

PHASE II WELLINGTON NEIGHBORHOOD
EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

THIS PHASE II WELLINGTON NEIGHBORHOOD EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT ("Phase II Covenant") is made and entered into at Breckenridge, Colorado this 20th day of September, 2006 by and between UNION MILL, INC., a Colorado corporation ("Developer") and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town").

Recitals

A. Developer is owner of record of the real property situate in the Town of Breckenridge, County of Summit and State of Colorado and described in **Exhibit A** attached hereto and incorporated herein by this reference ("Phase II Property").

B. Developer has heretofore requested Town to amend the Annexation Agreement applicable to the Property and to issue a development permit for the development of the Phase II Property which development, therefore, is subject to the applicable laws, ordinances and regulations of the Town.

C. Town has previously agreed to the Amendment to Annexation Agreement and to issue to Developer Development Permit No. 2005042 ("Development Permit").

D. It is a condition of the Amendment to Annexation Agreement and the Development Permit that the Developer create a valid and enforceable covenant running with the land which assures that certain of the units to be developed on the Phase II Property will be used solely by Qualified Occupants, subject to limited exceptions provided for herein.

E. Under this Phase II Covenant Developer intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use of the units described and provided for herein shall be and are covenants running with the land and are intended to be and shall be binding upon the Developer and all subsequent owners of such units for the stated term of this Phase II Covenant, unless and until this Phase II Covenant is released and terminated by the Town in the manner hereafter described.

F. The parties acknowledge that by entering into this Phase II Covenant the Town has acted both in its governmental capacity and in its proprietary capacity for the management of the Project in which it has an interest, and for the private advantage of its residents and for itself as a legal entity.

Agreement

NOW, THEREFORE, in satisfaction of the conditions in the Annexation Agreement and Development Permit and in consideration of the issuance of the Development Permit, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Developer, the Developer and the Town agree as follows:

1. Definitions. As used in this Phase II Covenant:

A. "AMI" means the annual median income of a family of four (4) for Summit County, Colorado as determined by the United States Department of Housing and Urban Development from time to time, or such successor index or figure as said Department may establish.

B. "Affordability Restrictions" means, collectively: (i) the Income Limits and Pre-Qualification Requirements of Section 2 of this Phase II Covenant; (ii) the Ownership Restrictions of Section 3 of this Phase II Covenant; (iii) the Occupancy Restrictions of Section 4 of this Phase II Covenant, and (iv) the Resale Restrictions of Section 5 of this Phase II Covenant.

C. "Director" means the Director of the Department of Community Development of the Town of Breckenridge, Colorado, or such person's designee.

D. "Income Limits and Pre-Qualification Requirements" means those limitations and requirements on the ability to purchase a Residential Unit as set forth in Section 2 hereof.

E. "Maximum Allowed Sale Price" means the maximum amount of money for which a Residential Unit may be sold by a Unit Owner as set forth in Subsection 5.A of this Phase II Covenant.

F. "Occupancy Restrictions" means those restrictions on the occupancy of the Residential Units as set forth in Section 4 hereof.

G. "Ownership Restrictions" means those restrictions on the ownership of the Residential Units as set forth in Section 3 hereof.

H. "Permitted Improvements" means the addition of a garage or storage space to a Residential Unit, the improvement of unfinished space in a Residential Unit allowed to be finished and occupied under the Town's building and technical codes in effect at the time of such improvement, or such energy efficiency improvements as the Town may approve, but does not include any other improvements, upgrades or work on or expenses incurred in connection with the Residential Unit, including, but not limited to, upgrades in appliances or Unit Owner finishes. Permitted Improvements may be made to a Residential Unit by the Developer prior to

the initial sale of such Residential Unit; provided, that prior to closing of the sale of the Residential Unit the Developer provides to the Town and the initial purchaser of the Residential Unit written confirmation that it has made Permitted Improvements to the Residential Unit, and a statement separately showing the amount of the Permitted Improvements and the amount of the Purchase Price of the Residential Unit. Such statement shall be signed by both the Developer and the initial purchaser of the Residential Unit.

I. "Permitted Improvement Cap" means an amount equal to ten percent (10%) of the original Purchase Price for a Residential Unit paid to the Developer by the first Unit Owner.

J. "Project" means the affordable housing development to be constructed by Developer on the Phase II Property. The Project shall consist of up to one hundred sixty (160) Residential Units, all of which shall initially be subject to this Phase II Covenant. One hundred twenty-eight (128) of the Residential Units shall forever remain subject to the this Phase II Covenant. Up to thirty-two (32) of the Residential Units may be released from this Phase II Covenant as provided for in Section 6 hereof.

K. "Phase II Property" means the real property located in the County of Summit and State of Colorado, as further described on **Exhibit A** attached hereto, against which this Phase II Covenant shall be recorded.

L. "Purchase Price" means the actual consideration paid by a Unit Owner to purchase a Residential Unit. "Purchase Price" does not include any real estate sales commission paid in connection with the purchase or sale of the Residential Unit. With respect to the initial sale of a Residential Unit by the Developer, "Purchase Price" does not include the cost of any Permitted Improvements made to the Residential Unit by the Developer. Subsequent to the initial sale of a Residential Unit by the Developer, the term "Purchase Price" shall include the cost of any Permitted Improvements made to the Residential Unit by any Unit Owner.

M. "Qualified Occupant" means a person eighteen (18) years of age or older who, during the entire period of his or her occupancy of a Residential Unit, earns his or her living by working in Summit County, Colorado an average of at least thirty (30) hours per week, together with such person's spouse and minor children, if any.

N. "Resale Restrictions" means those restrictions on the resale of the Residential Units by Unit Owners as set forth in Subsection 5.A.

O. "Residential Unit" means a physical portion of the Project to be constructed for purposes of residential use only and to be created as a separate transferable real property interest by the filing of subdivision plat(s), condominium map(s) or similar plat(s) or map(s) for some or all of the Phase II Property, and does not mean or include: (i) any physical portion of the Project

constructed for purposes of commercial use; or (ii) any residential unit excluded from this Phase II Covenant pursuant to Section 6.

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

Q. "Town Council" means the Town Council of the Town of Breckenridge, Colorado.

R. "Unit Owner" means a natural person or persons at any time taking and holding title to a Residential Unit, but does not include any entity, whether a corporation, partnership, limited liability company or similar entity which is not a natural person or an individual. Such natural person or persons shall be deemed a "Unit Owner" hereunder only during the period of his, her or their ownership interest in the Residential Unit. "Unit Owner" does not include a person or entity having an interest in a Residential Unit solely as security for the performance of an obligation.

2. Income Limits; Pre-Qualification Requirements.

A. It is the intent of this Phase II Covenant to impose income limits only upon those sixty three (63) Residential Units that the Developer is required by the Town to sell for either a Purchase Price that is affordable to under 80% AMI, or a Purchase Price that is affordable to under 100% AMI. Accordingly, at the time of purchase of a Residential Unit for a Purchase Price initially designated and identified by Developer to be affordable to under 80% AMI, a Unit Owner's gross annual household income, excluding the income of minors, cannot exceed 80% of the AMI adjusted for the appropriate household size. Similarly, at the time of purchase of a Residential Unit for a Purchase Price initially designated and identified by Developer to be affordable to under 100% AMI, a Unit Owner's gross annual household income, excluding the income of minors, cannot exceed 100% of AMI as defined in this Phase II Covenant. Prior to closing on the purchase of a Residential Unit, all prospective purchasers of Residential Units initially designated by the Town and Developer to be affordable to under either 80% AMI or 100% AMI shall be required to submit to the Town or its designee for review and approval sufficient competent evidence that the prospective purchaser's income does not exceed the maximum allowed income for the purchase of the particular Residential Unit the purchaser desires to purchase according to applicable Town guidelines as adopted and as amended from time to time. The income test shall apply only at the time of purchase of the Residential Unit by a Unit Owner and shall not limit or restrict the Unit Owner's income for the duration of ownership of the Residential Unit.

B. Qualified Occupant Verification. Prior to purchasing any Residential Unit (not just a Residential Units that the Developer is required to sell for either a Purchase Price that is affordable to under 80% AMI or a Purchase Price that is affordable to under 100% AMI), a

prospective purchaser shall submit to the Town or its designee for review and approval sufficient competent evidence to demonstrate that the prospective purchaser qualifies as a Qualified Occupant as defined in Subsection 1.M.

3. Ownership Restrictions. Title to each Residential Unit shall be taken and held only in the name of a Unit Owner, except for ownership by Developer and except in the event title is transferred by means of a public trustee's or sheriff's deed or by a deed in lieu of foreclosure of a deed of trust or mortgage, in which case such an entity shall transfer title subject to the terms and conditions of this Phase II Covenant, including specifically, but not limited to, the Affordability Restrictions.

4. Occupancy Restrictions.

A. Owner Occupancy Requirement. Subsequent to the initial sale of a Residential Unit by the Developer, and subject to the provisions of Subsection 4.C. hereof, each Residential Unit shall be occupied by the owner thereof as his or her primary place of residence.

B. General Occupancy Restriction. Except as expressly provided in Subsection 4.C. hereof, each Residential Unit shall be used and occupied only by Qualified Occupants and by no one else.

C. Exceptions. Notwithstanding the provisions of the preceding Subsection 4.B., it shall not be a violation of this Phase II Covenant if: (i) rooms within a Residential Unit are rented to Qualified Occupants sharing the Residential Unit with the Unit Owner; (ii) a Residential Unit is rented for use and occupancy to a Qualified Occupant for a maximum cumulative total of twelve (12) months during the time of ownership by a Unit Owner; (iii) a Residential Unit is owned or occupied by a person age fifty five (55) years or older who works at paid employment in Summit County, Colorado at least fifteen (15) hours per week on a year-round basis during the entire period of his or her ownership or occupancy of the Residential Unit, together with such person's spouse and minor children, if any; (iv) a Residential Unit is occupied by a person age sixty two (62) years or older who is no longer a Qualified Occupant because he or she no longer works the required number of hours as described in Subsection 1.M., if such person occupied the Residential Unit as a Qualified Occupant for a minimum of seven (7) consecutive years prior to ceasing to be a Qualified Occupant; (v) a Residential Unit is owned or occupied by a person otherwise authorized to own or occupy the Residential Unit pursuant to this Phase II Covenant who becomes disabled after commencing ownership or occupancy of the Residential Unit such that he or she cannot work the required number of hours each week required by this Phase II Covenant, provided, however, that such person shall be permitted to own or rent the Residential Unit for a maximum period of one (1) year following the commencement of such person's disability unless a longer period of ownership or occupancy is authorized by the Town pursuant to Subsection 4.D.; and (vi) guests visiting a Qualified Occupant and paying no rent or other consideration.

D. Relief In Extraordinary Circumstances. The Director may grant a variance, exception or waiver from the requirements of this Section 4 based upon the written request of the owner or prospective owner of a Residential Unit. Such variance, exception or waiver may be granted by the Director only upon a finding that: (i) the circumstances justifying the granting of the variance, exception or wavier are unique; (ii) a strict application of this Section 4 would result in an extraordinary hardship; and (iii) the variance, exception or waiver is consistent with the intent and purpose of this Phase II Covenant. No variance, exception or wavier shall be granted by the Director if its effect would be to nullify the intent and purpose of this Phase II Covenant. In granting a variance, exception or wavier of the provisions of this Section 4 the Director may impose specific conditions of approval, and shall fix the duration of the term of such variance, exception or waiver. Any owner or prospective owner of a Residential Unit who is dissatisfied with the decision of the Director with respect to a request for a variance, exception or waiver from the requirements of this Section 4 may appeal the Director's decision to the Town Council by submitting a written letter of appeal to the Town Clerk within ten (10) days of the date of the Director's decision. The Town Council shall make a final determination of such appeal within forty five (45) days after the Town Clerk's receipt of the letter of appeal.

5. Resale Restrictions.

A. Resale Price Limit. The Maximum Allowed Sale Price for which a Residential Unit may be sold by a Unit Owner shall be determined as follows:

(i) The selling Unit Owner's initial Purchase Price paid for the Residential Unit shall be the selling Unit Owner's "Base Price Limit." Real estate sales commissions, if any, paid by the Developer or any prior Unit Owners shall not be included in calculating the selling Unit Owner's Base Price Limit.

(ii) The Base Price Limit shall be increased to reflect a cost of living adjustment for the period of time the selling Unit Owner owned the Residential Unit. The Base Price Limit as increased by the cost of living adjustment described below in this Section 5.A.ii shall be the selling Unit Owner's "Adjusted Price Limit." The Adjusted Price Limit shall be the greater of:

The Base Price Limit	X	.0025	X	the number of whole months from the date of a Unit Owner's purchase to the date of a Unit Owner's sale of the Residential Unit	+	The Base Price Limit	=	ADJUSTED PRICE LIMIT
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OR

The Base Price Limit	X	<p>100% of AMI most recently released prior to the selling Unit Owner's sale</p> <p style="text-align: center;">÷</p> <p>100% of AMI in effect at the time of the selling Unit Owner's purchase of the Residential Unit</p>	=	ADJUSTED PRICE LIMIT
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(iii) The following amounts shall be added to the Adjusted Price Limit in order to finally determine the Maximum Allowed Sale Price:

(a) The cost of Permitted Improvements to the Residential Unit made by the selling Unit Owner during the selling Unit Owner's period of ownership of the Residential Unit; provided, however, that the maximum amount of Permitted Improvements that shall be allowed for a Residential Unit, regardless of when made, shall be subject to the Permitted Improvement Cap. Permitted Improvements made by previous Unit Owners and allowed by the Town shall be counted against the Permitted Improvements Cap in determining the amount of Permitted Improvements to be allowed for a selling Unit Owner. In calculating the amount of Permitted Improvements to be allowed under this subsection, only the selling Unit Owner's actual out-of-pocket costs and expenses for labor and materials shall be eligible for inclusion, provided, however, that if the selling Unit Owner purchases only materials and does not pay any third party for labor, then such amount to be allowed for Permitted Improvements shall include an amount attributable to the selling Unit Owner's personal labor or "sweat equity", which shall be determined by: (i) multiplying the amount paid for materials times two (2) as compensation for the selling Unit Owner's personal labor in making the Permitted Improvements; and (ii) adding to such sum the amount paid for materials. To be allowed to recover for Permitted Improvements, a selling Unit Owner must submit to the Town prior to selling the Residential Unit a copy of a development permit or other permit and a certificate of occupancy or compliance issued by the Town for the Permitted Improvements that demonstrates that the improvement was made/completed by the Unit Owner during the Unit Owner's period of

¹ The Base Price Limit multiplied by one quarter of one percent (0.25%) multiplied by the number of whole months from the date of a Unit Owner's purchase to the date of a Unit Owner's sale of the Residential Unit plus the Base Price Limit.

² The Base Price Limit multiplied by a fraction the numerator of which is the 100% of AMI most recently released prior to a selling Unit Owner's sale and the denominator of which is the 100% of AMI in effect at the time of the selling Unit Owner's purchase of the Restricted Unit.

ownership of the Residential Unit, together with copies of invoices, receipts or other similar evidence of the costs and expenses for labor and materials, or materials alone. The Town shall provide each selling Unit Owner who makes a proper submission for allowance of Permitted Improvements with a receipt or certificate verifying the amount of allowed Permitted Improvements and, after such receipt or certificate is issued by the Town, no subsequent Unit Owner may challenge the allowed amount of Permitted Improvements as described in the receipt or certificate issued by the Town. Notwithstanding anything contained in this Phase II Covenant to the contrary, the amount allowed for a selling Unit Owner's Permitted Improvements shall not be subject to the cost of living adjustment provided in Subsection 5.A.ii of this Phase II Covenant.

(b) The following costs actually incurred and paid by the selling Unit Owner in connection with the sale of the Residential Unit:

(I) Real estate sales commission paid by the selling Unit Owner in connection with the sale of the Residential Unit, not to exceed three percent (3%) of the selling Unit Owner's sales price.

(II) The premium for owner's title insurance policy paid by the selling Unit Owner in connection with the sale of the Residential Unit.

(III) The cost of a tax certificate paid by the selling Unit Owner in connection with the sale of the Residential Unit.

(IV) Other normal and customary closing costs incurred by sellers for similar sales in Summit County, Colorado, which costs shall not include appraisal or inspection costs.

NO RESIDENTIAL UNIT SHALL BE SOLD FOR AN AMOUNT WHICH IS IN EXCESS OF THE MAXIMUM ALLOWED SALE PRICE AS SET FORTH IN THIS SUBSECTION 5.A. ANY AMOUNT RECEIVED BY A SELLING UNIT OWNER IN EXCESS OF THE MAXIMUM ALLOWED SALE PRICE SHALL BE PAID TO THE TOWN BY THE SELLING UNIT OWNER AT THE TIME OF THE SALE OF THE RESIDENTIAL UNIT. THE DEFAULT NOTICE PROVISIONS OF SECTION 8 OF THIS PHASE II COVENANT SHALL NOT APPLY TO THE FAILURE OF A SELLING UNIT OWNER TO PAY SUCH SUM TO THE TOWN.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE TOWN, THE DEVELOPER, OR ANY OTHER PARTY, THAT THE UNIT OWNER WILL BE ABLE TO OBTAIN THE MAXIMUM ALLOWED SALE PRICE, AND THE TOWN AND DEVELOPER HEREBY DISCLAIM ANY SUCH REPRESENTATION OR WARRANTY THAT MIGHT OTHERWISE BE ALLOWED OR ATTRIBUTED.

B. Appreciating Limiting Promissory Note and Deed of Trust. At the time of each sale of a Residential Unit, beginning with the first such sale by Developer to a Unit Owner, the purchaser(s) of each Residential Unit shall execute an Appreciating Limiting Promissory Note in the form attached hereto as **Exhibit B**, or such other form as may be adopted from time to time by the Town which is consistent with the intent of this Phase II Covenant ("Note"), together with a form of Deed of Trust to a public trustee encumbering the Residential Unit to secure strict compliance with the terms of the Note. The deed of trust shall contain a strict due on sale provision and shall be in form and substance acceptable to the Town Attorney of the Town ("Deed of Trust"). At the time of each closing of the transfer of title to a Residential Unit, a new Note shall be executed by the purchaser(s) and delivered to the Town and a new Deed of Trust shall be executed by the purchaser(s) and recorded in the Summit County, Colorado real estate records. At the time of closing of each transfer of title to a Residential Unit subsequent to the first transfer by Developer, the Town shall determine whether the transfer complies with the requirements of this Phase II Covenant. If the transfer complies with the requirements of this Phase II Covenant, the Town shall mark the selling Unit Owner's Note as paid and execute a request for release of deed of trust upon verification to the Town, by the title company or other independent agent responsible for closing on the transfer of title to a Residential Unit, that the amount paid for the purchase of the Residential Unit does not exceed the Maximum Allowed Sale Price or that, if the price exceeds the Maximum Allowed Sale Price, the amount of such excess will be paid to the Town. If title to a Residential Unit is transferred without obtaining the release of a Deed of Trust securing a Note in favor of the Town, the Town, among other rights available to it, shall have the right to foreclose said Deed of Trust.

6. Release of Up to Thirty-Two Residential Units. Developer shall be entitled to the release from this Phase II Covenant of up to thirty-two (32) Residential Units constructed or allowed to be constructed as a part of the Project on the basis of one (1) such Residential Unit to be released for each three (3) Residential Units completed and sold to Unit Owners for prices within the price ranges set forth in **Exhibit C** attached hereto. Such releases to be executed by the Town shall be for lots created by the filing of a subdivision or resubdivision plat for one or more of the tracts identified on **Exhibit A**, and lots allowed to have multiple Residential Units constructed thereon shall be released only if the number of Residential Units Developer is entitled to have released is equal to or greater than the number of Residential Units allowed to be constructed on a lot to be released from this Phase II Covenant. Developer may request such releases each time three (3) Residential Units have been completed and sold to Unit Owners for prices within the price ranges set forth in **Exhibit C** or may cumulate the right to such releases and request the release of a number of Residential Units determined by dividing the number of Residential Units completed and sold to Unit Owners for prices within the price ranges set forth in **Exhibit C** by three (3) and rounding down to a whole number. All of the Residential Units required to be sold for a Purchase Price that is affordable to under 80% AMI shall be sold prior to release of the 17th Residential Unit under this Section 6.

7. Records; Inspection; Monitoring.

A. For so long as the Developer owns any of the Phase II Property, the Developer's records with respect to the use and occupancy of the Phase II Property shall be subject to examination, inspection and copying by the Town or its authorized agent upon reasonable advance notice.

B. A Unit Owner's records with respect to the Unit Owner's use and occupancy of a Residential Unit shall be subject to examination, inspection and copying by the Town or its authorized agent upon reasonable advance notice.

C. For so long as the Developer owns any of the Phase II Property, the Developer shall submit any information, documents or certificates requested from time to time by the Town with respect to the occupancy and use of the Phase II Property which the Town reasonably deems necessary to substantiate the Developer's continuing compliance with the provisions of this Phase II Covenant. Such information shall be submitted to the Town within such reasonable time period as the Town may establish. Without limiting the generality of the foregoing, for so long as the Developer owns any of the Phase II Property, not later than December 31st of each year the Developer shall submit to the Town verification, under oath, of Developer's continuing compliance with the provisions of this Phase II Covenant.

D. A Unit Owner shall submit any information, documents or certificates requested from time to time by the Town with respect to the occupancy and use of the Unit Owner's Residential Unit which the Town reasonably deems necessary to substantiate the Unit Owner's continuing compliance with the provisions of this Phase II Covenant. Such information shall be submitted to the Town within such reasonable time period as the Town may establish.

8. Default; Notice. In the event of any failure of the Developer or a Unit Owner to comply with the provisions of this Phase II Covenant (other than the failure of a selling Unit Owner to pay to Town the amount required by Subsection 5.A of this Phase II Covenant), the Town may inform the Developer or the defaulting or non-complying Unit Owner by written notice of such failure and provide the Developer or the defaulting or non-complying Unit Owner a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of the Town within the period of time specified by the Town, which shall be at least thirty (30) days after the date any notice to the Developer or the defaulting or non-complying Unit Owner is mailed, or within such further time as the Town determines is necessary to correct the violation, but not to exceed any limitation set by applicable law, the Town may without further notice declare a default under this Phase II Covenant effective on the date of such declaration of default; and the Town may then proceed to enforce this Phase II Covenant as hereafter provided.

9. Equitable Relief. Developer and each Unit Owner agree that in the event of the Developer's or a Unit Owner's default under or non-compliance with the terms of this Phase II Covenant, the Town shall have the right of specific performance of this Phase II Covenant, and the right to obtain from any court of competent jurisdiction a temporary restraining order, preliminary injunction and permanent injunction to obtain such performance. Any equitable relief provided for in this Section may be sought singly or in combination with such legal remedies as the Town may be entitled to, either pursuant to the provisions of this Phase II Covenant or under the laws of the State of Colorado.

10. Liquidated Damages. Each Unit Owner acknowledges that the unavailability of adequate employee housing within the Town of Breckenridge requires the expenditure of additional Town funds to provide required governmental services and thereby results in an economic loss to the Town. The Town and each Unit Owner further recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Town in such circumstance. Accordingly, instead of requiring such proof, the Town and each Unit Owner agree that a Unit Owner who violates the Occupancy Restrictions shall pay to Town the sum of \$100 per day for each day in which Unit Owner's Residential Unit is not used in strict compliance with the Occupancy Restrictions. Such amount is agreed to be a reasonable estimate of the actual damages which the Town would suffer in the event of a violation of the Occupancy Restrictions. The provisions of this Section shall not apply to any violation of this Phase II Covenant other than a violation of the Occupancy Restrictions. The liquidated damages provided herein shall commence as of the date on which the Unit Owner's Residential Unit is first used in violation of the Occupancy Restrictions, and not on the date when the Town learns of such violation or on the date when the Town gives notice of default as provided in Section 8. Further, the total amount of liquidated damages payable to the Town under this Section shall in no event exceed the then-current value of the Residential Unit owned by the defaulting or noncomplying Unit Owner. The liquidated damages provided for in this Section may be collected by the Town personally from the defaulting or noncomplying Unit Owner, either singly or in combination with an action for equitable enforcement of this Phase II Covenant as provided in Section 9 of this Phase II Covenant.

11. Town Authority To Enforce. The restrictions, covenants and limitations created herein are for the benefit of the Town which is given the sole power to enforce this Phase II Covenant in the manner herein provided.

12. Waiver; Termination; Modification Of Covenant.

A. For so long as the Developer owns any of the Phase II Property, the restrictions, covenants and limitations of this Phase II Covenant may be waived, terminated or modified only with the written consent of both the Developer and the Town in order to: (i) provide clarification to any provisions hereof which may be unclear or subject to differing interpretations; (ii) correct

any errors identified herein; or (iii) amend the Affordability Restrictions in any way that makes this Phase II Covenant less restrictive on the Unit Owners.

B. Once Developer no longer owns any of the Phase II Property, the Town shall have the unilateral right to amend the restrictions, covenants and limitations of this Phase II Covenant in order to: (i) provide clarification to any provisions hereof which may be unclear or subject to differing interpretations; (ii) correct any errors identified herein; or (iii) amend the Affordability Restrictions in any way that makes this Phase II Covenant less restrictive on the Unit Owners.

C. The Town's and/or the Town and the Developer's determination (as applicable) that an amendment to this Phase II Covenant is authorized by this Section 12 shall be conclusive, and shall not be subject to judicial review.

D. No waiver, modification, or termination of this Phase II Covenant shall be effective until the proper instrument in writing shall be executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado.

E. The Town may also terminate this instrument by recording a release in recordable form without the signature of Developer. For convenience, such instrument may run to "the owner or owners and parties interested" in the Phase II Property. If the Town desires to terminate this instrument as to one or more of the Residential Units, but less than all of the Residential Units, the Town's instrument may run to "the owner or owners and parties interested" in the specific Residential Units to be released from this Phase II Covenant.

13. Statute of Limitations. Developer and each Unit Owner hereby waive the benefit of, and agree not to assert in any action brought by the Town to enforce the terms of this Phase II Covenant, any applicable statute of limitation which might otherwise operate to bar the ability of the Town to enforce this Phase II Covenant, including, but not limited to, the provisions of §38-41-119, C.R.S., or any successor statute. In the event that any statute of limitations may lawfully be asserted by Developer or any Unit Owner in connection with an action brought by the Town to enforce the terms of this Phase II Covenant, it is agreed between Developer, each Unit Owner and the Town that each and every day during which any violation of the terms of this Phase II Covenant occurs shall be deemed to be a separate breach of this Phase II Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

14. Developer's Covenant Of Title And Authority. Developer covenants, represents and warrants to the Town that Developer has good and marketable title to the Phase II Property and full and complete legal authority to execute and deliver this Phase II Covenant to the Town; subject only to the following liens or encumbrances: (i) deeds of trust dated March 24, 2006 and recorded May 4, 2006 under Reception Nos. 821445 and 821446 of the records of the Clerk and Recorder of Summit County, Colorado; and (ii) taxes for 2006 and subsequent years. The

consent of the beneficiary of the referenced deed of trust to this Phase II Covenant is attached hereto as **Exhibit D**.

15. No Conflicting Agreement. Developer covenants, represents and warrants to the Town that the execution and delivery of this Phase II Covenant to the Town will not violate any agreement now existing with respect to the Phase II Property. Developer shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Phase II Covenant, and in any event, it is agreed that the provisions of this Phase II Covenant are paramount and controlling as to the rights, obligations and limitations herein set forth and shall supersede any other provision in conflict herewith.

16. Entire Agreement. This Phase II Covenant constitutes the entire agreement and understanding between the parties relating to the subject matter of this Phase II Covenant, and supersedes any prior agreement or understanding relating thereto.

17. Severability. In case one or more of the provisions contained in this Phase II Covenant or any application hereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Phase II Covenant and the application thereof shall not in any way be affected or impaired thereby.

18. Attorney's Fees. If any action is brought in a court of law by any party to this Phase II Covenant concerning the enforcement, interpretation or construction of this Phase II Covenant, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

19. Notices. Except as otherwise provided, all notices provided for or required under this Phase II Covenant shall be in writing, signed by the party giving the same, and shall be deemed properly given when actually received or two (2) days after mailed, postage prepaid, certified, return receipt requested, addressed to the parties hereto at their addresses appearing on the signature page(s). Each party, by written notice to the other party, may specify any other address for the receipt of such instruments or communications. Notice to a Unit Owner shall be sent to the address to which tax notices for the Residential Unit are to be sent as reflected in the records of the office of the Treasurer of Summit County, Colorado.

20. Applicable Law. This Phase II Covenant shall be interpreted in all respects in accordance with the laws of the State of Colorado.

21. Recording. This Phase II Covenant shall be placed of record in the real property records of Summit County, Colorado.

22. Town of Breckenridge Affordable Housing Guidelines. This Phase II Covenant shall be interpreted in accordance with the Town of Breckenridge Affordable Housing Guidelines (“Guidelines”), as amended from time to time by the Town Council following a public hearing; provided, however, that to the extent the Guidelines are inconsistent with this Phase II Covenant, this Phase II Covenant shall control.

23. Binding Effect and Running with the Land. This Phase II Covenant shall be binding upon, and inure to the benefit of the parties, their respective heirs, successors, assigns, legal representatives and personal representatives, and all subsequent owners of the Phase II Property or any interest therein, and shall run with the land. Without limiting the generality of the preceding sentence, once a Residential Unit has been sold by the Developer, the provisions of this Phase II Covenant shall apply to each Unit Owner of such Residential Unit subsequent to the Developer. The Developer and each Unit Owner agree that this Phase II Covenant does not constitute an unreasonable restraint on alienation of the Phase II Property or any interests therein, and that any and all requirements of the laws of the State of Colorado to be satisfied in order for the provisions of this Phase II Covenant to constitute a restrictive covenant running with the land shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that the covenants, conditions and restrictions set forth herein run with the land. Each and every contract, deed or other instrument hereafter executed conveying the Phase II Property, any portion thereof, or any Residential Unit, shall expressly provide that such conveyance is subject to this Phase II Covenant; provided, however, that the covenants, conditions and restrictions contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Phase II Property and any Residential Unit, regardless of whether such contract, deed or other instrument hereafter executed conveying the Phase II Property, any portion thereof, or any Residential Unit, provides that such conveyance is subject to this Phase II Covenant.

24. Vesting and Term. Developer and Town agree that the Town’s rights and interests under this Phase II Covenant are vested immediately and that this Phase II Covenant, and any amendments hereto, shall be binding and in full force and effect in perpetuity, unless terminated as herein provided.

25. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Phase II Covenant.

26. Terminology. Wherever applicable, the pronouns in this Phase II Covenant designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Agreement, the singular shall include the plural, and the plural shall include the singular.

IN WITNESS WHEREOF the parties have executed this Phase II Covenant the date first written above.

UNION MILL, INC., a Colorado corporation

By: 
David G. O'Neil, President


Developer's Address:

777 Pearl Street, Suite 200
Boulder, CO 80302

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: 
Timothy J. Gagen, Town Manager

ATTEST:


Mary Jean Loufek,
Town Clerk


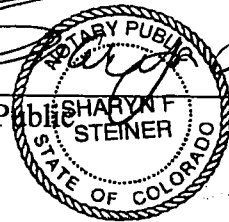
Town's Address:

P. O. Box 168
Breckenridge, CO 80424

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 20th day of September, 2006 by David G. O'Neil, as President of Union Mill, Inc., a Colorado corporation.

WITNESS my hand and official seal.
My commission expires: _____


Notary Public 
My Commission Expires
MAY 4, 2010

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 21st day of September, 2006 by Timothy J. Gagen, Town Manager, and Mary Jean Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.
My commission expires: 10/12/2007

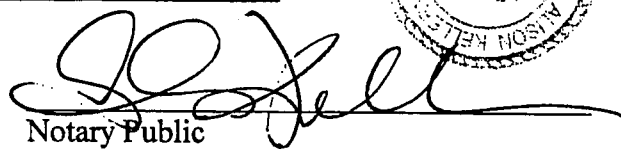
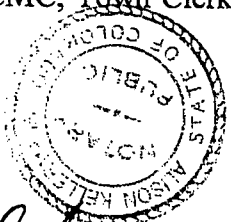

Notary Public 

EXHIBIT A
TO
EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

Description Of Property Subject To The Phase II Covenant

Lots 1, 2, 3 and 4, Block 6, The Wellington Neighborhood, according to the Preliminary Plat thereof filed with the Summit County, Colorado Clerk and Recorder on October 18, 1999 at Reception No. 608047;

and

Tract E-2, Block 5, The Wellington Neighborhood, according to A Subdivision Plat thereof filed with the Summit County, Colorado Clerk and Recorder on January 5, 2005 at Reception No. 779084.

EXHIBIT B
TO
EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

Appreciating Limiting Promissory Note

Appreciation Limiting Promissory Note (Wellington Phase 2-August, 2006)
(the "Note")

Date

FOR VALUE RECEIVED, _____ (the "Maker"), jointly and severally if more than one, promises to pay to the order of the TOWN OF BRECKENRIDGE, P.O. Box 168, Breckenridge, CO 80424 ("Town"), upon demand ("Due Date"), all sums that become due to Town from Maker after the date of this Note under the Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement, dated _____, 2006 and recorded _____, 2006 under Reception No. _____ of the records of the Clerk and Recorder of Summit County, Colorado.(the "Wellington Neighborhood Phase II Covenant").

This Note shall not bear interest until the Due Date. If this Note is not paid on or before the Due Date, it shall thereafter bear interest at the rate of eighteen percent (18%) per annum from the Due Date until fully paid.

The Maker and any surety, guarantor and endorser of this Note, jointly and severally, hereby waive notice of, and consent to any and all extensions of this Note or any part thereof without notice and each hereby waives demand, presentment for payment, notice of nonpayment and protest, and any and all notice of whatever kind or nature.

The Maker agrees to pay all costs of collection, including reasonable attorney's fees, incurred by Holder in the collection of this Note or any part thereof. If the Deed of Trust securing this Note is foreclosed, the undersigned also agrees to pay all costs and attorney's fees as provided therein.

No waiver by the Holder of any one or more of the terms and conditions herein contained shall be deemed a waiver of the other terms and conditions herein contained; nor shall any such waiver be considered for any reason as continuing or perpetual in nature.

This Note is secured by a deed of trust on the Residential Unit described as Lot _____, Block _____, Wellington Neighborhood, Phase II, according to the Plat thereof filed in the Summit County, Colorado real estate records on the _____ day of _____, 2006 at Reception No. _____.

Exhibit "B"

THE MAKER'S INITIAL PURCHASE PRICE FOR THE RESIDENTIAL UNIT AS DESCRIBED IN THE WELLINGTON NEIGHBORHOOD PHASE II COVENANT IS \$ _____ SUCH SUM DOES NOT INCLUDE ANY REAL ESTATE COMMISSION PAID BY EITHER THE BUYER OR THE SELLER AT THE TIME OF MAKER'S PURCHASE OF THE RESIDENTIAL UNIT

Maker

Maker

EXHIBIT C
TO
EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

Affordability Benchmarks

<u>Building Type</u>	<u>Purchase Price Affordable to Under 80% AMI</u>	<u>Purchase Price Affordable to Under 100% AMI</u>	<u>Purchase Price Affordable to Under 120% AMI</u>	<u>Purchase Price Affordable to Under 150% AMI</u>	<u>Total</u>
Single Family			57	8	65
Double House		48			48
Quad / Town Houses	15				15
Total	15	48	57	8	128

Up to 32 Units may be released from this Restrictive Covenant with such releases to occur at the rate of one Unit allowed to be released when three Units have been completed and sold within the price ranges set forth above.

THE PURCHASE PRICE AFFORDABILITY SHALL BE CALCULATED AS FOLLOWS:

Then current Area Median Income for four person household determined by the US Dept. of Housing and Urban Development for Summit County, Colorado for fiscal year of Oct. 1-Sept. 30, or successor index, or if no successor index, such other generally accepted index selected by the Town, ("AMI") \$ _____

Multiplied by applicable AMI percentage (80%, 100%, 120% or 150%) \$ _____

Divided by number of months in year (12) \$ _____

Multiplied by 30% (amount available for housing cost) \$ _____

Less \$250 (amount for taxes, insurance, HOA fees and private mortgage insurance) \$ _____

Subtotal (amount available for Mortgage Payment) \$ _____

Mortgage Amortization Calculation (from Amortization Table or calculator)

Amortization: 30 years
Interest Rate: then current 30 yr.
fixed rate or 7%,
whichever is lower *

Mortgage Payment calculated above

Equals Mortgage Amount \$ _____

Divided by .95 (Mortgage Amount plus 5%
down payment) equals Affordable Purchase
Price \$ _____

* Wall Street Journal national index, western region, or successor index, or if no successor index, such other generally accepted index selected by the Town.

EXHIBIT D
TO
EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

The undersigned, being the holder of a lien encumbering the real property described on **Exhibit A**, hereby consents to the execution and recording of this Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement ("Restrictive Covenant"), and further agrees that the lien or encumbrance owned or possessed by the undersigned against the real property described on **Exhibit A** shall be subordinated and made junior and subject to this Restrictive Covenant. In the event of the foreclosure of the lien or encumbrance owned or possessed by the undersigned, this Restrictive Covenant shall be treated as a prior and superior encumbrance, and any foreclosure sale shall be made subject to this Restrictive Covenant.

LIEN HOLDER:

HORIZON BANKS, N.A.

By Todd A. Peyor
President - Boulder Branch.
Title

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 20th day of September, 2006, by Todd A. Peyor as President of Horizon Banks, N.A.

WITNESS my hand and official seal.

My commission expires: 11/17/09

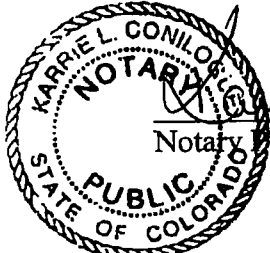


Kariel Conilo
Notary Public
My Commission Expires
NOVEMBER 17, 2009

EXHIBIT D
TO
EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

The undersigned, being the holder of a lien encumbering the real property described on **Exhibit A**, hereby consents to the execution and recording of this Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement ("Restrictive Covenant"), and further agrees that the lien or encumbrance owned or possessed by the undersigned against the real property described on **Exhibit A** shall be subordinated and made junior and subject to this Restrictive Covenant. In the event of the foreclosure of the lien or encumbrance owned or possessed by the undersigned, this Restrictive Covenant shall be treated as a prior and superior encumbrance, and any foreclosure sale shall be made subject to this Restrictive Covenant.

LIEN HOLDER:

BRYNN GREY V, LLC

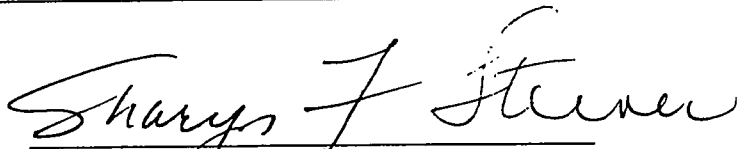
By: 
Stephen C. West, Attorney-in-Fact

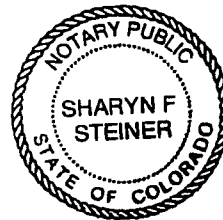
STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 21st day of September, 2006, by Stephen C. West as Attorney-in-Fact of Brynn Grey V, LLC.

WITNESS my hand and official seal.

My commission expires: _____


Notary Public



My Commission Expires
MAY 4, 2018