

APPENDIX B

AFFORDABLE HOUSING DEED RESTRICTION AND COVENANTS

THIS DEED RESTRICTION is made and executed this ____ day of _____, 200__, by _____ "Owner", whose address is _____, for the benefit of the City of Steamboat Springs ("City") and its duly designated and authorized agent, _____ ("Program Administrator"), their successors or assigns (together "Beneficiaries").

NOW, THEREFORE, for value received, the Owner does hereby declare and impose the following covenants on the real Unit identified below, which covenants shall burden and run with the Unit until modified or released by the Beneficiaries.

COVENANTS

1. The following described parcel of real estate ("Unit") is hereby burdened with the covenants as delineated herein:

_____,
According to the recorded plat thereof,
County of Routt,
State of Colorado.

2. **Definitions.** The following definitions shall apply to terms used in this Deed Restriction.

- a) **Eligible Household** shall be as defined in Section 26-148(b) of the City of Steamboat Springs Community Development Code.
- b) **Guidelines** shall mean the Steamboat Springs Community Housing Guidelines adopted by the City of Steamboat Springs in effect at the time of closing on a sale or other transfer of the Unit or a Unit, or at the commencement date of a lease or other occupation agreement, or its successor document, as amended from time to time.
- c) **Non-Qualified Owner** shall mean any person who does not meet the eligibility requirements specified in this Deed Restriction for Unit Ownership, and includes persons or entities that originally qualified as a Qualified Owner.
- d) **Owner** shall mean either a Qualified Owner or a Non-Qualified Owner, as the context requires.

- e) **Qualified Owner** shall mean a person that possesses an ownership interest in the Unit in compliance with the terms and provisions of this Deed Restriction, including, without limitation, being a member of an Eligible Household, and whose qualifications to own the Unit have been certified by Program Administrator, at the time the Qualified Owner takes title to the Unit and/or Unit.
- f) **Qualified Resident(s)** means a person or persons who are member(s) of an Eligible Household, whose total household income is no greater than _____% of the median income for Routt County.
- g) **Sole Residence** of a person means a Unit that is the exclusive residence of the person. Personal use of a dwelling unit other than the Unit shall preclude the Unit from being deemed the person's Sole Residence. Ownership without personal use of an interest in a dwelling unit other than the Unit shall not preclude the Unit from being deemed the person's Sole Residence.
- h) **Unit** shall mean the Lot or an individual residential dwelling unit described above, including any secondary units and rental units contained therein.

3. **Re-Sale Controls.** The Unit may not be sold or otherwise transferred to any person other than a Qualified Resident, who intends to occupy the Unit as that person's Sole Residence. Compliance with the resale restriction shall be verified by the Program Administrator in accordance with the following procedures. Owner may, with prior written approval of Program Administrator and subject to the requirements set forth in these Deed Restrictions, sell the Unit to another Qualified Resident. Such sale shall be subject to the following procedure:

- a) Owner must deliver written notice of intent to sell to the Program Administrator prior to offering the Unit for sale.
- b) Owner Options for Selling. The Owner may sell the Unit by:
 - (i) advertising and selling the Unit directly to a Qualified Resident;
 - (ii) listing the Unit with a real estate broker licensed to do business in the State of Colorado; or
 - (iii) offering the Unit for sale through the Program Administrator, who will either make it available to Qualified Residents on an existing waiting list or advertise the Unit for sale on a general basis.
- c) Prior to the closing of the sale of the Unit, any prospective owner must be certified in writing as a Qualified Resident by the Program Administrator in accordance with the qualifications and procedures established in these Deed Restrictions.

d) In all cases, the Owner shall be responsible for the costs of advertising, marketing and selling, including real estate commissions or fees paid to the Program Administrator or a licensed real estate broker.

4. **Sole and Exclusive Residence.**

a) The Unit shall be occupied by the Owner who was approved by Program Administrator as a Qualified Resident and the Unit shall be the Sole Residence of that Owner. The preceding notwithstanding, the Owner of a Unit may temporarily vacate the Unit in the event the Owner's business or personal affairs requires the Owner's temporary relocation. Temporary vacations shall not exceed an aggregate total of one year in any five-year period.

b) The Unit may be leased in whole, but only if the Owner leases the Unit in conjunction with a temporary vacation of the Unit as described in the preceding section (a). Units shall only be leased to Qualified Residents. An Owner may lease rooms in the Owner's Unit, and may lease separate secondary or rental units, but the Owner must continue to reside in the Unit and any lessees or tenants of the Owner must also be Qualified Residents.

5. **Non-Qualified Owner(s)/Defaults.** Any breach of the covenants set forth herein, including without limitation a transfer in violation of the covenants set forth herein shall constitute a default. Further, breach by Owner of the terms of any deed of trust or other lien encumbering the Unit or of the terms of any obligation secured by such a deed of trust or other lien shall constitute a default. The holder of a deed of trust or other lien encumbering the Unit shall give to the Program Administrator any notice relating to Owner's breach to which Owner is entitled. The notice shall include the following information at a minimum:

- a) the legal description and physical address of the Unit;
- b) the Owner's name;
- c) the name, mailing address, phone number and contact person of the lien holder;

In the event of a default, following notice and opportunity to cure as provided in Section 6, the Program Administrator shall have all rights and remedies available at law or equity, including the remedies set forth in Section 7.

6. **Notice and Cure.** The Program Administrator, in the event a violation of this Deed Restriction is discovered, shall send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner thirty (30) days to cure ("Cure Period"). Said notice shall state that the Owner may request a hearing before the hearings officer or board designated by the Program Administrator ("Decision-Maker") within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the thirty (30) day period, the Owner shall

be considered in violation of this Deed Restriction. If a hearing is held before the Decision-Maker, the decision of the Decision-Maker based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

7. **Remedies.** There is hereby reserved to the parties hereto any and all remedies provided by law for violation of this Deed Restriction or any of its terms. In the event the parties resort to litigation with respect to any of the provisions of this Deed Restriction, the prevailing party shall not be entitled to recover damages and costs, including reasonable attorneys fees. It is the intent of this language that each party shall pay its own costs, including reasonable attorney fees.

a) **Non-complying sales.** In the event the Unit, as the case may be, is sold and/or conveyed without compliance herewith, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, even without reference therein to this Deed Restriction.

b) **Failure to Cure.** In the event that the Owner fails to cure any default, the City or the Program Administrator or their authorized successor may resort to any and all available legal action, including, but not limited to, specific performance of this Deed Restriction, a mandatory injunction requiring the sale of the Unit by Owner as specified in Paragraph 3, or exercise of the option provided for in Section 9. The costs of such sale shall be paid out of the proceeds of the sale with the balance being paid to Owner.

c) **Default as to Deed of Trust.** In the event Owner defaults on the terms of any deed of trust or other lien encumbering the Unit or of the terms of any obligation secured by such a deed of trust or other lien the Program Administrator shall have all the rights of an Owner under the deed or trust or other lien and applicable law, including rights to notice and redemption.

8. **Release of Deed Restriction In Event of Foreclosure or Deed In Lieu.** In the event of foreclosure or acceptance of deed in lieu of foreclosure by the holder of a first deed of trust this Deed Restriction shall automatically and permanently terminate and be of no further force and effect if the following conditions are satisfied:

a) the holder of the deed of trust or other lien has given to the Program Administrator notice of the Owner's default as set forth in Section 5, above; and either

b) the Option Period has expired without exercise of the Option by the Program Administrator; or

c) the Program Administrator has exercised the Option but failed to close or perform under the Option.

In the event of the termination of the Deed Restriction, the Program Administrator, its authorized successor, or the City shall cause to be recorded in the records of the Clerk and Recorder for Routt County a full and complete release of this Deed Restriction and the Development Agreement.

9. Option to Purchase

a) In the event of a default by Owner, which remains uncured for a period of thirty (30) days as set forth above in Section 6, the Program Administrator shall have an option to purchase the Unit as set forth herein ("Option"). The Program Administrator shall have sixty (60) days after expiration of the Cure Period in which to exercise the Option ("Option Period").

b) The Program Administrator shall be granted entry into the Unit during the Option Period in order to inspect the Unit.

c) If the Unit is vacant, the Owner or lien holder shall maintain utility connections until expiration of the Option Period or closing on the Option.

d) The Program Administrator shall have the option to purchase the Unit for the greater of:

(i) the amount due to any and all holders of a promissory note secured by a deed of trust on the unit and any reasonable costs incurred by the holder during the option period; or

(ii) the least of the following values: the Fair Market Value of the unit calculated as set forth herein, the maximum affordable price of the Unit as determined by the Guidelines, or the maximum resale price of the Unit pursuant to Section ____.

The Program Administrator may, instead of purchasing the Unit itself, assign its right to purchase the Unit pursuant to the Option to another public agency, or a nonprofit corporation or a Qualified Owner. If the Program Administrator assigns its Option, the assignee shall be bound to purchase the Unit pursuant to the terms of the Option. If the Program Administrator or its assignee elects to purchase the Unit, the parties shall have the following rights and obligations:

(i) the Program Administrator shall engage an appraiser to determine the Fair Market Value and deliver to Owner a copy of the appraisal;

(ii) Owner shall permit a final walk-through of the Unit by the Program Administrator or its assignee in the final three (3) days prior to closing of the purchase of the Unit.

(iii) Upon payment of the Sales Price by the Program Administrator in cash or certified funds, Owner shall deliver to the Program Administrator a general warranty deed for the Unit, free and clear of all monetary liens.

(iv) Normal and customary closing costs shall be shared equally between the Owner and the Program Administrator. The Program Administrator shall be responsible, at its cost, for any and all title insurance fees, document fees, and recording fees for the deed. Taxes shall be prorated based upon taxes for the calendar year immediately preceding closing. Any fees incident to issuance of a letter or statement of assessments by an association shall be shared equally between Owner and the Program Administrator. Owner shall receive a credit for that portion of association assessments paid in advance from date of closing.

(v) Closing of the purchase of the Unit by the Program Administrator shall occur within sixty (60) days of the Program Administrator's exercise of the Option at a date and time to be mutually agreed by the Program Administrator and Owner ("Closing"). The location of the Closing shall be the title company closing the transaction. Possession shall be delivered to the Program Administrator immediately after closing, unless otherwise agreed between Owner and Program Administrator.

e) Fair Market value shall be determined by a qualified real estate appraiser familiar with Routt County and engaged by the Program Administrator and approved by the Owner, which approval shall not be unreasonably withheld. The appraisal shall consider the sales prices of comparable properties sold in the market area during the preceding three (3) month period. The appraisal shall also consider the effect of the deed restrictions created herein. The cost of the appraisal shall be paid by the Owner at closing. A copy of the appraisal shall be delivered to both the Program Administrator and Owner within seven (7) days of its completion.

f) If the Program Administrator fails to exercise its Option during the Option period, or otherwise fails to perform and/or close on its purchase of the Unit within sixty (60) days after exercising the Option, then the Owner shall be entitled to transfer the Unit free and clear of the Option or, if applicable, the lien holder in a foreclosure action may proceed to foreclose or take such other action necessary and allowed by law, in which case this Deed Restriction shall terminate automatically and have no further force and effect, as set forth above in Section 8.

g) Should the City or the Program Administrator or its authorized successor exercise the option pursuant to the terms of that certain Option to Purchase described above, the City or the Program Administrator, or its authorized successor may sell the Unit to Qualified Owners, or rent same to Qualified Residents until sale to a Qualified Owner is effected.

10. Re-Sale Price Restrictions. The Unit shall not be sold at a price exceeding the selling Owner's purchase price plus appreciation at a rate of three percent (3%) annually compounded quarterly plus the Owner's cost of any qualifying improvements.

Qualifying improvements shall be those improvements constructed or installed pursuant to a valid building permit. The cost of such improvements shall be presumed to be equal to the building department cost estimate plus the estimated use tax paid. The cost of qualifying improvements shall not be adjusted by the three percent (3%) annual increase applicable to the Owner's purchase price.

11. General Provisions. The following General Provisions shall apply to this Deed Restriction.

a) Notices. Any notice, consent or approval, which is required to be given hereunder, shall be given by either: mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein; or hand-delivering the same to any address provided herein. Notices shall be considered delivered on the date of delivery if hand-delivered or if both hand-delivered and mailed; or three days after postmarked, if mailed only. Notices, consents and approvals shall be sent to the parties at the following addresses unless otherwise notified in writing:

To Owner:

To Program Administrator:

Copy to:

Steamboat Springs City Attorney
City of Steamboat Springs
137 10th Street
P. O. Box 775088
Steamboat Springs, CO 80477

b) Severability. Whenever possible, each provision of this Deed Restriction and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

c) Choice of Law. This Deed Restriction and each and every related document is to be governed and construed in accordance with the laws of the State of

Colorado. Venue for any legal action arising from this Deed Restriction shall be in Routt County, Colorado.

d) 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. The covenants shall be a burden upon and run with the Unit and/or Unit(s), as the case may be, for the benefit of the Beneficiaries, their successors and assigns, who may enforce the covenants and compel compliance therewith through the initiation of judicial proceedings for, but not limited to, specific performance, injunctive relief, reversion, eviction, and damages.

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

f) Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Deed Restriction shall be valid against any party hereto except on the basis of a written instrument executed by the parties. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing.

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

IN WITNESS WHEREOF, the Owner has executed this instrument on the day and year above first written.

OWNER

(Type Name)

(Signature)

City of Steamboat Springs

