

Recording Requested By:
Town of Truckee

and

**Return to: Town of Truckee
Attn: Planning Division
10183 Truckee Airport Road
Truckee CA 96161**

Not Subject to Fees: Gov't Code § 27383

DEED RESTRICTION REGARDING FOUR RESTRICTED UNITS AT
10036 EDWIN WAY, TRUCKEE, CA

THIS DEED RESTRICTION REGARDING FOUR RESTRICTED UNITS AT 10036 EDWIN WAY, TRUCKEE, CA (this "Deed Restriction") is made and entered into this ____ day of _____ 2024 (the "Effective Date"), by and between the Town of Truckee, a California charter municipality (the "Town"), and Village at Gray's Crossing LLC, a California limited liability company (hereinafter "Developer").

WHEREAS, Developer is the owner of that certain real property located at 10036 Edwin Way (Nevada County Assessor's Parcel Number 043-070-008) in Truckee, CA and more particularly described in Exhibit I attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, on August 20, 2019, the Town of Truckee Planning Commission adopted Resolution 2019-12 approving a Development Permit, Tentative Map, and Comprehensive Sign Program (Planning Application 2017-00000160/DP-TM-CSP) for a mixed use project consisting of a 129-unit 83,371 s.f. hotel with 4,989 s.f. conference center and pool, 17,192 s.f. of commercial space, 21 residential units above the commercial spaces, one residential fourplex, and 24 townhomes called the Village at Gray's Crossing; and

WHEREAS, the Town of Truckee Planning Commission approved two two-year Time Extensions on November 16, 2021 and December 19, 2023 under Planning Commission Resolutions 2021-12 and 2023-20; and

WHEREAS, Truckee is currently experiencing a severe shortage of housing available to the Truckee workforce. The lack of available housing results in employees at local businesses commuting long distances to their place of employment with the associated detrimental impacts on the sensitive surrounding environment; and

WHEREAS, the lack of available housing also impacts local businesses by making it difficult to hire employees; and

WHEREAS, as a condition of approval of the Village at Gray's Crossing project, per the requirements of the Gray's Crossing Specific Plan, the Developer was required to deed restrict nine residential units within the Village at Gray's Crossing mixed use project for affordable housing;

WHEREAS, Developer and Developer's successors and assigns as to the Property have

designated the units in the residential fourplex in the Village at Gray's Crossing as fulfilling four out of the nine affordable housing units required for the project.

WHEREAS, Developer and Developer's successors and assigns as to the Property shall provide and maintain all four (4) housing units as affordable housing rental units subject to and as set forth in this Deed Restriction.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1) Defined Terms. For purposes of this Deed Restriction, the following terms shall have the following meanings:

a) "Affordable rent" means monthly rent, including utility costs, which does not exceed one-twelfth of 30% of the maximum annual income for a household of the applicable income level, as the Nevada County Median Income for various household sizes is determined annually by the State of California's Housing and Community Development. In accordance with the guidelines for the calculation of rent and determination of household size within the State of California's Housing and Community Development, "affordable rent" shall mean no more than 30% of the household income limit shall be applied to rent. Thus, "affordable rent" for the Moderate-Income units shall be 30% of 120% of the Nevada County Median Income for a three-person household.

b) "Developer" has the meaning stated in the first recital of this Deed Restriction, and any successor(s) in interest to Developer, as the fee title owner of the Property.

c) "Lender" means any one or more first mortgagee construction and/or permanent lender or lenders.

d) "Loan" means any future loan made by a Lender and under which a deed of trust (whether one or more, individually and collectively, "Deed of Trust") encumbers the Property in order to secure repayment by Developer of the applicable loan.

e) "Moderate-Income" means households with incomes not exceeding 120% of Nevada County median income.

f) "Principal place of residence" means the dwelling in which one's habitation is fixed and to which a person, whenever he or she is absent, has a present intention of returning after an absence therefrom. In determining what is a principal place of residence, the Town and Developer may consider, without limitation: location of business pursuits; employment and income sources; residence for tax purposes; residence of parents, spouse, and children, if any; location of personal property; motor vehicle registration; and voter registration.

g) "Restricted Unit" means each of the residential dwelling units constructed on the Property.

2) Binding Effect. This Deed Restriction shall constitute a covenant running with the Property as a burden thereon, for the benefit of, and enforceable by the Town and the Developer. This Deed Restriction shall bind the Developer and any successor in interest to the Developer. Each and every conveyance of the Property or a portion thereof, or interest therein, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Deed Restriction, even

without reference to this Deed Restriction in any document of conveyance.

3) Restriction. The following restriction shall apply to the Property:

a) Each Restricted Unit shall be rented at an affordable rent to a Moderate-Income household.

b) In implementing the restriction set forth above, the Developer or other entity managing the Units shall comply in all respects with the Federal Fair Housing Act and the State Fair Employment and Housing Act.

c) Each Restricted Unit must be occupied by a Moderate-Income household as his, her or their principal place of residence.

4) Right To Terminate Lease. Nothing herein shall prevent the Developer from terminating the lease of a Restricted Unit or taking any other legal action regarding a Restricted Unit based upon any tenant's breach of the terms of the lease.

5) Annual Verification. No later than February 1st of each year, Developer shall submit a written statement to the Town including the following information and stating that such information is true and correct to the best of Developer's knowledge and belief:

i) The name(s) of the tenant occupying the Restricted Unit during the prior calendar year and evidence that such tenant(s) qualified as Moderate-Income at the time of initial occupancy, including, without limitation, verification of income;

ii) A copy of the lease form currently used for the Restricted Unit.

6) Violations by Owner. The failure of the Developer to comply with the requirements of this Deed Restriction shall be a violation of this Deed Restriction. The failure of the Developer to cure any default in the Developer's obligations under the terms of this Deed Restriction within thirty (30) days after the delivery of a written notice of default from the Town will constitute a default under this Deed Restriction. Notwithstanding anything herein to the contrary, any Lender shall have the right, but not the obligation, to cure any default, breach or violation by Developer hereunder, and in connection therewith, the Town hereby agrees to accept any such cure(s) by Lender.

7) Remedies.

a) The Town and Developer shall have any and all remedies provided by law and in equity for a violation of this Deed Restriction, including without limitation:

i) Damages, including but not limited to damages resulting from the leasing of a Restricted Unit in violation of this Deed Restriction;

ii) Specific performance; and

iii) Injunction, including without limitation an injunction to prohibit the occupancy of a Restricted Unit in violation of this Deed Restriction. All remedies shall be cumulative.

b) In addition to any other available remedies, if Developer is found to be in violation of this Deed Restriction (after expiration of any cure period), Developer shall be subject to a penalty of \$100 per violation as determined by the Town in each instance. Each occurrence is hereby deemed to be a separate violation of this Deed Restriction, and the penalty may be imposed for each and every day during any portion of which a violation is found to have been committed, continued, or permitted by Developer. This penalty shall not apply if it is discovered that an occupant provided false information to Developer, Developer reasonably relied on such false information, and the false information caused the violation, unless the Developer becomes aware of the false information and fails to enforce this Deed Restriction within the applicable cure period described in Section 6.

c) The cost to the Town of any activity taken in response to any violation of this Deed Restriction by Developer, including reasonable attorney fees, shall be paid promptly by Developer; provided that, if the Town or court of competent jurisdiction finds that Developer was not in violation of this Deed Restriction, Developer shall not be liable for such payment.

d) The amounts set forth in subsection b) of this Section 7 shall be adjusted once every 5 years by an amount equal to the percentage change, since the last adjustment, in the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-Hayward metropolitan area, published by the Bureau of Labor Statistics. In the event that publication of this index ceases, Town shall select a comparable new index to use.

8) Covenants to Run With the Land. The Parties hereby declare their express intent that the covenants and restrictions set forth in this Deed Restriction shall run with the land and shall bind all successors in title to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the Town expressly releases such conveyed portion of the Property from the requirements of this Deed Restriction. All of the provisions of this Deed Restriction shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including without limitation Section 1468 of the California Civil Code. Each covenant to do, or to refrain from doing, some act on the Property hereunder: (a) is for the benefit of the Property and is a burden on the Property, (b) runs with the Property, and (c) is binding upon each Party and each successive owner during its ownership of the Property or any portion thereof, and shall be a benefit to and a burden upon each Party and the Property hereunder and each other person or entity succeeding in an interest to the Property.

9) Term. This Deed Restriction shall commence on the Effective Date and shall run with the Property in perpetuity, unless modified as provided herein.

10) Modification. This Deed Restriction may only be modified by subsequent written agreement of the Parties. Any modification to this Deed Restriction is subject to the prior written approval of all Lender(s) under any outstanding Loan(s). If either Party believes that any provision of this Deed Restriction is in conflict with California law or federal law, the Parties shall meet and confer in good faith to discuss how this Deed Restriction may be modified achieve its purposes while complying with the law.

11) Assignment. Subject to the provisions of Sections 8 and 18 hereof and this Section 11, neither this Deed Restriction nor any of the rights or obligations of the Parties hereto shall be assigned by either Party without the written consent of the other. Notwithstanding anything herein to the contrary,

this Section 11 shall not apply to assignment of Developer's rights and obligations under this Deed Restriction pursuant to a sale or other transfer of fee title to the Property or Developer's interest therein, or pursuant to foreclosure or deed in lieu of foreclosure.

12) Severability. If any provision of this Deed Restriction 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.

13) Governing Law and Venue. This Deed Restriction shall be governed by the laws of the State of California, and any legal action concerning the provisions hereof shall be brought in Nevada County, California.

14) Third Parties. There are no intended third-party beneficiaries to this Deed Restriction.

15) No Joint Venture. Notwithstanding any provision hereof, the Town is not and shall never be in a joint venture with the Developer, and the Town is not and shall never be liable or responsible for any debt or obligation of the Developer.

16) No Indemnity. Nothing herein shall be construed to require the Town to protect or indemnify Developer against any losses attributable to the rental of a Unit, nor to require the Town to locate an income eligible household for any Restricted Unit.

17) Governmental Immunity. The Town, its officers, attorneys, and employees, are relying on and do not waive or intend to waive by any provision of this Deed Restriction, the monetary limitation or any other rights, immunities, and protections provided by the California Government Claims Act as amended, or otherwise available to the Town or its officers, attorneys, or employees.

18) Foreclosure and Deed In Lieu.

a) Any transfer of title to the Property to a Lender or its nominees by foreclosure or deed in lieu of foreclosure, or any subsequent transfer by a Lender or its nominee following foreclosure or deed in lieu of foreclosure is permitted by this Deed Restriction, provided that this Deed Restriction shall remain in full force and effect. As more particularly set forth in Section 1466 of the California Civil Code, no subsequent owner of the Property shall be liable or obligated for the breach or default of any obligation of the Developer or any prior owner under this Deed Restriction including, but not limited to, any payment or indemnification obligations.

b) Notwithstanding anything in this Deed Restriction to the contrary:

i) In the event of any conflict between this Deed Restriction and one or more Loans and Lender Rights (as defined below), then in such event, the terms and conditions of this Deed Restriction shall control. As used herein, "Loans and Lender Rights" shall mean collectively, all applicable Lender's mortgage insurance regulations, related Lender's administrative requirements, and any of the other rights of any Lender thereunder.

ii) Developer, its successors and assigns, will take all steps necessary to comply with this Deed Restriction.

19) Notices. All notices required by this Deed Restriction shall be sent first-class mail or personally delivered to the following persons and addresses, which may be amended from time to time

by either party hereto by providing notice to the other party, which shall not be deemed or construed an amendment to this Deed Restriction:

Town:

Town of Truckee
10183 Truckee Airport Road Truckee, CA 96161
Attn: Town Manager

Owner:

Village at Gray's Crossing, LLC
4917 Stoddard Road
Modesto, CA 95356
Attn: John Abbate

20) The Town hereby agrees that it shall, upon its receipt of written notice from Developer or any Lender requesting the same, (a) concurrently with delivering any notices to Developer in respect of this Agreement (including, without limitation, any notice(s) or default(s) or breach(es) by Developer hereunder) , provide a copy of the identical notice(s) to the requesting Lender at the address for such Lender as shall be designated by the same in the aforementioned written request for notice so received by the Town, and (b) permit Lender to inspect and review during normal business hours and with reasonable advance notice, all books and records related to the Property then held by Developer or the Town.

[Remainder of page intentionally left blank]

In Witness Whereof, the Parties have executed this Deed Restriction on the Effective Date.

Town:

Town of Truckee, California

Jennifer Callaway, Town Manager

Developer:

Village at Gray's Crossing, LLC, a California limited liability company

By: _____
John Abbate, its Manager

Approved as to form:

Andrew Morris, Town Attorney

“EXHIBIT A”

Description of all that real property being a portion of Section 2, Township 17 North, Range 16 East, Mount Diablo Meridian, in the Incorporated Town of Truckee, County of Nevada, State of California and being more particularly described as follows:

Lot J, as shown on Final Map No. 2020-00000029/FM, The Village at Gray’s Crossing, recorded in Book 9 of Subdivisions, Page 26, Official Records of Nevada County.

The herein described **Parcel J** containing 17,617 sq.ft., more or less.

END OF DESCRIPTION

This description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Martin Wood

Martin D. Wood
LS 8321

Date

