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**TOWN OF MT. CRESTED BUTTE, COLORADO
OWNER-OCCUPIED COMMUNITY HOUSING
RESTRICTIVE COVENANT AND AGREEMENT**

THIS RESTRICTIVE COVENANT (Deed Restriction) is made and entered into this 11th day of November, 2005, by and between Steve Eckstat and Victoria Eckstat (collectively Grantor) and the Town of Mt. Crested Butte, Colorado, a Colorado home rule municipality, and its designees, the Gunnison County Housing Authority (Town).

WHEREAS, Grantor owns Unit R-338, Three Seasons Condominiums, according to the Condominium Map thereof bearing Reception No. 348810, and the Condominium Declaration pertaining thereto recorded in Book 547 at Page 833 and the Amendment to Condominium Declaration pertaining thereto recorded in Book 548 at Page 789, Town of Mt. Crested Butte, Gunnison County, Colorado (Property). The Property is also known as 701 Gothic Road, Unit R-338, Mt. Crested Butte, Colorado; and

WHEREAS, the Property is encumbered by and subject to the terms and provisions of the employee housing restrictive covenant recorded on May 18, 2001, at Reception No. 510894 of the records of Gunnison County, Colorado (Covenant); and

WHEREAS, the Grantor has requested that the Town allow Grantor to replace the Covenant with this Deed Restriction to allow for owner occupancy of the Property in accordance with Chapter 22, Community Housing, of the Code of the Town of Mt. Crested Butte, Colorado and the Community Housing Guidelines, adopted pursuant thereto; and

WHEREAS, the Town is willing to substitute the Covenant with this Deed Restriction;

NOW, THEREFORE, in consideration of the foregoing benefits received by the parties hereto, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** The following terms shall have the following meanings when used herein:

A. "AMI" shall mean the area median income reported for single persons and households of various sizes by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency or instrumentality for Gunnison County.



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- B. "Eligible household" shall mean a household which includes the owner who has been a resident of Gunnison County for at least one calendar year immediately prior to purchase of the Property, with gross income that does not exceed one hundred twenty percent (120%) of AMI; ~~eighty percent (80%)~~ of the household's income must consist of wages and salaries ~~earned within Gunnison County~~ or distribution of profits from business operations within Gunnison County unless the owner is a retired person over the age of 65, or a disabled person; ~~no member of the household may own another residential dwelling nor more than one vacant residential lot within Gunnison County.~~
- C. "First deed of trust" shall mean a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against the Property to secure a loan used to purchase the Property made by an Institutional Lender.
- D. "Gross income" shall mean the total income of the household derived from employment, business, trust, or other income-producing assets, including wages, maintenance or alimony, child support, distributions, and before deductions for expenses, depreciation, taxes, and similar allowances.
- E. "Household" shall mean all individuals who will be occupying the Property, regardless of legal or familial status.
- F. "Institutional Lender" shall mean any bank, savings and loan association, or any other institutional lender, which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.
- G. "Owner" shall mean the Grantor and any subsequent buyer, devisee, transferee, grantee, owner or holder of title of the Property or any interest in the Property.
- H. "Primary residence" shall mean the residence, which the owner occupies for a minimum of ten (10) full months out of every calendar year.
- I. "Transfer" shall mean any sale, assignment, or transfer, voluntary or involuntary, or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common interest, a life estate interest, a leasehold interest (except for a lease permitted under



paragraph 7. herein), or any interest evidenced by a land contract by which possession of the Property is transferred and owner retains title.

2. **Deed Restriction Supersedes Covenant.** Upon the recording of this Deed Restriction in the Gunnison County, Colorado Clerk and Recorder's Office, this Deed Restriction shall replace and wholly supersede the Covenant. The Covenant shall terminate and be of no further force and effect.
3. **Requirement of Title.** Compliance with the terms and provisions of this Deed Restriction shall be deemed to be a requirement of title. Eligible households wishing to purchase the Property must have a current and valid income certification from the Town in order to be eligible to purchase the Property.
4. **Occupancy of the Property.** From and after the date of recording of this Deed Restriction, the Property shall only be occupied as the primary residence of the owner and members of the owner's household.
5. **Transfer of the Property.**
 - A. From and after the date of recording of this Deed Restriction, the Property may be transferred only to an individual who qualifies as a member of an eligible household as defined herein.
 - B. The following transfers are exceptions to the above requirement, provided that the new owners, other than an estate, shall use the Property as his or her principal residence.
 - i. A transfer resulting from the death of an owner where the transfer is to the spouse or other person who is also an owner.
 - ii. A transfer to the owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof.
 - iii. A transfer resulting from the death of an owner when the transfer is to one or more children of the deceased owner.
 - iv. A transfer by an owner to a spouse or other member of the household who becomes a co-owner of the Property.
 - v. A transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incidental to such a decree by



which a spouse who is an owner becomes the sole owner of the Property.

6. **Good Faith Marketing.** Prior to the transfer of the Property, the owner thereof shall engage in a good faith marketing effort such that members of the public have a fair chance to become informed of the availability of the Property. The Town shall be notified in writing of the Owner's interest in transferring the title to the Property at least forty-five (45) days before any transfer is affected, as well as be provided with a written good faith marketing plan, which shall include, without limitation, the date the marketing period begins and the distinct elements of the good faith marketing effort. Upon receipt of such notice, the Town shall notify the Owner of those persons who have been determined to be members of eligible households by the Town to purchase the Property. The Property shall be marketed for a minimum of thirty (30) days. A contract for purchase may be submitted during the marketing period. However, no contract to purchase can be executed by the Owner until the mandatory 30-day marketing period has expired. When a proposed contract to purchase is received by the Owner, the Owner shall submit a copy of the same to the Town within two (2) business days. The Town will certify those persons who have applied to it or have a proposed contract to purchase who have been determined by the Town to be members of eligible households, and who have reviewed the provisions of this Deed Restriction and expressed their willingness to accept them. The Owner shall maintain a marketing log that shows the advertisements and other information that was submitted to the public about the Property, and keep a list of prospective buyers who have expressed an interest in the Property. Upon expiration of the marketing period, if only one contract has been received, the Owner may select that offer, but only if the prospective buyer has been certified by the Town as a member of an eligible household. If more than one contract has been received, each of which is essentially equivalent to the others, the Owner shall utilize a fair selection process approved by the Town, as follows:

- A. First preference given to an eligible household employed within the Town, or is accepting employment within the Town.
- B. Second preference given to an eligible household employed north of Round Mountain.

If there are a number of equivalent contracts for purchase with equal priority, the Town may hold a lottery for selection of the successful purchaser of the Property.



7. **Rental of the Property.** If the Owner must leave Gunnison County for a limited period of time and desires to rent the Property during his or her absence, permission to do so may be granted by the Town for up to one year. The Owner must submit a request to rent the Property at least thirty (30) days prior to the anticipated rental of the Property. The request shall include the reasons for the requested rental of the Property, expected duration and intent of the Owner to rent the Property. Permission may be granted for more than one year, however, such rental may not extend for longer than two years. The rent that may be charged shall not exceed the Owner's monthly mortgage, plus the following: homeowner's association dues, utilities remaining in the Owner's name, taxes and insurance not included in the monthly mortgage amount, if any, and an additional amount of \$20.00 per month. The Owner shall rent only to a household that qualifies as an eligible household, as determined by the Town. Both the Owner and the tenant must sign a statement indicating that this Deed Restriction has been provided to the tenant, and that the tenant has received and reviewed this Deed Restriction. In addition, a copy of the lease agreement between the Owner and the tenant shall be provided to the Town for its records.
8. **Option to Purchase.** In the event of a foreclosure of the Property by the holder of a first deed of trust upon the Property, the Town is hereby given the option to purchase the Property from the holder of the first deed of trust at a price equal to the last redemption price provided by state statute for redemption from foreclosure. The term of the option shall be for a period of thirty (30) days, after notice to the Town by the foreclosing party of the completion of the foreclosure and the amount necessary to redeem from such foreclosure. If the Town fails to exercise its option to purchase, the terms and conditions of the provision shall expire and be of no further force and effect whatsoever.
9. **Enforcement.** Each Owner of the Property hereby grants and assigns to the Town the right to review and enforce compliance with this Deed Restriction. The Town may enforce by any lawful means, including without limitation, specific performance and damages to reimburse the Town for its enforcement costs, including reasonable attorneys' fees.
10. **Miscellaneous.**
- A. This Deed Restriction shall run with the Property and the benefit hereof shall inure to the Owner, his or her heirs, legal representatives, executors, successors, designees, or assigns.
- B. Notices to the Town shall be given in writing and delivered in person or mailed by certified mail return receipt requested, to





the Town at the address set forth below, or at such other address as designated by the Town in like notice:

Town of Mt. Crested Butte, Colorado
PO Box 5800
Mt. Crested Butte, CO 81225
ATTN: Town Manager

- C. If any provision of this Deed Restriction shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions shall survive. The validity, legality, or unenforceability shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the Grantor has executed this Deed Restriction as of the date first set forth above.

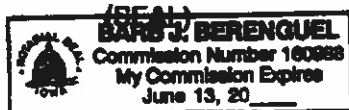
GRANTOR:


Steve Eckstat

Victoria Eckstat

STATE OF IOWA)
) ss.
County of Polk)

The foregoing Town of Mt. Crested Butte, Colorado Community Housing Owner-Occupied Restrictive Covenant and Agreement was acknowledged before me this 7 day of November, 2005, by Steve Eckstat and Victoria Eckstat.

Witness my hand and official seal.




Notary Public
My commission expires:



APPROVED by the Town of Mt. Crested Butte, Colorado this 11th day of November, 2005.

The Covenant is hereby released.

TOWN OF MT. CRESTED BUTTE, COLORADO

By: 
Joseph W. Fitzpatrick, Jr.
Town Manager

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DEVELOPER

Mt. Crested Butte Development, LLC

TOWN

Town of Mt. Crested Butte

By: [Signature]

Gregory D. Cielinski, President of SARSCO, Inc., a Texas corporation, General Partner of Rhombus Royalty Co., Ltd., a Texas limited partnership, Managing Member

By: [Signature]

Mayor

Attest: [Signature]

Donna Arwood

STATE OF Colorado

) ss.

COUNTY OF Gunnison

The foregoing Restrictive Covenant was acknowledged before me this 29th day of May, 2001 by Gregory D. Cielinski, President of SARSCO, Inc., a Texas corporation, General Partner of Rhombus Royalty Co., Ltd., a Texas limited partnership, Managing Member of Mt. Crested Butte Development, LLC.

Witness my hand and official seal. My commission expires: 07/30/2002

[Signature]
Notary Public

STATE OF COLORADO)

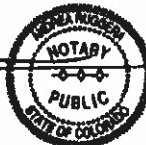
) ss.

COUNTY OF GUNNISON)

The foregoing Restrictive Covenant was acknowledged before me this 15 day of May, 2001 by Gwen Pettit as Mayor of Town of Mt. Crested Butte.

Witness my hand and official seal. My commission expires:

[Signature]
Notary Public



MY COMMISSION EXPIRES
February 22, 2003

EXHIBIT A

Property

Township 13 South, Range 86 West, 6th P.M.
Section 26:

A tract of land within the North $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 26, more particularly described as follows:

Commencing at a point on the easterly boundary of Hunter Hill Road of Chalet Village Addition No. 3, as shown by the Replat of Chalet Village Addition No.3 bearing Reception Number 260619 from which the East $\frac{1}{4}$ corner of said Section 26 bears North $69^{\circ}15'54''$ East 1272.54 feet;

Thence South $1^{\circ}51'12''$ West along the easterly boundary of said road a distance of 23.00 feet;

Thence along said easterly boundary along a curve to the right an arc distance of 107.48 feet, said curve having a radius of 1007.00 feet and a chord which bears South $4^{\circ}44'12''$ West 107.16 feet;

Thence South $67^{\circ}03'48''$ East 238.00 feet;

Thence South $37^{\circ}21'12''$ West 106.00 feet to the point of beginning of the tract herein described.

Thence continuing South $37^{\circ}21'12''$ West 447.00 feet;

Thence North $52^{\circ}41'48''$ West 100.69 feet to the easterly boundary of said Hunter Hill Road;

Thence along said easterly road boundary on a curve to the left and arc distance of 386.14 feet to the southwest corner of a parcel of land described in Book 411 at Page 344 of the records of Gunnison County, Colorado, said curve having a radius of 1007.00 feet and a chord which bears North $26^{\circ}19'40''$ East 383.78 feet;

Thence South $74^{\circ}39'48''$ East 187.78 feet to the point of beginning, containing 1.22 Acres.

EXCEPTING THEREFROM that property conveyed to the Town of Mt. Crested Butte, Colorado, a Colorado Home-Rule Municipality, in Quit Claim Deed recorded August 12, 1981 in Book 570 at Page 16.

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Note: The above description locates that tract of land described as Exhibit "A" and being recorded in Book 540 at Page 336 upon the ground in a precise relationship to the as-monumented East $\frac{1}{4}$ corner (capped-pipe) of Section 26, and to the as-monumented Lot locations, and the as-monumented location of the easterly boundary of Hunter Hill Road of the "Replat of Chaler Village Addition No. 3" (plat filed on 14 September 1964 under Reception Number 260619 - Gunnison County Records).

Deed description (Exhibit A - Book 540 at Page 336) directions are rotated counter-clockwise $00^{\circ}03'48''$ to be in compliance with the Direction basis of this survey.

Town of Mt. Crested Butte
County of Gunnison
State of Colorado

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proof of payments on loan