the Town of Frisco, concerning zoning, by amending Section 5.2.11 thereof, concerning telecommunications facilities, to revise regulations concerning small cell wireless facilities to conform to Federal Communications Commission requirements and limitations.

The Planning Commission tabled this item to September 5, 2019, by a vote of 7-0.

3. Planning Commission Resolution 19-02: A resolution adopting the 2019 Frisco Community Plan

The Planning Commission approved this item by a vote of 7-0.

The Planning Commission did not hold a meeting on August 15, 2019.

Planning Division Activities:

Administrative review applications approved last month: 40

Application Type	Applicant	Address
Master Sign Plan	Holiday Center	1121 Dillon Dam Road
Administrative Site Plan	Stais Architecture & Interiors	408 East Main Street, Suite 107

Administrative Site Plan	Todd Beck Custom Carpentry	95 Hawn Drive
Banner Permit	Abbey's Coffee	720 East Main Street
Administrative Site Plan	Acorn Creek Builders	151 Lupine Lane
Administrative Site Plan	Active Energies	720 Belford Street, Unit A
Administrative Site Plan	G&G Roofing LLC	203 Miners Creek Road
Administrative Site Plan	Active Energies	712 Belford Street
Administrative Site Plan	Acorn Creek Builders	151 Lupine Lane
Administrative Site Plan	Held Joinery	3 Miners Creek Road
Administrative Site Plan	Ravenwood at Frisco HOA	504A Granite Street
Administrative Site Plan	Neu Design	169 Rose Crown Circle
Administrative Site Plan	Charlie Whipdo LLC	106 Teller Street & 142 South 1 st Avenue
Minor Site Plan	Patrick Gleason	108 Primrose Place
Administrative Site Plan	Kirk Dice	620 East Main Street, Unit 11
Administrative Site Plan	Hogan Roofing	504 Granite Street, Units A & B
Administrative Site Plan	Hogan Roofing	506 Granite Street, Units A & B
Administrative Site Plan	Hogan Roofing	202 South 5th Avenue, Units A & B
Administrative Site Plan	Renewal by Andersen	604B Little Chief Way
Administrative Site Plan	Renewal by Andersen	805 South 5th Avenue, Bldg. H, Unit 312
Banner Permit	Performance Tours	842 North Summit Boulevard
Minor Site Plan	Campbell Construction	613 Pitkin Street
Administrative Site Plan	Travis Construction	405 Creekside Drive
Administrative Site Plan	Jim Kidder	601 Galena Street, Bldgs. 1 & 2
Administrative Site Plan	Elite Custom Builders LLLC	719, 757, 801 Ten Mile Drive
Administrative Site Plan	Rocky Mountain Hot Tub	10 Hawn Drive
Administrative Site Plan	Active Energies	273 Belford Street
Administrative Site Plan	Active Energies	901 Lakepoint Circle
Administrative Site Plan	Charlie Whipdo LLC	63 & 65 Hawn Drive
Administrative Site Plan	Andrew Held	3 Miners Creek Road
Administrative Site Plan	Augusto Torruco	108 Creekside Drive, Unit 2
Administrative Site Plan	Great Divide Builders LLC	583 Bills Ranch Road
Administrative Site Plan	AAA Properties	215 South 5th Avenue
Administrative Site Plan	Black Duck Builders	317 Galena Street, Units C, E, & F
Final Plat	Macatr LLC	100 Granite Street
Minor Site Plan	Charlie Crowley	20 Hawn Drive
Administrative Site Plan	Holly Crystal	104A Miners Creek Road
Administrative Site Plan	Champion Windows	510 Belford Street, Unit 1
Administrative Site Plan	Champion Windows	510 Belford Street, Unit 2
Administrative Site Plan	Champion Windows	510 Belford Street, Unit 3

Building Division Activities:

- Permits issued last month included the following:
 - Building Permits: 71
 - Plumbing & Mechanical Permits: 10
 - Electrical Permits (issued by Summit County): 7

These permits included 2 solar energy projects.

- Valuation of permits issued last month: \$2,057,241
- Inspections performed last month: 295
- Rapid Review Wednesday customers assisted last month: 48
- Certificates of Completion / Certificates of Occupancy issued last month: 8
Including:
 - 100 Granite Street, Mattox Manor Townhomes, Units B and C
 - 119 Lupine Lane new single-family
 - 112 North 5th Avenue, Deming Crossing Townhomes, Unit 3

Front Desk Activities: Phone calls and walk-in customers served last month: 708

Community Rating System Report: The Town of Frisco participates in the National Flood Insurance Program (NFIP) Community Rating System (CRS). The CRS is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum requirements of the NFIP.

As a result of the Town of Frisco's participation in CRS program, flood insurance premium rates are discounted for Frisco property owners. The percentage discount offered to property owners is based upon a community's CRS classification.

Community classifications are determined through the calculation of credit points awarded for various floodplain management activities. CRS Activity 510, Floodplain Management Planning, provides credit points associated with programs, projects, and measures that will reduce the adverse impacts of flood hazards. The Town of Frisco receives credit points in this category through our participation in the Summit County Multi-Jurisdictional Hazard Mitigation Plan.

To receive these credit points, a "Progress Report on Implementation of Credited Plan" must be provided to the Town Council and documented as part of our annual CRS recertification process. Below is a copy of this report in the format required by the CRS.

**Community Rating System
Activity 510 (Floodplain Management Planning)
Progress Report on Implementation of Credited Plan**

Date this Report was Prepared: August 21, 2019

Name of Community: Town of Frisco, Colorado

Name of Plan: Summit County Multi-Jurisdictional Hazard Mitigation Plan

Date of Adoption of Plan: November 11, 2014 (Town of Frisco Resolution 14-13)

5 Year CRS Expiration Date: May 1, 2022

1. How can a copy of the original plan or area analysis report be obtained:

The Summit County Multi-Hazard Mitigation Plan is available for review in person at Frisco Town Hall. The plan is also available online at the Summit County Office of Emergency Management's website and the Town of Frisco's website:

<https://www.summitcountyco.gov/194/Natural-Hazard-Plans>

<https://www.frisco.gov/departments/community-development/planning-division/flood-preparedness/>

2. Describe how this progress report was prepared and how it was submitted to the governing body, released to the media, and made available to the public:

This progress report has been submitted to the state NFIP coordinator via email and to the Frisco Town Council. It has been made available to the media and general public on the Town of Frisco's website:

<https://www.frisco.gov/departments/community-development/planning-division/flood-preparedness/>

3. Provide a description of the implementation of each recommendation or action item in the action plan or area analysis report, including a statement on how the project was implemented or not implemented during the previous year:

Pursuant to Section E.6, Mitigation Actions of the Summit County Multi-Hazard Mitigation Plan:

"Frisco will continue participation in and compliance with the NFIP. Specific activities that the Town will undertake to continue compliance include the following

- Working with FEMA and the State in the map modernization program and adopting new DFIRMs when effective.
- Reviewing the flood damage prevention ordinance and identifying opportunities for strengthening the ordinance at the same time it is updated to adopt new

DFIRMs.

- Continuing participation in the Community Rating System and identifying opportunities to increase points and lower rating, such as through this planning process.”

The Town of Frisco worked with FEMA and the State of Colorado on the map modernization program from 2013 to 2018. On September 25, 2018, the Town of Frisco adopted Ordinance 18-08 which implemented the new FEMA published Flood Insurance Rate Maps (FIRM) with an effective date November 16, 2018.

Ordinance 18-08 also updated Chapter 97, Flood Hazard Areas, of Frisco Code of Ordinances to bring the town code into full conformance with the State of Colorado, Department of Natural Resources adopted Rules and Regulations for Regulatory Floodplains in Colorado; the associated model ordinance prepared by the State of Colorado, Colorado Water Conservation Board; and the minimum standards of the National Flood Insurance Program.

The Town of Frisco continues its ongoing participation in the Community Rating System (CRS). The Town has increased its CRS credit points and maintained a Class 8 rating.

All objectives of the hazard mitigation plan have been met.

4. *Discuss why any objectives were not reached or why implementation is behind schedule:*

Not applicable as all objectives of the hazard mitigation plan have been met.

5. *What are the recommendations for new projects or revised recommendations?*

There are no new projects or recommendations at this time. New projects and revised recommendations will be explored during the update to the Summit County Multi-Hazard Mitigation Plan which is scheduled for later this calendar year. The update of this plan is being coordinated by the Summit County Office of Emergency Management.

Report Criteria:

Business.License status = "Active"
Business.Year opened = "August 2019"
Business Owner.Sequence number = 1

in or out City	Business Name	Name	Location	Location City	Business Telephone 1	Business Activity
In	Cobar	Pantle, Rob	610 Main Street 1A 1B and 2	Frisco	970-389-8835	Restaurant
Out	4 Imprint	Seekings, David	101 Commerce Street	Oshkosh	920-236-7272	Retail - General
Out	A Squared Mechanical Solutions	Green, Allen	5636 Kendall Court Unit E	Arvada	303-459-7785	Retail - HomeImprove
Out	Alpine Builders Hardware	Harder, Neal and Carolyn	5 Murray Road C-2	Edwards	970-926-7233	Retail - HomeImprove
Out	ASSA ABLOY Hospitality	ASSA ABLOY Hospitality	631 International Parkway Suite 1	Richardson	972-692-3115	Retail - Office
Out	Cookie Advantage	Shah, Michelle and Vinay	6549 North Academy Boulevard	Colorado Springs	719-321-4308	Retail - Gifts
Out	Domain Interiors	Brook, Nicole	5978 Highway 9	Blue River	970-771-3753	Retail - HomeImprove
Out	Dormakaba USA	Dormakaba USA	1 Dorma Drive	Reanstown	717-336-3881	Retail - HomeImprove
Out	Edge Environmental	Witkamp, Ryan	18584 Longs Way C5	Parker	303-840-2250	Retail - HomeImprove
Out	Enviro Roofing & Construction	Watschke, Joshua	110 Brown Street	Bailey	303-953-7079	Retail - HomeImprove
Out	Expanding Framing	Perez-Chacon, Alonso	9801 East Arizona Drive #814	Denver	720-412-5951	Retail - HomeImprove
Out	Flux Partner Group	Flux Partner Group	1039 Detroit Street	Denver	720-469-2379	Retail - HomeImprove
Out	H-E-B LP	H-E-B LP	646 South Flores Street	San Antonio	210-938-8000	Restaurant
Out	Holtzbrinck Publishers	Holtzbrinck Publishers	120 Broadway	New York	646-307-5151	Retail - Gifts
Out	NEC Financial Services	NEC Financial Services	250 Pehle Avenue Suite 203	Saddle Brook	210-845-5800	Retail - Office
Out	Norscot Group	Stern, Scott	1000 West Donges Bay Road	Mequon	262-241-3313	Retail - General
Out	Optos	Optos	500 Nickerson Road Suite 201	Marlborough	800-854-3039 x1448	Retail - Office
Out	Priority Home Management	Priority Home Management	582 Gateway Drive	Breckenridge	970-409-2003	Vacation Rentals
Out	Revision Skincare	Revision Skincare	9019 Premier Row	Dallas	800-385-6652	Retail - General
Out	Royal Appliance Manufacturing	Royal Appliance Manufacturing	8405 IBM Drive	Charlotte	864-332-55440	Retail - General
Out	Schnabel Foundation Company	Schnabel Foundation Company	2950 South Jamaica Court #107	Aurora	703-742-0020	Retail - HomeImprove
Out	Simplot AB Retail	Simplot AB Retail	1099 West Front Street	Boise	208-336-2110	Retail - General
Out	Summit Heating and A/C	Leech, William	8101 Shaffer Parkway #105	Littleton	720-870-1580	Retail - HomeImprove
Out	TA Operating	TA Operating	24601 Center Ridge Road	Westlake	440-808-9409	Retail - Automotive
Out	Techtronic Industries Factory Outl	Techtronic Industries Factory Outlets	1428 Pearman Dairy Road	Anderson	864-332-5523	Retail - HomeImprove
Out	Waste Farmers	Maxfield, John-Paul	215 Silver Street	Delta	888-369-3769	Retail - General



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: TOWN COUNCIL
FROM: DIANE MCBRIDE, ASSISTANT TOWN MANAGER / RECREATION & CULTURE DIRECTOR
CC: KATIE BARTON, GENERAL MANAGER – ADVENTURE PARK
ROSE GORRELL, MUSEUM MANAGER
TOM HOGEMAN, GENERAL MANAGER - MARINA
LINSEY JOYCE, PROGRAMS MANAGER
RE: **RECREATION & CULTURE DEPARTMENT REPORT – JULY 2019**
DATE: AUGUST 27, 2019

Overview

This Department report highlights operations, programs and events for the month of July.

July continued to be quite busy for all aspects of the Recreation and Culture Department. Work continued at the Frisco Bay Marina and the feedback on the work has been exceptional. The beach is extremely popular and rentals continue to be quite busy. Despite the cancelation of fireworks, the Marina was quite busy for the 4th of July. July rental numbers were quite high; slips and mooring revenues have all exceeded budgeted revenue at this time.

The Adventure Park is also quite busy with skateboarders, climbers, bikers, and numerous users on the new and old trails. Fun Club continues to run out of the Nordic Center and averaged 46 kids/day in the program in July. Capacity per day is 50 kids. Skateboard, bike, adventure, LEGO and Girls on the Run Camp all ran out of the Day Lodge in July. Camps were filled for the majority of days.

Founder's Day was a great success at the museum with over 500 people in attendance. Visitation numbers are strong, as are the lunchtime lecture attendance figures.

Staff continues to work with youth in the community. Youth program participation increased 6.5% in July 2019 compared to July 2018. Staff also continues to employ youth workers at the marina, sports camps, and Fun Club. Currently, there are nine 14 year olds, seven 15 year olds, eleven 16 year olds and eight 17 year olds working for the Town of Frisco in the Recreation and Culture Department, totaling 35 high school student workers. That is 18% of the TOF total work force.

The report below details each of the different divisions (Adventure Park, Marina, Historic Park and Museum, Recreation Programs and Events) within the Department. Attendance numbers (as appropriate) and financials are all presented for July.

Adventure Park

For the purpose of this report, the Adventure Park consists of all aspects of the Peninsula Recreation Area (PRA) including the tubing hill, ski and ride hill, field and facility reservations, concessionaire operations, bike park, skatepark, disc golf, trails and the Nordic Center. Finances are broken down into 1160 accounts (tubing hill, ski and ride hill, Day Lodge) and 1170 accounts (Nordic and Trails).

July highlights for the Adventure Park (1160) included the following:

- The Bike Park is open for the summer. All jumps were open by the beginning of the month. Staff resurfaced the dual slalom, green line and pump track. The toolcat is out of commission at this time.
- Council approved the lift decking replacement project. Work is underway at this time.
- The Skate Park is also open for the summer and continues to be a very popular destination for skaters. Landscaping and fencing around the skatepark will take place in August.
- The disc golf course remains a popular amenity at the Adventure Park.
 - The Peak One Disc Golf Tournament took place on 7/14.
 - The Town teamed with Pioneer Sports to run a Monday night league on the course.
- Rentals included the following:
 - The Day Lodge was rented for seven private events, and hosted TOF youth Bike, Skate, Adventure, LEGO and Girls on the Run camps throughout the month, as well as three Mountain Goat Races.
 - The multi-purpose field was rented for the High Country Soccer Association - 7/22-7/26, and for two private weddings.
 - The ballfield was rented for one baseball practice, two weddings, and the High Country Soccer Association camp.
 - Meadow Creek Park was rented for five private rentals
 - Walter Byron Park was rented for eight private rentals
- Staff purchased 160 re-usable plates to use in the Day Lodge Café instead of using paper products. These plates are made out of 100% recycled plastic, dishwasher safe, and are recyclable. The company claims that they are good for hundreds of uses. Staff is optimistic that they are durable and will significantly reduce waste generated out of the café and provide employees with a re-usable option. This will also reduce costs as purchasing single use paper products is expensive, in addition to being wasteful.
- Katie Barton returned from maternity leave. Wells Elizabeth was born on March 30th. We are all excited to have Katie back to work!



- Revenues are tracking well at 68% of budget at this time and comparable to 2018 year to date figures; expenses are also tracking well at 51% of budget.

Table 1: Frisco Adventure Park Figures (1160)

	July 2019	July 2018	July 2017
Revenue – 1160	\$10,461	\$8,861	\$10,125
Expenses – 1160	\$48,893	\$47,675	\$48,949

	YTD Actual 2019	Budget 2019	YTD Actual 2018	YTD Actual 2017
Revenue – 1160	\$1,333,524	\$1,948,500	\$1,365,829	\$1,283,046
Expenses – 1160	\$672,194	\$1,307,679	\$683,765	\$711,321

July highlights for Nordic and trails (1170) included the following:

- Trail work continues on the PRA and is shaping up quite well.
 - Trails crew continued work on Perimeter Trail towards the East, flagged Peak One trail for RMYC trail day
 - USFS site visit and approval on Jody's Nugget work
 - Trails crew completed Nordic re-alignment of Jody's Nugget
 - Posted additional signs per CPW direction warning PRA users of coyote and moose presence.
 - Completed fill project and tree thinning on Phat Loop
 - Continued tree cutting on Nordic trails
 - Completed grading of Frisco Bay Trail above 'Nightmare Hill'
- Pete Swenson, Nordic and Trails Manager, attended a GOCO grant writing seminar and as a result, has written a CPW/GOCO **Colorado The Beautiful** grant for trail work at the PRA. Pete will also be attending the Summit County Open Space Advisory Council (OSAC) meetings on behalf of the Town on a regular basis.
- Council approved the Adopt a Recpath program.
- Revenues are tracking well at 82.5% of budget at this time and nearly 46% ahead of 2018 year to date figures; expenses are also tracking well at 37% of budget. Expenses are higher at this time due to the increase in staffing. Two, 10-month positions have been hired for the Nordic and Trails operations.

Table 2: Frisco Nordic Center and Trails Figures (1170)

	July 2019	July 2018	July 2017
Revenue – 1170	\$11,305	\$1,132	\$0
Expenses – 1170	\$12,203	\$11,340	\$7,012

	YTD Actual 2019	Budget 2019	YTD Actual 2018	YTD Actual 2017
Revenue – 1170	\$285,024	\$345,600	\$195,391	\$191,617
Expenses – 1170	\$186,008	\$500,899	\$127,344	\$117,791

Marina

July highlights for the Marina included the following:

- July was an exceptionally busy month at the Frisco Bay Marina.
 - The Big Dig and Phase 1 projects were wrapped up and closeouts finalized with Columbine Hills and Schofield Excavation.
 - Docks were moved into place 7/8-7/12 and opened!
 - Used the old gangway set up temporarily as the new gangway delivery was delayed.
- The Service area completed the following:
 - Paint and swaging of handrails
 - Servicing and fixing of the rental boats - general upkeep and a few failed fuel injectors
 - Many work orders including stepping masts and launching
 - Followed up on warranty claims with the engines on multiple rental runabouts boats.
- The Operations area was busy shuffling “dock island”, moving docks into new spots, moving boats to slips, straightening moorings, moving the “no wake” buoys and channel marks, fixing the broken cleats and rub rail, swaging railings, and cleaning and straightening the grounds
- Revenue is tracking well at this time despite a wet and challenging month of June. July rental numbers made up for the lower revenues in June. Budgeted revenue for 2019 is \$6,370,000, which includes \$5M in loan proceeds. Year to date revenue is \$6,459,944, which includes \$5,406,156 in marina bond proceeds, and shows revenues tracking at 101.4% of budget at this time. Taking out the loan figures, the budget would be \$1,370,000 and year to date actual would be \$1,053,788, which is 77% of budget at this time. Rentals continue to track exceptionally well, and were 18% ahead of July 2018 figures. Staff is optimistic that rentals in August will remain strong.
- Expenses are also tracking well at this time. Expenses are higher in 2019 compared to 2018 due to the capital improvement projects. The 2019 budget for capital improvement projects alone is \$3,996,700. Taking out the capital improvement projects for comparison purposes between 2018 and 2019, expenses are tracking ~10% less in 2019 compared to 2018. The managers are doing a good job managing staffing levels and expenses at this time.

Table 3: Frisco Marina Figures (9000)

	July 2019	July 2018	July 2017
Revenue – 9000	\$415,435	\$351,280	\$405,433
Expenses – 9000	\$560,745[^]	\$170,283	\$154,218

[^] Expenses are higher in 2019 due to the capital improvement projects. 2019 budget for capital improvement projects is \$3,996,700.

	YTD Actual 2019	Budget 2019	YTD Actual 2018	YTD Actual 2017
Revenue – 9000	\$1,053,788*	\$1,370,000**	\$1,163,263	\$1,082,148
Expenses – 9000	\$3,859,440[^]	\$5,438,064	\$848,367	\$563,532

* YTD Actual 2019 is \$6,459,944, which includes the marina bond proceeds of \$5,406,156. The marina bond proceeds value is removed from this table for year-to-date and year-over-year comparisons.

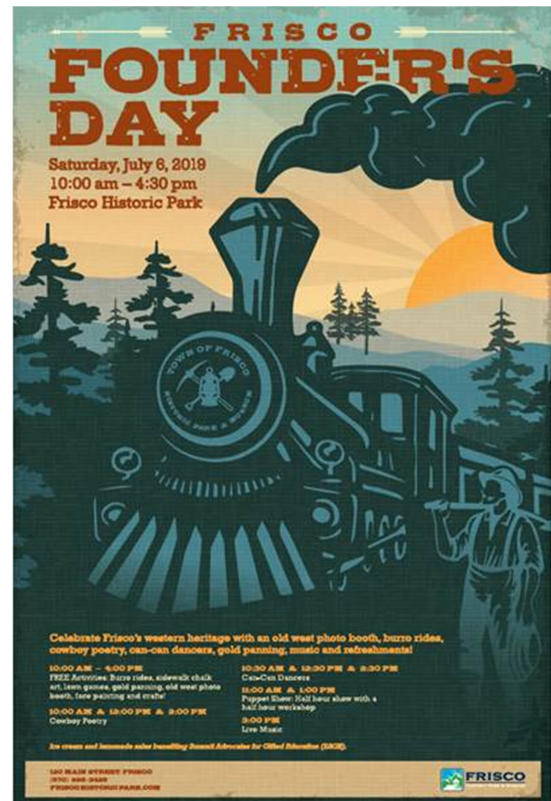
** Actual 2019 budget is \$6,370,000, which accounts for the \$5M loan proceeds. The \$5m loan proceeds are extracted from this table for year-to-date and year-over-year comparisons.

[^] Expenses are higher in 2019 due to the capital improvement projects. 2019 budget for capital improvement projects is \$3,996,700.

Historic Park and Museum

July highlights for the Historic Park and Museum included the following:

- Founder's Day took place on Saturday, July 6th with the following highlights:
 - 500 people walked into the schoolhouse. It was a good mixture of local, Denver area, and out of town guests.
 - The arts and crafts tent had ~176 children. There were 242 burro rides.
 - At 11 am, there were ~240 people in the park- not including the schoolhouse.
 - At 3 pm, there were ~193 people in the park- not including the schoolhouse.
 - A huge thank you to staff, and especially Michaela Douglas for planning the event!
- Visitor attendance for the month of July totaled 7,129 people (compared to 7,665 in 2018), with an average of 274 people/day. *Please note that these attendance numbers are based on a click system and therefore do not always accurately reflect all visitors to the museum and park.*



- Museum programs included the following:
 - Masontown Tour: went well. Michaela led and did well. Had low turnout. Around 8 people showed up. Will be changing Masontown route to attract broader audience (easier hike/better scenery/more opportunity for interpretation).
 - Frisco Town Tour: went well. Caroline led. Had low turnout. Will be rolling out a new survey to send to participants for future tours.
 - Founder's Day: went very well. Around 500 walked into the museum. Burro rides were exceptionally popular.
 - Lunchtime Lecture Series: Series remains exceptionally popular on Wednesdays at 12pm. Staff has been testing out the sound systems in the chapel and gazebo. Will be having a speaker in First and Main on August 14th to test out number of people and sound. Staff began reaching out to speakers for the Winter Series.
 - Upcoming: Night at the Museum (8/16) - Catering booked, Next Page author confirmed, Music selected; Nightmare @ the Museum- met with Coroner's Office. Set up schedule and talked through logistics. Will be having an illusionist for kids.

- Ongoing Museum projects include the following:
 - Archives: Staff continues to receive donations from the community. Recent donation was a cloak estimated to be from the early 1900s/late 1800s. The museum was given the macramé wall hanging that had previously been in town hall by the creator, Debbie Curtis.
 - Research Requests: We have had several requests from Summit Daily and Summit Historical for photographs.
 - Where's Waldo: The museum participated in the town wide Where's Waldo contest.
 - Report. Staff pulled together a social media report for the 1st half of 2019. The report indicates that the right combination of history + imagery + timing create the most reach AND engagement. Posting Frisco images and (sometimes) Colorado history before noon garner the most reactions and post clicks.
 - Report: Staff also pulled a visitor survey report for the 1st half of 2019. The feedback on the park and museum is very positive. Adding some interactive children's exhibits would further expand the experience according to many comments.

- Revenue is tracking well at this time at 76% of budget, and ~4% ahead of 2018 figures at this time. Expenses are also tracking well at 47% of budget.

Photo 1: Lunchtime Lecture Audience at the Gazebo 7/17/2019



Table 4: Frisco Historic Park and Museum Figures (1125)

	July 2019	July 2018	July 2017
Attendance	7,129	7,665	6,835

	July 2019	July 2018	July 2017
Revenue – 1125	\$3,186	\$3,144	\$3,153
Expenses – 1125	\$22,668	\$24,207	\$28,877

	YTD Actual 2018	Budget 2019	YTD Actual 2018	YTD Actual 2017
Revenue – 1125	\$13,363	\$17,500	\$12,788	\$11,954
Expenses – 1125	\$152,113	\$323,539	\$141,502	\$157,022

Recreation Programs and Special Events

July highlights for Recreation Programs and Special Events included the following:

- July is the busiest month of the year for programs and events in the Recreation and Culture Department. Staff held four races, six specialty camps and 21 days of Fun Club in July! Overall, program participation increased 6.5% and event participation increased 45% compared to July 2018.
- The largest participation increase from July 2018 to July 2019 was with the Mountain Goat Kids Trail Running Series! Race #2 this year had a 68% increase in participation from race #2 in 2019; this can be partially attributed to the fact that race #2 took place on July 2nd and many visitors participated in the event. Race #3 had a 20% increase in participation from 2018 to 2019. Although race #4 took place in August of 2018, staff bumped race #4 to July this year. Race #4 had a 31% increase in participation from 2018 to 2019. Overall, there were a total of 581 kids in the Mountain Goat Kids Trail Running Series this summer season, which was a 38% increase from the 422 kids in the 2018 Series!
- The Frisco Triathlon sold out for the second year; the race sold out in March with 300 racers! It takes so many staff and volunteers to make the event the huge success that it is!
- The LEGO Camp sold out with 25 kids; this is a contract camp that so many kids in the community look forward to each summer! The third LEGO camp will run in August.
- The Girls on the Run camp had a 32% increase in participation compared to 2018.
- Year to date revenue is tracking exceptionally well at this time at 95.5% of budget, and 13.5% ahead of 2018 year to date revenues. Expenses are tracking well at 48% of budget, and slightly lower than 2018 expenses at this time.

Table 5: Programs and Events Figures (1150)

	July 2019	July 2018	July 2017
Frisco Fun Club	978	960	901
Frisco Adventure Camp	178	147	144
Bike Camp	75	120	120
Skateboard Camp	60	n/a	n/a
Play Well Lego Camp	125	125	n/a
Yoga at the Marina	n/a	n/a	84
Girls on the Run Camp	125	95	160
Women's Mountain Biking Clinics	n/a	n/a	13
Total Program Participation	1,541	1,447	1,422
Mountain Goat Kids Trail Running	468	228	150
Frisco Triathlon	300	300	240
Total Event Participation	768	528	390

	July 2019	July 2018	July 2017
Revenue – 1150	\$6,613	\$2,644	\$11,581
Expenses – 1150	\$48,987	\$60,310	\$59,408

	YTD Actual 2019	Budget 2019	YTD Actual 2018	YTD Actual 2017
Revenue – 1150	\$273,681	\$286,500	\$241,067	\$257,845
Expenses – 1150	\$203,031	\$426,578	\$217,729	\$215,415

Photo 2: Start of the Frisco Triathlon – Stand Up Paddleboard at the Marina



Photos 3-4: Kelsy Maxie (Guest Services Manager) running the Run the Rockies Race August 10th; Frisco Fun Club Excitement



Photo 5: Welcome to the Frisco Adventure Park!



**RECORD OF PROCEEDINGS
MINUTES OF THE REGULAR MEETING
OF THE TOWN COUNCIL OF THE TOWN OF FRISCO
AUGUST 27, 2019**

Mayor Wilkinson called the meeting to order at 7:00 p.m. Deputy Town Clerk Brodie Boilard called the roll.

Present: Jessica Burley
Dan Fallon
Rick Ihnken
Deborah Shaner
Melissa Sherburne
Gary Wilkinson

Absent: Hunter Mortensen

Public Comment:

Frisco resident Joe Lamb thanked council for the short term rental ordinance and for the Marina improvements.

Frisco resident Donna Skupien expressed concern regarding bikes on sidewalks.

Council Comment:

Mayor Wilkinson spoke on behalf of Council member Mortensen, complementing the High School Mountain Bike Race.

Consent Agenda:

- Minutes August 13, 2019 Meeting
- Warrant List
- Purchasing Cards
- Resolution 19-28 Matthew Stais Architects for the Frisco Bay Marina Phase 2 Site Improvements
- Resolution 19-30 Trails CPW/GOCO Grant

MOTION: COUNCIL MEMBER FALLON MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. SECOND, COUNCIL MEMBER BURLEY. VOTE:

BURLEY	YEA	SHANER	YEA
FALLON	YEA	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	YEA
MORTENSEN	ABSENT	MOTION CARRIED.	

New Business:

Agenda Item #1: First Reading Ordinance 19-15, an Ordinance Amending Chapter 110 of the Code of Ordinances of the Town of Frisco, Concerning Business Licenses and Regulations, by

the Addition of a New Article III, Concerning the Establishment of a Requirement for the Licensing of Tobacco Product Retailers, and Requirements and Limitations Concerning the Sale of Tobacco Products by Such Retailers, Including Limiting the Sale of Tobacco Products to Persons who are Twenty-One (21) Years of Age or Older; which Requirements are Necessary to Safeguard the Health of Individuals who are not of Legal Age to Purchase Tobacco Products STAFF: DIANE MCBRIDE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #2: First Reading Ordinance 19-16, an Ordinance Amending Chapter 110 of the Code of Ordinances of the Town of Frisco, Concerning Business Licenses and Regulations, by the Addition of a New Article III, Concerning the Establishment of a Requirement for the Licensing of Tobacco Product Retailers, and Requirements Concerning the Sale of Tobacco Products by such Retailers, which Requirements are Necessary to Safeguard the Health of Individuals who are not of Legal Age to Purchase Tobacco Products STAFF: DIANE MCBRIDE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #3: First Reading Ordinance 19-17, an Ordinance Amending Chapter 127 of the Code of Ordinances of the Town of Frisco, Concerning General Offenses, to Prohibit the Sale of Tobacco Products to Persons who are Under Twenty-One (21) Years of Age, and to Prohibit the Purchase of Tobacco Products by Persons who are Under Twenty-One (21) Years of Age, which Requirements are Necessary to Safeguard the Health of such People, and to Prevent the Distribution of Tobacco Products to Minors STAFF: DIANE MCBRIDE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Manager Nancy Kerry stated that the three ordinances being presented on this agenda address tobacco age and licensing requirements. Ms. Kerry indicated that at Council's last meeting, direction was given to bring these items as individual ordinances, and as a combined ordinance. Mayor Wilkinson opened Agenda Items 1, 2, and 3 for consideration at this time. Mayor Wilkinson opened the public hearing at 7:15 p.m. Summit County Health Nurse Lauren Gilbert – nurse at Summit County Health Nurse and six Summit High students spoke in support of the ordinance. Mayor Wilkinson closed the public hearing at 7:44 p.m.

MOTION: COUNCIL MEMBER IHNKEN MOVED TO APPROVE ON FIRST READING ORDINANCE 19-15, AN ORDINANCE ESTABLISHING AGE AND LICENSING REQUIREMENTS FOR TOBACCO PURCHASES; AND TO DISAPPROVE ORDINANCES 19-16 AND 19-17. SECOND, COUNCIL MEMBER SHERBURNE. VOTE:

FALLON	YEA	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	YEA
MORTENSEN	ABSENT	BURLEY	YEA
SHANER	YEA	MOTION CARRIED.	

Agenda Item #4: Resolution 19-29, Lose Design for the Comprehensive Vision and Implementation Plan for the Peninsula Recreation Area STAFF: LINSEY JOYCE 1) MAYOR

OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Recreation Manager, Linsey Joyce stated that the Town budgeted for a new operations building at the Peninsula Recreation Area (PRA) in 2019, and approved a design/build contract with MW Golden Constructors March 26, 2019. On May 14, 2019, the scope, design, budget and challenges associated with this building were presented to Council. The costs of construction for the building exceeded budgeted amounts. In addition, concerns regarding the site location, current and future programming needs and the lack of a comprehensive vision for the PRA were brought forward and discussed. Council directed staff to pursue a more comprehensive planning effort before building any new amenities at the PRA. The contract with MW Golden Constructors was terminated June 3, 2019, and the Request for Proposals (RFP) for a Comprehensive Vision and Project Implementation Plan for the PRA was issued on June 19, 2019. Staff received five (5) bids for the project and interviewed all five (5) firms. A staff recommendation, resolution, and contract are before Council at this time. Lose Design was chosen for this project based on their parks, recreation, trail and community center experience.

MOTION: COUNCIL MEMBER FALLON MOVED TO APPROVE RESOLUTION 19-29, A RESOLUTION APPROVING LOSE DESIGN FOR THE COMPREHENSIVE VISION AND IMPLEMENTATION PLAN FOR THE PENINSULA RECREATION AREA. SECOND, COUNCIL MEMBER SHANER. VOTE:

IHNKEN	YEA	WILKINSON	YEA
MORTENSEN	ABSENT	BURLEY	YEA
SHANER	YEA	FALLON	YEA
SHERBURNE	YEA	MOTION CARRIED.	

Agenda Item #5: Resolution 19-31, Resolution Adopting Frisco's "Housing Helps" Program Guidelines STAFF: JOYCE ALLGAIER 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Community Development Director Joyce Allgaier stated that the program intent is to help locals obtain and maintain housing, help businesses house their employees, help incentivize investment in local housing, and help preserve the character of the Frisco community. The Program is one strategy that strives to address the Town Council's priority goal to implement housing solutions. It is acknowledged that solutions to housing the workforce come in a variety of approaches and the Program is but one of an integrated approach to achieve the Council's housing goals. Mayor Wilkinson opened the public hearing at 8:41 p.m. Frisco residents and property owners Donna Skupien, Kate Berg, and Larry Feldman supported the ordinance, expressing concerns about assistance to seasonal workers, limitations on short term rentals, caps on resale prices, and tiered resale requirements. Council directed staff to amend Section 2 Item D, replacing Blue River Basin with Ten Mile Basin; and revise the occupancy provision to state "within one mile of Ten Mile Basin". Mayor Wilkinson closed the public hearing at 8:56 p.m.

MOTION: COUNCIL MEMBER FALLON MOVED TO APPROVE RESOLUTION 19-31, A RESOLUTION ADOPTING FRISCO'S "HOUSING HELPS" PROGRAM GUIDELINES. SECOND, COUNCIL MEMBER BURLEY. VOTE:

MORTENSEN	ABSENT	BURLEY	YEA
SHANER	NO	FALLON	YEA
SHERBURNE	YEA	IHNKEN	YEA
WILKINSON	YEA	MOTION CARRIED.	

Old Business:

Agenda Item #6: Second Reading Ordinance 19-14, an Ordinance Establishing a “Disposable Bag Fee”; Providing for the Payment and Collection of Such Fee; and Providing Other Details Related to the Disposable Bag Fee and, in Connection Therewith, Establishing a New Title for Chapter 124 of the Code of Ordinances of the Town of Frisco, Concerning Nuisances, and Re-Ordering the Provisions of Said Chapter STAFF: NANCY KERRY 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Manager Nancy Kerry stated that this ordinance reflects the changes to .25 cents from .10 cents, adopting a fee for use of disposable bags. During the Town Council Strategic Planning Workshop in April, Council created the Strategic Priority, Sustainable Environment. To meet this priority Council created the goal to reduce the amount of waste that the Town of Frisco produces with plans to adopt a disposable bag (both paper and plastic) fee ordinance. The disposable bag fee will address the environmental problems associated with disposable bags and to meet the Town Council’s goal of reducing waste. The Town Council intends that the requirements of this ordinance will assist in offsetting the costs associated with using disposable bags to pay for the mitigation, educational, replacement, and administrative efforts of the Town. The ordinance proposes a bag fee at \$0.10 (ten cents), which is a common fee. The ordinance also requires creation of “*Disposable bag fee public outreach plan*” to raise awareness and educate residents and visitors regarding the Disposable Bag Fee and requires informational sessions and communications with Retail Stores to explain the Disposable Bag Fee. The proposed January 1, 2020 implementation date provides retailers sufficient time for education, awareness and implementing processes. Mayor Wilkinson opened the public hearing at 9:20p.m. Five Frisco residents spoke in support of the ordinance. One spoke in opposition. Mayor Wilkinson closed the public hearing at 9:29 p.m.

MOTION: COUNCIL MEMBER SHERBURNE MOVED TO APPROVE ON SECOND READING ORDINANCE 19-14, AN ORDINANCE ESTABLISHING A “DISPOSABLE BAG FEE”; PROVIDING FOR THE PAYMENT AND COLLECTION OF SUCH FEE; AND PROVIDING OTHER DETAILS RELATED TO THE DISPOSABLE BAG FEE AND, IN CONNECTION THEREWITH, ESTABLISHING A NEW TITLE FOR CHAPTER 124 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING NUISANCES, AND RE-ORDERING THE PROVISIONS OF SAID CHAPTER. SECOND, COUNCIL MEMBER BURLEY. VOTE:

SHANER	YEA	FALLON	YEA
SHERBURNE	YEA	IHNKEN	YEA
WILKINSON	YEA	MORTENSEN	ABSENT
BURLEY	YEA	MOTION CARRIED.	

Adjourn:

There being no further business, the meeting adjourned at 9:33 p.m.

Respectfully Submitted,

Brodie Boilard
Deputy Town Clerk



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: DEBORAH WOHLMUTH, TOWN CLERK
RE: HOME RULE CHARTER REVIEW OF CHAPTER 61, BRUSH, GRASS & WEEDS
DATE: SEPTEMBER 10, 2019

Summary Statement: Per the Town of Frisco Home Rule Charter, each Chapter of the Frisco Town Code is to be reviewed every five (5) years for possible amendment or repeal.

Background: Chapter 61, Brush, Grass and Weeds, was adopted September 3, 1991. It was repealed and reenacted in 2000, to reflect requirements of the State of Colorado, under the Colorado Noxious Weed Act (CRS 35-5.5-101), and amended in 2002. Chapter 61 is attached for your review.

Staff Analysis: Per the Home Rule Charter, staff has reviewed Chapter 61 and has determined that no changes are necessary.

Staff Recommendation:

On that basis,

It is my recommendation that Council make a motion acknowledging that Chapter 61, Brush, Grass and Weeds, has been reviewed pursuant to the Home Rule Charter and that no changes are necessary at this time.

Financial Impact: There is no financial impact.

Reviews and Approvals: This report has been reviewed and approved by:

Nancy Kerry, Town Manager
Bonnie Moinet, Finance Director-Approved

Attachments:

Frisco Town Code Chapter 61, Brush, Grass, and Weeds

BRUSH, GRASS AND WEEDS

Chapter 61

BRUSH, GRASS AND WEEDS

- § 61-1. Purpose.**
- § 61-2. Local Advisory Board Established.**
- § 61-3. Administration and Implementation.**
- § 61-4. Definitions.**
- § 61-5. Control of Weeds.**
- § 61-6. Failure to Control or Remove Weeds.**

[HISTORY: Adopted by the Mayor and Town Council of the Town of Frisco: Art., 9-3-91, Ord. 91-17, Repealed and reenacted 11-7-00, Ord. 00-17]

ARTICLE I

Noxious Weeds

[Repealed and reenacted 11-7-00, Ord. 00-17]

§ 61-1. Purpose.

It is the purpose of this Article to require the control of weeds and removal of noxious weeds from property within the Town in the manner provided by state law.

§ 61-2. Local Advisory Board Established. [Amended 7-2-02, Ord. 02-19]

- A. The Summit County Weed Advisory Board is hereby appointed to act as the noxious weed advisory board for the Town of Frisco. The Summit County Weed Advisory Board shall exercise the powers and duties set forth in the Intergovernmental Agreement Regarding the Summit County Weed Advisory Board, as amended from time to time.
- B. The Town Council may, at its discretion, replace the Summit County Advisory Weed Board by creating a new board, designating an existing board or creating, by intergovernmental agreement, a board to act as the noxious weed advisory board for the Town. Such creation or designation shall be made by ordinance, pursuant to 13-2 of the Town Charter.
- C. If the Town Council replaces the Summit County Advisory Weed Board, the noxious weed advisory board created or designated by the Town Council to replace the Summit County Advisory Weed Board shall exercise such powers and duties as are and shall hereafter be established by state statute or this Code.

§ 61-3. Administration and Implementation.

- A. The Director of Public Works is hereby appointed to administer and implement the provisions of this Article. The Director of Public Works may delegate his duties hereunder to any noxious weed advisory board designated or created by the Town Council pursuant to section 61-2(B), or to such board designee.

BRUSH, GRASS AND WEEDS

- B. A list of plants or parts thereof designated as noxious weeds by the Colorado Department of Agriculture or the local noxious weed advisory board for the Town of Frisco shall be maintained at the office of the Town Clerk.

§ 61-4. Definitions.

DIRECTOR shall mean the Director of Public Works or his authorized representative.

NOXIOUS WEED shall mean a plant or part thereof that aggressively invades or is detrimental to economic crops or native plant communities or is a carrier of detrimental insects, diseases, or parasites and that is designated as a noxious weed by the Colorado Department of Agriculture or the local noxious weed advisory board for the Town of Frisco.

PROPERTY shall mean any real property located within the Town limits.

WEEDS shall mean any vegetation, including grass or brush, but not including flowers or vegetables, plots of shrubbery, ornamental landscaping, grain plots, or pastures used for feed, fodder or forage.

§ 61-5. Control of Weeds.

- A. It shall be the duty of the owner or occupant of any property to control the growth of weeds on such property as required by this Article, including all sidewalk areas and parking areas abutting the property.
- B. It is unlawful for the owner or occupant of any property to permit noxious weeds to grow on such property.
- C. It is unlawful for the owner or occupant of any property, except property zoned agricultural, to permit weeds to grow to a height in excess of twelve inches. It is unlawful for the owner or occupant of property developed for residential use to permit weeds to grow to a height in excess of six inches.
- D. It is unlawful for the owner of any property zoned agricultural to permit weeds to grow to a height in excess of twelve inches if such property is located within a distance of 100 feet from:
1. Any dedicated street;
 2. Any property that is not zoned agricultural; or
 3. Any property that is zoned agricultural but is not used solely for agricultural or commercial crop purposes, solely for animal production purposes, or solely as a horse stable.

In such event, it shall be the duty of the owner or occupant of such property to control the growth of the weeds as required under this section a distance of 100 feet from the adjacent property line or dedicated street.

- E. It shall be the duty of the Town to ensure that all public rights-of-way are in compliance with the provisions of this Article.

BRUSH, GRASS AND WEEDS

- F. Any wildlife preserve or wildlife area designated by the Town shall be exempt from the requirements of this Section.

§ 61-6. Failure to Control or Remove Weeds.

- A. If any weeds or noxious weeds are not controlled or removed by the owner or occupant of any property, the Director may send written notification advising such owner or occupant of the need for removal or control of such weeds and that corrective action should be taken within ten calendar days of such notification.
- B. In the event the owner or occupant of the property does not take appropriate action, the Director shall have the right to:
1. Enter the property and take whatever corrective actions are determined to be necessary; and
 2. Assess the property owner or occupant for the actual cost of the weed control or removal; and
 3. Assess the property owner or occupant for the costs incurred by the Town to enforce collection of the costs of the weed control or removal, including inspection, attorneys' fees and court costs.



MEMORANDUM

P.O. BOX 4100 U FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: KATIE KENT, PLANNER
RE: RESOLUTION 19-27, A RESOLUTION APPROVING THE TOWN OF FRISCO FORM OF RESIDENTIAL HOUSING COVENANT AND NOTICE OF LIEN, AND AUTHORIZING ITS USE TO REPLACE ANY EXISTING SIMILAR COVENANTS.
DATE: SEPTEMBER 10, 2019

Summary and Background:

On August 13, 2019, Resolution 19-27 and potential modifications to the Town of Frisco's Residential Housing Restrictive Covenant and Notice of Lien document were discussed. Proposed modifications suggested to Staff included:

- Add garages as a Qualifying Capital Improvement (QCI) and to the accompanying depreciation schedule.
- Priority period should be twenty (20) days as opposed to thirty (30) days.
- Ensuring language is clear that the twenty (20) day priority period for employees in Frisco is limited to original AMI (not 20% spread). The twenty percent (20%) spread becomes in effect after the first twenty (20) days of listing.
- Clarifying the listing date to ensure it is officially listed when written notification is provided to the Town of Frisco and Summit Combined Housing Authority (SCHA) and in a manner accessible to the general public.

Staff continues to note that the goals of any modification to the deed restrictions shall be to keep the buyer's price in the same or similar affordable range as when the unit was previously purchased, allow the seller flexibility in price allowing for competition among sellers and encourage capital investment while also promoting upkeep and maintenance of the units. Any modifications approved will not be automatic changes to deed restrictions, property owners would be required to opt-in to the proposed new covenant.

Proposed changes to the Restrictive Covenant do not affect the seller's affordability. The AMI designated in the existing covenant for a property will remain the same when determining the resale calculation. However, a buyer's affordability is proposed to be increased by up to twenty percent (20%) if after twenty (20) days, there is no proposed buyer who is employed within the Town of Frisco and qualifies at the original AMI. As clarification, the buyer shall qualify at the original AMI during the priority period; not the increased 20% spread.

As an example, a covenant stating there is a 100% AMI on a two-bedroom property will not be permitted to sell for greater than the rate established by the SCHA for a two-bedroom unit at 100% AMI. For twenty (20) days, the property may be sold or contracted for sale only to a "Resident" who earns their living from a business operating in the Town of Frisco and earn no greater than 100% AMI. After twenty (20) days, the property may be sold or contracted for sale to a buyer who earns no more than 120% AMI and is employed for a business operating in Summit County. Even if a property is sold to a buyer who earns 120% AMI, the resale calculation is still based on the sale price for a 100% AMI Unit.

Analysis: Proposed changes to the Residential Housing Restrictive Covenant and Notice of Lien document are attached to this staff report. The below comments correlate to this Covenant:

Ø Article I, Definitions

- Added definition for: "Authorized Lessee".
- "Eligible Household": the AMI will need to be inserted on a case by case basis based on what the existing AMI for that property is.
- "Purchase Price": deleted a portion of the definition referencing furniture costs being deducted as this cannot feasibly be performed by SCHA.
- "Qualified Capital Improvements": definition added.
- "Resident": removed language permitting the SCHA or Town to grant exceptions to applicants. Removed requirement for a person to be over 65 years of age to be permitted to remain in unit if they have lived in a property within Summit County that is deed restricted for affordability, for a time period of not less than seven (7) years.

Ø Article VIII, Resale of the Property

- Section 8.2: insert priority for a Resident who earns his or her living from a business operating in the Town of Frisco for twenty (20) days.
- Section 8.2: insert language to address "spread" for a twenty percent (20%) increase in buyer qualification after the twenty (20) day priority period.
- Section 8.2: clarification of what constitutes the start of a listing period.
- Section 8.3: Maximum Resale Price is the same as was proposed in August with the appreciation calculation amended to be based on the listing date; not the transfer date. The Listing Date is stated as the date of Seller's listing of the property when written notification is provided to the Town of Frisco and the Summit Combined Housing Authority (SCHHA) and in a manner accessible to the general public.

Attached as Exhibit B within the proposed covenant is the Town of Frisco Qualifying Capital Improvement Summary. This document outlines the capital improvements which may be included in a unit's Maximum Resale Price and includes an associated depreciation schedule. The Summary also states how an owner may request QCIs be added to the Maximum Resale Price. Garages have been added as a result of the Town Council discussion at the August 13, 2019 meeting.

Financial Impact: Adoption of the attached resolution will have no financial impact to the Town of Frisco. The proposed modifications to the Town of Frisco's Residential Housing Restrictive Covenant and Notice of Lien document do not have direct financial impact to the Town of Frisco. Property owners who want to opt-in to the new restrictive covenant will be charged an application fee to the Town of Frisco to cover staff processing time and the cost of recording the new covenant in the Summit County Clerk & Recorder's office. The intent of modifying the maximum resale calculation and allowing permitted capital improvements shall have financial considerations to homeowners of deed restricted units.

Alignment with Strategic Plan: The 2019-2020 Strategic Plan, adopted May 28, 2019, includes the strategic priority of "Inclusive Community". Within this priority, it is noted:

Description: An inclusive community includes families of all backgrounds and income levels, where diverse interests and ideas are welcomed; a community striving to ensure there are a variety of housing options, childcare, and educational opportunities for its residents; a community where vibrancy abounds and its leaders consider the impact of their decisions from social equity, environmental, and economic perspectives.

Additionally, it is stated:

Goal: Strengthen Affordable Housing Deed Restrictions Covenants

Ø Present options to Town Council considering alternatives and impacts

Ø Adopt optional program for residents in deed restricted housing

The proposed modifications to the Town of Frisco's Residential Housing Restrictive Covenant and Notice of Lien document enhance the inclusive community priority through ensuring the Town maintains a variety of housing options for its residents. The proposed modifications are consistent with the Strategic Plan and the Town Council's priorities.

Staff Recommendation: Based on the information contained in this report, it is recommended the Town Council make a motion to adopt the attached Resolution, "Resolution 19-27, A Resolution approving the Town of Frisco Form of Residential Housing Covenant and Notice of Lien, and authorizing its use to replace any existing similar covenants.

Reviews and Approvals:

Bonnie Moinet, Finance Director - Approved

Nancy Kerry, Town Manager - Approved

Attachments:

1. Resolution 19--27, A Resolution approving the Town of Frisco Form of Residential Housing Covenant and Notice of Lien, and authorizing its use to replace any existing similar covenants
2. Proposed Residential Housing Restrictive Covenant and Notice of Lien

Attachment 1

RESTRICTIVE COVENANT
WITH PROPOSED MODIFICATIONS

**RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF LIEN
FOR UNIT __, OF _____,
TOWN OF FRISCO,
SUMMIT COUNTY COLORADO**

This Residential Housing Restrictive Covenant and Notice of Lien for Unit __, of _____, _____, Summit County, Colorado, (this "Restriction,") is made this _____ day of _____, 20__, by _____, a (hereinafter referred to as "Declarant").

RECITALS:

WHEREAS, Declarant is the Owner of that certain real estate located in the County of Summit, State of Colorado, and legally described as follows: Unit __, of _____, _____, according to the plat thereof now on file in the Office of the Clerk and Recorder for Summit County, Colorado, under Reception No. _____ (hereinafter referred to as the "Property"); and

WHEREAS, pursuant to the terms of the approval of the _____ Development Application, Declarant is required to execute and record this Restriction.

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that the Property shall hereafter be held, sold, and conveyed subject to the following covenants, restrictions, and conditions, all of which shall be covenants running with the land, and which are for the purposes of ensuring that the Property remains available for purchase and occupation by persons residing and working in Summit County, Colorado, as moderately priced housing, and protecting the value and desirability of the Property, and which covenants, restrictions, and conditions shall be binding on all parties having any right, title, or interest in the Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of the Owner of the Property, the Summit Combined Housing Authority, the Town, and Declarant.

**ARTICLE I
DEFINITIONS**

- 1.1. Definitions. The following words, when used in this Restriction, shall have the following meanings and the use of capitalization or lower case letters in references to the following terms shall have no bearing on the meanings of the terms:

A. "Area Median Income" or "AMI" means the median annual income for Summit County, Colorado, (or such next larger statistical area calculated by HUD that includes Summit County, Colorado, if HUD does not calculate the area median income for Summit County, Colorado, on a distinct basis from other areas), as adjusted for household size, that is calculated and published annually by HUD (or any successor index thereto acceptable to the Town or SCHA in its reasonable discretion). If current AMI data pertaining to the date of sale of the Property is not yet available as of the date the sale price is calculated, then the most recent data published by HUD shall be used in its place.

B. "Authorized Lessee" means a person approved by the Town who meets the definition of a Resident Eligible Household and who leases the property pursuant to the limitations of section 7.2 of this Restriction.

BC. "Dependent" shall mean a person, including a spouse of, a child of, a step-child of, a child in the permanent legal custody of, or a parent of, a Resident, whose principal place of residence is in the same household as such Resident, and who is financially dependent upon the support of the Resident. Dependent shall also include any person included within the definition of "Familial Status" as defined in 42 U.S.C. § 3602(k), as amended.

CD. "Eligible Household" means a household earning not more than _____ percent (____%) of the AMI and that has been approved by either the SCHA or the Town so as to allow for the execution by the SCHA or Town of the form of approval set forth in Section 5.3 of this Restriction. A household's income for purposes of determining whether such household meets this definition of eligibility shall be determined at the time of purchase or, if applicable, commencement of leasehold occupancy. For purposes of the determination of the number of people that constitute a household under this definition, any Resident or Dependent spouse of a Resident who is pregnant at the time of the determination of whether a household meets the income limitation provided in this definition shall be deemed to be two (2) people.

DE. "First Mortgage" means a Mortgage which is recorded senior to any other Mortgage against the Property to secure a loan used to purchase Property.

EF. "Household" means one or more persons who intend to live together in the premises of a dwelling unit as a single housekeeping unit, but does not mean a group of four (4) or more persons unrelated by blood, adoption or marriage.

FG. "HUD" means the U.S. Department of Housing and Urban Development.

GH. "Maximum Resale Price" means that maximum Purchase Price that shall be paid by any purchaser of the Property, other than the initial purchaser who acquires the Property from Declarant, as determined in accordance with the provisions of Section 8.3 of this Restriction. The Maximum Resale Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of the Property.

H. "Mortgage" means a consensual interest created by a real estate mortgage, a deed of trust on real estate, or the like.

I. "Mortgagee" means any grantee, beneficiary, or assignee of a Mortgage.

J. "Owner" means the record owner of the fee simple title to the Property.

L. "Purchase Money Mortgage" means a Mortgage given by an Owner to the extent that it is: (a) taken or retained by the seller of the Property to secure all or part of the payment of the Purchase Price; or (b) taken by a person who by making advances, by making a loan, or by incurring an obligation gives value to enable the Owner to acquire the Property if such value is in fact so used.

M. "Purchase Price" shall mean all consideration paid by the purchaser to the seller for the Property, but shall EXCLUDE any proration amounts, taxes, costs and expenses of obtaining financing, ~~cost of furnishings or personal property~~, lenders fees, title insurance fees, closing costs, inspection fees, real estate purchase and/or sales commission(s) or other fees and costs related to the purchase of the Property but not paid directly to Seller.

N. "Qualified Capital Improvements" means those improvements to a Property performed by the Owner, which qualify for inclusion within the calculation of Maximum Resale Price if such improvements are set forth in the Qualified Capital Improvement ("QCI") schedule contained in Exhibit B hereto, which exhibit is incorporated herein by this reference, and if the Owner furnishes the Town or its designee with the following:

i. Original or duplicate receipts to verify the expenditures by the Owner for the Qualified Capital Improvements;

ii. An affidavit verifying that the receipts are for actual expenditures for a specified Qualified Capital Improvement; and

iii. True and correct copies of any building permit or certificate of occupancy required by law in connection with the Qualified Capital Improvement

N. "Qualified Owner" means natural person(s) that meet(s) the definitions of both a Resident and an Eligible Household, or non-qualified Owner under Section 5.1.B., qualified and approved by SCHA or the Town in such manner that will allow SCHA or the Town to execute, on an instrument of conveyance, a copy of the language set forth in Section 5.3 below.

O. "Resident" means a person and his or her Dependents, if any, who (i) at the time of purchase of a Unit and all times during ownership or occupancy of the Property, earns his or her living from a business operating in Summit County, by working at such business an average of at least 30 hours per week on an annual basis; ~~or (ii) is a person who is approved, in writing, by SCHA or the Town/County which approval shall be based upon criteria including, but not limited to, total income, percent of income earned within Summit County, place of voter registration, place of automobile~~

~~registration, and driver's license address and other qualifications established by the SCHA or the Town from time to time. (Compliance with each of these criteria is not necessary; in certifying Residents, the SCHA or the Town shall consider the criteria cumulatively as they relate to the intent and purpose of this Restriction).~~ A person ~~over 65 years of age~~ shall remain a Resident regardless of his or her working status, so long as he or she has owned and occupied the Property, or other real property within Summit County that is deed restricted for affordability, for a time period of not less than seven (7) years. The term "business" as used in this Article I, Subsection M, and Section 5.1.B. shall mean an enterprise or organization providing goods and/or services, whether or not for profit, and shall include, but not be limited to, educational, religious, governmental and other similar institutions.

P. "Resident Eligible Household" shall mean an Eligible Household that includes at least one Resident.

Q. "SCHHA" means the Summit Combined Housing Authority.

R. "Town" means the Town of Frisco, State of Colorado.

S. "Transfer" or "transferred" means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including, but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of the Property is transferred and the Owner obtains title.

ARTICLE II

PURPOSE

The purpose of this Restriction is to restrict ownership, occupancy and sale of the Property in such a fashion as to provide, on a permanent basis, moderately priced housing to be occupied by Resident Eligible Households, which Resident Eligible Households, because of their income, may not otherwise be in a position to afford to purchase, own, and occupy other similar properties, and to help establish and preserve a supply of moderately priced housing to help meet the needs of the locally employed residents of Summit County.

ARTICLE III

RESTRICTION AND AGREEMENT BINDS THE PROPERTY

This Restriction shall constitute covenants running with title to the Property as a burden thereon, for benefit of, and enforceable by, the SCHHA and its successors and assigns, including, without limitation the Town/County, and this Restriction shall bind Declarant and all subsequent Owners of the Property. Each Owner, upon acceptance of a deed to the Property, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner period of ownership of the Property. Each and every

conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Restriction, even without reference to this Restriction in any document of conveyance.

ARTICLE IV

NATURAL PERSONS OCCUPANCY RESTRICTIONS

Other than use by the SCHA or the Town, and except as may be otherwise expressly set forth in this Restriction, the use and occupancy of the Property shall be limited exclusively to housing for natural persons who meet the definition of Resident and Eligible Household.

ARTICLE V

OWNERSHIP RESTRICTIONS

5.1. Ownership and Occupancy Obligation.

A. Except as provided in Section 5.1.B. or Article VI hereof, ownership of the Property is hereby limited exclusively to Eligible Households that include at least one Resident.

B. Upon the written consent of SCHA or Town, which consent may be recorded, a non-qualifying natural person or entity that owns and/or operates a business located in Summit County may purchase the Property; provided, however, that by taking title to the Property, such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that any Owner who does not qualify as a Resident Eligible Household shall rent the Property to a Resident Eligible Household as more fully set forth in Section 7.1 of this Restriction, and shall not occupy or use the Property for the Owner's own use or leave the Property vacant.

5.2. **Sale and Resale.** In the event that the Property is sold, resold, transferred and/or conveyed without compliance with this Restriction, SCHA or the Town shall have the remedies set forth herein, including, but not limited to, the rights set forth in Section 8.5. Except as otherwise provided herein, each and every conveyance of the Property, for any

and all purposes, shall be deemed to include and incorporate the terms and conditions of this Restriction.

5.3. **Compliance.** Any sale, transfer, and/or conveyance of the Property shall be wholly null and void and shall confer no title whatsoever upon the purported transferee unless (i) there is recorded in the real property records for Summit County, Colorado, along with the instrument of conveyance evidencing such sale, transfer or conveyance, a completed copy of the "Notice of Lien and Memorandum of Acceptance of Residential Housing Restrictive Covenant for Unit _____, of _____, Summit County, Colorado" attached hereto as Exhibit A, which copy is executed by the transferee and acknowledged

by a Notary Public, and (ii) the instrument of conveyance evidencing such sale, transfer, and/or conveyance, or some other instrument referencing the same, bears the following language followed by the acknowledged signature of either the director or some other authorized representative of the SCHA or by the Mayor of the Town , to wit:

"The conveyance evidenced by or referenced in this instrument has been approved by the Summit Combined Housing Authority or Town of Frisco as being in compliance with the Residential Housing Restrictive Covenant for Unit ___ of _____, _____, Summit County, Colorado, recorded in the records of Summit County, Colorado, on the _____ day of _____, 20____, at _____ Reception No. _____."

Each sales contract, or lease as the case may be, for the Property shall also (a) recite that the proposed purchaser has read, understands and agrees to be bound by the terms of this Restriction; and (b) require the proposed purchaser and/or lessee to submit such information as may be required by the Town/County or the SCHA under its rules and regulations or policies adopted for the purpose of ensuring compliance with this Restriction.

5.4. Refinance Restriction. The Owner shall not encumber the Property in an amount in excess of the Purchase Price.

ARTICLE VI

ORIGINAL SALE OF THE PROPERTY

6.1 Initial Purchase Price. Except as may be permitted under Section 5.1.B. above, upon completion of construction by the Declarant, the Property shall be sold to initial purchasers who qualify as a Resident and an Eligible Household at a Purchase Price that shall be determined by the SCHA or the Town as follows:

- (a) The number of bedrooms within the Property shall be determined and that number of bedrooms shall, in turn, determine the size of the household for which the Area Median Income shall be determined as follows: (i) for a one-bedroom dwelling unit, a 1.5 person household; (ii) for a two-bedroom dwelling unit, a 3 person household; (iii) for a three-bedroom dwelling unit, a 4.5 person household; and (iv) for a four-bedroom unit, a 6 person household;
- (b) The Area Median Income for a household of a size determined in accordance with subpart (a) above shall be determined;
- (c) The amount of Area Median Income determined in accordance with subpart (b) above shall be divided by twelve (12), and the number derived

shall then be multiplied by .30 to determine the total dollar amount available to the household on a monthly basis for the payment of principal, interest, taxes, insurance and homeowner's association dues in connection with the purchase of the Property;

- (d) The amount of \$350 shall be subtracted from the total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (c) above) in order to determine the total dollar amount available to the household on a monthly basis for the payment of principal and interest on a mortgage loan for purchase of the Property;
- (e) The total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (d) above) shall be used to determine the Purchase Price, through extrapolation, by determining the maximum loan amount that said dollar amount will support, assuming a mortgage loan with a standard amortization schedule, a term of thirty (30) years (360 months), an annual interest rate of ____% and a 90% loan to value ratio; and
- (f) The interest rate to be used to perform the calculation described in subpart (e) above shall be the greater of: (1) the actual interest rate obtained by the Eligible Household for purchase of the Property with a mortgage loan with a term of thirty (30) years; and (2) the interest rate determined by calculating, from data published by the Federal Home Loan Mortgage Corporation, the average interest rate, for the preceding ten (10) calendar years, for a thirty-year fixed rate loan, and adding thereto 1.5%.

ARTICLE VII

USE RESTRICTIONS

7.1. **Occupancy.** Except as otherwise provided in this Restriction, the Property shall, at all times, be occupied as a principal place of residence by an Owner, or, if applicable, an Authorized Lessee, (along with his or her Dependents) who, at the time of purchase, or in the case of an Authorized Lessee at the time of occupancy, of the Property, qualified as a Resident and Eligible Household. In the event that any Owner ceases to occupy the Property as his or her principal place of residence, or any non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.B. leaves the Property unoccupied by a Resident Eligible Household for a period of 90 consecutive days, the Owner of the Property shall, within 10 days of ceasing such occupation, notify the SCHA of the same and the Property shall, within 30 days of the Owner having vacated or left vacant the Property make the Property available for purchase pursuant to the terms of this Restriction. Any Owner who fails to occupy his or her Property for a period of 90 consecutive days shall be deemed to have ceased to occupy the Property as his or her principal place of residence; however, an Owner who has established the Property as his or her principal place of residence shall not be considered to have ceased occupancy of the Property during such period of time as the Owner is serving on active duty with the United States Armed Services.

7.2. Rental. Under no circumstances shall the Property be leased or rented for any period of time without the prior written approval of the SCHA or the Town, which approval may be conditioned, in the SCHA's or Town's sole and absolute discretion, on the lease or rental term being limited to a twelve (12) month period either consecutively or in the aggregate during the Owner's ownership of the Property. In the event that the Property, or any portion thereof, is leased or rented without compliance with this Restriction, such rental or lease shall be wholly null and void and shall confer no right or interest whatsoever to or upon the purported tenant or lessee. Any rental approved by the SCHA or the Town shall be to a Resident Eligible Household at such rental rates as shall be established by the SCHA and approved by the Town, or as may be established by the Town from time to time, and, if no such rental rates have been established, at a monthly rental rate that shall not exceed _____ percent (____%) of the most recent Fair Market Rent amounts published by the U.S. Department of Housing and Urban Development (or any successor index thereto acceptable to SCHA or the Town in its reasonable discretion) (such lessee being referred to herein as an "Authorized Lessee").

7.3 Involuntary Sale Upon Change in Residence. In the event Owner changes residence or ceases to utilize the Property as his or her exclusive and permanent place of residence, or in the event any non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.B. leaves the Property unoccupied by a Resident Eligible Household for a period of 90 consecutive days, as determined by the SCHA or the Town, the Property shall be offered for sale pursuant to the provision of Article VIII of this Restriction. The SCHA may further require the Owner to rent the Property in accordance with the provisions of Article X below.

7.4 Ownership Interest in Other Residential Property. Except with respect to a non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.B., if at any time the Owner also owns any interest alone or in conjunction with others in any other developed residential property, the 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 Owner within one hundred (120) days of its listing required hereunder, then the Owner shall immediately list the Property for sale pursuant to the provisions of this Restriction. It is understood and agreed between the parties hereto that, in the case of an 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 Owner's business shall not constitute "other developed residential property" as that term is used in this Article.

ARTICLE VIII

RESALE OF THE PROPERTY

8.1. Resale. The Property shall not be transferred subsequent to the original purchase from the Declarant except upon full compliance with the procedures set forth in this Article VIII.

8.2. Notice and General Limitations on Resale. In the event that an Owner shall desire to Transfer his Property, or in the event that an Owner shall be required to Transfer his Property pursuant to the terms of this Restriction, he shall notify the SCHA and the Town of Frisco, or such other person or entity as may be designated by the Town, in writing of his intention to Transfer his Property. The Property may be offered, advertised, or listed for sale by such Owner at such Owner's sole cost and expense, in any manner in which such Owner may choose. An Owner may list the Property for sale through SCHA for a commission equal to 2.0% of the sales price. Except as otherwise set forth in this Section 8.2, the Property shall not, however, be sold, transferred and/or conveyed to any person, entity, or entities, (i) other than a Resident Eligible Household, or non-qualified buyer under Section 5.1.B., qualified and approved by the SCHA or the Town in such a manner as will allow the SCHA or the Town to execute the approval set forth in Section 5.3 of this Restriction (a "Qualified Buyer"), and (ii) for consideration to be paid by such qualified Resident Eligible Household that exceeds the Maximum Resale Price as such is determined pursuant to the provisions of this Article VIII. Any other provision of this Restriction notwithstanding, upon resale of the Property: (i) a Household shall qualify as a an "Eligible Household" if it earns not more than twenty percent (20%) more AMI than the AMI percentage set forth in Subsection 1.1(D) above; provided, however, that such qualification shall have no impact on the determination of the Maximum Resale Price under Section 8.3 below; and (ii) during the first thirttwenty (320) days after listing the Property for sale with written notification to the Town of Frisco and the Summit Combined Housing Authority (SCHA), and in a manner accessible to the general public, the Property may be sold or contracted for sale only to a "Resident" who at the time of purchase earns his or her living from a business operating in the Town of Frisco, by working at such business an average of at least thirty (30) hours per week on an annual basis and qualifies as an "Eligible Household" if earns not more than (%) AMI.

8.3. Maximum Resale Price.

~~A. The Maximum Resale Price of a Property shall be equal to the sum of:~~

- ~~(1) the Purchase Price paid by the Owner for the Property;~~
- ~~(2) plus an increase of three percent (3%) of such Purchase Price per year (prorated at the rate of 1/12 for each whole month) from the date of the Owner's purchase of the Property to the date of the Owner's execution of the listing contract, such percentage increase to not be compounded annually;~~
- ~~(3) plus the amount of any commission payable to the SCHA.~~

A. If the Owner lists the unit for sale with a contracted realtor with the Summit Combined Housing Authority (SCHA), the Owner may add the amount paid in sales commission, up to two percent of the sale price (2%), to the Maximum Resale Price.

B. The Maximum Resale Price of a Property shall be no greater than the sum of:

- (1) The Purchase Price paid by the Owner of the Property as identified on closing documents in the purchase and sale agreement entered into at the time of purchase by Owner-Seller; and
- (2) Plus a three-percent (3%) increase of the Purchase Price per year (prorated at the rate of 1/12th for each whole month) from the date ownership transferred to Seller at the close of escrow to the date of Seller's listing of the property with written notification to the Town of Frisco and the Summit Combined Housing Authority (SCHA); such percentage increase shall be calculated as simple interest;
- (3) Plus the cost of Qualified Capital Improvements as approved by the Town of Frisco;
- (4) Plus the cost of real estate commission as negotiated by the Seller if the Owner lists the unit for sale with a private real estate broker (as opposed to a contracted realtor with the Summit Combined Housing Authority (SCHA)).

Provided, however, that the sum of items B. (1) through B. (4) in this paragraph shall be no greater than the Purchase Price determined in accordance with Section 6.1 of this Restriction using the most current (at time of sale) published Summit County AMI. At the owner's discretion, the maximum resale price is not required to be less than the purchase price paid by the owner of the property as identified on closing documents at the time of purchase by Owner-Seller

C.B. Owner shall be responsible for ensuring that at resale the Property is clean, the appliances are in working order, and that there are no health or safety violations regarding the Property.

CD. No Owner shall permit any prospective buyer to assume any or all of the Owner customary closing costs or accept any other consideration which would cause an increase in the Purchase Price above the bid price so as to induce the Owner to sell to such prospective buyer.

8.4 Non-Qualified Transferees. In the event that title to the Property vests in individuals and/or entities who are not a Qualified Buyer (hereinafter "Non-Qualified Transferee(s)") by descent, by foreclosure and/or redemption by any lien or mortgage holder (except any holder of a HUD - insured First Mortgage), or by operation of law or any other event, SCHA or the Town may elect to notify the non-qualified transferee that it must sell the Property in accordance with Section 8.5. The non-qualified transferee shall not: (i) occupy the Property; (ii) rent all or any part of the Property, except in strict compliance with this Restriction; (iii) engage in any business activity on or in the Property; (iv) sell or otherwise Transfer the Property except in accordance with this Restriction; or (v) sell or otherwise Transfer the Property for use in trade or business.

8.5 Sales to Preserve as Affordable Housing.

A. In the event the Property is occupied, transferred or leased in violation of

this Restriction, SCHA or the Town may, at its sole discretion, notify an Owner that it must immediately list the Property for sale (including the execution of a listing contract with, and the payment of the specified fees) by SCHA. The highest bid by a Qualified Owner for not less than ninety-five percent (95%) of the Maximum Sale Price shall be accepted by the Owner; provided, however, if the Property is listed for a period of at least ninety (90) days and all bids are below ninety-five percent (95%) of the Maximum Sale Price, the Property shall be sold to a Qualified Owner that has made the highest offer for at least the appraised market value of the Property, the reasonableness of which appraisal shall be determined by SCHA or the Town in its reasonable good faith judgment.

B. If required by SCHA or the Town, the Owner shall: (i) consent to any sale, conveyance or transfer of such Property to a Qualified Owner; (ii) execute any and all documents necessary to do so; and (iii) otherwise reasonably cooperate with SCHA or the Town to take actions needed to accomplish such sale, conveyance or transfer of such Property. For this purpose Owner constitutes and appoints SCHA and the Town as its true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions required under this Section 8.5.B. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees that all power granted to SCHA and the Town under this Restriction may be assigned by either of them to their respective successors or assigns.

C. In order to preserve the affordability of the Units for persons of low to moderate income, SCHA or the Town, or their respective successors, as applicable, shall also have and are hereby granted the right and option to purchase the Property, exercisable within a period of fifteen (15) calendar days after notice is sent by SCHA or the Town to the Owner that requires the Owner to sell the Property pursuant to this Section 8.5. SCHA or the Town shall complete the purchase of the Property within thirty (30) calendar days after exercising its option hereunder for a price equal to the lesser of the appraised market value of the Property, the reasonableness of which appraisal shall be determined by SCHA or the Town in its reasonable good faith judgment, or the Maximum Sale Price. SCHA or the Town may assign its option to purchase hereunder to an eligible purchaser which, for the purpose of this Section 8.5(c), shall be a Qualified Owner.

D. In all situations in which the provisions of this Section 8.5 apply, SCHA or the Town may alternatively require the Owner to rent the Property to a Resident Eligible Household in accordance with the requirements and limitations of this Restriction.

ARTICLE IX **FORECLOSURE**

9.1 Release. Subject to the process and rights set forth in this Article IX below, this Restriction shall be deemed released as to the Property in the event of (i) the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Property in connection with a foreclosure by the holder of a HUD-insured or other First Mortgage, or (ii) the

acceptance of a deed in lieu of foreclosure by the holder of a HUD-insured or other First Mortgage. This Restriction shall also automatically terminate and be released as to the Property upon the assignment to HUD of an HUD-insured mortgage encumbering the Property. The Town, in its sole discretion, may elect to release a Property from this Restriction in the event of (1) the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Property in connection with a foreclosure of the Town's lien, as defined in Section 9.2, or (2) the acceptance of a deed in lieu of foreclosure by the Town in connection with the Town's Lien. If the Town chooses to terminate this Restriction with respect to a particular Property, the Town shall record a document referencing such termination in the real property records of the County. Any and all claims of the Town available hereunder against the Owner personally shall survive any release or termination of this Restriction.

9.2 Lien.

A. The SCHAs and the Town shall have, and are hereby granted, a lien against the Property ("SCHAs's Lien" or "Town's Lien") to secure payment of any amounts due and owing the SCHAs or the Town pursuant to this Restriction including: the SCHAs or the Town's sale proceeds and/or amounts due to the SCHAs or the Town in the event of a foreclosure of a First Mortgage and to secure the obligations to the SCHAs or the Town hereunder. The SCHAs's Lien and the Town's Lien on the Property shall be superior to all other liens and encumbrances except the following:

- (1) liens and encumbrances recorded prior to the recording of this Restriction and Agreement;
- (2) real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts;
- (3) liens given superior priority by operation of law; and
- (4) the lien of any First Mortgage against the Property.

B.A. Recording of this Restriction constitutes record notice and perfection of the SCHAs's Lien and the Town's Lien. No further recordation of any claim of lien is required. However, the SCHAs or the Town may elect to prepare, and record in the Office of the County Clerk and Recorder of the County, a written notice of lien. By virtue of the SCHAs's Lien or the Town's Lien, the SCHAs or the Town shall have the rights granted a lienor under C.R.S. 38-38-101 *et seq.*, and the SCHAs or the Town shall be entitled to file such notices and other information necessary to preserve its rights, as a lienor, to cure and redeem in foreclosure of the Property, as provided by C.R.S. 38-38-101 *et seq.* In addition, unless otherwise instructed by the SCHAs or the Town in writing, the Owner shall sign, acknowledge, and cooperate in SCHAs's or the Town's recording in the County Clerk and Recorder's Office immediately subsequent to the recording of the First Mortgage, a notice of the SCHAs's Lien or the Town's Lien, substantially in the form attached hereto as Exhibit A, in order to assure that the SCHAs or the Town receives notice in the event of the foreclosure of the First Mortgage pursuant to this Article. The notice shall not alter the priority date of the SCHAs's Lien or the Town's Lien as established herein.

C. The sale or other transfer of the Property shall not affect the SCHA's Lien or the Town's Lien. No sale or deed in lieu of foreclosure shall relieve the Owner from continuing personal liability for payment of his or her obligations hereunder. The SCHA's Lien or the Town's Lien does not prohibit actions or suits to recover sums due pursuant to this Restriction and Agreement, or to enforce the terms of this Restriction, or to prohibit the SCHA or the Town from taking a deed in lieu of foreclosure.

9.3 SCHA's and Town's Option to Redeem and to Buy.

A. Foreclosure/SCHA's or Town's Option to Redeem. In the event of a foreclosure, the SCHA and the Town shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of the Property that are junior to the First Mortgage (as provided in C.R.S. §38-38-101 *et seq.*, or any succeeding statute). The SCHA and the Town shall have a right of redemption, and such other rights as a lienor in foreclosure, as its interest appears, in accordance with Colorado law governing foreclosure. The SCHA's Lien and the Town's lien is created pursuant to Section 9.2 above.

B. Deed in lieu of Foreclosure/Option to Buy. In the event that the First Mortgagee takes title to the Property by deed in lieu of foreclosure, the SCHA and the Town shall have an option to buy the Property ("Option to Buy") exercisable in accordance with this paragraph. Within three (3) days after the First Mortgagee's first attempt to secure a deed in lieu of foreclosure, the Owner shall deliver written notice to the SCHA and the Town of such intent to Transfer title. The SCHA or the Town may exercise its Option to Buy by tendering the Deed In Lieu Price (as defined below) to the First Mortgagee, within thirty (30) days from and after vesting of title to the Property in the First Mortgagee by deed in lieu of foreclosure ("Deed in Lieu Option Period"). Upon receipt of the Deed in Lieu Price, the First Mortgagee shall deliver to the SCHA or the Town a special warranty deed conveying fee simple title in and to the Property, in which event this Restriction and Agreement shall remain valid and in full force and effect. The Deed in Lieu Price shall be equal to: (i) the amounts unpaid pursuant to the First Mortgage note; (ii) any other reasonable costs incurred by the First Mortgagee that directly relate to the deed in lieu of foreclosure; and (iii) any additional reasonable costs incurred by the First Mortgagee during the Deed in Lieu Option Period that are directly related to maintenance of the Property. The First Mortgagee shall convey only such title as it received through the deed in lieu of foreclosure and will not create or suffer the creation of any additional liens or encumbrances against the Property following issuance of the deed in lieu of foreclosure to the First Mortgagee. The First Mortgagee shall not be liable for any of the costs of conveyance of the Property to the SCHA, the Town, or its designee; *however*, the First Mortgagee shall cooperate with the SCHA or the Town in calculating the Deed in Lieu Price and in the execution of the Option to Buy.

C. Upon Exercising Option. In the event that the SCHA or the Town obtains title to the Property pursuant to this Article, the SCHA, the Town or its designee may sell the Property to a Qualified Buyer, or rent the Property to third parties until such time that the

Property can be sold to a Qualified Buyer. The SCHAs or the Town's subsequent sale of the Property in these circumstances shall not be subject to the Maximum Sale Price restrictions set forth in Article VIII hereof.

D. Release upon Electing Not to Exercise Options. In the event that the SCHAs or the Town does not exercise its Option to Redeem as described in this Article or its Option to Buy as described above, as applicable, within the time periods set forth in this Article, this Restriction shall automatically terminate and shall be of no further force and effect, and the SCHAs and the Town shall prepare and execute a release of this Restriction and, within thirty (30) days of such termination, cause such release to be recorded in the records of the Clerk and Recorder of the County. Notwithstanding the foregoing, any and all claims of the SCHAs and the Town available hereunder against the Owner personally shall survive any release or termination of this Restriction.

9.4 Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Article IX shall be unlawful or void for violation of: (1) the rule against perpetuities or some analogous statutory provision; (2) the rule restricting restraints on alienation; or (3) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of (x) the term of this Restriction, or (y) the period of the lives of the current duly elected and seated board of directors of the SCHAs, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

ARTICLE X **ENFORCEMENT**

10.1 Enforcement of This Restriction. The Declarant and each Owner hereby grants and assigns to SCHAs or the Town the right to review and enforce compliance with this Restriction. Compliance may be enforced by SCHAs or the Town by any lawful means, including without limitation, seeking any equitable relief (including, without limitation, specific performance and other equitable relief as set forth in Section 10.2 below), as well as a suit for damages; provided, however, in the event the Property is financed by a HUD-insured First Mortgage and is sold in violation of Section 8.3 hereof, such enforcement shall not include:

- A. acceleration of a mortgage;
- B. voiding a conveyance by an Owner;
- C. terminating an Owner's interest in the Property; or
- D. subjecting an Owner to contractual liability.

Notwithstanding the foregoing, in no event shall SCHAs or the Town have any equitable remedies (including, but not limited to, the right to sue for specific performance or seek other equitable relief as set forth in Section 10.2) or the right to sue for damages if the Owner of the Property that was financed with a HUD-insured First Mortgage breaches or

violates the terms, covenants and other provisions of Section 8.3 hereof and if to do so would violate any existing or future requirement of HUD, it being understood, however, that in such event, SCHAs or the Town shall retain all other rights and remedies hereunder for enforcement of any other terms and provisions hereof, including, without limitation: (i) the right to sue for damages to reimburse SCHAs or the Town, or its agents, for its enforcement costs and to require an Owner to repay with reasonable interest (not to exceed ten percent (10%) per annum) any assistance received in connection with the purchase of the Property; (ii) the right to prohibit an Owner from retaining sales or rental proceeds collected or received in violation of this Restriction; and (iii) the option to purchase granted to SCHAs or the Town in Section 8.5(c) hereof. Venue for a suit enforcing compliance shall be proper in Summit County, Colorado and service may be made or notice given by posting such service or notice in a conspicuous place on the applicable Property. As part of any enforcement action on the part of SCHAs or the Town, the applicable Owner shall pay all court costs and reasonable legal fees incurred by SCHAs or the Town, or its agents, in connection with these claims, actions, liabilities or judgments, including an amount to pay for the time, if any, of SCHAs or the Town's or its agents, attorney spent on such claims at the rates generally charged for similar services by private practitioners within the County.

10.2 Injunctive and other Equitable Relief. Declarant and each Owner agree that in the event of Declarant's or Owner's default under or non-compliance with the terms of this Restriction, SCHAs or the Town shall have the right to seek such equitable relief as it may deem necessary or proper, including, without limitation, the right to: (a) seek specific performance of this Restriction; (b) obtain a judgment from any court of competent jurisdiction granting a temporary restraining order, preliminary injunction and/or permanent injunction; and (c) set aside or rescind any sale of the Property made in violation of this Restriction. Any equitable relief provided for in this Section 10.2 may be sought singly or in combination with such legal remedies as SCHAs or the Town may be entitled to, either pursuant to this Restriction, under the laws of the State of Colorado or otherwise.

ARTICLE XI

GENERAL PROVISIONS

11.1 Equal Housing Opportunity. Pursuant to the Fair Housing Act, Declarant, the SCHAs, and the Town shall not discriminate on the basis of race, creed, color, sex, national origin, familial status or disability in the lease, sale, use or occupancy of the Property.

11.2 Rules, Regulations, and Standards. The SCHAs shall have the authority to promulgate and adopt such rules, regulations and standards as it may deem appropriate, from time to time, for the purpose of carrying out its obligations and responsibilities described herein, all of which rules, regulations and standards, and any amendments thereof, shall be subject to approval of the Town.

11.3 Waiver of Exemptions. Every Owner, by taking title to the Property, shall be deemed to have subordinated to this Restriction any and all right of homestead and any

other exemption in, or with respect to, such Property under state or federal law presently existing or hereafter enacted.

11.4 Enforcement. Except as otherwise provided herein, the SCHA, the Town, the Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, and reservations imposed by the provisions of this Restriction and shall be entitled to specific enforcement of the same. Failure by any party described in this paragraph to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right by such party or any other party to do so thereafter.

11.5 Expenses of Enforcement. In the event that any party entitled to enforce the terms of this Restriction shall be required to bring any action as the result of any breach of the terms of this Restriction by any Owner, the party bringing such action shall be entitled to recover from and against the Owner in breach of these Restrictions, in addition to any and all other remedies available at law or in equity, reasonable attorney's fees and costs incurred in the enforcement of these Restrictions and in the bringing of such action, and the party against whom such fees and costs are awarded shall be personally liable for the payment of such fees and costs, and such award and judgment shall constitute a lien against the Property owned by the party in breach of these Restrictions which lien may be enforced by foreclosure of the defaulting Owner's Property in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado or elimination of Owner's resale gain on the Property.

11.6 Severability. Invalidity of any one of the covenants or restrictions contained herein by judgment or Court order shall in no way affect any other provisions, it being the intent of the Declarant, SCHA and Town that such invalidated provision be severable.

11.7 Term. The restrictions contained herein shall run with the land and bind the land for a term of 99 years from the date that this covenant is recorded, after which time the terms of this Covenant shall be automatically extended for successive periods of 10 years.

11.8 Amendment. This restriction may be amended only by an instrument recorded in the records of Summit County executed by the Town and the then-Owner of the Property.

11.9 Successor to SCHA. In the event that, at any time during the duration of this Restriction, the SCHA ceases to exist, all reference in this Restriction to SCHA shall, thereafter, mean the Town its successors, assigns, or any other entity designated by the Town to administer or enforce the provisions hereof, or to perform the functions of the SCHA as described herein.

11.10 No Third Party Beneficiaries. This Restriction is made and entered into for the sole protection and benefit of the SCHA, the Town and the Owner. Except as otherwise specifically provided for herein, no other person, persons, entity or entities, including without limitation prospective buyers of the Property, shall have any right of action with respect to this Restriction or right to claim any right or benefit from the terms provided in this Restriction or be deemed a third party beneficiary of this Restriction.

11.11 Non-Liability. SCHA and Town and their respective employees, members, officers and agents shall not be liable to any Owner or third party by virtue of the exercise of their rights or the performance of their obligations under this Restriction. The parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this Restriction, the monetary limitations or any other rights, immunities or protections afforded by the Governmental Immunity Act, CRS §§ 24-10-101, et seq., as they may be amended, or any other limitation, right, immunity or protection otherwise available to the parties.

11.12 Exhibits. All exhibits attached hereto are incorporated herein and by this reference made part hereof.

11.13 Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and use of the singular shall include the plural and vice versa.

11.14 Personal Liability. Each Owner shall be personally liable for any of the transactions contemplated herein, jointly and severally with his or her co-owners.

11.15 Further Actions. The Owner and Owner's successors and assigns agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Restriction or any agreement or document relating hereto or entered into in connection herewith.

11.16 Notices. Any notice, consent or approval which is required or permitted to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Restriction. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:

To the Town:

Town of Frisco
Attn: Town Manager
P.O. Box 4100
Frisco, CO 80443

To the Summit Combined Housing Authority:

Summit Combined Housing Authority
P.O. Box 188
Breckenridge, CO 80424

To the Owner:

To be determined pursuant to the Notice of Lien and Memorandum of Acceptance
(as shown on Exhibit A) recorded with respect to each transfer of the Property.

11.17 Choice of Law. This Covenant and each and every related document shall be governed and constructed in accordance with the laws of the State of Colorado.

11.18 Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

11.19 Headings. Article and Section headings within this Restriction are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

11.20 Signatures. Signatures to this Restriction may be in counterparts and by facsimile or scanned emailed document.

11.21 Approval. Wherever an approval is required by the SCHA or the Town, in all instances approval by the Town shall be deemed sufficient. Town "approval" shall mean approval by the Town Manager or his or her designated representative.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has set its hand unto this Restriction this _____ day of _____, 20__.

_____, a

By:

Name:

Title:

STATE OF _____)

COUNTY OF _____) ss.
_____)

The foregoing instrument was acknowledged before me as of the _____ day of _____, 20____, by _____ as _____ of _____, a _____.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

EXHIBIT A

**NOTICE OF LIEN AND MEMORANDUM OF ACCEPTANCE
OF RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF
LIEN FOR UNIT __, OF _____,**

SUMMIT COUNTY, COLORADO

WHEREAS, _____[Buyer Name]_____, the
“Buyer” is purchasing from _____[Seller Name]_____,
the “Seller,” at a price of \$_____[purchase price amount]_____, real property
described _____ as: _____[Legal
Description]_____, according to the plat recorded under
Reception No. _____, in the real property records of the County
of Summit, Colorado (the “Property”); and

WHEREAS, the Seller of the Property is requiring, as a prerequisite to the sale
transaction, that the Buyer acknowledge and agree to the terms, conditions and
restrictions found in that certain instrument entitled “Residential Housing Restrictive
Covenant and Notice of Lien for Unit __, of _____,
Town/County, Colorado”, recorded on _____, 20__, under Reception No.
_____, in the real property records of the County of Summit, Colorado (the
“Restrictive Covenant”).

NOW, THEREFORE, as an inducement to the Seller to sell the Property, the
Buyer:

1. Acknowledges that Buyer has carefully read the entire Restrictive
Covenant, has had the opportunity to consult with legal and financial counsel concerning
the Restrictive Covenant and fully understands the terms, conditions, provisions, and
restrictions contained in the Restrictive Covenant.

2. States that the Notice to Buyer should be sent to:

3. Directs that this Notice be placed of record in the real estate records of the
County of Summit, Colorado and a copy provided to the Summit County Housing
Authority and the Town of Frisco (as defined in the Restrictive Covenant).

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the _____ day of _____, 20__.

BUYER(S):

Print Name(s): _____

STATE OF)
) ss.
COUNTY OF)

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

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT B

Town of Frisco Qualifying Capital Improvement Summary

As permitted through the Residential Housing Restrictive Covenant and Notice of Lien for Unit ____, Of _____, Town of Frisco, Summit County Colorado, the process for submitting Qualifying Capital Improvements (QCI) includes the information below:

- a. Qualifying Capital Improvements shall be approved by the Community Development Department and calculated in accordance with Residential Housing Restrictive Covenant and Notice of Lien.
- b. Certain improvements to a unit may be included in a unit's Maximum Resale Price. The following table outlines the costs that may be included in an owner's base price, items which will not be considered Qualifying Capital Improvements, items which will be allowed as Qualifying Capital Improvements and depreciated on a five year schedule and items which will be allowed as Qualifying Capital Improvements and depreciated on a twenty year schedule.

<u>Items included in Base Price</u> <ul style="list-style-type: none">• Purchase price, including garage, lot premium, heating systems and water heaters <p>The following items may be included in base price with the written approval of the Community Development Department prior to the commencement of the work:</p> <ul style="list-style-type: none">• Structural addition or addition of livable space including bathrooms, bedrooms, exterior door, interior doors, baseboard, window casing, insulation and plumbing (excluding fixtures)• Modifications or improvements to accommodate a person with a disability as defined in the Americans with Disabilities Act of 1990• Roof replacement	<u>Items which are NOT Qualifying Capital Improvements</u> <ul style="list-style-type: none">• All work performed without the issuance of a building permit• Jacuzzis, saunas, steam showers, hot tubs, etc.• Maintenance of existing fixtures, appliances, plumbing, mechanical systems, painting, cleaning, etc. and improvements to existing fixtures• Decorative items including window coverings, lamps and lighting not affixed to walls or ceilings, bath towel bars and hooks, etc.• Interior paint• Cost of tools• Equipment Rental• Removable items not attached to the unit
<u>Items depreciated on 5 year schedule</u> <ul style="list-style-type: none">• Replaced appliances• Washer and dryer (including	<u>Items depreciated on 20 year schedule</u> <ul style="list-style-type: none">• Flooring and countertop upgrades including hardwood,

<ul style="list-style-type: none"> stackable) • Carpet upgrades including pad • Permanent fitted window blinds • Garage door openers • Gutters and downspouts • Security system • Electric fireplace • Exterior paint • Ceiling fans • Storm doors • Laminate flooring • Building permit fees • Improvements for health and safety protection 	<ul style="list-style-type: none"> stone, slate, granite, marble, tile, etc. • Light fixtures (electrical fixtures & wiring) • Plumbing fixtures including sinks and toilets • Cabinets including vanities • Closet organization systems • Trees and permanent landscaping including sod, concrete pads, concrete pavers, etc. • Outdoor decks • Irrigation system • Fencing • Gas fireplace • Windows • Solar Panels • Asphalt roof shingles (single family & duplex) • Garage
--	---

For an owner to request that Qualifying Capital Improvements be added to the Maximum Resale Price, he or she must comply with the following:

- a. Upon completion of the work, Community Development Department requests the following:
 - i. Legible copies of receipts and invoices
 - ii. Proof of payment by a third party
 - iii. Owners must retain original receipts and invoices
- b. In calculating the costs allowed as Qualifying Capital Improvements, only the owner's actual out of pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to owner's labor, or that of their employees or business, or to any appreciation in the value of these improvements.
- c. If an owner pays cash for improvements, the owner must provide third party documentation of payment. An owner must have an invoice for improvements, but if no such documentation of proof of cash payment can be produced, the Community Development Department can inspect the improvement completed in the unit. Up to 75% of documented invoice value may be included after an inspection, subject to depreciation, at the Community Development Department's sole discretion.

- d. Work that requires and is performed without the issuance of all required building permits or property owners' association approval will not be included as a Qualifying Capital Improvement.
- e. The value of the Qualifying Capital Improvements will be added to the appreciated value of the unit at the time of sale. No appreciation is allowed on Qualifying Capital Improvements.
- f. Other improvements to the Affordable Housing unit are allowed, but adjustments to the Maximum Resale Price will only be given for Qualifying Capital Improvements.

If a Qualifying Capital Improvements or an improvement included in the base price of the unit is removed or is no longer operational, the actual cost of the improvement shall be deducted from the base price or Qualifying Capital Improvement schedule. No other categories or types of expenditures may qualify as Qualifying Capital Improvements unless pre-approved in writing by the Community Development Department.

5 Year Depreciation Schedule % of Cost	Months	Years
75%	Up to 12 months	Up to 1 year
50%	12-36	2-3
25%	36-60	3-5
0%	60+	5+

20 Year Depreciation Schedule % of Cost	Months	Years
100%	Up to 24 months	Up to 2 years
90%	24-48	2-4
80%	48-72	4-6
70%	72-96	6-8
60%	96-120	8-10
50%	120-144	10-12
40%	144-168	12-14
30%	168-192	14-16
20%	192-216	16-18
10%	216-240	18-20
0%	240+	20+

Community Development Department may accelerate depreciation or exclude items if damaged beyond ordinary depreciation.

OWNER'S AFFIDAVIT REGARDING CAPITAL IMPROVEMENTS

The undersigned, _____,
being of lawful age and having been duly sworn, upon personal knowledge states and
alleges as follows:

1. I am the Owner of property located at the following street address:

_____.

2. I verify and acknowledge that the receipts and proof of payment submitted with this Affidavit represent the actual costs expended for Improvements to my home located at the address above and that the receipts are valid and correct receipts tendered at the time of purchase.
3. I verify and acknowledge that true and correct copies of any building permit or certificate of occupancy required to be issued by the Town of Frisco Building Division with respect to the Improvements have been submitted with this Affidavit.

I declare under penalty of perjury that I have read this Affidavit and the statements contained in it are true and correct to the best of my knowledge.

Date: _____

Signature of Owner

State of _____)

) ss.

County of _____)

The foregoing was subscribed and sworn to before me this _____ day of _____, 20__, by _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

Attachment 2

RESOLUTION FOR ADOPTION

TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO

RESOLUTION 19-27

A RESOLUTION APPROVING THE TOWN OF FRISCO FORM OF RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF LIEN, AND AUTHORIZING ITS USE TO REPLACE ANY EXISTING SIMILAR COVENANTS.

WHEREAS, under several laws of the Town, including but not limited to the Town's Unified Development Code, the Town provides incentives for the establishment of affordable housing units by way of the Town's standard form of residential housing restrictive covenant (the "Affordable Housing Covenant"); and

WHEREAS, the purpose of the Town's Affordable Housing Covenant is to provide a low or moderate priced housing unit for sale (or, under certain conditions, for rent) to a person or household of low or moderate income; and

WHEREAS, from time to time the Town Council reviews the Affordable Housing Covenant and, based upon community input and staff recommendations, makes amendments to the covenant in order to address changes in circumstances over time, and to ensure that the covenant continues to meet the affordable housing goals of the Town; and

WHEREAS, the Town Council has determined that the attached, revised form of Affordable Housing Covenant better addresses matters such as the maximum resale price and the inclusion of the cost of certain capital improvements within the maximum resale price of the home than does the Town's existing form of the covenant.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THAT:

Section 1. The attached form of Residential Housing Restrictive Covenant and Notice of Lien is hereby approved and authorized as the Town of Frisco's standard form of residential housing restrictive covenant, to be used as allowed or required by the Code of Ordinances of the Town of Frisco from and after the date set forth below.

Section 2. In addition to the use of the attached form of Residential Housing Restrictive Covenant and Notice of Lien for the establishment of new affordable housing units, the Town Attorney is hereby authorized and directed to prepare from time to time, and the Town Manager authorized and directed to execute and have recorded in the real property records from time to time, such documents as may be necessary to replace, at the request of an owner, any real covenant that created an Affordable Housing Unit with

the attached form of covenant. In making such replacement, no changes shall be made to the attached form of covenant other than those necessary to complete the form, or that concern the replacement of an existing covenant with the new form. For purposes of this section, the terms “Affordable Housing Unit” shall be as set forth in section 160-12 of the Code of Ordinances of the Town of Frisco.

INTRODUCED, READ AND ADOPTED THIS ____ DAY OF _____. 2019.

Town of Frisco, Colorado:

Gary Wilkinson, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

Attachment to Resolution

RESTRICTIVE COVENANT

**RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF LIEN
FOR UNIT __, OF _____,
TOWN OF FRISCO,
SUMMIT COUNTY COLORADO**

This Residential Housing Restrictive Covenant and Notice of Lien for Unit __, of _____, _____, Summit County, Colorado, (this "Restriction,") is made this _____ day of _____, 20__, by _____, a (hereinafter referred to as "Declarant").

RECITALS:

WHEREAS, Declarant is the Owner of that certain real estate located in the County of Summit, State of Colorado, and legally described as follows: Unit __, of _____, _____, according to the plat thereof now on file in the Office of the Clerk and Recorder for Summit County, Colorado, under Reception No. _____ (hereinafter referred to as the "Property"); and

WHEREAS, pursuant to the terms of the approval of the _____ Development Application, Declarant is required to execute and record this Restriction.

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that the Property shall hereafter be held, sold, and conveyed subject to the following covenants, restrictions, and conditions, all of which shall be covenants running with the land, and which are for the purposes of ensuring that the Property remains available for purchase and occupation by persons residing and working in Summit County, Colorado, as moderately priced housing, and protecting the value and desirability of the Property, and which covenants, restrictions, and conditions shall be binding on all parties having any right, title, or interest in the Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of the Owner of the Property, the Summit Combined Housing Authority, the Town, and Declarant.

**ARTICLE I
DEFINITIONS**

- 1.1. Definitions. The following words, when used in this Restriction, shall have the following meanings and the use of capitalization or lower case letters in references to the following terms shall have no bearing on the meanings of the terms:

A. "Area Median Income" or "AMI" means the median annual income for Summit County, Colorado, (or such next larger statistical area calculated by HUD that includes Summit County, Colorado, if HUD does not calculate the area median income for Summit County, Colorado, on a distinct basis from other areas), as adjusted for household size, that is calculated and published annually by HUD (or any successor index thereto acceptable to the Town or SCHA in its reasonable discretion). If current AMI data pertaining to the date of sale of the Property is not yet available as of the date the sale price is calculated, then the most recent data published by HUD shall be used in its place.

B. "Authorized Lessee" means a person approved by the Town who meets the definition of a Resident Eligible Household and who leases the property pursuant to the limitations of section 7.2 of this Restriction.

C. "Dependent" shall mean a person, including a spouse of, a child of, a step-child of, a child in the permanent legal custody of, or a parent of, a Resident, whose principal place of residence is in the same household as such Resident, and who is financially dependent upon the support of the Resident. Dependent shall also include any person included within the definition of "Familial Status" as defined in 42 U.S.C. § 3602(k), as amended.

D. "Eligible Household" means a household earning not more than _____ percent (____%) of the AMI and that has been approved by either the SCHA or the Town so as to allow for the execution by the SCHA or Town of the form of approval set forth in Section 5.3 of this Restriction. A household's income for purposes of determining whether such household meets this definition of eligibility shall be determined at the time of purchase or, if applicable, commencement of leasehold occupancy. For purposes of the determination of the number of people that constitute a household under this definition, any Resident or Dependent spouse of a Resident who is pregnant at the time of the determination of whether a household meets the income limitation provided in this definition shall be deemed to be two (2) people.

E. "First Mortgage" means a Mortgage which is recorded senior to any other Mortgage against the Property to secure a loan used to purchase Property.

F. "Household" means one or more persons who intend to live together in the premises of a dwelling unit as a single housekeeping unit, but does not mean a group of four (4) or more persons unrelated by blood, adoption or marriage.

G. "HUD" means the U.S. Department of Housing and Urban Development.

H. "Maximum Resale Price" means that maximum Purchase Price that shall be paid by any purchaser of the Property, other than the initial purchaser who acquires the Property from Declarant, as determined in accordance with the provisions of Section 8.3 of this Restriction. The Maximum Resale Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of the Property.

I. "Mortgage" means a consensual interest created by a real estate mortgage, a deed of trust on real estate, or the like.

J. "Mortgagee" means any grantee, beneficiary, or assignee of a Mortgage.

K. "Owner" means the record owner of the fee simple title to the Property.

L. "Purchase Money Mortgage" means a Mortgage given by an Owner to the extent that it is: (a) taken or retained by the seller of the Property to secure all or part of the payment of the Purchase Price; or (b) taken by a person who by making advances, by making a loan, or by incurring an obligation gives value to enable the Owner to acquire the Property if such value is in fact so used.

M. "Purchase Price" shall mean all consideration paid by the purchaser to the seller for the Property, but shall EXCLUDE any proration amounts, taxes, costs and expenses of obtaining financing, lenders fees, title insurance fees, closing costs, inspection fees, real estate purchase and/or sales commission(s) or other fees and costs related to the purchase of the Property but not paid directly to Seller.

N. "Qualified Capital Improvements" means those improvements to a Property performed by the Owner, which qualify for inclusion within the calculation of Maximum Resale Price if such improvements are set forth in the Qualified Capital Improvement ("QCI") schedule contained in Exhibit B hereto, which exhibit is incorporated herein by this reference, and if the Owner furnishes the Town or its designee with the following:

- i. Original or duplicate receipts to verify the expenditures by the Owner for the Qualified Capital Improvements;
- ii. An affidavit verifying that the receipts are for actual expenditures for a specified Qualified Capital Improvement; and
- iii. True and correct copies of any building permit or certificate of occupancy required by law in connection with the Qualified Capital Improvement

N. "Qualified Owner" means natural person(s) that meet(s) the definitions of both a Resident and an Eligible Household, or non-qualified Owner under Section 5.1.B., qualified and approved by SCHA or the Town in such manner that will allow SCHA or the Town to execute, on an instrument of conveyance, a copy of the language set forth in Section 5.3 below.

O. "Resident" means a person and his or her Dependents, if any, who (i) at the time of purchase of a Unit and all times during ownership or occupancy of the Property, earns his or her living from a business operating in Summit County, by working at such business an average of at least 30 hours per week on an annual basis. A person shall remain a Resident regardless of his or her working status, so long as he or she has owned and occupied the Property, or other real property within Summit County that is deed restricted for affordability, for a time period of not less than seven (7) years. The term "business" as used in this Article I, Subsection M, and Section 5.1.B. shall mean an

enterprise or organization providing goods and/or services, whether or not for profit, and shall include, but not be limited to, educational, religious, governmental and other similar institutions.

P. "Resident Eligible Household" shall mean an Eligible Household that includes at least one Resident.

Q. "SCHA" means the Summit Combined Housing Authority.

R. "Town" means the Town of Frisco, State of Colorado.

S. "Transfer" or "transferred" means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including, but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of the Property is transferred and the Owner obtains title.

ARTICLE II

PURPOSE

The purpose of this Restriction is to restrict ownership, occupancy and sale of the Property in such a fashion as to provide, on a permanent basis, moderately priced housing to be occupied by Resident Eligible Households, which Resident Eligible Households, because of their income, may not otherwise be in a position to afford to purchase, own, and occupy other similar properties, and to help establish and preserve a supply of moderately priced housing to help meet the needs of the locally employed residents of Summit County.

ARTICLE III

RESTRICTION AND AGREEMENT BINDS THE PROPERTY

This Restriction shall constitute covenants running with title to the Property as a burden thereon, for benefit of, and enforceable by, the SCHA and its successors and assigns, including, without limitation the Town/County, and this Restriction shall bind Declarant and all subsequent Owners of the Property. Each Owner, upon acceptance of a deed to the Property, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner period of ownership of the Property. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Restriction, even without reference to this Restriction in any document of conveyance.

ARTICLE IV
OCCUPANCY RESTRICTIONS

Other than use by the SCHA or the Town, and except as may be otherwise expressly set forth in this Restriction, the use and occupancy of the Property shall be limited exclusively to housing for natural persons who meet the definition of Resident and Eligible Household.

ARTICLE V
OWNERSHIP RESTRICTIONS

5.1. Ownership and Occupancy Obligation.

A. Except as provided in Section 5.1.B. or Article VI hereof, ownership of the Property is hereby limited exclusively to Eligible Households that include at least one Resident.

B. Upon the written consent of SCHA or Town, which consent may be recorded, a non-qualifying natural person or entity that owns and/or operates a business located in Summit County may purchase the Property; provided, however, that by taking title to the Property, such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that any Owner who does not qualify as a Resident Eligible Household shall rent the Property to a Resident Eligible Household as more fully set forth in Section 7.1 of this Restriction, and shall not occupy or use the Property for the Owner's own use or leave the Property vacant.

5.2. Sale and Resale. In the event that the Property is sold, resold, transferred and/or conveyed without compliance with this Restriction, SCHA or the Town shall have the remedies set forth herein, including, but not limited to, the rights set forth in Section 8.5. Except as otherwise provided herein, each and every conveyance of the Property, for any

and all purposes, shall be deemed to include and incorporate the terms and conditions of this Restriction.

5.3. Compliance. Any sale, transfer, and/or conveyance of the Property shall be wholly null and void and shall confer no title whatsoever upon the purported transferee unless (i) there is recorded in the real property records for Summit County, Colorado, along with the instrument of conveyance evidencing such sale, transfer or conveyance, a completed copy of the "Notice of Lien and Memorandum of Acceptance of Residential Housing Restrictive Covenant for Unit _____, of _____, Summit County, Colorado" attached hereto as Exhibit A, which copy is executed by the transferee and acknowledged by a Notary Public, and (ii) the instrument of conveyance evidencing such sale, transfer, and/or conveyance, or some other instrument referencing the same, bears the following language followed by the acknowledged signature of either the director or some other authorized representative of the SCHA or by the Mayor of the Town , to wit:

"The conveyance evidenced by or referenced in this instrument has been approved by the Summit Combined Housing Authority or Town of Frisco as being in compliance with the Residential Housing Restrictive Covenant for Unit ___ of _____, _____, Summit County, Colorado, recorded in the records of Summit County, Colorado, on the _____ day of _____, 20____, at Reception No. _____."

Each sales contract, or lease as the case may be, for the Property shall also (a) recite that the proposed purchaser has read, understands and agrees to be bound by the terms of this Restriction; and (b) require the proposed purchaser and/or lessee to submit such information as may be required by the Town/County or the SCHA under its rules and regulations or policies adopted for the purpose of ensuring compliance with this Restriction.

5.4. Refinance Restriction. The Owner shall not encumber the Property in an amount in excess of the Purchase Price.

ARTICLE VI

ORIGINAL SALE OF THE PROPERTY

6.1 Initial Purchase Price. Except as may be permitted under Section 5.1.B. above, upon completion of construction by the Declarant, the Property shall be sold to initial purchasers who qualify as a Resident and an Eligible Household at a Purchase Price that shall be determined by the SCHA or the Town as follows:

- (a) The number of bedrooms within the Property shall be determined and that number of bedrooms shall, in turn, determine the size of the household for which the Area Median Income shall be determined as follows: (i) for a one-bedroom dwelling unit, a 1.5 person household; (ii) for a two-bedroom dwelling unit, a 3 person household; (iii) for a three-bedroom dwelling unit, a 4.5 person household; and (iv) for a four-bedroom unit, a 6 person household;
- (b) The Area Median Income for a household of a size determined in accordance with subpart (a) above shall be determined;
- (c) The amount of Area Median Income determined in accordance with subpart (b) above shall be divided by twelve (12), and the number derived shall then be multiplied by .30 to determine the total dollar amount available to the household on a monthly basis for the payment of principal, interest, taxes, insurance and homeowner's association dues in connection with the purchase of the Property;

- (d) The amount of \$350 shall be subtracted from the total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (c) above) in order to determine the total dollar amount available to the household on a monthly basis for the payment of principal and interest on a mortgage loan for purchase of the Property;
- (e) The total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (d) above) shall be used to determine the Purchase Price, through extrapolation, by determining the maximum loan amount that said dollar amount will support, assuming a mortgage loan with a standard amortization schedule, a term of thirty (30) years (360 months), an annual interest rate of ____% and a 90% loan to value ratio; and
- (f) The interest rate to be used to perform the calculation described in subpart (e) above shall be the greater of: (1) the actual interest rate obtained by the Eligible Household for purchase of the Property with a mortgage loan with a term of thirty (30) years; and (2) the interest rate determined by calculating, from data published by the Federal Home Loan Mortgage Corporation, the average interest rate, for the preceding ten (10) calendar years, for a thirty-year fixed rate loan, and adding thereto 1.5%.

ARTICLE VII

USE RESTRICTIONS

7.1. Occupancy. Except as otherwise provided in this Restriction, the Property shall, at all times, be occupied as a principal place of residence by an Owner, or, if applicable, an Authorized Lessee, (along with his or her Dependents) who, at the time of purchase, or in the case of an Authorized Lessee at the time of occupancy, of the Property, qualified as a Resident and Eligible Household. In the event that any Owner ceases to occupy the Property as his or her principal place of residence, or any non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.B. leaves the Property unoccupied by a Resident Eligible Household for a period of 90 consecutive days, the Owner of the Property shall, within 10 days of ceasing such occupation, notify the SCHA of the same and the Property shall, within 30 days of the Owner having vacated or left vacant the Property make the Property available for purchase pursuant to the terms of this Restriction. Any Owner who fails to occupy his or her Property for a period of 90 consecutive days shall be deemed to have ceased to occupy the Property as his or her principal place of residence; however, an Owner who has established the Property as his or her principal place of residence shall not be considered to have ceased occupancy of the Property during such period of time as the Owner is serving on active duty with the United States Armed Services.

7.2. Rental. Under no circumstances shall the Property be leased or rented for any period of time without the prior written approval of the SCHA or the Town, which approval may be conditioned, in the SCHA's or Town's sole and absolute discretion, on

the lease or rental term being limited to a twelve (12) month period either consecutively or in the aggregate during the Owner's ownership of the Property. In the event that the Property, or any portion thereof, is leased or rented without compliance with this Restriction, such rental or lease shall be wholly null and void and shall confer no right or interest whatsoever to or upon the purported tenant or lessee. Any rental approved by the SCHA or the Town shall be to a Resident Eligible Household at such rental rates as shall be established by the SCHA and approved by the Town, or as may be established by the Town from time to time, and, if no such rental rates have been established, at a monthly rental rate that shall not exceed _____ percent (____%) of the most recent Fair Market Rent amounts published by the U.S. Department of Housing and Urban Development (or any successor index thereto acceptable to SCHA or the Town in its reasonable discretion) (such lessee being referred to herein as an "Authorized Lessee").

7.3 Involuntary Sale Upon Change in Residence. In the event Owner changes residence or ceases to utilize the Property as his or her exclusive and permanent place of residence, or in the event any non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.B. leaves the Property unoccupied by a Resident Eligible Household for a period of 90 consecutive days, as determined by the SCHA or the Town, the Property shall be offered for sale pursuant to the provision of Article VIII of this Restriction. The SCHA may further require the Owner to rent the Property in accordance with the provisions of Article X below.

7.4 Ownership Interest in Other Residential Property. Except with respect to a non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.B, if at any time the Owner also owns any interest alone or in conjunction with others in any other developed residential property, the 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 Owner within one hundred (120) days of its listing required hereunder, then the Owner shall immediately list the Property for sale pursuant to the provisions of this Restriction. It is understood and agreed between the parties hereto that, in the case of an 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 Owner's business shall not constitute "other developed residential property" as that term is used in this Article.

ARTICLE VIII

RESALE OF THE PROPERTY

8.1. Resale. The Property shall not be transferred subsequent to the original purchase from the Declarant except upon full compliance with the procedures set forth in this Article VIII.

8.2. Notice and General Limitations on Resale. In the event that an Owner shall desire to Transfer his Property, or in the event that an Owner shall be required to Transfer his Property pursuant to the terms of this Restriction, he shall notify the SCHA and the Town of Frisco, or such other person or entity as may be designated by the Town, in writing of

his intention to Transfer his Property. The Property may be offered, advertised, or listed for sale by such Owner at such Owner's sole cost and expense, in any manner in which such Owner may choose. An Owner may list the Property for sale through SCHA for a commission equal to 2.0% of the sales price. Except as otherwise set forth in this Section 8.2, the Property shall not, however, be sold, transferred and/or conveyed to any person, entity, or entities, (i) other than a Resident Eligible Household, or non-qualified buyer under Section 5.1.B., qualified and approved by the SCHA or the Town in such a manner as will allow the SCHA or the Town to execute the approval set forth in Section 5.3 of this Restriction (a "Qualified Buyer"), and (ii) for consideration to be paid by such qualified Resident Eligible Household that exceeds the Maximum Resale Price as such is determined pursuant to the provisions of this Article VIII. Any other provision of this Restriction notwithstanding, upon resale of the Property: (i) a Household shall qualify as an "Eligible Household" if it earns not more than twenty percent (20%) more AMI than the AMI percentage set forth in Subsection 1.1(D) above; provided, however, that such qualification shall have no impact on the determination of the Maximum Resale Price under Section 8.3 below; and (ii) during the first twenty (20) days after listing the Property for sale with written notification to the Town of Frisco and the Summit Combined Housing Authority (SCHA), and in a manner accessible to the general public, the Property may be sold or contracted for sale only to a "Resident" who at the time of purchase earns his or her living from a business operating in the Town of Frisco, by working at such business an average of at least thirty (30) hours per week on an annual basis and qualifies as an "Eligible Household" if earns not more than ____ (____%) AMI.

8.3. Maximum Resale Price.

- A. If the Owner lists the unit for sale with a contracted realtor with the Summit Combined Housing Authority (SCHA), the Owner may add the amount paid in sales commission, up to two percent of the sale price (2%), to the Maximum Resale Price.
- B. The Maximum Resale Price of a Property shall be no greater than the sum of:
 - (1) The Purchase Price paid by the Owner of the Property as identified in the purchase and sale agreement entered into at the time of purchase by Owner-Seller;
 - (2) Plus a three-percent (3%) increase of the Purchase Price per year (prorated at the rate of 1/12th for each whole month) from the date ownership transferred to Seller to the date of Seller's listing of the property with written notification to the Town of Frisco and the Summit Combined Housing Authority (SCHA); such percentage increase shall be calculated as simple interest;
 - (3) Plus the cost of Qualified Capital Improvements as approved by the Town of Frisco;

- (4) Plus the cost of real estate commission as negotiated by the Seller if the Owner lists the unit for sale with a private real estate broker (as opposed to a contracted realtor with the Summit Combined Housing Authority (SCHA),

Provided, however, that the sum of items B. (1) through B. (4) in this paragraph shall be no greater than the Purchase Price determined in accordance with Section 6.1 of this Restriction using the most current (at time of sale) published Summit County AMI. At the owner's discretion, the maximum resale price is not required to be less than the purchase price paid by the owner of the property as identified on closing documents at the time of purchase by Owner-Seller.

C. Owner shall be responsible for ensuring that at resale the Property is clean, the appliances are in working order, and that there are no health or safety violations regarding the Property.

D. No Owner shall permit any prospective buyer to assume any or all of the Owner customary closing costs or accept any other consideration which would cause an increase in the Purchase Price above the bid price so as to induce the Owner to sell to such prospective buyer.

8.4 Non-Qualified Transferees. In the event that title to the Property vests in individuals and/or entities who are not a Qualified Buyer (hereinafter "Non-Qualified Transferee(s)") by descent, by foreclosure and/or redemption by any lien or mortgage holder (except any holder of a HUD - insured First Mortgage), or by operation of law or any other event, SCHA or the Town may elect to notify the non-qualified transferee that it must sell the Property in accordance with Section 8.5. The non-qualified transferee shall not: (i) occupy the Property; (ii) rent all or any part of the Property, except in strict compliance with this Restriction; (iii) engage in any business activity on or in the Property; (iv) sell or otherwise Transfer the Property except in accordance with this Restriction; or (v) sell or otherwise Transfer the Property for use in trade or business.

8.5 Sales to Preserve as Affordable Housing.

A. In the event the Property is occupied, transferred or leased in violation of this Restriction, SCHA or the Town may, at its sole discretion, notify an Owner that it must immediately list the Property for sale (including the execution of a listing contract with, and the payment of the specified fees) by SCHA. The highest bid by a Qualified Owner for not less than ninety-five percent (95%) of the Maximum Sale Price shall be accepted by the Owner; provided, however, if the Property is listed for a period of at least ninety (90) days and all bids are below ninety-five percent (95%) of the Maximum Sale Price, the Property shall be sold to a Qualified Owner that has made the highest offer for at least the appraised market value of the Property, the reasonableness of which appraisal shall be determined by SCHA or the Town in its reasonable good faith judgment.

B. If required by SCHA or the Town, the Owner shall: (i) consent to any sale, conveyance or transfer of such Property to a Qualified Owner; (ii) execute any and all

documents necessary to do so; and (iii) otherwise reasonably cooperate with SCHA or the Town to take actions needed to accomplish such sale, conveyance or transfer of such Property. For this purpose Owner constitutes and appoints SCHA and the Town as its true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions required under this Section 8.5.B. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees that all power granted to SCHA and the Town under this Restriction may be assigned by either of them to their respective successors or assigns.

C. In order to preserve the affordability of the Units for persons of low to moderate income, SCHA or the Town, or their respective successors, as applicable, shall also have and are hereby granted the right and option to purchase the Property, exercisable within a period of fifteen (15) calendar days after notice is sent by SCHA or the Town to the Owner that requires the Owner to sell the Property pursuant to this Section 8.5. SCHA or the Town shall complete the purchase of the Property within thirty (30) calendar days after exercising its option hereunder for a price equal to the lesser of the appraised market value of the Property, the reasonableness of which appraisal shall be determined by SCHA or the Town in its reasonable good faith judgment, or the Maximum Sale Price. SCHA or the Town may assign its option to purchase hereunder to an eligible purchaser which, for the purpose of this Section 8.5(c), shall be a Qualified Owner.

D. In all situations in which the provisions of this Section 8.5 apply, SCHA or the Town may alternatively require the Owner to rent the Property to a Resident Eligible Household in accordance with the requirements and limitations of this Restriction.

ARTICLE IX **FORECLOSURE**

9.1 Release. Subject to the process and rights set forth in this Article IX below, this Restriction shall be deemed released as to the Property in the event of (i) the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Property in connection with a foreclosure by the holder of a HUD-insured or other First Mortgage, or (ii) the acceptance of a deed in lieu of foreclosure by the holder of a HUD-insured or other First Mortgage. This Restriction shall also automatically terminate and be released as to the Property upon the assignment to HUD of an HUD-insured mortgage encumbering the Property. The Town, in its sole discretion, may elect to release a Property from this Restriction in the event of (1) the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Property in connection with a foreclosure of the Town's lien, as defined in Section 9.2, or (2) the acceptance of a deed in lieu of foreclosure by the Town in connection with the Town's Lien. If the Town chooses to terminate this Restriction with respect to a particular Property, the Town shall record a document referencing such termination in the real property records of the County. Any and all claims of the Town available hereunder against the Owner personally shall survive any release or termination of this Restriction.

9.2 Lien.

A. The SCHA and the Town shall have, and are hereby granted, a lien against the Property ("SCHAs Lien" or "Town's Lien") to secure payment of any amounts due and owing the SCHA or the Town pursuant to this Restriction including: the SCHAs or the Town's sale proceeds and/or amounts due to the SCHA or the Town in the event of a foreclosure of a First Mortgage and to secure the obligations to the SCHA or the Town hereunder. The SCHAs Lien and the Town's Lien on the Property shall be superior to all other liens and encumbrances except the following:

- (1) liens and encumbrances recorded prior to the recording of this Restriction and Agreement;
- (2) real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts;
- (3) liens given superior priority by operation of law; and
- (4) the lien of any First Mortgage against the Property.

A. Recording of this Restriction constitutes record notice and perfection of the SCHAs Lien and the Town's Lien. No further recordation of any claim of lien is required. However, the SCHA or the Town may elect to prepare, and record in the Office of the County Clerk and Recorder of the County, a written notice of lien. By virtue of the SCHAs Lien or the Town's Lien, the SCHA or the Town shall have the rights granted a lienor under C.R.S. 38-38-101 *et seq.*, and the SCHA or the Town shall be entitled to file such notices and other information necessary to preserve its rights, as a lienor, to cure and redeem in foreclosure of the Property, as provided by C.R.S. 38-38-101 *et seq.* In addition, unless otherwise instructed by the SCHA or the Town in writing, the Owner shall sign, acknowledge, and cooperate in SCHAs or the Town's recording in the County Clerk and Recorder's Office immediately subsequent to the recording of the First Mortgage, a notice of the SCHAs Lien or the Town's Lien, substantially in the form attached hereto as Exhibit A, in order to assure that the SCHA or the Town receives notice in the event of the foreclosure of the First Mortgage pursuant to this Article. The notice shall not alter the priority date of the SCHAs Lien or the Town's Lien as established herein.

C. The sale or other transfer of the Property shall not affect the SCHAs Lien or the Town's Lien. No sale or deed in lieu of foreclosure shall relieve the Owner from continuing personal liability for payment of his or her obligations hereunder. The SCHAs Lien or the Town's Lien does not prohibit actions or suits to recover sums due pursuant to this Restriction and Agreement, or to enforce the terms of this Restriction, or to prohibit the SCHA or the Town from taking a deed in lieu of foreclosure.

9.3 SCHAs and Town's Option to Redeem and to Buy.

A. Foreclosure/SCHAs or Town's Option to Redeem. In the event of a

foreclosure, the SCHa and the Town shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of the Property that are junior to the First Mortgage (as provided in C.R.S. §38-38-101 *et seq.*, or any succeeding statute). The SCHa and the Town shall have a right of redemption, and such other rights as a lienor in foreclosure, as its interest appears, in accordance with Colorado law governing foreclosure. The SCHa's Lien and the Town's lien is created pursuant to Section 9.2 above.

B. Deed in lieu of Foreclosure/Option to Buy. In the event that the First Mortgagee takes title to the Property by deed in lieu of foreclosure, the SCHa and the Town shall have an option to buy the Property ("Option to Buy") exercisable in accordance with this paragraph. Within three (3) days after the First Mortgagee's first attempt to secure a deed in lieu of foreclosure, the Owner shall deliver written notice to the SCHa and the Town of such intent to Transfer title. The SCHa or the Town may exercise its Option to Buy by tendering the Deed In Lieu Price (as defined below) to the First Mortgagee, within thirty (30) days from and after vesting of title to the Property in the First Mortgagee by deed in lieu of foreclosure ("Deed in Lieu Option Period"). Upon receipt of the Deed in Lieu Price, the First Mortgagee shall deliver to the SCHa or the Town a special warranty deed conveying fee simple title in and to the Property, in which event this Restriction and Agreement shall remain valid and in full force and effect. The Deed in Lieu Price shall be equal to: (i) the amounts unpaid pursuant to the First Mortgage note; (ii) any other reasonable costs incurred by the First Mortgagee that directly relate to the deed in lieu of foreclosure; and (iii) any additional reasonable costs incurred by the First Mortgagee during the Deed in Lieu Option Period that are directly related to maintenance of the Property. The First Mortgagee shall convey only such title as it received through the deed in lieu of foreclosure and will not create or suffer the creation of any additional liens or encumbrances against the Property following issuance of the deed in lieu of foreclosure to the First Mortgagee. The First Mortgagee shall not be liable for any of the costs of conveyance of the Property to the SCHa, the Town, or its designee; *however*, the First Mortgagee shall cooperate with the SCHa or the Town in calculating the Deed in Lieu Price and in the execution of the Option to Buy.

C. Upon Exercising Option. In the event that the SCHa or the Town obtains title to the Property pursuant to this Article, the SCHa, the Town or its designee may sell the Property to a Qualified Buyer, or rent the Property to third parties until such time that the Property can be sold to a Qualified Buyer. The SCHa's or the Town's subsequent sale of the Property in these circumstances shall not be subject to the Maximum Sale Price restrictions set forth in Article VIII hereof.

D. Release upon Electing Not to Exercise Options. In the event that the SCHa or the Town does not exercise its Option to Redeem as described in this Article or its Option to Buy as described above, as applicable, within the time periods set forth in this Article, this Restriction shall automatically terminate and shall be of no further force and effect, and the SCHa and the Town shall prepare and execute a release of this Restriction and, within thirty (30) days of such termination, cause such release to be recorded in the records of the Clerk and Recorder of the County. Notwithstanding the foregoing, any and

all claims of the SCHA and the Town available hereunder against the Owner personally shall survive any release or termination of this Restriction.

9.4 Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Article IX shall be unlawful or void for violation of: (1) the rule against perpetuities or some analogous statutory provision; (2) the rule restricting restraints on alienation; or (3) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of (x) the term of this Restriction, or (y) the period of the lives of the current duly elected and seated board of directors of the SCHA, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

ARTICLE X **ENFORCEMENT**

10.1 Enforcement of This Restriction. The Declarant and each Owner hereby grants and assigns to SCHA or the Town the right to review and enforce compliance with this Restriction. Compliance may be enforced by SCHA or the Town by any lawful means, including without limitation, seeking any equitable relief (including, without limitation, specific performance and other equitable relief as set forth in Section 10.2 below), as well as a suit for damages; provided, however, in the event the Property is financed by a HUD-insured First Mortgage and is sold in violation of Section 8.3 hereof, such enforcement shall not include:

- A. acceleration of a mortgage;
- B. voiding a conveyance by an Owner;
- C. terminating an Owner's interest in the Property; or
- D. subjecting an Owner to contractual liability.

Notwithstanding the foregoing, in no event shall SCHA or the Town have any equitable remedies (including, but not limited to, the right to sue for specific performance or seek other equitable relief as set forth in Section 10.2) or the right to sue for damages if the Owner of the Property that was financed with a HUD-insured First Mortgage breaches or violates the terms, covenants and other provisions of Section 8.3 hereof and if to do so would violate any existing or future requirement of HUD, it being understood, however, that in such event, SCHA or the Town shall retain all other rights and remedies hereunder for enforcement of any other terms and provisions hereof, including, without limitation: (i) the right to sue for damages to reimburse SCHA or the Town, or its agents, for its enforcement costs and to require an Owner to repay with reasonable interest (not to exceed ten percent (10%) per annum) any assistance received in connection with the purchase of the Property; (ii) the right to prohibit an Owner from retaining sales or rental proceeds collected or received in violation of this Restriction; and (iii) the option to purchase granted to SCHA or the Town in Section 8.5(c) hereof. Venue for a suit enforcing compliance shall be proper in Summit County, Colorado and service may be

made or notice given by posting such service or notice in a conspicuous place on the applicable Property. As part of any enforcement action on the part of SCHA or the Town, the applicable Owner shall pay all court costs and reasonable legal fees incurred by SCHA or the Town, or its agents, in connection with these claims, actions, liabilities or judgments, including an amount to pay for the time, if any, of SCHA or the Town's or its agents, attorney spent on such claims at the rates generally charged for similar services by private practitioners within the County.

10.2 Injunctive and other Equitable Relief. Declarant and each Owner agree that in the event of Declarant's or Owner's default under or non-compliance with the terms of this Restriction, SCHA or the Town shall have the right to seek such equitable relief as it may deem necessary or proper, including, without limitation, the right to: (a) seek specific performance of this Restriction; (b) obtain a judgment from any court of competent jurisdiction granting a temporary restraining order, preliminary injunction and/or permanent injunction; and (c) set aside or rescind any sale of the Property made in violation of this Restriction. Any equitable relief provided for in this Section 10.2 may be sought singly or in combination with such legal remedies as SCHA or the Town may be entitled to, either pursuant to this Restriction, under the laws of the State of Colorado or otherwise.

ARTICLE XI

GENERAL PROVISIONS

11.1 Equal Housing Opportunity. Pursuant to the Fair Housing Act, Declarant, the SCHA, and the Town shall not discriminate on the basis of race, creed, color, sex, national origin, familial status or disability in the lease, sale, use or occupancy of the Property.

11.2 Rules, Regulations, and Standards. The SCHA shall have the authority to promulgate and adopt such rules, regulations and standards as it may deem appropriate, from time to time, for the purpose of carrying out its obligations and responsibilities described herein, all of which rules, regulations and standards, and any amendments thereof, shall be subject to approval of the Town.

11.3 Waiver of Exemptions. Every Owner, by taking title to the Property, shall be deemed to have subordinated to this Restriction any and all right of homestead and any other exemption in, or with respect to, such Property under state or federal law presently existing or hereafter enacted.

11.4 Enforcement. Except as otherwise provided herein, the SCHA, the Town, the Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, and reservations imposed by the provisions of this Restriction and shall be entitled to specific enforcement of the same. Failure by any party described in this paragraph to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right by such party or any other party to do so thereafter.

11.5 Expenses of Enforcement. In the event that any party entitled to enforce the terms of this Restriction shall be required to bring any action as the result of any breach of the terms of this Restriction by any Owner, the party bringing such action shall be entitled to recover from and against the Owner in breach of these Restrictions, in addition to any and all other remedies available at law or in equity, reasonable attorney's fees and costs incurred in the enforcement of these Restrictions and in the bringing of such action, and the party against whom such fees and costs are awarded shall be personally liable for the payment of such fees and costs, and such award and judgment shall constitute a lien against the Property owned by the party in breach of these Restrictions which lien may be enforced by foreclosure of the defaulting Owner's Property in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado or elimination of Owner's resale gain on the Property.

11.6 Severability. Invalidation of any one of the covenants or restrictions contained herein by judgment or Court order shall in no way affect any other provisions, it being the intent of the Declarant, SCHA and Town that such invalidated provision be severable.

11.7 Term. The restrictions contained herein shall run with the land and bind the land for a term of 99 years from the date that this covenant is recorded, after which time the terms of this Covenant shall be automatically extended for successive periods of 10 years.

11.8 Amendment. This restriction may be amended only by an instrument recorded in the records of Summit County executed by the Town and the then-Owner of the Property.

11.9 Successor to SCHA. In the event that, at any time during the duration of this Restriction, the SCHA ceases to exist, all reference in this Restriction to SCHA shall, thereafter, mean the Town its successors, assigns, or any other entity designated by the Town to administer or enforce the provisions hereof, or to perform the functions of the SCHA as described herein.

11.10 No Third Party Beneficiaries. This Restriction is made and entered into for the sole protection and benefit of the SCHA, the Town and the Owner. Except as otherwise specifically provided for herein, no other person, persons, entity or entities, including without limitation prospective buyers of the Property, shall have any right of action with respect to this Restriction or right to claim any right or benefit from the terms provided in this Restriction or be deemed a third party beneficiary of this Restriction.

11.11 Non-Liability. SCHA and Town and their respective employees, members, officers and agents shall not be liable to any Owner or third party by virtue of the exercise of their rights or the performance of their obligations under this Restriction. The parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this Restriction, the monetary limitations or any other rights, immunities or protections afforded by the Governmental Immunity Act, CRS §§ 24-10-101, et seq., as they may be amended, or any other limitation, right, immunity or protection otherwise available to the parties.

11.12 Exhibits. All exhibits attached hereto are incorporated herein and by this reference

made part hereof.

11.13 Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and use of the singular shall include the plural and vice versa.

11.14 Personal Liability. Each Owner shall be personally liable for any of the transactions contemplated herein, jointly and severally with his or her co-owners.

11.15 Further Actions. The Owner and Owner's successors and assigns agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Restriction or any agreement or document relating hereto or entered into in connection herewith.

11.16 Notices. Any notice, consent or approval which is required or permitted to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Restriction. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:

To the Town:

Town of Frisco
Attn: Town Manager
P.O. Box 4100
Frisco, CO 80443

To the Summit Combined Housing Authority:

Summit Combined Housing Authority
P.O. Box 188
Breckenridge, CO 80424

To the Owner:

To be determined pursuant to the Notice of Lien and Memorandum of Acceptance (as shown on Exhibit A) recorded with respect to each transfer of the Property.

11.17 Choice of Law. This Covenant and each and every related document shall be governed and constructed in accordance with the laws of the State of Colorado.

11.18 Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

11.19 Headings. Article and Section headings within this Restriction are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

11.20 Signatures. Signatures to this Restriction may be in counterparts and by facsimile or scanned emailed document.

11.21 Approval. Wherever an approval is required by the SCHA or the Town, in all instances approval by the Town shall be deemed sufficient. Town "approval" shall mean approval by the Town Manager or his or her designated representative.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has set its hand unto this Restriction this _____ day of _____, 20__.

_____, a

By:

Name:

Title:

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me as of the _____ day of _____, 20__, by _____ as _____ of _____, a _____.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

DRAFT

EXHIBIT A

**NOTICE OF LIEN AND MEMORANDUM OF ACCEPTANCE
OF RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF
LIEN FOR UNIT __, OF _____,**

SUMMIT COUNTY, COLORADO

WHEREAS, _____[Buyer Name]_____, the
“Buyer” is purchasing from _____[Seller Name]_____,
the “Seller,” at a price of \$_____[purchase price amount]_____, real property
described _____ as: _____[Legal
Description]_____, according to the plat recorded under
Reception No. _____, in the real property records of the County
of Summit, Colorado (the “Property”); and

WHEREAS, the Seller of the Property is requiring, as a prerequisite to the sale
transaction, that the Buyer acknowledge and agree to the terms, conditions and
restrictions found in that certain instrument entitled “Residential Housing Restrictive
Covenant and Notice of Lien for Unit __, of _____,
Town/County, Colorado”, recorded on _____, 20__, under Reception No.
_____, in the real property records of the County of Summit, Colorado (the
“Restrictive Covenant”).

NOW, THEREFORE, as an inducement to the Seller to sell the Property, the
Buyer:

1. Acknowledges that Buyer has carefully read the entire Restrictive
Covenant, has had the opportunity to consult with legal and financial counsel concerning
the Restrictive Covenant and fully understands the terms, conditions, provisions, and
restrictions contained in the Restrictive Covenant.

2. States that the Notice to Buyer should be sent to:

3. Directs that this Notice be placed of record in the real estate records of the
County of Summit, Colorado and a copy provided to the Summit County Housing
Authority and the Town of Frisco (as defined in the Restrictive Covenant).

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the _____ day of _____, 20__.

BUYER(S):

Print Name(s): _____

STATE OF)
) ss.
COUNTY OF)

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

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT B

Town of Frisco Qualifying Capital Improvement Summary

As permitted through the Residential Housing Restrictive Covenant and Notice of Lien for Unit ____, of _____, Town of Frisco, Summit County Colorado, the process for submitting Qualifying Capital Improvements (QCI) includes the information below:

- a. Qualifying Capital Improvements shall be approved by the Community Development Department and calculated in accordance with Residential Housing Restrictive Covenant and Notice of Lien.
- b. Certain improvements to a unit may be included in a unit's Maximum Resale Price. The following table outlines the costs that may be included in an owner's base price, items which will not be considered Qualifying Capital Improvements, items which will be allowed as Qualifying Capital Improvements and depreciated on a five year schedule and items which will be allowed as Qualifying Capital Improvements and depreciated on a twenty year schedule.

<u>Items included in Base Price</u> <ul style="list-style-type: none">• Purchase price, including garage, lot premium, heating systems and water heaters <p>The following items may be included in base price with the written approval of the Community Development Department prior to the commencement of the work:</p> <ul style="list-style-type: none">• Structural addition or addition of livable space including bathrooms, bedrooms, exterior door, interior doors, baseboard, window casing, insulation and plumbing (excluding fixtures)• Modifications or improvements to accommodate a person with a disability as defined in the Americans with Disabilities Act of 1990• Roof replacement	<u>Items which are NOT Qualifying Capital Improvements</u> <ul style="list-style-type: none">• All work performed without the issuance of a building permit• Jacuzzis, saunas, steam showers, hot tubs, etc.• Maintenance of existing fixtures, appliances, plumbing, mechanical systems, painting, cleaning, etc. and improvements to existing fixtures• Decorative items including window coverings, lamps and lighting not affixed to walls or ceilings, bath towel bars and hooks, etc.• Interior paint• Cost of tools• Equipment Rental• Removable items not attached to the unit
<u>Items depreciated on 5 year schedule</u> <ul style="list-style-type: none">• Replaced appliances• Washer and dryer (including	<u>Items depreciated on 20 year schedule</u> <ul style="list-style-type: none">• Flooring and countertop upgrades including hardwood,

<ul style="list-style-type: none"> stackable) • Carpet upgrades including pad • Permanent fitted window blinds • Garage door openers • Gutters and downspouts • Security system • Electric fireplace • Exterior paint • Ceiling fans • Storm doors • Laminate flooring • Building permit fees • Improvements for health and safety protection 	<ul style="list-style-type: none"> stone, slate, granite, marble, tile, etc. • Light fixtures (electrical fixtures & wiring) • Plumbing fixtures including sinks and toilets • Cabinets including vanities • Closet organization systems • Trees and permanent landscaping including sod, concrete pads, concrete pavers, etc. • Outdoor decks • Irrigation system • Fencing • Gas fireplace • Windows • Solar Panels • Asphalt roof shingles (single family & duplex) • Garage
--	---

For an owner to request that Qualifying Capital Improvements be added to the Maximum Resale Price, he or she must comply with the following:

- a. Upon completion of the work, Community Development Department requests the following:
 - i. Legible copies of receipts and invoices
 - ii. Proof of payment by a third party
 - iii. Owners must retain original receipts and invoices
- b. In calculating the costs allowed as Qualifying Capital Improvements, only the owner's actual out of pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to owner's labor, or that of their employees or business, or to any appreciation in the value of these improvements.
- c. If an owner pays cash for improvements, the owner must provide third party documentation of payment. An owner must have an invoice for improvements, but if no such documentation of proof of cash payment can be produced, the Community Development Department can inspect the improvement completed in the unit. Up to 75% of documented invoice value may be included after an inspection, subject to depreciation, at the Community Development Department's sole discretion.

- d. Work that requires and is performed without the issuance of all required building permits or property owners' association approval will not be included as a Qualifying Capital Improvement.
- e. The value of the Qualifying Capital Improvements will be added to the appreciated value of the unit at the time of sale. No appreciation is allowed on Qualifying Capital Improvements.
- f. Other improvements to the Affordable Housing unit are allowed, but adjustments to the Maximum Resale Price will only be given for Qualifying Capital Improvements.

If a Qualifying Capital Improvements or an improvement included in the base price of the unit is removed or is no longer operational, the actual cost of the improvement shall be deducted from the base price or Qualifying Capital Improvement schedule. No other categories or types of expenditures may qualify as Qualifying Capital Improvements unless pre-approved in writing by the Community Development Department.

5 Year Depreciation Schedule % of Cost	Months	Years
75%	Up to 12 months	Up to 1 year
50%	12-36	2-3
25%	36-60	3-5
0%	60+	5+

20 Year Depreciation Schedule % of Cost	Months	Years
100%	Up to 24 months	Up to 2 years
90%	24-48	2-4
80%	48-72	4-6
70%	72-96	6-8
60%	96-120	8-10
50%	120-144	10-12
40%	144-168	12-14
30%	168-192	14-16
20%	192-216	16-18
10%	216-240	18-20
0%	240+	20+

Community Development Department may accelerate depreciation or exclude items if damaged beyond ordinary depreciation.

OWNER'S AFFIDAVIT REGARDING CAPITAL IMPROVEMENTS

The undersigned, _____,
being of lawful age and having been duly sworn, upon personal knowledge states and
alleges as follows:

1. I am the Owner of property located at the following street address:

_____.

2. I verify and acknowledge that the receipts and proof of payment submitted with this Affidavit represent the actual costs expended for Improvements to my home located at the address above and that the receipts are valid and correct receipts tendered at the time of purchase.
3. I verify and acknowledge that true and correct copies of any building permit or certificate of occupancy required to be issued by the Town of Frisco Building Division with respect to the Improvements have been submitted with this Affidavit.

I declare under penalty of perjury that I have read this Affidavit and the statements contained in it are true and correct to the best of my knowledge.

Date: _____

Signature of Owner

State of _____)

) ss.

County of _____)

The foregoing was subscribed and sworn to before me this _____ day of _____, 20____, by _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: DEBORAH WOHLMUTH, TOWN CLERK
RE: NEW HOTEL AND RESTAURANT LIQUOR LICENSE – HIMALAYAN CUISINE FRISCO LLC
DBA HIMALAYAN CUISINE
DATE: SEPTEMBER 10, 2019

Background: As prescribed in State Statute, all new liquor license applications must be first submitted to the local licensing authority for approval. Supporting documentation as outlined on State form DR 8404 must accompany the application to begin the hearing process requirements. The preliminary findings have been included in this report to support proof of a completed application.

Analysis: This application is for a new Hotel and Restaurant liquor license for Himalayan Cuisine Frisco LLC dba Himalayan Cuisine located at 842 Summit Boulevard #17. Applicants Ashim Khattri Chettri and Bidhya Khettri Chettri have filed the necessary paperwork and posted the premise in accordance with the Colorado Liquor Code. Further, notice of this application was published in a newspaper of general circulation on August 30, 2019 pursuant to statutory requirements. Identigo and the Frisco Police Department have performed the necessary fingerprinting and background checks for the applicants and have found them to be satisfactory.

Staff Recommendation: On that basis, it is recommended the Council make a motion approving the issuance of a new Hotel and Restaurant liquor license for Himalayan Cuisine Frisco LLC dba Himalayan Cuisine located at 842 Summit Boulevard #17, on the basis of the following findings: that the Authority (1) has reviewed the neighborhood under consideration and finds it to be the Town of Frisco as a whole; (2) has considered the desires of the inhabitants of the neighborhood and finds that the inhabitants desire an additional establishment that serves liquor; (3) has reviewed the needs of the neighborhood for the outlet and finds that the needs of the neighborhood are not met by the existing outlets; (4) has reviewed the location of the proposed establishment and finds that it is not located within 250 feet of any school or college campus; (5) has reviewed the qualifications of the applicant and, pursuant to the requirements of the Frisco Code and Colorado Statutes, find the applicant to be qualified to obtain a Hotel and Restaurant liquor license for Himalayan Cuisine Frisco LLC dba Himalayan Cuisine.

Financial Impact: There is no financial impact.

Reviews and Approvals: This report has been reviewed and approved by:
Nancy Kerry, Town Manager - Approved
Bonnie Moinet, Finance Director-Approved



MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: ROSE GORRELL, MUSEUM MANAGER
JOYCE ALLGAIER, COMMUNITY DEVELOPMENT DIRECTOR
RE: EXCELSIOR HOUSE WORK SESSION – OPTIONS AND CONSIDERATIONS
DATE: SEPTEMBER 10, 2019

Summary and Background: The purpose of this work session is to provide information that can assist the Council in evaluating and deciding upon a site for the relocation of the Excelsior House. Per the Council's direction in the 2019-2020 Strategic Plan, a comprehensive list of potential sites for the permanent location of the Excelsior House has been compiled for the Council's review and consideration.

Establishing a plan for the Lund House will be undertaken in the future as further planning and implementation of the Frisco Marina Park Master Plan unfolds.

Analysis: The 1,066 sq. ft. Excelsior House was built circa 1895 in the Ten Mile Canyon. A brief history of the house and the Excelsior Mine is attached as Exhibit A. The Excelsior House and mine complex operated as a boarding house, ore houses, the power plant, and several barns. The Excelsior Mine also provided Frisco with electricity through the hydroelectric power plant that was constructed for the mill. The mine closed permanently in 1921, and the House was moved to 208 Galena Street in 1938 and used as a residence. In 2017, a land owner gifted the house to the Town of Frisco and paid to relocate it to the Frisco Adventure Park. The house remains on steel beams in the "boneyard" at the Frisco Adventure Park at this time.

The exterior of the building has significant cosmetic and physical damage from the weather and the balcony and side shed extension were removed in 2017. The interior has been altered with the installation of temporary steel bracing during the 2017 relocation.

A committee of Town staff from Community Development, Public Works, and the Recreation & Culture Departments evaluated options for relocation of the house and prepared a list for Town Council consideration. The goal of this exercise was to find a permanent home for the Excelsior House that would fulfill three key objectives - 1.) allow for a single move, 2.) find a location that supports a meaningful use of the building, and, 3.) allow for quality restoration of the building. Town-owned properties were given priority evaluation and some other lands (CDOT, USFS, and private) were also considered.

Due to their inherent lack of suitability, other public properties were not considered including the Public Works Operations site, Water Treatment site, Mary Ruth Place, Meadow Creek Wetlands, Frisco Cemetery, Willow Preserve Park, town manager house parcel, subdivision open spaces, mining claims, and unimproved rights-of-ways. Other properties were considered

but not scored due to either too many unknowns about the future use of the property, current Council considerations for the site, low priority for this use, or other challenges due to timing. These include the B-1 Lot, 1st & Main, Meadow Creek Park, Walter Byron Park, Pioneer Park, and the Information Center. (Staff recently confirmed that the new park master plan does not accommodate the House for park purposes.)

The committee created an evaluation matrix (Exhibit B) to help comprehensively analyze potential locations for the Excelsior House. The following criteria below were used in the matrix and each site was scored.

- Suitability of Location
- Zoning
- Opportunity for Adaptive Reuse
- Opportunity for Historic Context
- Topographical or Physical Constraints
- Availability of Utilities
- Opportunity to Enhance “Sense of Place”
- Opportunity Cost of the Site (land use options lost or diminished through siting the Excelsior House)
- Clear Benefit to Museum
- Cost (relocation, setting/installation, utility connections, site preparation, etc.)

Staff also considered external influences, such as the CDOT Gap Project that is slated to start in 2020. The size and shape of the Excelsior House requires a certain width and maneuverability for transport and the construction limitations could prevent the Excelsior House from being moved to a location on or near Main Street until at least 2021-2022.

The potential sites listed below are organized to reflect the evaluation of the potential site against the three key goals and the matrix criteria. Many of the sites have multiple options for reuse that meet several of the Town Council's guiding principles and strategic goals. Regardless of where the Excelsior House lands, it will provide the Town with an opportunity to preserve a vestige from the past and serve as a reminder of Frisco's mining history for future generations to come.

Potential Site Locations (in no particular order):

A high level map of the Town of Frisco with possible site locations is included as Exhibit C. A total of eight (8) sites were reviewed through this evaluation process.

Site 1: 113 Granite Street

113 Granite Street is located within the historic overlay and central core of Frisco. The area is a flat space directly off the street with easy access to utilities from the alley. There are two historic houses already on the property currently being used as employee housing. A gravel parking lot and driveway from Granite Street serve the property. There are options for reuse of the House that would align with the Town Council's employee housing and historic park planning. This parcel has recently been considered for higher density work force housing and the Planning Commission recommended against removing the historic overlay.



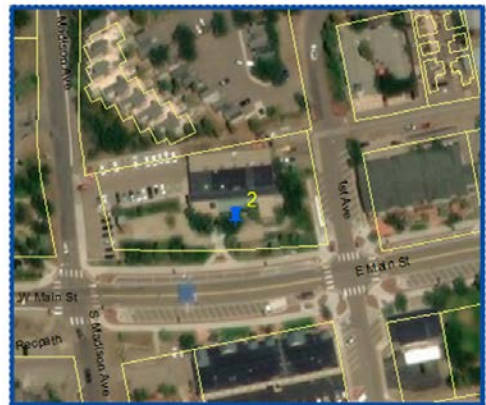
Site 2: Frisco Historic Park & Museum

The Frisco Historic Park & Museum is located within the historic overlay and central core of Frisco. There is no physical space for the House in the park. The alley contains utilities that traverse through the green space between the Frank & Annie Ruth House and the Log Chapel into Second Avenue preventing placement of any structure there. If additional space were to be added from adjacent properties (113 Granite), there are several options for reuse (historic park, commercial, residential) that could align with Council's sustainable environment priorities as well as the 2019-2020 FHPM Strategic Plan.



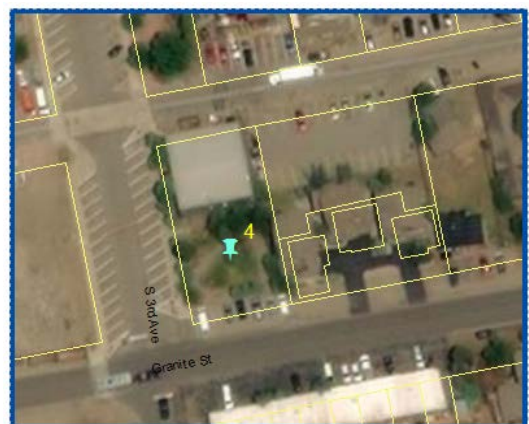
Site 3: Town Hall

Town Hall is located in the central core on Main Street. The House could be placed generally in the southwest corner of the lot and other parts of the site as well. (Clock tower would be removed.) There are easily accessible utilities and the topography would need minimal modification. Options for reuse could include civic, nonprofit, or tourism-oriented uses at this location. Very careful and thoughtful site planning would be necessary to take into consideration future uses of the parcel and parking.



Site 4: Pocket Park at 3rd & Granite

The Community Center and Pocket Park on 3rd and Granite Street is located within the central core of Frisco. The area is a flat space with some trees and limited access to utilities. The site is adequately sized for the House and with proper siting could allow for open areas and seating outside. This site was once considered for workforce housing but is designated as an official park.



Site 5: West Main Gateway

The West Main Gateway refers to the town-owned and CDOT parking lot and land at the end of Main Street next to I-70. While the site is highly visible as an entryway to the town and is the closest to the original location at the Excelsior Mine, the site has significant constraints including power lines, wetlands, floodplain, distanced utilities, and its historic use for snow storage. Potential uses as a trail head support services or public space for this popular parking area and trailhead were considered.



Site 6: Peninsula Recreation Area

The PRA has several location options dependent upon the pending PRA implementation master plan. This location has opportunities for such uses as a warming hut, recreation program support, recreation or food vendor space, office or caretaker/residential. The site does not provide a historic context for the building.



Site 7: Triangle Park

The size and shape of Triangle Park will change with the planned Gap Project design. The space is flat with mature trees at the rear and a large visible lawn. The building could be located at the corner of 7th / Main facing Main and other options are possible. Siting of the House on this parcel would require thoughtful site planning but could add to an enhancement of the Main Street streetscape. Utilities do not conveniently serve the site. Options for reuse could include a civic use, retail/commercial, or nonprofit.



Site 8: Peak One Crescent Park

Peak One Crescent Park was recently identified in community park planning efforts for field and open space park area. There is little historic context for the House at this site. When the Peak One Neighborhood was designed, each unit was provided a small private yard with the understanding that the park would serve as common open and play space.



The Council may also consider a partnership with a private owner or another public entity if within an appropriate timeframe and with certain agreed upon conditions as identified by Council.

Financial Impact: There is a placeholder for building relocation costs and reuse of \$100,000 in the 2019 capital improvement fund (20-2000-5089). The previous owner of the Excelsior House spent approximately \$30,000 to prep and move the Excelsior House to its current location. Staff anticipates a cost to move the house to be approximately \$25-\$35k and setting and restoration to be \$50 - \$100k dependent upon the use and site selected.

Alignment with Strategic Plan: One of the goals of the Town Council's 2019-2020 Strategic Plan is to establish a plan for the Excelsior House. The goal includes identifying options for relocation of the house to a useful permanent location. This goal is within the Strategic Priority of "Creating a Sustainable Environment", whereby the Town of Frisco will take action to collaboratively protect and sustain our treasured environment. The Town Council supports a sustainable human ecosystem comprised of our inspiring natural environment, our history and culture, the integration of arts, promoting a thriving economy, and engaging our community.

Staff Recommendation: Staff recommends Council use this time to understand the location and use options compiled by staff so they are more informed and better equipped to select a permanent location and purpose for the Excelsior House. Should Council select a preferred location(s), the project committee can provide more detailed site planning options, use options, and costs as might be needed.

Reviews and Approvals: This report has been reviewed and approved by:

Nancy Kerry, Town Manager – Approved
Bonnie Moinet, Finance Director
Diane McBride, Assistant Town Manager/Recreation and Culture Director

Attachments

Exhibit A: History of the Excelsior House
Exhibit B: Review and Scoring Matrix
Exhibit C: Map of Town of Frisco with Potential Sites



The Excelsior House

General Architectural Description: Vernacular wood frame with front gable. Built circa 1895. Balcony added at unknown time. 1,066 sq ft

Historical Background: The Excelsior mine was established by Daniel Recen, brother of Frisco founder Henry Recen. It is reported that all three of the Recen brothers owned and operated the mine. The Excelsior Mine collapsed, like many other mines in the area, after the Sherman Silver Purchase Act of 1890. The mine reportedly sold for \$20 in 1897.

New owners, Frank Wiborg and Levi Ault—millionaire ink manufacturers out of Cincinnati—constructed a new mill for the mine in 1898. A brief note on December 1900 in the *Summit County Journal* reads, “The mill at the Excelsior Mine has started again.” It is likely the Excelsior House was built just prior to the construction of the new mill. It acted as the mine’s administrative offices as larger profits and more employees required organized operations. Frisco’s own ski jumping aficionados, Peter Prestrud and Eyvind Flood, built the Excelsior Ski Jump between shifts at the mine.

At the turn of the century, five tunnels were being mined as new technology, such as the Wilfley Table, increased the quality and ease of production. At the height of operations the mine ran eight Wilfley Tables purchased at approximately \$450 each. The table was created by local miner Arthur Redman Wilfley in Kokomo. It allowed the heavy minerals to be separated out creating a higher quality product faster. Throughout the 1890s and 1900s, the mine produced silver, gold, lead, and copper.

At its peak, the Excelsior Mine operated a boarding house, ore houses, the power plant, and several barns. The Excelsior Mine also provided Frisco with electricity through the hydroelectric power plant constructed for the mill. In 1900, there was speculation that enough power could be produced to light Leadville and Breckenridge if the occasion arose. These bold predictions were never confirmed as economic boom and bust cycles halted production multiple times. Wiborg attempted a second revival in 1917 by investing a reported \$300,000 in new technology under the leadership of Prestrud and Flood. While news reports painted pictures of potential success just around the corner, the mine struggled with high operating costs and low profits.

When the Excelsior Mine and its mill permanently closed in 1921, the electricity went with it. In the 1930s there were 18 people living in Frisco. The railroads and telephone service were gone. The majority of silver and gold mines in the area had closed. Frisco would not regain electricity until the early 1940s.

The Excelsior House moved to 208 Galena in 1938, and then moved to the Adventure Park in 2017 as population growth demanded more modern housing. The house will be moved again to a permanent location as part of the Town Council's 2019 Strategic Plan. Regardless of where the Excelsior House lands, it provides us with an opportunity to promote the mining history of Frisco and the determination of its residents to reside here.

Sources: Research on the Excelsior Mine has been comprised of photographs, personal accounts, business documents, and objects, many of which are in the FHPM collection. There are also open source materials like mining and investment journals. For example, the Excelsior Mine appears as a special correspondence in the 1903 *Mining American* published by the Industrial Reporting Company. A 1907 article in the *Western Investors Review* tells a brief story about the operations of the mine at the turn of the century. The mine appears again in 1908 in a short report on the creation of electricity in Frisco through the hydroelectric plant. There are no shortage of newspaper references to the Excelsior Mine, most of which can be found through the digitization efforts of universities and libraries.

Clarke, Charolette. *The Mines of Frisco: A Self-Guided Tour*. 2007.

Frisco Historic Park & Museum Archival Collection

84.9.11. Letter written by Edward W. Swanson. Bill's Ranch House: Archive: ALBUM: As I Remember Letters.

2017.9.234. Letter written by H.P. Demming to Mary Ellen Gilliland. Bill's Ranch House: Archives: 5A: Box 76.

Henderson, Charles W. "Mining in Colorado: A History of Discovery, Development, and Production." *Department of the Interior, U.S. Geological Survey, Professional Paper 138*. (Washington: Government Printing Office, 1926)

Mather, Sandra F., *Images of America: Frisco and the Ten Mile Canyon*, (Charleston: Arcadia Publishing, 2011)

The Mining American: Volume 47. Industrial Reporter Company, December 31, 1903. pg 228

The Western Investors Review: Volume 14. J.F. Manning, December 31, 1907. pg 58

The Western Investors Review: Volume 15. J.F. Manning, December 31, 1908. pg 23

Summit County Journal, November 10, 1900. pg 9

Summit County Journal, July 7, 1917. pg 1

Criteria	Excelsior House Relocation Site Evaluation (1 = good, 2 = better, 3 = best)									
	Properties									
		FHPM (Existing Site)	Town Hall	West Main Gateway (Parking Area)	113 Granite	Community Center & Pocket Park (3rd & Granite)	Triangle Park	PRA	Peak One Crescent Park	Zach's Stop
	Location	3	3	2	3	3	1	2	2	3
	Zoning	3	3	3	3	3	3	3	2	1
	Opportunity for Functional Adaptive Reuse of Building	3	3	3	3	3	2	3	2	2
	Opportunity for Historic Context (town site/mining reference)	3	2	3	3	2	1	1	1	1
	Topography/Physical Constraints	1	3	1	3	3	3	2	3	2
	Availability of Utilities	3	3	1	3	2	1	2	2	1
	Enhancement to "Sense of Place", Betters the Setting	1	2	3	3	2	2	2	1	2
	Opportunity Costs & Impact to Other Uses of the Site	1	1	2	2	1	1	2	1	3
	Benefit to Museum	3	1	1	3	1	1	1	1	1
	Cost Effectiveness	1	2	1	3	2	1	2	1	1
	Total (highest score = best location)	22	23	21	29	22	16	20	16	17
	Notes	Park can not accommodate house unless placed in green space/concert area which could have pushback. Must look to adding onto space if desire to add to FHMP.	Remove tower, use underutilized space. Cost to taking space when town hall expansion may be needed in future. Good town use, public, or non profit/maker's space/art space.	Closest to original mining site, good mountain backdrop, good potential use for public space/facilities. Good reference to railroad and creek used for mining. Power line, parking, snow storage are constraints.	Housing or expansion of the FHPM? Good flat ground with opportunity to enhance park. WF Housing?	Good for public space, non-profit, maker's space, retail, res., etc.	Opportunity costs - space could be improved/useful park, commercial, workforce housing. Could face Main and add character. Site planning important	Need to coordinate potential siting here with implementation planning. Many use options exist, historic context is minimal.	Would look out of place. Uses unclear for this location.	Good backdrop of mountains for the site. Could be good trail head facility.

Goals:
Find a permanent home for building
Move the building once
Make good use of building
Good restoration of building

General NOTES;
Lund House - stays at Marina through 2020
Moving Excelsior PRIOR to GAP project commencement is key, otherwise a year or more could be lost
Size of Excelsior: 1,100 sq.ft.

Presentation to Council:
Goals
Background information
Sites considered
Sites not considered
List of potential uses
Costs
Other options for site "Opportunity Cost"
Restoration
Sketch-up visualization
Threshold Decision - Would Council like to use 113 Granite for housing or FHPM expansion?
Aerial photographs of sites
Photographs of sites

Cost - defined
Relocation Costs
Setting/Topography
Utilities
Demo/relocation on new site

Opportunity Cost - defined
Other (good) options exist for the site and those options would be lost by the use for Excelsior/Lund
A low number means a high cost -i.e. that other beneficial options would no longer exist or be diminished

Public Lands Not Considered:
Sabatini Lot
Town Manager Housing unit
Public Works Complex
The Reserve Subdivision Open Spaces
The Frisco Duck Subdivision Open Space
Water Treatment Plat Site
Mining claims
Unimproved Street Right-of-Ways
Mary Ruth Place
Meadow Creek Wetlands
Cemetery
Willow Preserve
Post Office Open Space

Considered but not Rated
CDOT
USFS (in general)
County Lands
Public/Private Partnership
Private Land

Sites w/ Low Potential, Unknowns, Poor Timing, Challenges:
B-1 Lot
Meadow Creek Park
Walter Byron Park
First & Main Building
Pioneer Park
Information Center



Excelsior House Potential Locations

Location

-  113 Granite Street
-  Frisco Historic Park & Museum
-  Peak One Crescent Park
-  Peninsula Recreation Area
-  Pocket Park at 3rd and Granite
-  Town Hall
-  Triangle Park
-  West Main Gateway



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Excelsior House

Relocation Project

Why Preserve the Excelsior House?

The Excelsior House gives us the opportunity to preserve a important piece of Frisco's mining history and is an opportunity to share that history with future generations.

History

- 1898- A new mill is constructed by Frank Wiborg and Levi Ault.
- 1898-1900- The Excelsior Mine starts provides Frisco with electricity through a hydroelectric power plant attached to the mill.
- 1913-1917- The Excelsior Mine halts production multiple times as economic boom and bust cycles diminish profits and available labor. A second revival is attempted in 1917 by Wiborg, Peter Prestrud, and Eyvind Flood.
- 1921- The Excelsior Mine and Mill is permanently closed.
- 1938- The Excelsior Mining Office is moved to 208 Galena as a residence.
- 2017- The Excelsior House is moved to Frisco Adventure Park.



The Excelsior House at 208 Galena

Goals

The goal of this project is to find a permanent home for the Excelsior House that would fulfill 3 objectives:

- allow for a single move,
- find a location that supports a meaningful use of the building, and
- allow for quality restoration of the building.

The Excelsior House - Today



Evaluation Matrix

Criteria:

- Suitability of Location
- Zoning
- Good Site for Reuse
- Historic Context
- Topo or Physical Constraints
- Availability of Utilities
- Enhance “Sense of Place”
- Opportunity Cost of the Site
- Clear Benefit to the Museum
- Cost

Opportunity cost = options which could be lost or diminished by the placement of the Excelsior House on that site

Cost = relocation, setting, installation, utilities, restoration, and landscaping of site.

Other Considerations

- CDOT Gap Project (timing and construction constraints)
- Potential for private other gov't partnership
- Existing and developing plans
 - Frisco Parks Master Plan
 - Frisco Historic Park and Museum
 - Marina Master Plan Implementation

113 Granite Street

- Site provides historic context
- Flat ground with utilities
- Provides an opportunity for enhancement to streetscape edge.
- Reuse options would include employee housing, public use, or addition to the FHPM.



Frisco Historic Park & Museum

- No physical space for the House in the park, except concert lawn.
- If 113 Granite added could expand FHPM
- Reuse options would include res., public, FHPM support space (classroom, archive, admin.)



Town Hall

- Potential high visibility to the public.
- First introduction of “historic Frisco” on West Main entrance
- Careful siting needed. Impacts future use of Town Hall lot.
- Reuse options would include public uses, office space, nonprofit, or meeting space.



Pocket Park at 3rd & Granite

- Good historic context, connection to Info Center, FHPM and Foote's Rest.
- Good visitor draw and site is large enough for outside use.
- Reuse options would include public, res., gathering, commercial, non profit.



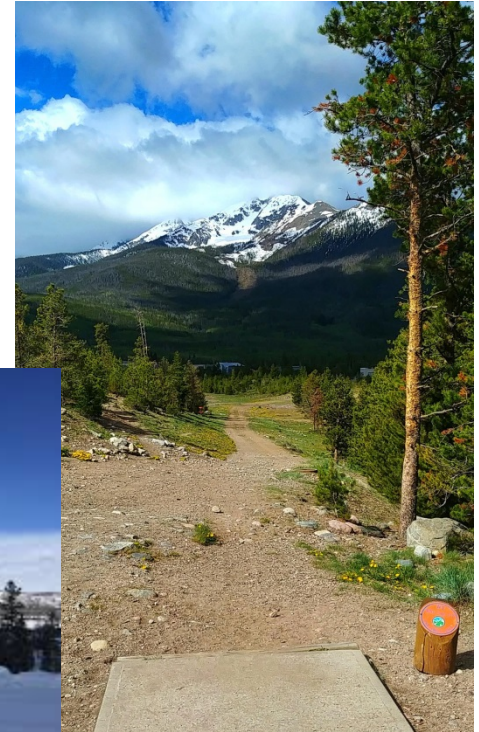
West Main Gateway

- Potential good gateway feature to historic Frisco Main Street.
- Tough site challenges.
- Mountain backdrop and proximity to original mine/railroad line places the House in context.
- Reuse in this location could be a welcome center/trailhead facilities.



Peninsula Recreation

- Natural setting and available land, architecture is not in keeping with PRA mountain style
- Must coordinate with current implementation planning
- Reuse could include a warming or rental hut, recreation support, vendor space, facilities



Triangle Park

- Visual link of east gateway to historic Main streetscape
- Careful siting key to good integration into the site.
- Utilities difficult
- Reuse options could be public, commercial, or other civic.



Peak One Crescent Park

- Little historic context, similar design features
- Public park was intended for common space for the development
- Potential for public use, gathering space, but odd location



Excelsior's Original Location



Financial Considerations



- \$100,000 placeholder in 2019-2020
- Relocation, Setting and Restoration, Complete site

Questions & Discussion





MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: DIANE MCBRIDE, ASSISTANT TOWN MANAGER
RE: TOBACCO T21, RETAIL LICENSE
DATE: SEPTEMBER 10, 2019

Summary and Background: On June 25, 2019, staff presented to Council an overview of House Bill No.19-1033, which allows counties and municipalities in Colorado to implement licensing and taxes on nicotine products. The bill also authorizes counties and municipalities to enact a resolution or ordinance that prohibits a minor from possessing or purchasing nicotine products, and also allows counties and municipalities to impose regulations on nicotine products that are more stringent than state regulations.

In response to this presentation, Council directed staff to draft three ordinances as alternative approaches to the regulation of the sale of tobacco products. These three ordinances were presented to Council on August 27, 2019. The first ordinance provided a tobacco sales licensing regime and moved the minimum age for purchase to 21 years. The second ordinance provided for the same licensing regime, but kept the age limit at 18 years. The third ordinance moved the minimum age for purchase to 21 years, but established no licensing regime. Council reviewed all three (3) ordinances and unanimously approved on first reading Ordinance 19-15 which provides a tobacco sales licensing regime and moves the minimum age for purchase to 21 years.

The licensing application fee is in the amount of \$600/year and is consistent with the fee approved by the Town of Breckenridge. The effective date for the ordinance is January 1, 2020.

Ordinance 19-15 which provides a tobacco sales licensing regime and moves the minimum age for purchase to 21 years is before Council at this time for second reading.

Analysis: A countywide Nicotine Tax and Policy Workgroup was formed in May 2019 with the purpose *“to develop proposed policy language and enforcement plans, identify uses for funding and develop estimates for funding generated by different levels of per cigarette/per pack and percent taxes on other nicotine products.”* A coordinated countywide effort on nicotine enforcement, age, and tax is recommended for consistency purposes throughout the county.

The first step in this coordinated countywide effort is the nicotine tax. On August 13, 2019, Council signed the Intergovernmental Agreement (IGA) with Summit County to ensure the Town of Frisco receives any special nicotine taxes generated within Town's municipal boundaries, if such a tax is placed on an upcoming ballot by Summit County. The County is moving forward with this nicotine tax question on the November 5, 2019, ballot. The measure would impose a \$4/pack sales tax on cigarettes, and a 40% sales tax on all other tobacco and nicotine products,

including e-cigarettes and vaping devices. This 40% sales tax would start January 1, 2020, and increase 10% per year for four years starting January 1, 2021.

The next steps in this coordinated countywide effort on nicotine are enforcement and age. The prevalence of vaping is increasing significantly, and is viewed by many as the gateway to long term tobacco use. From a survey done by Summit Schools in 2017, vaping by students increased from 26% using within the last 30 days in 2015 to 40% using within the last 30 days in 2017. Summit County has one of the highest use rates in the state. Currently, most kids are successfully purchasing tobacco products from stores. One vaping device may have the nicotine equivalent of one pack of cigarettes.

Meeting minutes from the countywide Nicotine Tax and Policy Workgroup, and referenced in the June 25, 2019, update to Council, include the following:

Age of Sale and Licensure

- Increasing the age to 21 and requiring sellers to have a license reduces the ability for tobacco products to fall into the hands of youth. The license holds the retailers accountable.
- Currently, stores are only checked for compliance once a year, every other year, or once every three years. Retailers have minimal accountability with the current compliance checks.
- With licensing, municipalities would be able to suspend or revoke selling privileges with non-compliance. The licensing would be administered by a Licensing Administrator, such as the Town Clerk. There would be a fee required for each license issued which would cover the cost of administering and enforcing the licensing program. The fees for licensing and fines would be approved by two readings of an ordinance.
- The average license rate across the state is \$189 annually. Aspen's rate is \$500 annually and Pueblo's rate is \$100 annually. Breckenridge is proposing a \$600 annual licensing rate.
- Penalties for violation of the ordinance would be civil and not criminal.

Research has shown that about 96 percent of smokers began smoking before age 21, with most starting before age 16. According to the U.S. Centers for Disease Control and Prevention, youth who use e-cigarettes are four-to-seven times more likely to become lifelong tobacco users.

Businesses are also looking closely at the issues surrounding nicotine sales. As of July 1st, Walmart nationally increased the age of tobacco purchase to 21. This effort is to help prevent addiction at a young age.

Financial Impact: The overall goal of the proposed changes is to reduce nicotine usage in youth and adults, which if successful, would reduce the estimated potential revenue from the fees and taxes.

A proposed license would be required with an appropriate fee for each license issued to cover the cost of administering and enforcing the licensing program. This fee has yet to be determined, but is currently estimated at \$600 per license. With approximately 14 retailers in Frisco, this would translate into \$8,400 annually to cover the cost of processing the licenses and inspection. Enforcement costs could exceed this fee.

The recommended license fee of \$600 annually is estimated to help cover the costs associated with administering the licensing, inspection, and enforcement aspects associated with the proposed programs. This fee is needed to monitor retailer collections and compliance, and may need to be adjusted over time.

Alignment with Strategic Plan: According to the Best Practices for Comprehensive Tobacco Control Programs, the recommendations for preventing tobacco use among youth are:

- Increasing the unit price of tobacco products, and
- Conducting mass-media education campaigns in combination with other community interventions, and
- Mobilizing the community to restrict minors' access to tobacco products in combination with additional interventions (stronger local laws directed at retailers, active enforcement of retailer sales laws, and retailer education with reinforcement).

Raising the minimum age for purchase and licensing retailers aligns with the Town Council's 2019-2020 Inclusive Community and Sustainable Environment Strategic Priorities.

Staff Recommendation: Staff recommends the Town Council adopt upon second reading the attached ordinance 19-15 providing for tobacco business licensing process and increasing the minimum age for purchase to 21 years of age.

Reviews and Approvals: This report has been reviewed and approved by:

Nancy, Kerry, Town Manager - Approved
Bonnie Moinet, Finance Director - Approved

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
ORDINANCE 19-15**

AN ORDINANCE AMENDING CHAPTER 110 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING BUSINESS LICENSES AND REGULATIONS, BY THE ADDITION OF A NEW ARTICLE III, CONCERNING THE ESTABLISHMENT OF A REQUIREMENT FOR THE LICENSING OF TOBACCO PRODUCT RETAILERS, AND REQUIREMENTS AND LIMITATIONS CONCERNING THE SALE OF TOBACCO PRODUCTS BY SUCH RETAILERS, INCLUDING LIMITING THE SALE OF TOBACCO PRODUCTS TO PERSONS WHO ARE TWENTY-ONE (21) YEARS OF AGE OR OLDER; WHICH REQUIREMENTS ARE NECESSARY TO SAFEGUARD THE HEALTH OF INDIVIDUALS WHO ARE NOT OF LEGAL AGE TO PURCHASE TOBACCO PRODUCTS.

WHEREAS, the Town Council of the Town of Frisco finds that the use of tobacco products by people under twenty-one (21) years of age presents grave health risks, including but not limited to nicotine addiction; and

WHEREAS, the Town of Frisco has a substantial interest in promoting compliance with state and local laws intended to regulate tobacco sales and use, discouraging the illegal sales of tobacco and nicotine products to minors, and promoting compliance with laws prohibiting the sale of tobacco products to minors; and

WHEREAS, the Town Council finds that there is a financial incentive to tobacco product retailers to sell tobacco products to minors, which incentive too often results in the unlawful sale of tobacco products to minors; and

WHEREAS, the Town Council finds that the establishment herein of licensing requirements for tobacco product retailers, and the related substantive limitations on the sale of tobacco products to minors, will protect the health, safety, and welfare of the public by encouraging responsible tobacco product retailing and reducing the sales of tobacco products to minors in the Town of Frisco; and

WHEREAS, the Town Council finds that there is a financial incentive to tobacco product retailers to sell tobacco products to minors and persons under the age of twenty-one years, which incentive too often results in the unlawful sale (directly and indirectly) of tobacco products to minors; and

WHEREAS, the Town Council finds that the establishment herein of substantive limitations on the sale of tobacco products to persons under the age of twenty-one (21) years, will protect the health, safety, and welfare of the public by encouraging responsible tobacco product retailing and reducing the sales of tobacco products to minors and persons under twenty-one (21) years of age in Frisco.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO, THAT:

Section 1. Chapter 110 of the Code of Ordinance of the Town of Frisco, concerning the licensing of businesses, is hereby amended by the addition of a new Article III, to read in its entirety as follows:

ARTICLE III TOBACCO PRODUCT RETAILER LICENSE AND REGULATIONS

§ 110-36. Legislative Intent.

The intent of this Article is to prohibit sales of tobacco products to youth, to encourage responsible tobacco product retailing and to reduce the impact of tobacco product use by young people in the Town of Frisco.

§ 110-37. Application of Licensure Provisions of This Article.

Effective January 1, 2020, it shall be unlawful for any person to be a tobacco product retailer without a valid license issued pursuant to this Article.

§ 110-38. Definitions.

When not inconsistent with the content, words used in the present tense include the future, words in the singular number include the plural number, words in the plural number include the singular number, and the masculine includes the feminine. For purposes of this Article, the following words, terms and phrases shall have the following meanings unless the context clearly indicates otherwise:

Cigarette means any product that contains tobacco or nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

1. any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
2. tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or
3. any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1) above.

The term includes all “roll-your-own,” i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

Department means the Town of Frisco Police Department, and any agency or person designated by the department to enforce the provisions of this Article.

Distribute or *Distribution* means to furnish, give, provide, or attempt to furnish give or provide, whether gratuitously or for any type of consideration.

Electronic Smoking Device means an electronic device that, when activated, emits a vapor, aerosol, fume or smoke that may be inhaled or absorbed by the user, including, but not limited to, an e---cigarette, e---cigar, e---pipe, vape pen, or e---hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately,

and includes any substance, with or without nicotine, intended to be aerosolized, vaporized or produces a fume or smoke during the use of the device intended for human consumption.

License means the tobacco product retailer license.

License Administrator means the Frisco Town Clerk.

Licensee means the owner or holder of a tobacco product retailer license and shall include the employees, agents and officers thereof as appropriate.

Licensed Premises means any area of the premises where tobacco products are authorized to be sold or distributed to a consumer including, but not limited to, the grounds occupied by a retailer and any store, outlet, location, vending machine or structure where tobacco products are sold, as designated in the approved License application.

Retail Tobacco Business means a person engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, electronic smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is less than 25% of gross sales receipts. For purposes of enforcement of this Article, a retail tobacco business shall also include a person engaged primarily in the sale or manufacture of hookah or shisha products and related smoking products, including but not limited to, any plant, or other organic matter packaged for smoking or held out as a smoking product, or any person engaged in the promotion of hookah or shisha smoking, sometimes referred to as a hookah bar, lounge or café.

Self-Service Display means the open *display* or storage of tobacco products, electronic smoking devices, or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct, person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

Tobacco Product means and includes cigarettes, electronic smoking devices and:

1. any other product that contains tobacco, nicotine, or synthetic nicotine products or that is made or derived from tobacco, and that is intended or expected to be ingested, smoked, inhaled, placed in oral or nasal cavities, or applied to the skin of an individual, including but not limited to chewing tobacco and snuff; the term also includes any component, accessory, part or paraphernalia, whether or not sold separately, used in the consumption of a tobacco product, such as filters, rolling papers, pipes or liquid used in an electronic smoking device; or
2. any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an electronic cigarette, cigar, cigarillo, or pipe.

Provided, however, that the term “tobacco product” does not include any product specifically approved by the United States Food and Drug Administration for use in reducing, treating or eliminating nicotine or tobacco dependence, or for other medical purposes, when such product is being marketed solely for such an approved purpose.

Tobacco Product Retailer means any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, a tobacco product, electronic smoking device or tobacco paraphernalia.

Tobacco Product Retailing means the selling, offering for sale, exchanging or offering for exchange for any form of consideration, a tobacco product or electronic smoking device.

Tobacco Paraphernalia means any item designed for the consumption, use or preparation of a tobacco product or for the use of an electronic smoking device; provided, however, that any such item that is offered for sale within a premises licensed for the sale of marijuana shall not be considered tobacco paraphernalia for purposes of this Article unless there is also sold within the premises any electronic smoking device that contains nicotine, or any other tobacco product.

§ 110-39. License Required.

A. Tobacco product retailer license required.

1. It shall be unlawful for any person to engage in tobacco product retailing in the Town of Frisco without a valid license issued pursuant to this Article for each location where tobacco product retailing occurs.
2. No license may be issued to authorize tobacco product retailing anywhere other than at a fixed location that is designated in the license application and approved license. Tobacco product retailing from vehicles is prohibited.

B. A licensed premise may only have one active license at one time.

1. *Display of License.* Each license shall be prominently displayed in a publicly visible location at the licensed premises.
2. *Period of revocation.* A person may not apply for a new license for a one-year period after a license held by such person has been revoked.
3. *Minimum age of licensee.* No License shall be issued to any natural person under twenty-one (21) years of age.

§ 110-40. Minimum Legal Sales Age and Limitations on Tobacco Product Retailing.

- A. Minimum legal sales age and requirements of positive identification.* It is unlawful to sell or distribute a tobacco product to a person under the age of twenty-one (21) years. No licensee shall distribute a tobacco product without first examining the government-issued photographic identification of the recipient to confirm that the recipient is at least twenty-one (21) years of age.
- B. Minimum age for persons selling tobacco products.* Licensees shall not allow, permit or require any person who is younger than the age of 21 years to sell, a tobacco product during the course of operation of the business.
- C. No unaccompanied minors permitted in retail tobacco businesses.* Licensee shall not allow or permit a person who is younger than age of 21 years to be admitted or remain upon the licensed premises of a retail tobacco business, unless such person is accompanied by his or

her parent or guardian. The licensee of a retail tobacco business shall post and keep visible at all times to the public in a conspicuous place on the licensed premises, a sign to be provided by the Town Clerk's office which shall read as follows:

WARNING: It is a violation of the Code of Ordinances of the Town of Frisco for any person under twenty-one (21) years of age to be on the premises of this business unless accompanied by their parent or guardian.

- D. *Self-service display prohibited.* Except at a location where persons under the age of 21 years are prohibited from entry, it is unlawful for a licensee to engage in tobacco product retailing by means of a self-service display.
- E. *Signage required.* No person shall distribute a tobacco product in the Town unless a clearly visible notice is posted at the location where the tobacco product is distributed, which notice shall state legibly printed in letters at least one-half inch in height, "No person under twenty-one (21) years of age may purchase tobacco or an electronic smoking device."

§ 110-41. Application Procedure.

- A. An application for a license shall be submitted and signed by an individual authorized by the person making application for the license.
- B. An application for a license for an operation for which there is a reasonable expectation that it will meet the definition of a retail tobacco business shall so indicate in the application. For any license that is granted pursuant to an application indicating that a retail tobacco business is anticipated on the licensed premises, there shall be a rebuttal presumption that in fact the business is a retail tobacco business.
- C. All license applications shall be submitted on a form supplied by the License Administrator.
- D. All license applications, including applications for renewal of a license, shall be accompanied by the payment in full of an application fee in the amount of \$600.00, which amount is the reasonably anticipated expense that will be incurred by the Town in administering and enforcing the provisions of this Article on a per-license, per-year basis.
- E. Applicants and licensees shall inform the Licensing Administrator in writing of any change to the information submitted on an application for a license within thirty (30) calendar days of a change, including, without limitation, a change that indicates that the licensee is operating as a retail tobacco business.

§ 110-42. Issuance of License

- A. Upon the receipt of a completed application for a license and all required fees, the License Administrator shall issue a license within thirty (30) days, which period may be extended by the License Administrator for good cause, unless credible evidence indicates that one or more of the following bases for denial exists:
 - 1. The information presented in the application is incomplete, inaccurate or false;
 - 2. The applicant seeks a license for a location where this Article prohibits the issuance of a license;

3. The applicant seeks a license for a location that is not appropriately zoned for the use;
 4. The proposed location for the requested license is not otherwise in compliance with applicable Town law; or
 5. The applicant is not qualified to hold the requested license under the provisions of this Article.
- B. If the License Administrator denies the application for issuance of the license, the License Administrator shall notify the applicant in writing by regular mail, postage prepaid, to the address shown in the application. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.

§ 110-43. Appeal of License Administrator's Decision.

- A. An applicant has the right to appeal the Licensing Administrator's denial of an application to the Town Council. Such appeal shall be initiated by filing a written request with the Licensing Administrator within twenty (20) days of the date of the notice of denial of the issuance of a license.
- B. The applicant's failure to timely appeal the decision of the Licensing Administrator is a waiver the applicant's right to contest the denial of the issuance of the license.
- C. The appeal to the Town Council shall be conducted as a de novo hearing by the Town Council.

§110-44. License Term, Renewal and Transfer.

- A. *Term.* A license shall be valid for a term of one (1) year from the date of its issuance.
- B. *Renewal.* A licensee shall apply for the renewal of the license and submit the license fee, no later than thirty (30) days prior to expiration of the existing license term. The License Administrator shall renew the license prior to the end of the term, provided that the renewal application and fee were timely submitted, and the License Administrator is not aware of facts that would have prevented issuance of the original license.
- C. *Transfer.* A license shall not be transferred from one person to another or from one location to another.

§ 110-45. Compliance Monitoring.

- A. Compliance monitoring of this Article shall be by the Department, as the Department deems appropriate, to allow the Department to determine if a tobacco product retailer is conducting business in a manner that complies with this Article.
- B. The Department shall have the discretion to consider the previous compliance check history of a licensee in determining how frequently to conduct compliance checks of a licensee.
- C. Nothing in this section shall create a right of action in any licensee or other person against the Town, the Department or their agents and officers.

- D. The Department shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "minor operative") if the potential violation occurs when:
1. The minor operative is participating in a compliance check supervised by a peace officer or a code enforcement official of the Department; or
 2. The minor operative is acting as an agent of a person designated by the Town to monitor compliance with this Article; or
 3. The minor operative is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the State of Colorado or Summit County.
- E. The results of Department compliance monitoring activities shall be provided by the Department to the Town Clerk and the Town Clerk shall maintain a database of such activities on a license by license basis.

§ 110-46. Suspension or Revocation of License.

- A. The following shall be grounds for suspension or revocation of the licensee's license:
1. A violation by a licensee or a licensee's officers, agents, or employees of any of the provisions of this Article or any laws of the State of Colorado or ordinances of the Town of Frisco relating to the sale or furnishing of tobacco or cigarettes or tobacco products to minors, or the storage or display of cigarettes or tobacco products, including, without limitation, C.R.S. 18-13-121, C.R.S. 24-35-503, and Section 127-48 of this Code;
 2. A violation of any condition imposed by the License Administrator or Town Council in connection with the issuance or renewal of the license;
 3. Failure to pay state or local taxes that are related to the operation of the business associated with the license;
 4. Loss of the right to possession of the licensed premises; or
 5. Fraud, misrepresentation or a false statement of material fact contained in the original or renewal license application.
- B. The Town Council shall hear and determine all actions relating to the suspension or revocation of licenses pursuant to this Article. The Town Council shall have the authority to impose remedial sanctions for violations.
- C. The Department shall commence suspension or revocation proceedings by petitioning the Town Council to issue an order to the licensee to show cause why the licensee's license should not be suspended or revoked. The Town Council shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one or more grounds exist pursuant to subsection (a) to suspend or revoke the licensee's license. The order to show cause shall set the matter for a public hearing before the Town Council.

- D. The Town Clerk shall give written notice of the public hearing no later than thirty (30) days prior to the hearing by mailing to the licensee at the address contained in the licensee's license. At the hearing, the licensee shall have the opportunity to be heard, to present evidence and witnesses, and to cross-examine witnesses presented by the Department. The Town Council shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the Town Council is authorized to conduct. The standard of proof at such hearings shall be a preponderance of the evidence. The burden of proof shall be upon the Department.
- E. In determining whether a license should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the Town Council shall consider the following factors:
1. The nature and circumstances of the violation;
 2. Corrective action, if any, taken by the licensee;
 3. Prior violations, if any, by the licensee;
 4. The likelihood of recurrence of the violation;
 5. Whether the violation was willful; and
 6. Previous sanctions, if any, imposed on the licensee.
- F. The Town Council shall consider the following non-binding guidelines in determining whether to suspend or revoke a license and, in the case of a suspension, the length of the suspension. The purpose of these guidelines is to provide generally consistent treatment of violators of this Article. The actual sanction imposed upon a licensee for any violation may vary from the guidelines when warranted by the specific facts and circumstances of the case. The decision of the Town Council with respect to the suspension or revocation of a license shall constitute a final administrative action by the Town of Frisco, subject to judicial review.
1. For a first offense within a one-year period, suspension for seven days.
 2. For a second offense within a one-year period, suspension for 30 days.
 3. For a third or subsequent offense within a one-year period, revocation of the license.
- G. Upon request of a licensee, the Town Council may allow for the payment of a fine in lieu of the suspension of a license for all or part of the suspension period. Upon the receipt of such a request, the Town Council may, in its sole discretion, stay the proposed suspension and cause any investigation to be made that it deems desirable and may, in its sole discretion, grant the request if it is satisfied that:
1. The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes; and
 2. The books and records of the licensee are kept in such a manner that the loss of sales of tobacco products that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy.

The fine amount shall be the equivalent of twenty percent (20%) of the licensee's estimated gross revenues from sales of tobacco products during the period of the proposed suspension; except that the fine shall be not less than two hundred dollars (\$200) nor more than five thousand dollars (\$5,000).

Sec. 110-47. Enforcement.

- A. The remedies provided by this Article are cumulative and in addition to any other remedies available at law or in equity.
- B. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Article is unlawful and shall cause the offender to be subject to the general penalty provisions of this Code.
- C. Violations of this Article are hereby declared to be public nuisances.
- D. In addition to other remedies provided by this Article or by other law, any violation of this Article may be remedied by a civil action brought by the Town Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

Section 2. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The Town Council hereby declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. Safety Clause. The Town Council hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety, and welfare of the public, that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare, and that this ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. Effective Date. This ordinance shall become effective in accordance with the Home Rule Charter of the Town of Frisco.

INTRODUCED, PASSED ON FIRST READING AND PUBLICATION AND POSTING
ORDERED THIS 27TH DAY OF AUGUST, 2019.

ADOPTED ON SECOND AND FINAL READING AND PUBLICATION BY TITLE ORDERED
THIS 10TH DAY OF SEPTEMBER, 2019.

TOWN OF FRISCO, COLORADO

Gary Wilkinson, Mayor

Attest:

Deborah Wohlmuth, CMC, Town Clerk