

Return to: Big Sky Community Housing Trust  
PO Box 160164  
Big Sky, MT 59716

## DEED RESTRICTION

THIS DEED RESTRICTION (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between **Big Sky Community Housing Trust**, a Montana nonprofit corporation with a IRC 501(c)3 designation, whose mailing address is P.O. Box 160164, Big Sky, MT 59716 ("BSCHT") and \_\_\_\_\_, whose mailing address is \_\_\_\_\_, (individually and collectively "Owner") (each individually a "Party" and collectively the "Parties").

WHEREAS, in exchange for compensation as set forth in a Deed Restriction Purchase Agreement, Owner has agreed to place certain restrictions on the use of the Property for the benefit of the Big Sky community by requiring occupancy of the Property by at least one Qualified Resident, as defined below.

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 following real property is hereby burdened with the covenants and restrictions specified in this Agreement: \_\_\_\_\_ as more specifically described in Exhibit A.
2. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:
  - a. Person means a natural person and excludes any type of entity.
  - b. 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.
  - c. Qualified Household means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants who are not Qualified Residents as long as at least one occupant is a Qualified Resident.

- d. Qualified Resident means a natural person who works an average of 30 hours per week a year or more at a Qualified Business in Big Sky and earns at least 75% of their income from such business. A Qualified Business in Big Sky means a business located within the Big Sky Resort Area District or is registered with the Big Sky Resort Area District. A Qualified Resident also includes an individual who: is retired; was 60 years of age or older at the time of retirement; for the five years immediately prior to retirement, worked an average of 30 hours per week a year or more at a Qualified Business; and earned at least 75% of their income from such business during such five-year period. To determine that a person is a Qualified Resident, the Qualification Guidelines set forth in Exhibit B, attached hereto and incorporated herein by this reference, shall apply.

**3. Occupancy Restrictions.**

- a. At least one Qualified Resident shall continuously occupy the Property as their principal place of residence.
- b. No business activity shall occur on or in such Property, other than as permitted within the zone district applicable to the Property.

**4. Annual Verification.** No later than April 15<sup>th</sup> of each year, beginning in the year following the first year of occupancy of the Property, Owner shall submit a written statement to BSCHT including the following information and stating that such information is true and correct to the best of Owner's knowledge and belief:

- a. Evidence to establish that the Property was occupied by a Qualified Household during all of the prior calendar year;
- b. If applicable, a copy of the lease form currently used for the Property;
- c. If applicable, a list of tenants who occupied the Property in the prior calendar year and evidence that at least one tenant is a Qualified Resident, as set forth in the Qualification Guidelines; and
- d. Federal Income Tax Documents for Owner, or Owner's tenant if the tenant is identified as the Qualified Resident. Federal Income Tax Documents may include Internal Revenue Service Form 1040, applicable schedules, W2s, and 1099s. In the event the tenant is identified as the Qualified Resident, Owner shall require the tenant to fill out an Internal Revenue Service Form 8821 Tax Information Authorization.

In the event Owner does not provide the annual verification information required in this Section 4 to BSCHT, Owner shall be subject to the following fines for each year of

noncompliance with this Section 4.

<b>Deadline</b>	<b>Fine</b>
Tax Day (typically April 15 <sup>th</sup> )	\$250
June 1 <sup>st</sup>	\$500
For Extension: six months from Tax Day	\$250
For Extension: December 1 <sup>st</sup>	\$500

**5. Rental.**

- a. Owner shall not rent the Property to any person or persons for a term shorter than 30 days.
- b. A Qualified Resident may lease a room or rooms in the Property to one or more persons, provided that the Qualified Resident still continuously occupies the Property as their principal place of residence. The term of all leases shall be no less than 30 days in duration and no greater than 12 months in duration, provided that unlimited renewals to Qualified Households are permitted.

**6. Breach.** It is a breach of this Agreement for Owner 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 or mortgage encumbering the Property. Owner shall notify BSCHT, in writing, of any notification received from any lender of past due payments or defaults in payments or other obligations within five days of receipt.

If BSCHT has reasonable cause to believe Owner is violating this Agreement, BSCHT may inspect the Property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing Owner with 24 hours' written notice. This Agreement shall constitute Owner's permission to enter the Property during such times upon such notice.

**7. Remedies.**

- a. BSCHT shall have any and all remedies provided by law and in equity for a violation of this Deed Restriction, including without limitation: (i) damages; (ii) specific performance; and (iii) injunctions, including without limitation an injunction requiring eviction of the occupant(s) and an injunction to prohibit the occupancy of the Property in violation of this Deed Restriction. All remedies shall be cumulative.
- b. The cost to BSCHT of any activity taken in response to any violation of this Deed Restriction, including reasonable attorney fees, shall be paid promptly by Owner.

**8. Foreclosure.**

- a. 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.

- b. Owner shall give immediate notice to BSCHT of any notice of foreclosure under the first deed of trust, or mortgage 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 mortgage or other subordinate security interest in the Property.
- c. Within 60 days after receipt of any notice described herein, BSCHT may (but shall not be obligated to) proceed to make any payment required to avoid foreclosure. Upon making any such payment, BSCHT may 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.

9. **Subordination.** In no event shall Owner use the Property to secure or collateralize any financing whether primary financing, secondary or subordinate financing, or incremental financing (“Owner Financing”) without the written consent of BSCHT, which consent can be withheld in BSCHT’s sole and absolute discretion. Any deed of trust, trust indenture, or mortgage securing the Owner Financing will be subordinate to this Agreement unless BSCHT provides its written consent to subordinate this Agreement to the Owner Financing.

#### 10. **Miscellaneous.**

- a. **Modification.** This Agreement may only be modified by subsequent written agreement of the Parties.
- b. **Integration.** This Agreement and any attached exhibits constitute the entire agreement between Owner and BSCHT superseding all prior oral or written communications.
- c. **Runs with the Land.** The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner’s obligations hereunder shall be binding on any subsequent holder of an ownership interest in the Property.
- 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 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 Montana and any legal action concerning the provisions hereof shall be brought in \_\_\_\_\_ County, Montana.
- f. **Assignment.** There shall be no transfer or assignment of any of the rights or obligations of Owner under this Agreement without the prior written approval of BSCHT.

- g. **Third Parties.** There are no intended third-party beneficiaries to this Agreement.
- h. **No Joint Venture.** Notwithstanding any provision hereof, BSCHT shall never be a joint venture in any private entity or activity which participates in this Agreement, and BSCHT shall never be liable or responsible for any debt or obligation of any participant in this Agreement.
- i. **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.
- j. **Recording.** This Agreement shall be recorded with the \_\_\_\_\_ County Clerk and Recorder.

[SIGNATURE ON FOLLOWING PAGE]

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

**BIG SKY COMMUNITY HOUSING TRUST**  
a Montana nonprofit corporation

By: \_\_\_\_\_  
Printed Name: David O'Connor  
Title: Executive Director

STATE OF MONTANA        )  
                                      :SS  
County of \_\_\_\_\_  )

This instrument was signed or acknowledged before me on \_\_\_\_\_,  
202\_\_, by David O'Connor, the Executive Director of Big Sky Community Housing Trust.

WITNESS my hand and official seal.

\_\_\_\_\_

NOTARY PUBLIC FOR THE STATE OF MONTANA

**OWNER:**

By: \_\_\_\_\_  
Name

By: \_\_\_\_\_  
Name

STATE OF MONTANA        )  
  :SS  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
202\_\_, by \_\_\_\_\_, who is personally  
known to me or who has produced identification.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF MONTANA

STATE OF MONTANA        )  
  :SS  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
202\_\_, by \_\_\_\_\_, who is personally  
known to me or who has produced identification.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF MONTANA

**EXHIBIT A  
LEGAL DESCRIPTION**

**EXHIBIT B**  
**QUALIFICATION GUIDELINES**

1. **Purpose.** The purpose of these Qualification Guidelines is to set forth the occupancy requirements for the Property pursuant to the Deed Restriction.
2. **Definitions.** All capitalized terms herein shall have the meanings set forth in the Deed Restriction.
3. **Application.** To become a Qualified Resident, a person must provide the following information:
  - a. Verification (e.g., wage stubs, employer name, address, telephone number and other appropriate documentation) of the person's current employment with a Qualified Business in Big Sky. A Qualified Business means a business located within the Big Sky Resort Area District or is registered with the Big Sky Resort Area District;
  - b. Evidence that the applicant has worked, or will work, an average of 30 hours per week or more per year and earns at least 75% of their income from a Qualified Business in Big Sky;
  - c. If the applicant is retired, provide evidence that the applicant was 60 years of age or older at the time of retirement, and for the five years immediately prior to retirement, worked an average of 30 hours or more per week a year at a Qualified Business in Big Sky and earned at least 75% of their income from such a business;
  - d. If the applicant retires after commencing ownership or occupancy of a unit for at least two continuous years, the applicant may be permitted to remain in the unit;
  - e. If disabled, evidence that the applicant is a person unable to work or does not have a work history due to qualifying for disability as defined by the American with Disabilities Act (ADA);
  - f. If an applicant becomes disabled as defined by the ADA after commencing ownership or occupancy of a unit, and if such disability prevents the applicant from working the required hours set forth in the deed restriction, the applicant may be permitted to remain in the unit;
  - g. A valid form of identification, such as a driver's license, state-issued identification, passport, or military identification; and
  - h. A signed statement certifying and acknowledging that all information submitted is true to the applicant's best knowledge and authorizing verification of all information submitted.