

Recorded at the request of:

WORKFORCE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

**[Form with Occupancy, Ownership, and Resale restrictions]
[Designed for recording with final plat and CC&Rs]**

THIS WORKFORCE HOUSING RESTRICTIVE COVENANT AND AGREEMENT ("Restrictive Covenant") is made and entered into at [Name of Municipality], Washington County, State of Utah, this _____ day of _____, 20____, by and between [Name of Developer and type of entity] ("Developer") and the [Name of Municipality], a Utah municipal corporation ("Municipality").

Recitals

A. Developer is owner of record of the real property situated in Washington County State of Utah, and described in **Exhibit A** attached hereto and incorporated herein by this reference ("Property").

B. Developer has heretofore requested Municipality to [approve a final subdivision plat or other development permit] for the development of the Property (the "Development Approval") which development, therefore, is subject to the applicable laws, ordinances and regulations of the Municipality.

C. It is a condition of the Development Approval 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 Property will be used solely by Qualified Occupants, subject to limited exceptions provided for herein.

D. Under this Restrictive 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 Restrictive Covenant, unless and until this Restrictive Covenant is released and terminated by the Municipality in the manner hereafter described.

E. The parties acknowledge that by entering into this Covenant the Municipality has acted 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 Development Approval and in consideration of the issuance of the Development Approval, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Developer, the Developer

and the Municipality agree as follows:

1. Definitions. As used in this Restrictive Covenant:

A. "AMI" means the annual median income of a family of four (4) for Washington County, Utah, 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, the Ownership Restrictions, Occupancy Restrictions and Resale Restrictions.

C. "Occupancy Restrictions" means those restrictions on the occupancy of the Units as set forth in Section 3 hereof.

D. "Ownership Restrictions" means those restrictions on the ownership of the Units as set forth in Section 2 hereof.

E. "Permitted Improvements" means the addition of a garage or storage space to a Residential Unit or the improvement of unfinished space in a Residential Unit allowed to be finished and occupied under the Uniform Building Code in effect at the time of such improvement, but does not include any other improvements, upgrades or work on or expenses incurred in connection with the Residential Unit.

F. "Project" means the affordable housing development to be constructed on the Property, consisting of: [description of the development], collectively to be known as [name of development project].

G. "Property" means the real property located in Washington County, State of Utah, as further described on **Exhibit A** attached hereto, against which this Covenant shall be recorded.

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

I. "Resale Restrictions" means those restrictions on the resale by Unit Owners of the Residential Units as set forth in Section 4 hereof.

J. "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 transferrable 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 Property, and does not mean or include any physical portion of the Project constructed for purposes of commercial use.

K. "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.

Ownership Restriction. Title to each Residential Unit shall be taken and held only in the name of a Unit Owner, 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 take, hold and transfer title subject to the terms and conditions of this Restrictive Covenant, including specifically, but not limited to, the Resale Restrictions and the Occupancy Restrictions.

2. Occupancy Restriction.

A. General Restriction. Except as expressly provided in Subsection 3.B. hereof, each Residential Unit shall be used and occupied only by Qualified Occupants and by no one else, except as expressly provided herein.

B. Exceptions. Notwithstanding the provisions of the preceding Subsection 3.A., it shall not be a violation of this 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 as Employee Housing 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 Washington County, Utah at least fifteen (15) hours per week on an annual 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 owned or occupied by a person otherwise authorized to own or occupy the Residential Unit pursuant to this Restrictive 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 Restrictive 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 Municipality; and (v) guests visiting a Qualified Occupant and paying no rent or other consideration.

4. Resale Restriction.

A. Resale Price Limit. The total price for which a Residential Unit may be sold by a Unit Owner shall be the total of:

and (i) *Purchase Price.* The selling Unit Owner's purchase price;

(ii) *Permitted Improvements.* The cost of Permitted Improvements to any Residential Unit made within five (5) years of the date of the purchase by the first Unit Owner of each such Residential Unit from Developer, provided, however, that in no event shall said additional amount hereunder exceed cumulatively fifteen percent (15%) of the original purchase price for such Residential Unit paid by the first Unit Owner to the Developer. In calculating the additional amount under this Subsection, only a Unit Owner's actual out-of-pocket costs and expenses for labor and materials shall be eligible for inclusion, provided, however, that if a Unit Owner purchases only materials and does not pay any third party for labor, then such amount to be added for Permitted Improvements shall include an amount attributable to the Unit owner's personal labor or "sweat equity" determined by multiplying the amount paid for materials times two (2). A Unit Owner must submit to the Municipality a copy of a development or other permit and a certificate of occupancy or compliance for the Permitted Improvements and copies of invoices, receipts or other similar evidence of the costs and

expenses for labor and materials or materials alone on or before the end of five and one-half (5) years from the date of the purchase of a Residential Unit by the first Unit Owner from Developer. The Municipality shall provide each Unit Owner making a proper submission for Permitted Improvements with a receipt or certificate verifying the amount of such Permitted Improvements and, after such receipt or certificate is issued to a Unit Owner by the Municipality, no subsequent Unit Owner may challenge the verified amount for those Permitted Improvements.

The sum of the foregoing Subsections 4.A.(i) and (ii) shall be referred to the "Price Limit".

B. Adjustment to Price Limit. The amount of the Price Limit determined in accordance with the preceding Subsection 4.A. may be increased by multiplying the Price Limit times the greater of:

(i) The percentage determined by adding one plus one-quarter percent (.25%) per month times 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; or

(ii) The percentage determined by dividing the amount equal to 100% of AMI most recently released prior to a Unit Owner's sale by the amount equal to 100% of AMI in effect at the time of a Unit Owner's Purchase.

The resale price so calculated shall be the "Adjusted Price Limit". NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE MUNICIPALITY, THE DEVELOPER, OR ANY OTHER PARTY, THAT THE UNIT OWNER WILL BE ABLE TO OBTAIN THE MAXIMUM SALE PRICE, AND THE MUNICIPALITY AND DEVELOPER HEREBY DISCLAIM ANY SUCH REPRESENTATION OR WARRANTY THAT MIGHT OTHERWISE BE ALLOWED OR ATTRIBUTED.

C. Permitted Sales Costs. A Unit Owner shall be allowed to add to the Adjusted Price Limit the following costs incurred in connection with the sale of a Residential Unit:

(a) Actual real estate sales commission paid by a Unit Owner, not to exceed seven (7%) percent;

(b) Premium for owner's title insurance policy;

(c) Cost of a tax certificate; and

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

D. 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** ("Note") and a form of Deed of Trust to a trustee encumbering the Residential Unit to secure strict compliance with the terms of the Note, containing a strict due on sale provision and acceptable to the Attorney of the Municipality ("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 Municipality and a Deed of Trust shall be executed by the purchaser(s) and recorded in the Washington County, Utah 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 Adjusted Price Limit shall be determined by the Municipality

in accordance with this Section 4. The Municipality shall mark each Note as paid and execute a request for release of deed of trust on verification to the Municipality, 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 Adjusted Price Limit or that, if the price exceeds the Adjusted Price Limit, the amount of such excess will be paid to the Municipality. If title to a Residential Unit is transferred without obtaining the release of a Deed of Trust securing a Note in favor of the Municipality, the Municipality, among other rights available to it, shall have the right to foreclose said Deed of Trust.

5. Reserved.

6. Records; Inspection; Monitoring.

A. The Developer's records with respect to the use and occupancy of the Property shall be subject to examination, inspection and copying by the Municipality or its authorized agent upon reasonable advance notice. The Municipality or its authorized agent shall also have the right to enter into the Property for the purpose of determining compliance with the provisions of this Restrictive Covenant; provided, however, that the Municipality or its agent shall first attempt to secure the permission of any occupants of the Property prior to making entry.

B. The Developer shall submit any information, documents or certificates requested from time to time by the Municipality with respect to the occupancy and use of the Property which the Municipality reasonably deems necessary to substantiate the Developer's continuing compliance with the provisions of this Covenant. Without limiting the generality of the foregoing, not later than December 31st of each year the Developer shall submit to the Municipality verification, under oath, of Developer's continuing compliance with the provisions of this Covenant.

7. Default; Notice. In the event of any failure of the Developer to comply with the provisions of this Restrictive Covenant, the Municipality may inform the Developer by written notice of such failure and provide the Developer a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of the Municipality within the period of time specified by the Municipality, which shall be at least thirty (30) days after the date any notice to the Developer is mailed, or within such further time as the Municipality determines is necessary to correct the violation, but not to exceed any limitation set by applicable law, the Municipality may without further notice declare a default under this Restrictive Covenant effective on the date of such declaration of default; and the Municipality may then proceed to enforce this Restrictive Covenant as hereafter provided.

8. Equitable Relief. Developer agrees that in the event of Developer's default under or non-compliance with the terms of this Restrictive Covenant, the Municipality shall have the right of specific performance of this Restrictive 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 Paragraph 12 may be sought singly or in combination with such legal remedies as the Municipality may be entitled to, either pursuant to the provisions of this Restrictive Covenant or under the laws of the State of Utah.

9. Liquidated Damages. The Developer acknowledges that the unavailability of adequate employee housing within the Municipality requires the expenditure of additional Municipality funds to provide required governmental services and thereby results in an economic loss to the Municipality. The Municipality and the Developer further recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Municipality in such circumstance. Accordingly, instead of requiring such proof, Municipality and Developer agree that Unit Owner shall pay to Municipality the sum of \$100

per day for each day in which the Property is not used in strict compliance with the provisions of Paragraph 3 of this Covenant. Such amount is agreed to be a reasonable estimate of the actual damages which the Municipality would suffer in the event of a violation of Paragraph 3 of this Covenant. The provisions of this Paragraph 9 shall not apply to any violation of this Covenant other than a violation of Paragraph 3. The liquidated damages provided herein shall commence as of the date on which the Property is first used in violation of Paragraph 3 of this Restrictive Covenant, and not on the date when the Municipality learns of such violation or on the date when the Municipality gives notice of default as provided in Paragraph 7. Further, the total amount of liquidated damages payable to the Municipality under this Paragraph 9 shall in no event exceed the then-current value of the Property. The liquidated damages provided for in this Paragraph 9 may be collected personally from the Developer by the Municipality, either singly or in combination with an action for equitable enforcement of this Covenant as provided in Paragraph 8 of this Restrictive Covenant.

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

11. Waiver; Termination; Modification Of Covenant. The restrictions, covenants and limitations created herein may be waived, terminated or modified with the written consent of both the Developer and the Municipality. In addition, after Residential Units have been sold to Unit Owners and mortgages or deeds of trust have been filed of record against Residential Units, the Developer and the Municipality reserve the right to amend this Restrictive Covenant: to provide clarification to any provisions hereof which may be unclear or subject to differing interpretations; to correct any errors identified herein; or to amend the Affordability Restrictions to reduce or eliminate such restrictions as the Developer and the Municipality may deem to be in the best interests of the Project or for the Unit Owners, provided that, if the Developer no longer has any interest in the Property or any of the Residential Units, such amendments may be made by the Municipality alone. No such waiver, modification, or termination shall be effective until the proper instrument in writing shall be executed and recorded in the office of the Recorder of Washington County, Utah. The Municipality 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 Property.

12. Statute of Limitations. Developer hereby waives the benefit of, and agrees not to assert in any action brought by the Municipality to enforce the terms of this Restrictive Covenant, any applicable statute of limitation which might otherwise operate to bar the ability of the Municipality to enforce this Restrictive Covenant, including, but not limited to, the provisions of [cite to applicable Utah law]. In the event that any statute of limitations may lawfully be asserted by Developer in connection with an action brought by the Municipality to enforce the terms of this Restrictive Covenant, it is agreed between Developer and Municipality that each and every day during which any violation of the terms of this Restrictive Covenant occurs shall be deemed to be a separate breach of this Restrictive Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

13. Developer's Covenant Of Title And Authority. Developer covenants, represents and warrants to the Municipality that Developer has good and marketable title to the Property and full and complete legal authority to execute and deliver this Restrictive Covenant to the Municipality; subject only to the following liens or encumbrances: and taxes for 1999 and subsequent years.

14. No Conflicting Agreement. Developer covenants, represents and warrants to the Municipality that the execution and delivery of this Restrictive Covenant to the Municipality will not violate any agreement now existing with respect to the Property. Developer shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Restrictive Covenant, and in any event, it is agreed that the provisions of this Restrictive

Covenant are paramount and controlling as to the rights, obligations and limitations herein set forth and shall supersede any other provision in conflict herewith.

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

16. Severability. In case one or more of the provisions contained in this Restrictive 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 Restrictive Covenant and the application thereof shall not in any way be affected or impaired thereby.

17. Attorney's Fees. If any action is brought in a court of law by either party to this Restrictive Covenant concerning the enforcement, interpretation or construction of this Restrictive 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.

18. Notices. Except as otherwise provided, all notices provided for or required under this Restrictive 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 pages. Each party, by written notice to the other party, may specify any other address for the receipt of such instruments or communications.

19. Applicable Law. This Restrictive Covenant shall be interpreted in all respects in accordance with the laws of the State of Utah.

20. Recording. This Restrictive Covenant shall be filed of record in the real property records of Washington County, Utah.

21. Binding Effect and Running with the Land. This Restrictive 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 Property or any interest therein, and shall run with the land. The Developer agrees that this Restrictive Covenant does not constitute an unreasonable restraint on alienation of the Property or interests therein and that any and all requirements of the laws of the State of Utah to be satisfied in order for the provisions of this Restrictive 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 Property or any portion thereof shall expressly provide that such conveyance is subject to this Restrictive 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 Property, regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or any portion thereof provides that such conveyance is subject to this Restrictive Covenant.

22. Vesting and Term. Developer and Municipality agree that the Municipality's rights and interests under this Restrictive Covenant are vested immediately and that this Restrictive Covenant, and any amendments hereto, shall be binding and in full force and effect in perpetuity, unless terminated as herein provided.

23. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Restrictive Covenant.

24. Terminology. Wherever applicable, the pronouns in this Restrictive 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 Restrictive Covenant the date first written above.

[Insert signature blocks and notary acknowledgments]

DRAFT

EXHIBIT A
TO
EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

Description of property subject to Restrictive Covenant:

DRAFT

EXHIBIT B
TO
EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

**Appreciation Limiting
Promissory Note
(the "Note")**

**For Amounts Collected by Maker in Excess
of Adjusted Price Limit**

**[Name of Municipality], Utah
[Date]**

[Name of Developer] (the "Maker") after date, for value received, promises to pay to the order of [Name and address of Municipality], immediately upon any Sale of the Property an amount equal to the Gross Proceeds in excess of the Adjusted Price Limit plus Permitted Sales Costs.

As used in this Note the terms set forth below shall have the meanings provided:

"Residential Unit" means the property subject to the Deed of Trust securing compliance with this Note.

"Sale" means the sale or transfer of the Residential Unit or any interest therein.

"Gross Proceeds" means the total value of all consideration given Purchaser in connection with a Sale.

"Adjusted Price Limit" means an amount determined in accordance with the following:

The total consideration paid by
Maker for the purchase of the
Residential Unit

Permitted Improvements as _____
provided for in Subsection
4.A.(ii) of the Workforce
Housing Restrictive Covenant
and Agreement filed in the
Washington County, Utah
Recorder's Office on the _____
day
of _____, 20__ at
Document No. _____
("Restrictive Covenant") + _____

The Price Limit _____

Adjustment to Price Limit of _____

.25% per month or increase in
AMI as provided for in
Subsection 4.B. of
the Restrictive Covenant

x _____

Adjusted Price Limit: _____

"Permitted Sales Costs" means those costs allowed to be added to the Adjusted Price Limit as provided for in Subsection 4.C. of the Restrictive Covenant.

Purchaser may, at its election, reduce the amount of Gross Proceeds so as to reduce any amounts owing hereunder. The Note shall not bear interest and shall be due and payable upon Purchaser's Sale of the Property.

This Note shall be subordinate to a conventional first deed of trust where 100% of the proceeds are used in connection with purchasing the Property. **Maker may not subordinate this Note to any other deed of trust without the prior written approval of the Municipality.**

It is agreed that if this Note is not paid when due or declared due hereunder, the amount due shall draw interest at the rate of 15% per annum, and that the failure to make any payment of principal or interest when due or any default under any encumbrance or agreement securing this Note shall cause the whole Note to become due at once, or the interest to be counted as principal, at the option of the holder of the Note. The makers and endorsers hereof severally waive presentment for payment, protest, notice of non-payment and of protest, and agree to any extension of time of payment and partial payments before, at or after maturity, and if this Note or interest thereon is not paid when due, or suit is brought, agree to pay all reasonable costs of collection including reasonable attorney fees, and if foreclosure is made by the Public Trustee, reasonable attorney fees to be added by the Public Trustee to the cost of foreclosure.

This Note is secured a deed of trust on the Residential Unit described as [legal description] on the ____ day of _____, 20__, at Document No. _____, which deed of trust shall be subordinate to a first Deed of Trust securing payment of the balance of the purchase price for such Residential Unit not paid in cash.

[Insert signature blocks and notary acknowledgments]