

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**Memorandum**”) is dated \_\_\_\_\_, 2020 and is between SUMMIT COUNTY HABITAT FOR HUMANITY (“**Habitat**”) and SUMMIT COUNTY, COLORADO, acting by and through the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (“**County**”). Habitat and County are sometimes referred to individually as a “**Party**”, or together as the “**Parties**.”

### ARTICLE 1

#### Intent and Purpose

##### Section 1.1 Intent and Purpose of Memorandum.

Habitat is a non-profit organization dedicated to providing affordable housing to low-income families.

The County is a governmental entity that seeks to identify and act on opportunities to provide affordable workforce housing so that people can live and work in our community, and generally promotes the provision of low and moderate income workforce housing in Summit County through a variety of programs. On October 3, 2012, the County purchased 3 lots located at 0019 Straight Creek Drive (Lots 0 and 1, Block 1, and Lot 1, Block 2, Dillon Valley Subdivision #1), previously owned and occupied by Our Lady of Peace Catholic Church. The property was and is intended to be utilized for workforce housing and the purchase was made with funds dedicated to the development of affordable workforce housing within the community. The Dillon Valley Vistas Planned Unit Development (PUD) currently under construction only includes Lot 0 and Lot 1, Block 1 and will provide twelve (12) new deed restricted units to the workforce housing inventory. The remaining lot, Lot 1, Block 2, is currently zoned for Single Family Residential and would make an ideal lot for a Habitat low income housing unit.

In recognition of the Parties’ efforts and to address the continuing need for affordable housing in Summit County, they desire to collaborate with each other on a single-family home building project located at Lot 1, Block 2, Dillon Valley Subdivision #1, Summit County, Colorado (“**Property**”). This Memorandum will set forth the terms and conditions of such collaboration.

##### Section 1.2 Implementation of Memorandum.

The Memorandum shall be effective upon signing by both parties and shall remain in effect, unless otherwise terminated as provided for in this Memorandum, until completion of the Project, which will be the construction, sale and occupation of the home by a qualified purchaser pursuant to Habitat’s policy, which shall be no later than December 31, 2022, unless otherwise agreed to in writing by the parties as provided herein.

## ARTICLE 2

### Project

#### Section 2.1 County Responsibilities

The County will be responsible for the following:

- A. County will provide assistance to Habitat regarding the application and processing of the building permit for the Property. Such assistance will include the waiving of fees, where such waiver is discretionary or otherwise legally permitted.
- B. The County shall transfer ownership of the lot to Habitat within 45 days of the execution of this MOU.
- C. County will consider requests for other in-kind assistance that may be granted at the County's sole discretion in consideration of its other operational and financial obligations.
- D. County will transfer the Property to Habitat in accordance with the provisions set forth in Section 2.3 below.

#### Section 2.2 Habitat Responsibilities

Habitat will be responsible for the following:

- A. Habitat will be responsible for creating and executing the Project plan. Design and construction of the Project shall be done according to Habitat's standard practices and procedures.
- B. Habitat will be responsible for the selection, negotiation, contracting with, and sale to potential and final buyers. The sale and mortgage process shall be performed in consultation with SCHA according to Habitat's standard practices and procedures.
- C. Habitat shall bear all costs of the Project, except for the contributions or value of the County's assistance, as provided for herein. Final responsibility for completion of the Project rests with Habitat.
- D. Habitat shall be responsible for securing and managing any sub-contractors, volunteer or otherwise, associated with the Project.
- E. Habitat shall complete the Project by December 31, 2022 ("Project Completion Date"), unless otherwise agreed to in writing. In the event an extension of time is needed, Habitat shall provide the County with adequate justification, in writing, of the need for such extension of time, and, upon approval by the County, the parties may enter into a written addendum to this Memorandum. Notwithstanding anything in the foregoing to the contrary, such extension will not be unreasonably withheld if legitimate cause exists for such a request.

#### Section 2.3 Transfer of the Property

- A. Within 45 days of the execution of this MOU, the County shall transfer ownership of the Property to Habitat by warranty deed. Closing shall occur at a date agreed upon by both

parties. Title guarantee and closing services shall be provided by Land Title and costs shall be split equally.

- B. Concurrently with the transfer of the Property, at Closing, the parties shall execute and record a deed restriction acceptable to the County, as contemplated in section 2.6 below.
- C. If Habitat has not completed the Project by the Project Completion Date, and if no extension has been agreed upon, then the County shall have the right to purchase the Property back from Habitat. The Purchase Price may include the cost of actual improvements to the Property, excluding volunteer labor, but in no case shall it exceed the price the completed home could be sold for under the applicable deed restriction.

#### Section 2.4 Work on the Property

Prior to the transfer of ownership of the Property from the County to Habitat as set forth above, Habitat may enter onto the Property to perform work on the Property in accordance to the terms set forth in this MOU. All such work shall be coordinated with the County and the County's development efforts on the adjacent County owned property.

#### Section 2.5 Insurance and Indemnification

Habitat shall provide a certificate of insurance listing County as a secondary insured. At no time shall Comprehensive General Liability Insurance for operations and contractual liability have limits of less than \$150,000 on account of any one person and \$600,000 for each occurrence of property damage and personal injury.

Habitat shall indemnify and hold harmless the County from and against all claims, damages, losses, and expenses arising out of or resulting from acts or omissions of Habitat, Habitat's contractors or sub-contractors, or volunteers, or otherwise arising out of Habitat's performance of its responsibilities under the Memorandum.

#### Section 2.6 Affordable Housing Restrictions

In order to preserve the intent of the Habitat Project and accomplish the objectives encompassed by both Habitat's mission and the County's dedication to ensuring affordable housing, prior to issuance of a building permit for the Project, a Habitat and County-approved affordable housing deed restriction shall be recorded against the Property. Habitat shall work with the County to ensure compliance with the County rules and regulations, and the terms of such deed restriction.

#### Section 2.7 Volunteer Opportunities and Publicity

County and Habitat agree to work together to provide one or more volunteer opportunities for County employees to work on the Project.

Habitat and County agree to work cooperatively on public information opportunities, including but not limited to newspaper articles and special events surrounding the construction and completion of the Project.

Section 2.8 Contact Persons

The Project team will consist of Tom Begley (Habitat Coordinator), Jason Dietz (County Housing Director), and Amy Priegel (SCHA). The Project team will be the contact points for the duration of the Project and initial questions regarding any part of this process should be directed to these individuals.

**General Provisions**

Section 2.9 Termination.

- A. Either party may terminate this MOU upon 30 days prior to closing upon written notice to the other party. Should such termination by either party occur prior to transfer of the Property from County to Habitat, as set forth above in Section 2.3, the Property will remain owned by County and no further action will be required by either party.
- B. After the transfer of the Property has occurred, neither party may terminate this agreement unless such termination is for cause or material non-performance and a failure to cure the same.

Section 2.10 Notices.

All notices required or permitted under this Memorandum must be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by fax, directed as follows:

If intended for Habitat, to:

Summit Habitat for Humanity  
1291 Blue River Parkway, CO 80498  
PO Box 4330 Breckenridge, Colorado 80424

Telephone number: (970)423-7445

If intended for County, to:

Board of County Commissioners  
P.O. Box 68  
Breckenridge, Colorado 80424  
Attn: Scott Vargo, County Manager  
Telephone number: (970)453-3401  
Fax number: (970)453-3535

with a copy in each case (which will not constitute notice) to:

Jeff Huntley, Esq.  
Summit County Attorney

P.O. Box 68  
Breckenridge, Colorado 80424

Any notice delivered by mail in accordance with this Section will be effective on the third business day after being deposited in any post office or postal box regularly maintained by the United States Postal Service. Any notice delivered by telecopier in accordance with this Section will be effective upon receipt if concurrently with sending receipt is confirmed orally by telephone. Any notice delivered by hand or commercial carrier will be effective upon actual receipt. Either Party, by notice given as above, may change the address to which future notices may be sent.

Section 2.11 Amendment. This Memorandum may be amended only by a duly authorized written instrument executed by the Parties. Oral amendments to this Memorandum are not permitted.

Section 2.12 Applicable Law. This Memorandum is to be interpreted in all respects in accordance with the laws of the State of Colorado. Both parties agree to comply with all applicable rules, regulations, codes, laws, restrictions, and covenants.

Section 2.13 Legal Effect of Memorandum. This Memorandum creates a binding and legally enforceable agreement between the Parties. There are no legal or equitable remedies available to either Party resulting from a breach or alleged breach of the terms of this Memorandum except the remedy of Specific Performance. Neither this Memorandum, any statements made or documents prepared or submitted by the Parties in connection with the negotiations leading up to the execution of this Memorandum, nor any statements made or documents prepared or submitted by the Parties in connection with this Memorandum, are admissible in any litigation or other judicial or administrative proceeding.

Section 2.14 Annual Appropriation. If sufficient funds are not appropriated for the payment of sums due hereunder by the governing body of the Party, this Memorandum will automatically terminate. Neither Party's obligations under this Memorandum constitutes a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE TO FOLLOW

HABITAT FOR HUMANITY, a Colorado  
non-profit corporation

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

ATTEST:

\_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS OF  
SUMMIT COUNTY, COLORADO

By: \_\_\_\_\_  
Karn Stiegelmeier, Chair

ATTEST:

\_\_\_\_\_  
Kathleen Neel, Clerk and Recorder, and  
*ex-officio* clerk to the Board of County Commissioners