

DEED RESTRICTION AGREEMENT
FOR THE OCCUPANCY AND TRANSFER OF
TIMBER RIDGE NEIGHBORHOOD RESIDENTIAL DWELLING UNITS
(EMPLOYEE UNITS)

THIS DEED RESTRICTION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 20__ (the "Effective Date") by and between the Town of Vail, Colorado, a Colorado home rule municipality with an address of 75 South Frontage Road, Vail, CO 81657 (the "Town"), and Triumph Timber Ridge LLC, a _____ with an address of _____ ("Triumph") (each a "Party" and collectively the "Parties").

WHEREAS, Triumph owns the real property described as Unit ____, Timber Ridge Neighborhood, Town of Vail, Colorado (the "Property"), and together with the Town, has developed the Property as part of the Timber Ridge Neighborhood employee housing project;

WHEREAS, Triumph is selling the Property to an individual buyer; and

WHEREAS, prior to such sale, the Parties wish to permanently restrict the occupancy, use and resale of the Property.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Property. The Property is hereby burdened with the covenants and restrictions specified in this Agreement, in perpetuity.

2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

a. *Guidelines* means the current version of the Timber Ridge Neighborhood Employee Housing Guidelines adopted by the Town. The version adopted as of the Effective Date is attached hereto as **Exhibit 1** and incorporated herein by this reference.

b. *Maximum Resale Price* means the Purchase Price paid by the last Qualified Buyer plus: an increase of 1.5% per annum of such Purchase Price (prorated at the rate of 1/12 for each whole month) from the date of Owner's purchase of the Property to the date of the Owner's execution of the listing contract, such percentage increase to not be compounded annually; and the value of Permitted Capital Improvements.

c. *Non-Qualified Owner* means any person who acquires an ownership interest in the Property who is not a Qualified Owner.

d. *Owner* means any person who acquires an ownership interest in the Property, including without limitation Qualified Owners, Non-Qualified Owners and Inheriting Owners.

e. *Permitted Capital Improvements* means those improvements to the Property performed by the current Owner as described in the Guidelines, which shall qualify for inclusion within the calculation of Maximum Resale Price if the Owner furnishes the Town with the following information:

i. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;

ii. An affidavit verifying the receipts are valid and correct receipts tendered at the time of purchase; and

iii. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town for the Permitted Capital Improvements.

f. *Principal Place of Residence* means the home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom. In determining what is a Principal Place of Residence, the Town shall consider the criteria set forth in C.R.S. § 31-10-201(3), as amended.

g. *Purchase Price* means all consideration paid by a Qualified Buyer for the Property but excludes: any proration amounts, taxes, costs and expenses of obtaining financing; costs of furnishings or personal property; lenders' fees; title insurance fees; closing cost; inspection fees; and real estate purchase or sales commission(s).

h. *Qualified Buyer* means the Town or a person who, upon purchase of the Property, will be a Qualified Owner.

i. *Qualified Owner* means an Owner who is an individual who: works an average of 30 hours or more per week at a business in Eagle County, Colorado that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business; and earns at least 75% of their income from such business. For example, if an individual worked 60 hours per week for one half of the year at such a business in Eagle County, Colorado, and worked elsewhere for the other half of the year, such person would be a Qualified Owner. A *Qualified Owner* also includes an individual who: was a Qualified Owner when the individual purchased the Property, but then retired while owning the Property; was 60 years of age or older at the time of retirement; for the 5 years immediately prior to retirement, worked an average of 30 hours or more per week at a business in Eagle County, Colorado that held a valid and current business license, or paid sales taxes, or was otherwise generally recognized as a legitimate business; earned at least 75% of their income from such business during such 5-year period; and does not work for a business outside of Eagle County, Colorado.

j. *Qualified Tenant* means an individual who works an average of 30 hours or more per week at a business in Eagle County, Colorado that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business. For example, if an individual worked 60 hours per week for one half of the year at such a business in Eagle County, Colorado, and worked elsewhere for the other half of the year, such person would be a Qualified Tenant.

k. *Transfer* means any sale, conveyance, assignment or transfer, voluntary or involuntary, of any interest in the Property, including without limitation a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest and an interest evidenced by any contract by which possession of the Property is transferred and an Owner retains title; provided that the lease of a room or rooms within the Property to a Qualified Tenant in accordance with this Agreement shall not constitute a Transfer.

3. Occupancy Restrictions.

a. The Property shall be continuously occupied by at least one Qualified Owner as their principal place of residence. If a Qualified Owner ceases to occupy the Property as their principal place of residence, the Qualified Owner shall immediately contact the Town to Transfer the Property pursuant to Section 4 hereof. An Owner shall be deemed to have changed their principal place of residence by becoming a resident elsewhere or accepting permanent employment outside of Eagle County, Colorado.

b. The Qualified Owner may lease a room or rooms within the Property, but only to one or more Qualified Tenants, and provided that the Qualified Owner still occupies the Property as their principal place of residence. Leases of less than 30 days or more than 6 months are prohibited, provided that a Qualified Tenant may renew a 6-month lease without limitation.

c. No business activity shall occur on or within the Property, other than as permitted within the zone district applicable to the Property.

d. If at any time a Qualified Owner also owns any interest alone or in conjunction with others in any developed residential property or dwelling unit located in Eagle County, Colorado, the Qualified Owner shall immediately list said other property or unit for sale to sell the Qualified Owner's interest in such property at a sales price comparable to like units or properties in the area in which the property or dwelling unit is located. If said other property or unit(s) has not been sold by the Qualified Owner within 120 days of its listing, the Qualified Owner shall immediately contact the Town to Transfer the Property pursuant to Section 4 hereof. It is understood and agreed that, in the case of a Qualified Owner whose business is the construction and sale of residential properties or the purchase and sale of such properties, the properties which constitute inventory in the business shall not constitute other developed residential property or dwelling unit as those terms are used in this Section.

f. No later than February 1st of each year, Owner shall submit one copy of a sworn affidavit, on a form provided by the Town, verifying that the Property is occupied in accordance with this Agreement and the Guidelines.

g. Should the Town acquire possession of the Property for any reason, the Town may lease the Property subject to the terms of this Agreement.

4. Transfer.

a. The Owner shall first notify the Town that the Owner wishes to Transfer the Property. The Town shall have the first option to purchase the Property, exercisable within

a period of 15 days after receipt of notice, and if the Town exercises its right and option, the Town shall purchase the Property from the Owner for a price equal to the Maximum Resale Price, or the appraised market value, whichever is less.

b. Should the Town determine not to purchase the Property, Owner shall list the Property for sale in accordance with the Guidelines, and shall thereafter select a Qualified Buyer pursuant to the Guidelines.

c. The Property shall be transferred only to the Town or a Qualified Buyer, and shall not be sold for more than the Maximum Resale Price.

d. At closing, the Qualified Buyer shall execute, in a form satisfactory to the Town and for recording with the Eagle County Clerk and Recorder, a document acknowledging this Deed Restriction and expressly agreeing to be bound by it.

5. Effect of Transfer to a Non-Qualified Owner.

a. If for any reason the Property is transferred to a Non-Qualified Owner, the Non-Qualified Owner shall immediately contact the Town to Transfer the Property pursuant to Section 4 hereof.

b. The Non-Qualified Owner shall execute any and all documents necessary for the Transfer.

c. A Non-Qualified Owner shall not: occupy the Property; rent any part of the Property; engage in any business activity in the Property; or Transfer the Property except in accordance with this Agreement.

6. Transfer by Devise or Inheritance.

a. If a Transfer occurs by devise or inheritance due to death of an Owner, the personal representative of the Owner's estate or the person inheriting the Property (the "Inheriting Owner") shall provide written notice to the Town within 30 days of the date of death.

b. If the Inheriting Owner is a Qualified Owner, they shall provide the Town with documentation proving their status as such, and the Town may determine if the Inheriting Owner is in fact a Qualified Owner. If the Inheriting Owner fails to provide the required documentation, they shall be deemed a Non-Qualified Owner. If the Inheriting Owner is a Qualified Owner, they shall succeed in the Qualified Owner's interest and obligations under this Agreement.

c. If the Inheriting Owner is a Non-Qualified Owner, the Inheriting Owner shall Transfer the Property pursuant to Section 4 hereof.

7. Consensual Lien; Right to Redeem. For the purpose of securing performance under this Agreement and creating in favor of the Town a right to redeem in accordance

with Part 3 of Article 38 of Title 38, C.R.S., as amended, Triumph hereby grants to Town a consensual lien on the Property. Such lien shall not have a lien amount.

8. Breach.

a. It shall be a breach of this Agreement for an Owner, Qualified Buyer or Qualified Tenant to violate any provision of this Agreement, or to default in payment or other obligations due to be performed under a promissory note secured by a first deed of trust encumbering the Property.

b. If the Town has reasonable cause to believe that an Owner, Qualified Buyer or Qualified Tenant is violating this Agreement, the Town may inspect the Property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner or Inheriting Owner with 24 hours written notice. This Agreement shall constitute permission to enter the Property during such times upon such notice.

c. If the Town discovers a violation of this Agreement, the Town shall notify the Owner, Qualified Buyer or Qualified Tenant of the violation and allow 15 days to cure.

9. Remedies.

a. Any Transfer in violation of this Agreement shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every Transfer, for all purposes, shall be deemed to include and incorporate by this reference the covenants contained in this Agreement, even if the Transfer documents fail to reference this Agreement.

b. The Town may pursue all available remedies for violations of this Agreement, including without limitation specific performance or a mandatory injunction requiring a Transfer of the Property, with the costs of such Transfer to be paid out of the proceeds of the sale.

c. Upon request by the Town, each Owner authorizes the holder of any mortgage or deed of trust against the Property to disclose to the Town if any payments due are delinquent and the duration and amount of such delinquency.

d. Any violation of this Agreement shall cause the Maximum Resale Price to freeze and remain fixed until the date such violation is fully cured.

e. In addition to the specific remedies set forth herein, the Town shall have all other remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy.

10. Foreclosure.

a. An Owner shall notify the Town, in writing, of any notification received from a lender of past due payments or defaults in payments or other obligations within 5 days of receipt of such notification.

b. An Owner shall immediately notify the Town, in writing, of any notice of foreclosure under the first deed of trust or any other subordinate security interest in the Property, or when any payment on any indebtedness encumbering the Property is required to avoid foreclosure of the first deed of trust or other subordinate security interest in the Property.

c. Within 60 days after receipt of any notice described herein, the Town may (but shall not be obligated to) proceed to make any payment required to avoid foreclosure. Upon making any such payment, the Town shall place a lien on the Property in the amount paid to cure the default and avoid foreclosure, including all fees and costs resulting from such foreclosure.

d. Notwithstanding any other provision of this Agreement, in the event of a foreclosure, acceptance of a deed-in-lieu of foreclosure, or assignment, this Agreement shall remain in full force and effect, including without limitation Section 4 hereof, restricting Transfer of the Property.

e. The Town shall have 30 days after issuance of the public trustee's deed or the acceptance of a deed in lieu of foreclosure by the holder in which to purchase by tendering to the holder, in cash or certified funds, an amount equal to the redemption price which would have been required of the borrower or any person who might be liable upon a deficiency on the last day of the statutory redemption period(s) and any additional reasonable costs incurred by the holder related to the foreclosure.

11. Miscellaneous.

a. *Modification.* This Agreement may only be modified by subsequent written agreement of the Parties, provided that, if the Town obtains title to the Property, the Town may modify or terminate this Agreement at any time.

b. *Integration.* This Agreement and any attached exhibits constitute the entire agreement between the Parties, superseding all prior oral or written communications.

c. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

d. *Severability.* If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Eagle County, Colorado.

f. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

g. *No Joint Venture.* Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this

Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

h. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement, or, if the Property has been transferred to a subsequent Owner, the Owner's address on file with the Eagle County Assessor.

i. *Recording.* This Agreement shall be recorded with the Eagle County Clerk and Recorder. The benefits and obligations of Triumph under this Agreement shall run with the land, and shall be binding on any subsequent holder of an interest in the Property.

j. *Savings Clause.* If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement are held to be unlawful or void for violation of: the rule against perpetuities or some analogous statutory provision; the rule restricting restraints on alienation; or any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated members of the Vail Town Council, their now living descendants, if any, and the survivor of them, plus 21 years.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF VAIL, COLORADO

Kim Langmaid, Mayor

ATTEST:

Stephanie Bibbens, Town Clerk

EXHIBIT 1

TIMBER RIDGE NEIGHBORHOOD EMPLOYEE HOUSING GUIDELINES (EMPLOYEE UNITS)

1. General. These Guidelines are intended to supplement the Deed Restriction Agreement for the Occupancy and Transfer of the Timber Ridge Neighborhood Residential Dwelling Units (Employee Units) (the "Deed Restriction"). These Guidelines may be updated by Town staff as necessary, and the current version of these Guidelines shall always control over any prior version. In the event of any conflict between these Guidelines and the Deed Restriction, the Deed Restriction shall control.

2. Occupancy.

a. Leasing. If an Owner leases the Property, the lease shall include a clear reference to the Deed Restriction and a brief summary of the Deed Restriction, and shall by reference incorporate the terms and conditions of this Deed Restriction. Copies of all leases shall be filed with the Town during the annual verification process.

b. Leave of Absence. A leave of absence may be granted for one year, subject to Town approval, upon clear and convincing written evidence which shows a reason for leaving and a commitment to return to the Town. Such written evidence shall be presented to the Town at least 30 days prior to leaving. The Leave of Absence shall be for one year and may, at the discretion of the Town, be extended for one year, but in no event shall it exceed two years. The Property must be rented during the leave to one or more Qualified Tenants in accordance with the Deed Restriction.

c. Disability. Should a Qualified Owner become an individual with a disability and, because of such disability, be unable to meet the requirements of the Deed Restriction to remain a Qualified Owner, the Qualified Owner shall notify the Town, in writing, of the nature of the disability. If the disability is permanent, the Qualified Owner shall remain a Qualified Owner despite the disability. If the disability is temporary and the Qualified Owner becomes able to return to work, to remain a Qualified Owner, the Qualified Owner must return to work when the disability ceases. Notwithstanding anything to the contrary in these Guidelines or the Deed Restriction, the Town will make all reasonable accommodations necessary under the Americans with Disabilities Act.

3. Annual Verification.

a. Affidavit. As provided in the Deed Restriction, no later than February 1st of each year, every Owner shall submit a sworn affidavit, on a form provided by the Town, verifying that the Property is occupied in accordance with the Deed Restriction and these Guidelines.

b. Additional Documentation. The affidavit shall be accompanied by the following supporting documentation:

i. Verification of current employment and employment during the prior year (paystubs with employer's name, address and contact information);

- ii. Signed authorization allowing the Town discuss employment details with the Owner's employer;
- iii. The Owner's federal income tax return from the prior year, together with an executed Internal Revenue Service Form 8821 or equivalent;
- iv. If the Property was leased during the prior year, copies of all leases of the Property during the prior year; and
- v. If the Property was leased during the prior year, the information set forth in subsections i.-iii. for each Qualified Tenant.

4. Permitted Capital Improvements.

a. For purposes of determining the Maximum Resale Price, Permitted Capital Improvements shall include only the following:

- i. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacement and maintenance;
- ii. Improvements for energy and water conservation;
- iii. Improvements for health and safety protection devices;
- iv. Improvements to add or finish permanent/finished storage space;
- v. Improvements to finish unfinished space; or
- vi. Replacement of the following: new carpet and carpet pad; new hardwood, wood laminate, or tile floors and base; new Energy Star-rated appliances (including without limitation clothes washer and dryer, refrigerator, range, dishwasher and built-in microwave); new baseboard, window casing and interior doors when the entire Property is finished in an identical material and quality; and new kitchen or bathroom countertops.

b. Permitted Capital Improvements shall be depreciated as follows:

- i. 75% of the cost will be included in the Maximum Resale Price if the improvement has been installed within 12 months of listing the Property.
- ii. 50% of the cost will be included in the Maximum Resale Price if the improvement has been installed in greater than 12 months and less than 36 months of listing the Property.
- iii. 25% of the cost will be included in the Maximum Resale Price if the improvement has been installed in greater than 36 months and less than 60 months of listing the Property.

iv. No cost will be included in the Maximum Resale Price if the improvement has been installed more than 5 years prior to listing the Property.

v. For energy or water conservation Permitted Capital Improvements, including without limitation solar panels, the amount of the cost to be included in the Maximum Resale Price shall be reduced by the amount of any rebates received, and shall then be depreciated by 4% each year.

c. The following improvements shall not be considered Permitted Capital Improvements:

i. Decks or balconies;

ii. Jacuzzis, saunas and steam showers;

iii. Repair, replacement or maintenance of existing fixtures, appliances, plumbing and mechanical fixtures;

iv. Painting; or

v. Decorative items, including without limitation lights and window coverings.

d. The following costs shall apply to Permitted Capital Improvements, regardless of the price actually paid, and no additional amounts shall be added for installation, labor or "sweat equity":

| | |
|---------------------------|------------------------|
| Carpet and Pad | \$4.00/square foot |
| Hardwood or Wood Laminate | \$7.00/per square foot |
| Tile Floor and Base | \$10.00/square foot |
| Clothes Washer | \$800.00 |
| Clothes Dryer | \$800.00 |
| Refrigerator | \$1,500.00 |
| Range | \$900.00 |
| Dishwasher | \$500.00 |
| Over-the-Range Microwave | \$400.00 |
| Baseboard | \$5.00/linear foot |
| Window Casing | \$4.00/linear foot |
| Interior Doors | \$200.00/door |
| Counter | \$50.00/square foot |
| Bath Tub Surround | \$5.00/square foot |

e. Notwithstanding the costs set forth herein, the amount for Permitted Capital Improvements shall not exceed 15% of the original Purchase Price paid by the Owner selling the Property, provided that, for every 10-year period commencing on the Effective Date, another 15% of the original Purchase Price may be added to the value of the Property for Permitted Capital Improvements.

5. Listing.

a. Town's Role. Town staff are not licensed brokers, but instead, act as representatives of the Town and its interests. All sellers and purchasers are advised to consult legal counsel regarding examination of title and all contracts, agreements and documents, at their own expense.

b. Advertising. Upon listing, the Town will advertise the sale of the Property in 2 consecutive Friday editions of the Vail Daily, or in any other manner deemed appropriate by the Town.

c. Open Houses. The Town will coordinate with the selling Owner to establish two open house dates when the Property may be viewed by interested parties.

e. Fee. Prior to or at closing, the selling Owner shall pay the Town a nonrefundable listing fee equal to 2% of the Maximum Resale Price, regardless of the final purchase price for the Property. The Town may instruct the title company to pay said fees to the Town out of the funds held for the selling Owner at the closing.

6. Lottery.

a. Eligibility. To be eligible to enter the lottery to purchase a Property, the applicant must: be a Qualified Buyer; be prequalified with a mortgage lender; and file a complete application with the Town on forms provided by the Town.

b. Application. In addition to the application form, each applicant shall submit the following information:

i. The last 4 years of federal income tax returns, together with an executed Internal Revenue Service Form 8821 or equivalent;

ii. Verification of current employment (*i.e.*, paystubs with employer name, address and contact information);

iii. Proof of current residency;

iv. Valid Colorado driver's license or identification card;

v. Prequalification letter from the lender;

vi. A description of any co-ownership interests (joint tenancy, tenancy in common); and

vii. A signed authorization allowing the Town to discuss employment details with the applicant's employer.

c. Drawing. On the date and at the time selected by the Town, the Town shall conduct a random drawing from the pool of eligible applicants. The Town will notify the selected Qualified Buyer as soon as practicable after the lottery. Within 5 days of

notification from the Town, the selected Qualified Buyer shall make a written, binding offer to the selling Owner, using Colorado standard real estate forms.

d. Purchase and Sale Contract. If the selected Qualified Buyer and the selling Owner are successful in their negotiations, they will enter into a purchase and sale contract, using Colorado standard real estate forms. If the negotiations fail, the Town will hold another drawing, and notify the next selected Qualified Buyer. This process will continue until the Property is under contract for sale.

e. Records. Every application and any accompanying documentation shall become the property of the Town and will not be returned to any applicant. All applicants should be aware that the Town is subject to the Colorado Open Records Act, C.R.S. § 24-72-200.1, *et seq.* ("CORA"), and as such, the Town may be required to release portions of an application that are not considered confidential under applicable law. The applicant shall have no recourse against the Town for release of any information in response to a CORA request or a court order.

f. Additional Information. Nothing herein shall prevent the Town from requesting and requiring the submission of reasonable additional information to assist the Town in determining eligibility.

7. Town Purchase.

a. Eligibility. As provided in the Deed Restriction, the Town will always be a Qualified Buyer.

b. Process. Upon receipt of a listing request for a Property, the Town may, in its sole discretion, elect to purchase the Property, in lieu of following the lottery process set forth in Section 5 hereof.

c. Sale. If the Town purchases a Property, the Town may thereafter sell the Property to any Qualified Buyer. The Town may determine, in its sole discretion, whether to follow the lottery process in Section 5, or whether to sell the Property to a Qualified Buyer selected by the Town outside of the lottery process.