

**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 as 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 thirty (30) 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 who qualifies as an "Eligible Household" by earning 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 up to a three-percent (3%) increase of the Purchase Price per year (prorated at the rate of 1/12<sup>th</sup> 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 up to the cost of Qualified Capital Improvements as approved by the Town of Frisco;
  - (4) Plus up to 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 maximum sales price for the Property's unit type and household AMI level as published by the SCHA at the time of the sale. 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 ("SCHA's 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 SCHA's 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 SCHA'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.

A. Recording of this Restriction constitutes record notice and perfection of the SCHA's 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 SCHA's 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 SCHA'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 SCHA's 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 SCHA'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 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.



**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.

<b><u>Items included in Base Price</u></b>	<b><u>Items which are NOT Qualifying Capital Improvements</u></b>
<ul style="list-style-type: none"> <li>• Purchase price, including garage, lot premium, heating systems and water heaters</li> </ul> <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"> <li>• Structural addition or addition of livable space including bathrooms, bedrooms, exterior door, interior doors, baseboard, window casing, insulation and plumbing (excluding fixtures) and garages (detached or attached)</li> <li>• Modifications or improvements to accommodate a person with a disability as defined in the Americans with Disabilities Act of 1990</li> </ul>	<ul style="list-style-type: none"> <li>• All work performed without the issuance of a building permit</li> <li>• Jacuzzis, saunas, steam showers, hot tubs, etc.</li> <li>• Maintenance of existing fixtures, appliances, plumbing, mechanical systems, painting, cleaning, etc. and improvements to existing fixtures</li> <li>• Decorative items including window coverings, lamps and lighting not affixed to walls or ceilings, bath towel bars and hooks, etc.</li> <li>• Interior paint</li> <li>• Cost of tools</li> <li>• Equipment Rental</li> <li>• Removable items not attached to the unit</li> </ul>

<ul style="list-style-type: none"> <li>• Roof replacement</li> </ul> <p><b>Items depreciated on 5 year schedule</b></p> <ul style="list-style-type: none"> <li>• Replaced appliances</li> <li>• Washer and dryer (including stackable)</li> <li>• Carpet upgrades including pad</li> <li>• Permanent fitted window blinds</li> <li>• Garage door openers</li> <li>• Gutters and downspouts</li> <li>• Security system</li> <li>• Electric fireplace</li> <li>• Exterior paint</li> <li>• Ceiling fans</li> <li>• Storm doors</li> <li>• Laminate flooring</li> <li>• Building permit fees</li> <li>• Improvements for health and safety protection</li> </ul>	<p><b>Items depreciated on 20 year schedule</b></p> <ul style="list-style-type: none"> <li>• Flooring and countertop upgrades including hardwood, stone, slate, granite, marble, tile, etc.</li> <li>• Light fixtures (electrical fixtures &amp; wiring)</li> <li>• Plumbing fixtures including sinks and toilets</li> <li>• Cabinets including vanities</li> <li>• Closet organization systems</li> <li>• Trees and permanent landscaping including sod, concrete pads, concrete pavers, etc.</li> <li>• Outdoor decks</li> <li>• Irrigation system</li> <li>• Fencing</li> <li>• Gas fireplace</li> <li>• Windows</li> <li>• Renewable Energy Systems</li> <li>• Asphalt roof shingles (single family &amp; duplex)</li> </ul>
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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.

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

<b>20 Year Depreciation Schedule % of Cost</b>	<b>Months</b>	<b>Years</b>
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