

DEED RESTRICTION AGREEMENT
FOR THE OCCUPANCY AND TRANSFER OF TIMBER RIDGE NEIGHBORHOOD
RESIDENTIAL DWELLING UNITS (EMPLOYER 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 a third party; 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 (Employer Units) 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. *Non-Qualified Owner* means any person who acquires an ownership interest in the Property who is not a Qualified Owner.

c. *Owner* means any person who acquires an ownership interest in the Property.

d. *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.

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

f. *Qualified Owner* means an Owner who employs at least one 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 such individual earns at least 75% of their income from such business.

g. *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; 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 Tenant.

h. *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 Tenant as their principal place of residence. A Qualified Tenant 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. No business activity shall occur on or within the Property, other than as permitted within the zone district applicable to the Property.

c. 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.

d. The Property shall be subject to a written lease that expressly incorporates this Deed Restriction.

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, the Owner shall list the Property for sale in accordance with the Guidelines, and shall thereafter select a Qualified Buyer.

c. The Property shall be transferred only to the Town or a Qualified Buyer.

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 within 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, the personal representative of the estate or the person inheriting the Property (the "Inheriting Owner") shall provide written notice to the Town within 30 days of the devise or inheritance.

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.

c. If the Inheriting Owner is a Qualified Owner, they shall succeed in the Qualified Owner's interest and obligations under this Agreement. 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 the Owner or a 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 or any 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 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. 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. The 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. The 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.

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, to 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

EXHIBIT 1

TIMBER RIDGE NEIGHBORHOOD EMPLOYEE HOUSING GUIDELINES (EMPLOYER 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 (Employer 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. Each 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. Disability. Should a Qualified Tenant 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 Tenant, the Qualified Tenant shall notify the Town, in writing, of the nature of the disability. If the disability is permanent, the Qualified Tenant shall remain a Qualified Tenant despite the disability. If the disability is temporary and the Qualified Tenant becomes able to return to work, to remain a Qualified Tenant, the Qualified Tenant 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, 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 each Qualified Tenant's 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 each Qualified Tenant's employer;

iii. Each Qualified Tenant's federal income tax return from the prior year, together with an executed Internal Revenue Service Form 8821 or equivalent;

iv. Copies of all leases of the Property during the prior year.

4. 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 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 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.