

RESOLUTION NO. 20

Series 2017

A RESOLUTION RECOMMENDING THE APPROVAL OF THE RESIDENTIAL HOUSING RESTRICTION AND NOTICE OF LIEN FOR BLUE 52 TOWNHOMES

WHEREAS, the Town of Breckenridge Housing Authority ("**Housing Authority**") is currently developing the "Blue 52 Townhomes" housing project ("**Property**"); and

WHEREAS, the Housing Authority, acting as the declarant, intends to create a valid and enforceable restrictive covenant running with the land that assures that all of the units to be developed on the Property will be used solely by individuals who are both residents and eligible households (as such terms are defined) by the Housing Authority, subject to limited exceptions; and

WHEREAS, in furtherance of such intent the Housing Authority has prepared a proposed a restrictive covenant entitled "Residential Housing Restriction and Notice of Lien for 'Blue 52 Townhomes'", a copy of which marked **Exhibit "A"**, attached hereto, and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed restrictive covenant, and finds and determines that it should recommend final approval of the covenant to the Housing Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. The Town Council recommends to the Town of Breckenridge Housing Authority that the "Residential Housing Restriction and Notice of Lien for 'Blue 52 Townhomes'" (**Exhibit "A"** hereto) be approved.

Section 2. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED this 22<sup>nd</sup> day of August, 2017.

TOWN OF BRECKENRIDGE

By: 

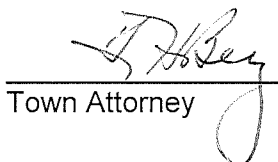
Eric S. Mamula, Mayor

ATTEST:



Helen Cospolich, CMC,  
Town Clerk

APPROVED IN FORM

 8/22/17  
Town Attorney Date



1 case letters in references to the following terms shall have no bearing on the meanings of the  
2 terms:

3  
4 A. **“Appreciation Limiting Promissory Note”** means the promissory note to be  
5 executed by the purchaser of a Unit and delivered to the Housing Authority as described in  
6 Section 5.4.

7 B. **“Appreciation Limiting Deed of Trust”** means the deed of trust to be executed  
8 by the purchaser of a Unit and delivered to the Housing Authority for recording with the Clerk  
9 and Recorder of Summit County, Colorado as described in Section 5.4.

10 C. **“Area Median Income”** or **“AMI”** means the median annual income for the  
11 County (or such next larger statistical area calculated by HUD that includes the County, if HUD  
12 does not calculate the area median income for the County on a distinct basis from other areas), as  
13 adjusted for household size, that is calculated and published annually by HUD (or any successor  
14 index thereto acceptable to the Housing Authority, in its reasonable discretion). If AMI data  
15 pertaining to the date of sale of a Unit is yet not available as of the date the sale price is  
16 calculated, then the most recent data published by HUD shall be used in its place.

17 D. **“Assets”** means the sum of all real and personal property, money, and other things  
18 of value owned or controlled by a person at the time of his or her purchase or lease of a Unit as  
19 defined in the Housing Authority’s Guidelines then in effect.

20 E. **“Authorized Lessee”** means any tenant approved by the Housing Authority, who  
21 shall meet the definitions of both Resident and Eligible Household, and who shall lease a Unit at  
22 such rental rates as shall be established by the Housing Authority.

23 F. **“County”** means Summit County, Colorado.

24 G. **“Dependent”** means a person, including a spouse of a child of, a step-child of, a  
25 child in the permanent legal custody of or a parent of, a Resident, in each case whose sole place  
26 of residence is in the same household as such Resident, and who is financially dependent upon  
27 the support of the Resident. Dependent shall also include any person included within the  
28 definition of **“Familial Status”** as defined in 42 U.S.C. § 3602(k), as that act shall from time to  
29 time be amended.

30 H. **“Director”** means the Director of the Department of Community Development of  
31 the Town of Breckenridge, Colorado, or such person’s designee.

32 I. **“Eligible Household”** means a Household approved by the Housing Authority or  
33 its designee so as to allow for the execution by the Housing Authority of the form of Notice of  
34 Lien and Memorandum of Acceptance of Residential Housing Restriction and Notice of Lien for  
35 the Blue 52 Townhomes, Town of Breckenridge, Summit County, Colorado set forth in **Exhibit**  
36 **B** of this Restriction, and shall include: (i) the eight (8) Units identified on **Exhibit C** of this  
37 Restriction, which shall be Households earning not more than one hundred ten percent (110%) of  
38 the Area Median Income (a “110% AMI Unit”); (ii) the thirteen (13) Units identified on **Exhibit**  
39 **D** of this Restriction, which shall be Households earning not more than one hundred twenty  
40 percent (120%) of the Area Median Income (a “120% AMI Unit”); (iii) the twelve (12) Units

1 identified on **Exhibit E** of this Restriction, which shall be Households earning not more than one  
 2 hundred thirty percent (130%) of the Area Median Income (a “130%AMI Unit”); and (iv) the  
 3 nineteen (19) Units identified on **Exhibit F** of this Restriction, which shall be sold to Households  
 4 without an income cap (a “Unit without an income cap”). Once a Unit is designated as either a  
 5 110% AMI Unit, a 120% AMI Unit, a 130% AMI Unit, or a Unit without an income cap, it shall  
 6 remain so designated throughout the term of this Restriction, unless otherwise approved by the  
 7 Housing Authority. A Household’s income for purpose of determining whether such household  
 8 meets this definition of eligibility shall be determined in accordance with the Housing  
 9 Authority’s Guidelines in effect at the time of purchase or, as the case may be, commencement  
 10 of leasehold occupancy. Income testing shall be done only at the time a person purchases or  
 11 leases a Unit. Additional income obtained by persons in an Eligible Household after purchasing  
 12 or leasing the Unit shall not have any effect on the household’s qualifications or income  
 13 classification under this Restriction.

14 In order to attempt to assure a pool of qualified buyers while also matching household  
 15 income to appropriately priced Units, the Housing Authority has established the following initial  
 16 price affordability standards for the Units that are subject to this Restriction:  
 17

Unit Category	Priced To Be Affordable To:
110% AMI Unit	80% AMI Household
120% AMI Unit	90% AMI Household
130% AMI Unit	110% AMI Household
Non-Income Capped Units	120% & 130 AMI Households

18  
 19 At the time of the purchase of a Unit a Qualified Owner shall not have more Assets than  
 20 are allowed under the Housing Authority’s Guidelines then in effect. Asset testing shall be done  
 21 only at the time a person purchases a Unit. Assets acquired by a Qualified Owner after  
 22 purchasing the Unit shall not have any effect on the ability of the Qualified Owner to continue to  
 23 own the Unit.  
 24

25 J. **“First Mortgage”** means a deed of trust or mortgage that is recorded senior to  
 26 any other deeds of trust or liens against the Property to secure a loan used to purchase the  
 27 Property made by a Mortgagee.

28 K. **“Guidelines”** means the administrative rules, regulations, policies, and standards  
 29 adopted by the Housing Authority pursuant to Section 11.1 of this Restriction, as amended from  
 30 time to time.

31 L. **“Household”** means one or more persons who intend to live together in a Unit as  
 32 a single housekeeping unit.

33 M. **“Housing Authority Lien”** means the lien that is granted to the Housing  
 34 Authority in Section 9.2 of this Restriction to secure payment of any amounts due and owing to  
 35 the Housing Authority pursuant to this Restriction.

36 N. **“HUD”** means the U.S. Department of Housing and Urban Development.

1 O. **“Maximum Resale Price”** means the maximum Purchase Price that shall be paid  
2 by any purchaser of the Property, other than the initial purchaser who acquires the Property from  
3 the Housing Authority, that is determined in accordance with the provisions of Section 8.3 of this  
4 Restriction. The Maximum Resale Price is not a guaranteed price, but merely the highest price an  
5 Owner may obtain for the sale of the Property.

6 P. **“Mortgagee”** means any bank, savings and loan association, or any other  
7 institutional lender that is licensed to engage in the business of providing purchase money  
8 mortgage financing for residential real property and that is the beneficiary of a deed of trust or  
9 mortgage encumbering any Unit.

10 Q. **“Non-Qualified Owner” or “Non-Qualified Transferee”** means an Owner that  
11 is not a Qualified Owner.

12 R. **“Owner”** means the record owner at any time taking and holding fee simple title  
13 to a Unit.

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

19 T. **“Purchase Price”** shall mean all consideration paid by the purchaser to the seller  
20 for a Unit as defined in this Guidelines.

21 U. **“Rent”** means to lease or rent a Unit.

22 V. **“Qualified Owner”** means a natural person(s) that meet(s) the definitions of both  
23 a Resident and an Eligible Household, or Non-Qualified Owner under Section 5.1B, qualified  
24 and approved by the Housing Authority, in such a manner as will allow the Housing Authority to  
25 execute the Notice of Lien and Memorandum of Acceptance of Residential Housing Restriction  
26 and Notice of Lien for the Blue 52 Townhomes, Town of Breckenridge, Summit County,  
27 Colorado set forth in **Exhibit B** of this Restriction.

28 W. **“Resident”** means a person and his or her Dependents, if any, who at all times  
29 during ownership or occupancy of the Unit: (i) earns his or her living from a business operating  
30 in and serving the County, and (ii) works in the County at such business an average of at least  
31 thirty (30) hours per week on an annual basis, or is a person who is approved in writing by the  
32 Housing Authority, which approval shall be based upon criteria including, but not limited to,  
33 total income, percent of income earned within the County, place of voter registration, place of  
34 automobile registration, and driver’s license address and other qualifications established by the  
35 Housing Authority from time to time (compliance with each of these criteria is not necessary; in  
36 certifying Residents, the Housing Authority shall consider the criteria cumulatively as they relate  
37 to the intent and purpose of this Restriction). A person over 65 years of age shall remain a  
38 Resident regardless of his or her working status, so long as he or she has owned and occupied a  
39 Unit for a time period of not less than seven (7) years. A Resident or Authorized Lessee who  
40 becomes disabled after commencing ownership or occupancy of a Unit such that he or she

1 cannot work the required number of hours each week required by this Restriction shall remain a  
2 Resident or Authorized Lessee; provided that such person is permitted to occupy the Unit only  
3 for a maximum period of one (1) year following the commencement of said person's disability,  
4 unless a longer period of occupancy is authorized by the Housing Authority. Unless otherwise  
5 indicated, the term "business" as used in this Restriction shall mean an enterprise or organization  
6 providing goods and/or services, whether or not for profit, and shall include, but not be limited  
7 to, educational, religious, governmental, and other similar institutions.

8 X. "Town" means the Town of Breckenridge, a Colorado municipal corporation.

9 Y. "Town Clerk" means the Town Clerk of the Town of Breckenridge, Colorado, or  
10 such person's designee.

11 Z. "Town Council" means the Town Council of the Town of Breckenridge,  
12 Colorado.

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

19 BB. "Unit" means a physical portion of the Property to be constructed for purposes of  
20 residential use only and to be created as a separate transferable real property interest by the filing  
21 of subdivision or similar plat(s) or map(s) for some or all of the Property. There will be a total of  
22 fifty-two (52) Units built within the Property.

23 **ARTICLE 2**  
24 **PURPOSE**

25  
26 2.1 Purpose of Restriction. The purpose of this Restriction is to restrict ownership,  
27 occupancy, and sale of each Unit in such a fashion as to provide, on a permanent basis,  
28 affordably priced housing for low to moderate income persons to be occupied by Qualified  
29 Owners or Authorized Lessees, which Qualified Owners or Authorized Lessees, because of their  
30 income, may not otherwise be in a position to afford to purchase, own, occupy, or lease other  
31 similar properties, and to help establish and preserve a supply of affordably priced housing to  
32 help meet the needs of the locally employed residents of the County.

33  
34 **ARTICLE 3**  
35 **RESTRICTION AND AGREEMENT BINDS THE PROPERTY**

36  
37 3.1 Restriction Runs With the Land. This Restriction shall constitute covenants  
38 running with title to the Property as a burden thereon, for benefit of, and enforceable by, the  
39 Housing Authority, and its successors and assigns, and this Restriction shall bind the Housing  
40 Authority and all subsequent Owners and occupants of a Unit. Each Owner and Authorized  
41 Lessee, upon acceptance of a deed or lease to a Unit, shall be personally obligated hereunder for

1 the full and complete performance and observance of all covenants, conditions, and restrictions  
2 contained herein during the Owner's period of ownership or Authorized Lessee's tenancy, as  
3 may be appropriate. Each and every Transfer or lease of a Unit, for all purposes, shall be deemed  
4 to include and incorporate by this reference, the covenants contained in this Restriction, even  
5 without reference to this Restriction in any document of conveyance.  
6

7 **ARTICLE 4**  
8 **NATURAL PERSONS**  
9

10 4.1 Units Shall Be Occupied by Natural Persons Only. Other than by the Housing  
11 Authority, the use and occupancy of a Unit shall be limited exclusively to housing for natural  
12 persons who meet the definition of Qualified Owner or Authorized Lessee.  
13

14 **ARTICLE 5**  
15 **OWNERSHIP RESTRICTIONS**  
16

17 5.1 Ownership and Occupancy Obligation.  
18

19 A. Ownership of a Unit is hereby limited exclusively to a Qualified Owner, which  
20 shall include the parties described and approved as set forth in Section 5.1B. In the event that a  
21 Unit is occupied without compliance with this Restriction, the Housing Authority shall have the  
22 remedies set forth herein, including, but not limited to, the rights under Section 8.5.

23 B. Upon the written consent of the Housing Authority, which consent may be  
24 recorded, a non-qualifying natural person or entity that owns and/or operates a business located  
25 in and serving the County may purchase a Unit; provided, however, that by taking title to a Unit,  
26 such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that  
27 any Owner who does not meet the definitions of both a Resident and an Eligible Household shall  
28 rent the Unit to a natural person(s) that does meet the definitions of both a Resident and Eligible  
29 Household, and shall not occupy or use such Unit for such Owner's own use or leave such Unit  
30 vacant except as otherwise provided herein. Any occupancy of a Unit pursuant to this Section  
31 5.1B shall not exceed two persons per bedroom, unless the Housing Authority approves  
32 otherwise.

33 5.2 Sale, Resale, and Lease. In the event that a Unit is Transferred or leased without  
34 compliance with this Restriction, the Housing Authority shall have the remedies set forth herein,  
35 including but not limited to, the rights set forth in Section 8.5. Except as otherwise provided  
36 herein, each and every Transfer or lease of a Unit, for any and all purposes, shall be deemed to  
37 include and incorporate the terms and conditions of this Restriction.  
38

39 5.3 Compliance. Along with the recorded instrument of conveyance evidencing a  
40 Transfer of a Unit, any such Transfer of a Unit shall include a completed copy of the "Notice of  
41 Lien and Memorandum of Acceptance of Residential Housing Restriction and Notice of Lien for  
42 the Blue 52 Townhomes, Town of Breckenridge, Summit County, Colorado" attached hereto as  
43 **Exhibit B**, which copy is executed by the transferee and acknowledged by the transferee before a  
44 notary public. The instrument of conveyance evidencing such Transfer, or some other instrument

1 referencing the same, shall bear the following language followed by the acknowledged signature  
2 of an authorized officer or representative of the Housing Authority, or its designee, to wit:

3  
4 “The conveyance evidenced by or referenced in this instrument has been  
5 approved by the Town of Breckenridge Housing Authority as being in compliance  
6 with the Residential Housing Restriction and Notice of Lien for the Blue 52  
7 Townhomes, Town of Breckenridge, Summit County, Colorado, recorded in the  
8 records of Summit County, Colorado, on the \_\_\_\_ day of \_\_\_\_\_,  
9 2017, at Reception No. \_\_\_\_\_.”

10  
11 Each sales contract, or lease as the case may be, for a Unit shall also: (a) recite that the proposed  
12 purchaser or lessee, as applicable, has read, understands, and agrees to be bound by the terms of  
13 this Restriction; and (b) require the proposed purchaser and/or lessee to submit such information  
14 as may be required by the Housing Authority under the Guidelines for the purpose of ensuring  
15 compliance with this Restriction.

16 5.4 Appreciating Limiting Promissory Note and Deed of Trust. At the time of each  
17 sale of a Unit, beginning with the first such sale by the Housing Authority to a Unit Owner, the  
18 purchaser(s) of each Unit shall execute an Appreciating Limiting Promissory Note in the form  
19 provided for in the Guidelines, together with a form of Appreciating Limiting Deed of Trust to a  
20 public trustee in the form provided for in the Guidelines encumbering the Unit to secure strict  
21 compliance with the terms of the Note. The Appreciating Limiting Deed of trust shall contain a  
22 strict due on sale provision, and shall be in form and substance acceptable to the attorney for the  
23 Housing Authority. At the time of each subsequent closing of the transfer of title to a Unit, a new  
24 Appreciation Limiting Promissory Note shall be executed by the purchaser(s) and delivered to  
25 the Housing Authority, and a new Appreciation Limiting Deed of Trust shall be executed by the  
26 purchaser(s) and recorded in the Summit County, Colorado real estate records. At the time of  
27 closing of each transfer of title to a Unit subsequent to the first transfer by Developer, the  
28 Housing Authority shall determine whether the transfer complies with the requirements of this  
29 Restriction. If the transfer complies with the requirements of this Restriction, the Housing  
30 Authority shall mark the selling Unit Owner’s Appreciation Limiting Promissory Note as paid  
31 and execute a request for release of the Appreciation Limiting Deed of Trust upon verification to  
32 the Housing Authority, by the title company or other independent agent responsible for closing  
33 on the transfer of title to a Unit, that the amount paid for the purchase of the Unit does not  
34 exceed the Maximum Resale Price or that, if the price exceeds the Maximum Resale Price, the  
35 amount of such excess will be paid to the Housing Authority. If title to a Unit is transferred  
36 without obtaining the release of a Appreciation Limiting Deed of Trust securing an appreciation  
37 Limiting Promissory Note in favor of the Housing Authority, the Housing Authority, among  
38 other rights available to it, shall have the right to foreclose said Appreciation Limiting Deed of  
39 Trust.

40  
41 5.5 Initial Finance and Refinance Restriction.

42  
43 A. At the time of the purchase of a Unit the original principal amount of any  
44 indebtedness secured by a First Mortgage shall not exceed an amount equal to one hundred  
45 percent (100%) of the Purchase Price paid for the Unit by that Owner, subject to the Housing  
46 Authority’s Mortgage Guidelines.



1 B. An Owner may refinance a First Mortgage that encumbers the Owner's Unit with  
2 the consent of the Housing Authority; provided, however, that the original principal amount of  
3 any refinanced indebtedness secured by a First Mortgage shall not exceed an amount equal to  
4 ninety seven percent (97%) of the then current Maximum Resale Price of the Unit.

5 5.6 Records and Inspection. An Owner's records with respect to the Owner's use and  
6 occupancy of a Unit shall be subject to examination, inspection, and copying by the Housing  
7 Authority, or its authorized agent, upon reasonable advance notice. The Housing Authority, or its  
8 authorized agent, shall also have the right to enter into or upon a Unit for the purpose of  
9 determining compliance with the provisions of this Restriction; provided, however, that the  
10 Housing Authority, or its agent, shall first attempt to secure the permission of any occupants of  
11 the Unit prior to making entry. An Owner shall submit any information, documents, or  
12 certificates requested from time to time by the Housing Authority with respect to the occupancy  
13 and use of the Owner's Unit that the Housing Authority reasonably deems necessary to  
14 substantiate the Owner's continuing compliance with the provisions of this Restriction. Such  
15 information shall be submitted to the Housing Authority within such reasonable time period as  
16 the Housing Authority may establish. All lessees of a Unit shall be bound by the terms of this  
17 Section 5.6, and shall cooperate with all requirements herein.

18  
19 5.7 Relief In Extraordinary Circumstances. The Director may grant a variance,  
20 exception, or waiver from the requirements of this ARTICLE 5 based upon the written request of  
21 the Owner, a prospective Owner of a Unit, or a prospective Authorized Lessee of a Unit. Such  
22 variance, exception, or waiver may be granted by the Director only upon a finding that: (i) the  
23 circumstances justifying the granting of the variance, exception, or wavier are unique; (ii) a strict  
24 application of this ARTICLE 5 would result in an extraordinary hardship; and (iii) the variance,  
25 exception, or waiver is consistent with the intent and purpose of this Restriction. No variance,  
26 exception, or wavier shall be granted by the Director if its effect would be to nullify the intent  
27 and purpose of this Restriction. In granting a variance, exception, or wavier of the provisions of  
28 this ARTICLE 5 the Director may impose specific conditions of approval, and shall fix the  
29 duration of the term of such variance, exception or waiver. Any Owner or prospective Owner of  
30 a Unit who is dissatisfied with the decision of the Director with respect to a request for a  
31 variance, exception or waiver from the requirements of this ARTICLE 5 may appeal the  
32 Director's decision to the Housing Authority by submitting a written letter of appeal to the Town  
33 Clerk within ten (10) days of the date of the Director's decision. The Housing Authority shall  
34 make a final determination of such appeal within forty five (45) days after the Town Clerk's  
35 receipt of the letter of appeal.

36  
37 **ARTICLE 6**  
38 **ORIGINAL SALE OF A UNIT**

39  
40 6.1 Initial Purchase Price. Upon completion of construction of each Unit, the Unit  
41 shall be sold to a Qualified Owner at an affordable Purchase Price as determined by the Housing  
42 Authority.

43  
44 **ARTICLE 7**  
45 **USE RESTRICTIONS**



1 Unit shall not, however, be Transferred to: (i) any person, entity, or entities other than a  
2 Qualified Owner, and (ii) for consideration to be paid by such Qualified Owner that exceeds the  
3 Maximum Resale Price as such is determined pursuant to the provisions of this Article 8.

4  
5 8.3 Maximum Resale Price.  
6

7 A. The Maximum Resale Price of a Unit may not exceed the sum of: (i) the Purchase  
8 Price paid by the Owner for the Unit, plus: (ii) an increase of two percent (2%) of such Purchase  
9 Price per year (prorated at the rate of 1/12 for each whole month, but not compounded annually)  
10 from the date of the Owner's purchase of the Unit to the date of the Owner's sale of the Unit;  
11 (iii) capital improvements made to the Unit by the Owner (if and only if such improvements are  
12 allowed by the Housing Authority pursuant to its Guidelines adopted pursuant to Section 11.1 of  
13 this Restriction); and (iv) a maximum of one percent (1.00%) of the sum of items (i), (ii), and  
14 (iii) of this Section A to provide the selling Owner with assistance in paying any sales  
15 commissions to a licensed real estate broker, attorneys' fees, and closing costs incurred by the  
16 Owner in connection with the sale of the Unit. Provided, however, that until such time as an  
17 Owner has owned the Unit for three (3) full years, the maximum amount that shall be allowed to  
18 provide the Owner with assistance in paying any sales commissions to a licensed real estate  
19 broker, attorneys' fees, and closing costs incurred by the Owner in connection with the sale of  
20 the Unit shall be a maximum of one-half percent (1/2 %) of the sum of items (i), (ii), and (iii) of  
21 this Section A.

22 B. Pursuant to the Guidelines, each Owner shall be responsible for ensuring that at  
23 the Transfer of his or her Unit, the same is clean, the appliances are in working order, and that  
24 there are no health or safety violations regarding such Unit. Prior to the sale of the Unit the  
25 Housing Authority is authorized to take necessary actions and incur necessary expenses for  
26 bringing the relevant Unit into saleable condition. Such actions and expenses include, but are not  
27 limited to, cleaning the Unit and making necessary repairs to or replacements of appliances  
28 and/or Unit fixtures, such as windows, doors, cabinets, countertops, carpets, flooring and lighting  
29 fixtures, and/or correcting any health or safety violations on such Unit. Expenses incurred by the  
30 Housing Authority to bring a Unit into a saleable condition shall be itemized and documented by  
31 the Housing Authority and deducted from Owner's proceeds at closing of the Transfer of such  
32 Unit.

33 C. No Owner shall permit any prospective buyer to assume any or all of the Owner's  
34 customary closing costs.

35 D. Nothing in this Restriction represents or guarantees that a Unit will be re-sold at  
36 an amount equal to the Maximum Resale Price. Depending upon conditions affecting the real  
37 estate market, the Unit may be re-sold for less than the Maximum Resale Price.

38 8.4 Non-Qualified Transferees. In the event that title to a Unit vests in a Non-  
39 Qualified Transferee by descent, by foreclosure and/or redemption by any lien or mortgage  
40 holder (except any holder of a HUD-insured First Mortgage), or by operation of law or any other  
41 event, the Housing Authority may elect to notify the Non-Qualified Transferee that it must sell  
42 the Unit in accordance with Section 8.5. The Non-Qualified Transferee(s) shall not: (i) occupy a  
43 Unit; (ii) rent all or any part of a Unit, except in strict compliance with this Restriction; (iii)

1 engage in any business activity on or in a Unit; (iv) sell or otherwise Transfer a Unit except in  
2 accordance with this Restriction; or (v) sell or otherwise Transfer a Unit for use in trade or  
3 business.

4  
5 8.5 Sales to Preserve Unit as Affordable Housing.  
6

7 A. In the event a Unit is occupied, used, transferred, leased, or rented in violation of  
8 this Restriction, or whenever the provisions of this Section 8.5 are expressly made applicable by  
9 any section or provision of this Restriction, the Housing Authority may, in its sole and absolute  
10 discretion, notify an Owner that the Owner must immediately list the Unit for sale. The highest  
11 offer by a Qualified Owner for not less than ninety-five percent (95%) and not more than one  
12 hundred (100%) of the Maximum Sale Price shall be accepted by the Owner; provided, however,  
13 if the Unit is listed or offered for sale by the Owner for a period of at least ninety (90) days and  
14 all offers are below ninety-five percent (95%) of the Maximum Sale Price, the Unit shall be sold  
15 to a Qualified Owner that has made the highest offer for at least the appraised market value of  
16 the Unit, as determined by the Housing Authority in its reasonable good faith judgment, after  
17 such ninety (90) day period.

18 B. If required by the Housing Authority, the Owner shall: (i) consent to any sale,  
19 conveyance, or transfer of such Unit to a Qualified Owner; (ii) execute any and all documents  
20 necessary to do so; and (iii) otherwise reasonably cooperate with the Housing Authority to take  
21 actions needed to accomplish such sale, conveyance, or transfer of such Unit. For this purpose  
22 Owner constitutes and appoints the Housing Authority its true and lawful attorney-in-fact with  
23 full power of substitution to complete or undertake any and all actions required under this  
24 Section 8.5. It is further understood and agreed that this power of attorney, which shall be  
25 deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees  
26 that all power granted to the Housing Authority under this Restriction may be assigned by it to  
27 its successors or assigns.

28 C. In order to preserve the affordability of the Units for persons of low to moderate  
29 income, the Housing Authority, or its successor or assigns, as applicable, shall also have and is  
30 hereby granted the right and option to purchase a Unit, exercisable within a period of fifteen (15)  
31 calendar days after notice is sent by the Housing Authority to the Owner that requires the Owner  
32 to sell the Unit pursuant to this Section 8.5. The Housing Authority shall complete the purchase  
33 of such Unit within thirty (30) calendar days after exercising its option hereunder for a price  
34 equal to the lesser of the appraised market value of the Unit, as determined by the Housing  
35 Authority in its reasonable good faith judgment, or the Maximum Sale Price. The Housing  
36 Authority may assign its option to purchase hereunder to an eligible purchaser that, for the  
37 purpose of this Section 8.5C, shall be a Qualified Owner.

38 D. In all situations in which the provisions of this Section 8.5 apply, the Housing  
39 Authority may alternatively require the Owner to lease or rent a Unit to an Authorized Lessee in  
40 accordance with the requirements of this Restriction.

41 **ARTICLE 9**  
42 **FORECLOSURE**  
43

1           9.1    Release. Notwithstanding anything herein to the contrary, this Restriction shall  
2 be deemed released as to a Unit in the event of: (i) the issuance of a public trustee's confirmation  
3 deed, sheriff's confirmation deed, or similar conveyance of the Unit in connection with a  
4 foreclosure by the holder of a HUD-insured First Mortgage; or (ii) the acceptance of a deed in  
5 lieu of foreclosure by the holder of a HUD-insured First Mortgage. This Restriction shall also  
6 automatically terminate and be released as to a Unit upon the assignment to HUD of an HUD-  
7 insured mortgage encumbering a Unit. The Housing Authority, in its sole and absolute  
8 discretion, may elect to release a Unit from this Restriction in the event of: (1) the issuance of a  
9 public trustee's confirmation deed, sheriff's confirmation deed, or similar conveyance of the Unit  
10 in connection with a foreclosure of the Housing Authority's Lien, as defined in Section 9.2, or  
11 (2) the acceptance of a deed in lieu of foreclosure by the Housing Authority in connection with  
12 the Housing Authority's Lien. If the Housing Authority chooses to terminate this Restriction  
13 with respect to a particular Unit, the Housing Authority shall record a document referencing such  
14 termination in the real property records of the County. Any and all claims of the Housing  
15 Authority available hereunder against the Owner personally shall survive any release or  
16 termination of this Restriction.

17  
18           9.2    Lien.

19  
20           A.    The Housing Authority lien is hereby granted to secure payment of any amounts  
21 due and owing the Housing Authority pursuant to this Restriction including, but not limited to,  
22 all sales proceeds over and above the Maximum Sales Price. The Housing Authority's Lien on  
23 the respective Unit shall be superior to all other liens and encumbrances, except the following:

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

29  
30           B.    Recording of this Restriction constitutes record notice and perfection of the  
31 Housing Authority's Lien. No further recordation of any claim of lien is required. However, the  
32 Housing Authority may elect to prepare and record in the office of the County Clerk and  
33 Recorder of the County, a written notice of lien. By virtue of the Housing Authority's Lien, the  
34 Housing Authority shall have all of the rights that a mortgage holder may have against a Unit,  
35 including, but not limited to, the right to judicially foreclose upon a Unit. The Housing Authority  
36 shall be entitled to file such notices and other information necessary to preserve its rights, as a  
37 lienor, and to cure and redeem in foreclosure of a Unit, as provided by Section 38-38-101, et  
38 seq., C.R.S. In addition, unless otherwise instructed by the Housing Authority in writing, the  
39 Owner shall sign, acknowledge, and cooperate in the Housing Authority's recording in the  
40 County Clerk and Recorder's Office immediately subsequent to the recording of the First  
41 Mortgage, a notice of the Housing Authority's Lien, substantially in the form attached hereto as  
42 **Exhibit B**, in order to assure that the Housing Authority receives notice in the event of the  
43 foreclosure of the First Mortgage pursuant to this Article. The notice shall not alter the priority  
44 date of the Housing Authority's Lien as established herein.

1 C. The sale or other Transfer of a Unit shall not affect the Housing Authority's Lien.  
2 No sale or deed in lieu of foreclosure shall relieve the Owner from continuing personal liability  
3 for payment of his or her obligations hereunder. The Housing Authority's Lien does not prohibit  
4 actions or suits to recover sums due pursuant to this Restriction, or to enforce the terms of this  
5 Restriction, or to prohibit the Housing Authority from taking a deed in lieu of foreclosure.

6 D. Upon request, the Housing Authority shall agree to subordinate the Housing  
7 Authority's Lien to a bona fide mortgage or deed of trust provided that the total principal  
8 indebtedness secured by those mortgages or deed of trust with priority over the Housing  
9 Authority's Lien shall not exceed one hundred percent (100%) of the current allowed Maximum  
10 Resale Price under this Restriction as of the date of subordination. To the extent that **Exhibit B** is  
11 inconsistent with this provision, the provisions of this Section 9.2D shall control.

12 9.3 The Housing Authority's Option to Redeem.  
13

14 A. Notice of Default to the Housing Authority. Within ten (10) days after Owner's  
15 receipt of any notice of default from a Mortgagee or the homeowner's association governing the  
16 Owner's Unit, the Owner shall give written notice of such default to the Housing Authority.

17 B. Foreclosure/The Housing Authority's Option to Redeem. In the event of a  
18 foreclosure of a First Mortgage or the assessment lien of the homeowner's association governing  
19 the Units, the Housing Authority shall be entitled to receive notice of the foreclosure proceedings  
20 as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of a  
21 Unit that are junior to the First Mortgage (as provided in Section 38-38-101, et seq., C.R.S., or  
22 any succeeding statute). The Housing Authority shall have a right of redemption, and such other  
23 rights as a lienor in foreclosure, as its interest appears, in accordance with Colorado law  
24 governing foreclosure. The Housing Authority's lien is created pursuant to Section 9.2.

25 C. Upon Exercising Option. In the event that the Housing Authority obtains title to a  
26 Unit pursuant to this ARTICLE 9, the Housing Authority or its designee may sell such Unit to a  
27 Qualified Owner, or rent such Unit to an Authorized Lessee until such time that such Unit can be  
28 sold to a Qualified Owner. In the Housing Authority's sole and absolute discretion, the Housing  
29 Authority's subsequent sale of such Unit in these circumstances shall not be subject to the  
30 Maximum Sale Price restrictions set forth in ARTICLE 8.

31 9.4 Perpetuities Savings Clause. If any of the terms, covenants, conditions,  
32 restrictions, uses, limitations, obligations, or options created by this Restriction shall be unlawful  
33 or void for violation of: (i) the rule against perpetuities or some analogous statutory provision;  
34 (ii) the rule restricting restraints on alienation; or (iii) any other statutory or common law rules  
35 imposing like or similar time limits, then such provision shall continue only for the shorter of:  
36 (x) the term of this Restriction, or (y) the period of the lives of the current duly elected and  
37 seated members of the Town Council of the Town of Breckenridge, Colorado, their now living  
38 descendants, if any, and the survivor of them, plus twenty-one (21) years.  
39

40 **ARTICLE 10**  
41 **ENFORCEMENT**  
42

1           10.1 Enforcement of This Restriction. Each Owner hereby grants and assigns to the  
2 Housing Authority the right to review and enforce compliance with this Restriction. Compliance  
3 may be enforced by the Housing Authority by any lawful means, including without limitation,  
4 seeking any equitable relief (including, without limitation, specific performance and other  
5 equitable relief as set forth in Section 10.2, below), as well as a suit for damages; provided,  
6 however, in the event a Unit is financed by a HUD-insured First Mortgage and is sold in  
7 violation of Section 8.3, such enforcement shall not include:

- 8
- 9           1. acceleration of a mortgage;
- 10
- 11           2. voiding a conveyance by an Owner;
- 12
- 13           3. terminating an Owner's interest in a Unit; or
- 14
- 15           4. subjecting an Owner to contractual liability.
- 16

17 Notwithstanding the foregoing, in no event shall the Housing Authority have any equitable  
18 remedies (including, but not limited to, the right to sue for specific performance or seek other  
19 equitable relief as set forth in Section 10.2) or the right to sue for damages if the Owner of a Unit  
20 that was financed with a HUD-insured First Mortgage breaches or violates the terms, covenants  
21 and other provisions of Section 8.3 and if to do so would violate any existing or future  
22 requirement of HUD, it being understood, however, that in such event, the Housing Authority  
23 shall retain all other rights and remedies hereunder for enforcement of any other terms and  
24 provisions of this Restriction, including, without limitation: (i) the right to sue for damages to  
25 reimburse the Housing Authority, or its agents, for its enforcement costs and to require an Owner  
26 to repay with reasonable interest (not to exceed ten percent (10%) per annum) any financial  
27 assistance received in connection with the purchase of a Unit; (ii) the right to prohibit an Owner  
28 from retaining sales or lease/rental proceeds collected or received in violation of this Restriction;  
29 and (iii) the option to purchase granted to the Housing Authority in Section 8.5C. Venue for a  
30 suit enforcing compliance shall be proper in the County and service may be made or notice given  
31 by posting such service or notice in a conspicuous place on the applicable Unit. As part of any  
32 enforcement action on the part of the Housing Authority, the applicable Owner shall pay all court  
33 costs and reasonable legal fees incurred by the Housing Authority, or its agents, in connection  
34 with these claims, actions, liabilities, or judgments, including an amount to pay for the time, if  
35 any, of the Housing Authority's, or its agent's, attorney spent on such claims at the rates  
36 generally charged for similar services by private practitioners within the County.

37

38           10.2 Injunctive and other Equitable Relief. Each Owner agrees that in the event of his  
39 or her default under or non-compliance with the terms of this Restriction, the Housing Authority  
40 shall have the right to seek such equitable relief as it may deem necessary or proper, including,  
41 without limitation, the right to: (a) seek specific performance of this Restriction; (b) obtain a  
42 judgment from any court of competent jurisdiction granting a temporary restraining order,  
43 preliminary injunction and/or permanent injunction; and (c) set aside or rescind any sale of a  
44 Unit made in violation of this Restriction. Any equitable relief provided for in this Section 10.2  
45 may be sought singly or in combination with such legal remedies as the Housing Authority may

1 be entitled to, either pursuant to this Restriction, under the laws of the State of Colorado or  
2 otherwise.

3  
4 **ARTICLE 11**  
5 **PERIODIC REVIEW AND AMENDMENT BY HOUSING AUTHORITY**  
6

7 11.1 Housing Authority's Right to Period Review and Amend Certain Provisions of  
8 this Restriction. In recognition of the changing nature of the housing market in the County, and  
9 the Housing Authority's desire to keep this Restriction current for the benefit of all interested  
10 parties, the following provisions of this Restriction are subject to periodic review by the Housing  
11 Authority, and may be amended from time to time in the Guidelines in the manner provided in  
12 this Section 11.1 without invalidating or affecting the enforceability of this Restriction:  
13

- 14 A. ARTICLE 5;  
15 B. ARTICLE 7; and  
16 C. ARTICLE 8.

17 Amendments made to this Restriction by the Housing Authority pursuant to this Section 11.1  
18 shall be effective upon the effective date of the amendment to the Guidelines. No amendment  
19 made by the Housing Authority pursuant to this Section 11.1 shall become effective unless it has  
20 been reviewed by the Housing Authority at a regular or special meeting notice of which meeting  
21 has been given to the public as required by Section 24-6-402, C.R.S., which is part of the  
22 Colorado Open Meeting Act, or any successor statute.  
23

24 **ARTICLE 12**  
25 **GENERAL PROVISIONS**  
26

27 12.1 Equal Housing Opportunity. Pursuant to the Fair Housing Act and the Housing  
28 Authority's public policy, the Housing Authority shall not discriminate on the basis of race,  
29 creed, color, sex, national origin, familial status, disability or sexual orientation in the lease, sale,  
30 use or occupancy of a Unit.  
31

32 12.2 Waiver of Exemptions. Every Owner, by taking title to a Unit, shall be deemed to  
33 have subordinated to this Restriction any and all right of homestead and any other exemption in,  
34 or with respect to, such Property under state or federal law presently existing or hereafter  
35 enacted.  
36

37 12.3 Severability. Invalidation of any one of the covenants or restrictions contained  
38 herein by judgment or Court order shall in no way affect any other provisions, it being the intent  
39 of the Housing Authority that such invalidated provision be severable.  
40

41 12.4 Term. Subject to Section 9.4, and the other termination or release provisions  
42 contained herein, the restrictions contained herein shall run with the land and bind the land in  
43 perpetuity.  
44



1           12.5 Amendment. This Restriction may be amended as follows:

2  
3           A.     In the Guidelines as provided in Section 11.1;

4           B.     By an instrument recorded in the records of the County executed by the Housing  
5 Authority and the then-Owner of a Unit; and

6           C.     Unilaterally by the Housing Authority without the approval or consent of any  
7 Owner, Mortgagee, or any other person or entity for the purpose of either: (a) making non-  
8 material changes (such as for correction of technical, typographical, or clerical errors), or for  
9 clarification of a statement; or (b) without regard to (a), if such amendment lessens the  
10 ownership, use, or resale and lease restrictions placed upon the Owners as provided herein. The  
11 Housing Authority may unilaterally execute and record such amendments at any time.

12 If any one or more amendment made by the Housing Authority pursuant to this Section 12.5  
13 shall be finally declared by a court of competent jurisdiction to be invalid, illegal, or  
14 unenforceable in any respect, then: (a) such provision shall be stricken from this Restriction; (b)  
15 this Restriction shall continue in full force and effect as if the stricken portion of this Restriction  
16 had not been executed; and (c) the validity, legality, and enforceability of the remaining  
17 provisions of this Restriction shall not in any way be affected or impaired thereby.

18           12.6 Housing Authority Right to Delegate. In its sole and absolute discretion the  
19 Housing Authority may delegate any of its rights and authority under this Restriction to another  
20 person. The Housing Authority may delegate some but not all of its rights and authority to a  
21 delegatee. Upon such delegation, the references in this Restriction to the Housing Authority shall  
22 also apply to the Housing Authority's delegatee. The Housing Authority shall also have the right  
23 to terminate any such delegation of authority in its sole and absolute discretion.  
24

25           12.7 No Third Party Beneficiaries. This Restriction is made and entered into for the  
26 sole protection and benefit of the Housing Authority and the Owner. Except as otherwise  
27 specifically provided for herein, no other person, persons, entity, or entities, including without  
28 limitation, prospective buyers or Authorized Lessees of a Unit, shall have any right of action  
29 with respect to this Restriction, or right to claim any right or benefit pursuant to this Restriction,  
30 nor shall any such persons or entities be deemed a third party beneficiary of this Restriction.  
31

32           12.8 Non-Liability. The Housing Authority and its members, officers, employees, and  
33 agents shall not be liable to any Owner or third party by virtue of the exercise of their rights or  
34 the performance of their obligations under this Restriction. The parties understand and agree that  
35 they are relying on, and do not waive or intend to waive by any provision of this Restriction, the  
36 monetary limitations or any other rights, immunities or protections afforded by the  
37 Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as they may be amended, or  
38 any other limitation, right, immunity, or protection otherwise available to the parties.  
39

40           12.9 Exhibits. All exhibits attached to this Restriction are incorporated herein and by  
41 this reference made part of this Restriction.  
42





**EXHIBIT A**

**Property**

[Legal Description To Be Inserted]

**EXHIBIT B**

**NOTICE OF LIEN AND MEMORANDUM OF ACCEPTANCE  
OF  
RESIDENTIAL HOUSING RESTRICTION AND NOTICE OF LIEN  
FOR THE BLUE 52 TOWNHOMES  
TOWN OF BRECKENRIDGE, 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 Town of Breckenridge, County of Summit, Colorado (the "Unit"); and

WHEREAS, the Seller of the Unit 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 Restriction and Notice of Lien for the Blue 52 Townhomes, Summit County, Colorado," recorded on \_\_\_\_\_, 2017, under Reception No. \_\_\_\_\_, in the real property records of the County of Summit, Colorado (the "Restriction").

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

1. Acknowledges that Buyer has carefully read the entire Restriction; has had the opportunity to consult with legal and financial counsel concerning the Restriction prior to signing it; and fully understands the terms, conditions, provisions, and restrictions contained in the Restriction.
2. Agrees to be bound by and to comply with the terms, conditions, and requirements of the Restriction.
3. Acknowledges that the Restriction creates a lien on the Unit in favor of the Town of Breckenridge Housing Authority which may be foreclosed upon the occurrence of certain events as more particularly described in the Restriction.
4. States that the Notice to Buyer should be sent to:
  
5. Directs that this memorandum be placed of record in the real estate records of the County of Summit, Colorado, and a copy provided to the Town of Breckenridge Housing Authority.

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

BUYER(S):

By: \_\_\_\_\_  
Printed Name:  
\_\_\_\_\_  
Printed Name:

STATE OF )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

TOWN OF BRECKENRIDGE HOUSING  
AUTHORITY

By: \_\_\_\_\_  
Eric S. Mamula, Chair

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Eric S. Mamula, as Chair, and Rick G. Holman, as Secretary, of the Town of Breckenridge Housing Authority.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

EXHIBIT C

List of 110% AMI Units

TO BE INSERTED BY AMENDMENT TO THIS RESTRICTION AFTER ALL UNITS IN  
THE PROJECT HAVE BEEN SOLD



EXHIBIT D

List of 120% AMI Units

TO BE INSERTED BY AMENDMENT TO THIS RESTRICTION AFTER ALL UNITS IN  
THE PROJECT HAVE BEEN SOLD

EXHIBIT E

List of 130% AMI Units

TO BE INSERTED BY AMENDMENT TO THIS RESTRICTION AFTER ALL UNITS IN  
THE PROJECT HAVE BEEN SOLD

EXHIBIT F

List of Units Without An Income Cap

TO BE INSERTED BY AMENDMENT TO THIS RESTRICTION AFTER ALL UNITS IN  
THE PROJECT HAVE BEEN SOLD