

# Melody Lodge Cabins Planned Unit Development Designation

This Melody Lodge Cabins Planned Unit Development Designation ("Designation") originally approved on May 23, 2006, and revised on October 24, 2006, is hereby revised on this 24th-25th day of October-August 2006-2020 by the Board of County Commissioners ("County Commissioners") of Summit County, Colorado ("County"). This PUD designation is for certain real property located in the County as described in attached Exhibit A, hereinafter referred to as the "Property."

This PUD Designation establishes permitted land uses and restrictions permitted on the Property, its development plan, and sets forth specific development regulations which must be adhered to by Dale Mitchener and Debra Gregory-Mitchener ("Mitcheners") and their successors, heirs, agents and assigns, as owners of the Property in whole or in part, as collectively referred to herein as the "Owner/Developer(s)". This designation also specifies obligations which must be fulfilled in a timely manner in accordance and conjunction with this Designation by the Owner/Developer.

Where this Designation does not address a specific development standard or requirement of the Summit County Land Use and Development Code ("Development Code"), the provisions of the Development Code shall apply. Where the Designation addresses a specific development standard or requirement, the provisions of this PUD Designation shall supersede only such specific provisions of the Development Code.

## A. PERMITTED USES AND DEVELOPMENT PLAN

Use and existing development on the property shall be in accordance with the specific requirements set forth in this PUD designation and in substantial compliance with the PUD Plan attached hereto as Exhibit B, as well as the applicable provisions of the Development Code.

### 1. Land Use and Permitted Uses

Use and development of the property shall be in accordance with the PUD Designation's Development Plan attached hereto as Exhibit B, and pursuant to the following specific requirements:

**The Land Use and Permitted Uses within the Melody Lodge PUD are as follows:**

#### a. East Side of Heeney Road (County Road 30):

- i. **Lodge Building** - first floor - Fee-simple market-rate single-family residence to be occupied by Property Manager or Owner/Developer and their successors and assignees with occupancy permitted year-round.
- ii. **Lodge Building** - second floor - Deed-restricted affordable rental unit per the applicable Summit Housing Authority standards with occupancy permitted year-round;
- iii. **Cabin A** - Fee-simple market-rate vacation cabin with restricted continuous occupancy limited to six (6) consecutive months or less, and eight (8) cumulative months in any one calendar year for any particular occupant;
- iv. **Cabin B** - Fee-simple market-rate vacation cabin with restricted continuous occupancy limited to six (6) consecutive months or less, and eight (8) cumulative months in any one calendar year for any particular occupant; and
- v. **Cabin C** -Fee-simple market-rate vacation cabin with restricted continuous

occupancy limited to six (6) consecutive months or less, and eight (8) cumulative months in any one calendar year for any particular occupant;

- vi. **The existing detached garage** located on the east side of Heeney Road (County Road 30) shall be limited to the use by the Mitcheners, or other duly designated Property Manager and/or Owner/Developer/occupant of the first floor of the lodge building for the storage of vehicles, and such other miscellaneous articles necessary for the maintenance and upkeep of the vehicles stored therein, as well as items typically found stored in such structures.
- vii. **The existing detached storage shed** located on the east side of Heeney Road (County Road 30) that is limited to use by the Mitcheners, or other duly designated Property Manager and/or Owner/Developer/occupant of the first floor of the lodge building for the storage of miscellaneous articles necessary for the maintenance and upkeep of the physical improvements, structures and common open space associated with the Melody Lodge Planned Unit Development.

**b. West Side of Heeney Road (County Road 30):**

- i. **Cabin #1** – ~~(e)Eastern ½ of duplex cabin~~ shall have a recorded Covenant Restriction to restrict ownership, occupancy, and sale of the unit in such a fashion as to provide, on a permanent basis, affordably priced housing for low to moderate-income persons. This unit shall be occupied as stipulated in the “Restrictive Housing Covenant and Notice of Lien for Cabin #1 and Cabin #2 of Melody Lodge Cabins PUD, Summit County Colorado” attached and recorded as part of this PUD designation; Fee simple market rate vacation cabin with restricted continuous occupancy limited to six (6) consecutive months or less, and eight (8) cumulative months in any one calendar year for any particular occupant;
- ii. **Cabin #2** – ~~(w)Western ½ of duplex cabin~~ shall have a recorded Covenant Restriction to restrict ownership, occupancy, and sale of the unit in such a fashion as to provide, on a permanent basis, affordably priced housing for low to moderate-income persons. This unit shall be occupied as stipulated in the “Restrictive Housing Covenant and Notice of Lien for Cabin #1 and Cabin #2 of Melody Lodge Cabins PUD, Summit County Colorado” attached and recorded as part of this PUD designation; Fee simple market rate vacation cabin with restricted continuous occupancy limited to six (6) consecutive months or less, and eight (8) cumulative months in any one calendar year for any particular occupant;
- iii. **Cabin 3** – Fee-simple market-rate vacation cabin with restricted continuous occupancy limited to six (6) consecutive months or less, and eight (8) cumulative months in any one calendar year for any particular occupant;
- iv. **Cabin #4** – Fee-simple deed-restricted affordable for-sale housing unit per applicable Summit Housing Authority standards with occupancy permitted year-round;
- v. **Cabin #5** – Fee-simple market-rate vacation cabin with restricted continuous occupancy limited to six (6) consecutive months or less, and eight (8) cumulative months in any one calendar year for any particular occupant;
- vi. **A stables area** on the west side of Heeney Road (County Road 30) limited to private use solely for the Mitcheners, or other duly designated Property Manager and/or

Owner/Developer/occupant of the first floor of the lodge building subject to the limitations as listed below in the Animal Keeping subsection and the Development Code regulations; and

- vii. **Outdoor storage** on the west side of Heeney Road (County Road 30) subject to the limitations as listed below in the Outdoor Storage sub-section and the Development Code regulations.

**c. Accessory Uses**

**Animal keeping -**

Animal keeping shall be restricted as follows:

- i. For all units and commercial use, the keeping of domestic pets as defined in the Development Code shall be permitted with restrictions developed and approved by the governing homeowners' association documents and the Development Code. Where the two sets of regulations conflict, the stricter of the two shall prevail.
- ii. The keeping of all other animals, including, but not limited to horses, shall be prohibited for all owners except lodge building owner. The lodge-building owner shall be restricted as to the number and types of animals as allowed by the Development Code.

**d. Recreational Vehicles, Snowmobiles, All Terrain Vehicles, Boats, Ancillary Trailers and Utility Trailers -**

- i. Parking of recreational vehicles (RVs), snowmobiles, All Terrain Vehicles (ATVs), boats, ancillary trailers and utility trailers owned by the Owners/Developers within the PUD is limited to a period to run parallel with the time frame of their occupancy with a maximum total time limit of eight (8) months.
- ii. RVs, utility trailers, boats and boat trailers owned by the Property Manager or Owner/Developer shall comply with the regulations of the Development Code for parking and the outdoor storage requirements of such items.
- iii. All such aforementioned RV parking areas shall be specifically designated in the governing homeowner association documents.
- iv. All other types of outdoor storage of any motor vehicle, RVs, snowmobiles, ATVs, boats, ancillary trailers, and utility trailers are prohibited within the PUD.

**e. Outdoor Storage:**

- i. All outdoor storage shall comply with the regulations of the Development Code.

**2. Development Plan**

The approximate square footages of the living space in the existing buildings on the property are as follows:

West - 3 one bedroom cabins =	576 sq. ft. x 3 =	1728 sq. ft.
2 two bedroom units in duplex =	920 sq. ft. x2 =	1840 sq. ft.
East - 1 one bedroom cabin =		331 sq. ft.
1 one bedroom cabin =		645 sq. ft.
1 one bedroom cabin =		825 sq. ft.
1 lodge building duplex main level =		1447 sq. ft.
<u>1 lodge building duplex main level =</u>		<u>714sq ft.</u>

Total =  
living space

7530 sq. ft. total

No new structures or additional dwelling units are permitted other than those currently existing on-site and listed under Permitted Uses. The occupancy of the cabins except ~~Cabin #1, and Cabin #2, and~~ the residences in the lodge building, and the one other designated deed-restricted affordable full-time County employee cabin, will be restricted to no more than six (6) consecutive months and eight (8) months in any calendar year for any particular occupant. All uses permitted herein, including accessory, temporary and conditional uses, shall be restricted to those uses allowed when the property was utilized as short term rental unit lodging use, and further in accordance with the use restrictions set forth herein, and with the associated accessory uses as listed below as permitted by the current minimum lot size variance amendment. Said current minimum lot size variance amendment is attached as Exhibit C and incorporated herein as if referenced in full.

## **B. DEVELOPMENT STANDARDS**

- 1. Building height** - All of the buildings currently exist and are restricted from any future exterior alterations, including changing the existing buildings' heights.
- 2. Setbacks** - All of the buildings currently exist and are restricted from any exterior additions or remodeling that would expand or contract from the current existing building bulk and mass. All buildings built in 2000 are per approved Summit County setback. All "original" buildings are per "grandfathered" setbacks. No further setback encroachments or extensions of such grandfathered encroachments are permitted without specific variance allowing the same.
- 3. Parking** - Per the minimum lot size variance amendment from 1997, the parking requirement has been established at 1.5 spaces per bedroom, requiring a maximum of 21 parking spaces on the property.
- 4. Designated open space area/public use area** -
  - a. Open space areas:** The remainder of the property on both sides of Heeney Road (CR 30), not currently occupied either by structures or used for the Owner/Developer's RV parking area and private stable area, shall be hereby designated as privately owned open space. The open space areas shall remain open and free from all new improvements. The Owner/Developer shall establish a Homeowners Association ("HOA") and establish governing documents for the same to adequately address the ownership and maintenance of such open space areas associated with the Melody Lodge PUD.
  - b. Public Use areas:** Pursuant to Section 8601 of the Summit County Land Use & Development Code, the Owner/Developer will be required to provide public use areas upon subdivision or subdivision exemption. The requirement for public use areas may be met by either payment of fees, land dedication, or obtaining credits for construction of recreational facilities. Dedication of an easement or a bond for the fees will be required prior to recordation of any final plat for the project.
- 5. Signs and lighting** - All signs shall comply with the Summit County Sign Regulations as now in effect or hereafter amended. No signage, other than public safety signs fully consistent with the Manual for Uniform Traffic Control Devices shall be erected within the PUD until approved by the applicable Review Authority. All lighting shall comply with the requirements of the Development Code.
- 6. Architectural design requirements** - All future upgrades or improvements to the current structures

within the Melody Lodge Cabins PUD shall continue to reflect the present character of the existing cabins. The existing cabins' height, bulk and mass, and footprint shall not be altered from its existing form and location. Any maintenance of the exterior of any of the cabins or exterior remodeling of the exterior of the existing cabins shall not change the buildings' height, bulk, mass or general appearance.

**7. Employee Housing and Summit County Housing Authority support –**

- a. The owner/developer shall participate in an affordable housing program with the Summit County Housing Authority for the ~~two~~ affordable units described in this document. Evidence of the participation shall be provided to the Summit County Planning Department prior to approval of the subdivision or subdivision exemption of the property.

**8. Air quality** – No new solid fuel burning devices may be installed in any of the structures other than those that comply with current Environmental Protection Agency standards.

**9. Water quality** – All water systems have been completed within the Melody Lodge Cabins PUD and comply with the water quality mitigation requirements established in the Development Code.

**10. Site plan review** – A site plan was completed and approved in 1998 prior to construction of the newer cabins were built. Said site plan is attached to this PUD as Exhibit C and shall be incorporated herein as if referenced in full. Site Plan Reviews shall be conducted in accordance with the requirements of the Development Code.

**11. Homeowner's Association/Governing Documents** – Prior to subdivision or subdivision exemption approval, Owner/Developer shall provide for the establishment of a homeowner's association on the property, and prepare governing documents for such association that adequately address the relevant requirements set forth herein.

**C. REQUIRED IMPROVEMENTS**

Required improvements currently exist and the PUD land use section restricts any new development. Access, water systems, sewer systems, fire protection, vegetation management, utilities and easements and landscaping have all been addressed in the 2000 variance amendment and site plan. Any new construction is limited to minimal upgrades, improvements and maintenance of the existing structures and site subject to the restrictions and limitations as listed in this document.

**D. IMPLEMENTATION**

**1. Platting requirements -**

A preliminary and final subdivision plat or a subdivision exemption plat, whichever is deemed appropriate under the Summit County Subdivision Regulations, shall be submitted for review and approval by the County prior to any subdivision of the property.

**E. GENERAL PROVISIONS**

**1. Enforcement -**

The provisions of the Melody Lodge Cabins planned unit designation and the development plan relating to the use of land and the location of common open space shall run in favor of Summit County and shall be enforceable at law or in equity by the County without limitation on any power or regulation otherwise granted by law. Other provisions of the Melody Lodge Cabins planned unit development designation and the development plan shall run in favor of the residents, occupants and owners of the planned unit development, but only to the extent expressly provided in, and in

accordance with the terms of, the Melody Lodge Cabins planned unit development designation and the development plan. Provisions not expressly stated as running in favor of the residents, occupants or owners of the planned unit development shall run in favor of the County.

**2. Breach of provisions of PUD designation -**

If at any time any provision or requirements stated in the Melody Lodge Cabins planned unit development designation has been breached by the Owner/Developer, the County may withhold review and approval of any permits, applications or other matters pertaining to the Property, until such breach has been remedied; provided, however, that the County shall not take affirmative action on account of such breach until it shall have first notified the Owner/Developer in writing and afforded the Owner/Developer a reasonable opportunity to remedy the same.

**3. Binding Effect -**

The Melody Lodge Cabins planned unit development designation shall run with the land and be binding upon the Owner/Developer, their respective successors, heirs, agents, representatives and assigns, and any and all persons who may hereafter acquire an interest in the Property or any part thereof, with the exception that provisions of this designation may be modified through an amendment in accordance with the procedure stated in the County Development Review Procedures. This designation shall be recorded in order to put prospective purchasers or other interested persons on notice as to the terms contained herein.

**4. Amendments -**

- a. Amendments to the provisions of this PUD Designation shall be received and acted upon as a rezoning application, subject to the County's procedures for zoning amendments and to the requirement for findings under the Planned Unit Development Act of 1972 at C.R.S. 24-67-106(3)(b), unless such amendment is determined to be minor in nature.
- b. Amendments to the provisions of this PUD Designation may be initiated by, and the applicant on any application for such amendment may be, any of the following persons or entities (each, a "Permitted Applicant") acting alone or together:
  - i. The County Commissioners,
  - ii. The Planning Commission,
  - iii. The Planning Director of the Planning Department,
  - iv. Any owner of fee title to any real property within the Property on the condition that the owner's real property would directly be affected by such amendment (an "Affected Property Owner"),
  - v. Anyone having written permission from an Affected Property Owner, or
  - vi. A public entity having the power to obtain title to the property through condemnation.
- c. Notwithstanding Subsection E.4. (B) above, if the effect of any amendment to this PUD Designation would be to subject any property to this Designation that was not previously subject to this PUD Designation (any "Additional Property"), the owner of such Additional Property must be an applicant on the application for such amendment or otherwise provide its written consent to its Additional Property to this PUD Designation.
- d. Amendments to this PUD Designation initiated by one or more Permitted Applicants that are approved in accordance with the Code shall be binding upon all owners of property subject to such amended PUD Designation.

**5. Notices -**

Notice to County:  
Board of County Commissioners  
PO Box 68  
Breckenridge, CO 80424

Notice to Owner/Developer  
Dale Mitchener  
Debra Gregory-Mitchener  
1534 County Road 30  
Heeney, CO 8049

All notices so given shall be considered delivered three days after the mailing thereof, excluding weekends or official holidays. Either party, by notice so given, may change the address to which future notices shall be sent.

**6. Entire Designation -**

This Designation contains all provisions and requirements incumbent upon the Owner/Developer relative to the Melody Lodge Cabins planned unit development, except as modified by subsequent action of the Board of County Commissioners in accordance with procedures set forth in the Summit County Land Use & Development Code and the Colorado Planned Unit Development Act (CRS 24-67-106) for amending planned unit developments, and except that nothing contained herein shall be construed as waiving any requirements of the Summit County Land Use & Development Code or other regulations otherwise applicable to the development of the Property.

**7. Effective Date -**

This Designation must be signed by both the Summit County Board of County Commissioners and the Owner/Developer and must be recorded by the Summit County Clerk and Recorder in order to become effective. The effective date shall be the date of recordation.

**8. PUD Review Requirements -**

The Summit County Land Use & Development Code, Chapter 12, includes procedures and requirements for review of all planned unit developments. The Owner/Developer shall be on notice of these requirements and shall insure that information necessary for the periodic review is made available to the County within the time frames as may be established in Chapter 12. The Owner/Developer further understands that failure to provide the necessary information or to proceed with the review process may result in development approvals within the PUD being withheld.

IN WITNESS WHEREOF, the County and the Owner/Developer have executed this Designation as of the date first written above.

BOARD OF COUNTY COMMISSIONERS  
OF SUMMIT COUNTY, COLORADO

BY: \_\_\_\_\_  
Karn Stiegelmeier, Chair

\_\_\_\_\_  
Kathleen Neel, Clerk and Recorder

BY: \_\_\_\_\_  
Dale Mitchener

BY: \_\_\_\_\_  
Debra Gregory-Mitchener

### **Exhibit A – Legal Description, Melody Lodge Property**

Part of Lot 2 of Section 33 and part of Lot 5 of Section 34, Twp 2 S, R. 79 W. of the 6th P.M., more particularly described as follows:

Beginning at a point on the section line common to said Sections 33 and 34, at the Southeast corner of Lot 2 of said Section 33, which is also the Southwest corner of Lot 5 of said Section 34; thence, with the South line of said Lot 2 North 89° 53' West, 300.0 feet; thence due North 681.02 feet; thence South 47° 26' East, 407.34 feet to a point on said section line; thence continuing South 47° 26' East, 192.9 feet; thence South 63° 41' East 226.0 feet; thence South 49° 29' East 269.0 feet to the South line of said Lot 5; thence with said South line, North 89° 47' West, 548.3 feet to the point of beginning and containing 5.79 acres, more or less, together with improvements thereon.

**Exhibit B**  
**Site Plan**



**Exhibit C**  
**BOA97-02**  
**Resolution**  
**(Resolution #97-05)**

RESOLUTION NO. 97-05

Before the Board of Adjustment  
of the County of Summit  
State of Colorado

FILE COPY

APPROVING AN AMENDMENT TO THE 1984 VARIANCE FOR THE MELODY LODGE THAT ALLOWS FOR THE CONSTRUCTION OF UP TO A MAXIMUM OF THREE (3) NEW ONE BEDROOM COMMERCIAL LODGING CABINS NOT EXCEEDING 700 SQ.FT. AND ONE (1) NEW DUPLEX UNIT, EACH HALF OF WHICH MAY HAVE UP TO ONE TWO BEDROOM COMMERCIAL LODGING UNIT WITH THE ENTIRE DUPLEX NOT EXCEEDING 2,200 SQ.FT. ALONG WITH THE ELIMINATION OF THE BAR/RESTAURANT ALLOWED UNDER THE 1984 VARIANCE ON A 5.79 ACRE PARCEL, A PORTION OF SECTIONS 33 & 34, T2S, R79W (Applicants: Dale & Debra Mitchener)

WHEREAS, Dale & Debra Mitchener have applied to the Board of Adjustment to amend the existing Melody Lodge variance, approved by the County in 1984, to allow the construction of up to a maximum of three (3) new one bedroom commercial lodging cabins not exceeding 700 sq.ft. and one (1) new duplex, each half of which may have up to a two bedroom commercial lodging unit with the entire duplex not exceeding 2,200 sq.ft. along with the elimination of the bar/restaurant allowed under the 1984 variance on a 5.79 acre parcel, a portion of Sections 33 & 34, T2S, R79W; and,

WHEREAS, the Community Development Division has reviewed the application and recommended that it be approved; and,

WHEREAS, the Board of Adjustment has reviewed the application at public hearings held on April 16, 1997 and May 21, 1997 with public notice as required by law and considered the evidence and testimony presented at those hearings; and,

WHEREAS, the Board of Adjustment finds as follows:

1. Due to the unique nature of this application to amend a grandfathered variance granted in 1984, the question of whether or not the strict application of the County's Zoning Regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner in the development of the property because of special circumstances applicable to the property such as size, shape, topography or other extraordinary or exceptional physical conditions is not applicable in this case.
2. With compliance with the conditions set forth in this resolution the proposed amendment to the existing Melody Lodge variance granted in 1984 should pose no significant threat to the public health, safety, or welfare due to the fact that adequate access is available and adequate water and sewage disposal will be provided.

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Doris L. Brill - Summit County Recorder

3. The requested variance amendment is consistent with the purpose and intent of the County's Zoning Regulations due to the fact that additional lodging cabins not exceeding four in number and/or 4,300 sq.ft. of development will not constitute an incompatible use with the neighboring Forest Service or agricultural lands, represents a better designed, more efficient and economical use of land and its resources because it will redistribute the allowed uses on the property, minimize visual impacts along the CR #30 view corridor, and facilitate proper sewage disposal in an effort to protect the water quality of Green Mountain Reservoir.
4. While the 1984 approvals probably constitute an grant of special privilege, the proposed amendment does not increase the disparity between what is normally approved for property owners of such non-conforming parcels and as such is not inconsistent with the criteria established under Section 12505.04(A)(4) of the Summit County Land Use & Development Code.
5. The proposed amendment constitutes a more reasonable use of the property than do some of the uses currently allowed under the variance granted in 1984.
6. This parcel was created in 1939 and as such constitutes a legal parcel for the purposes of Section 12505.04(A)(6) of the Code.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT OF SUMMIT COUNTY, COLORADO, THAT an amendment to the Melody Lodge variance that allows up to a maximum of three (3) new one bedroom commercial lodging cabins not exceeding 700 sq.ft. each and a new duplex, each half consisting of up to a maximum of a two bedroom commercial lodging cabin with a maximum of 2,200 sq.ft. for the entire duplex along with the elimination of the bar/restaurant allowed under the '84 variance on a 5.79 acre parcel, a portion of Section 33 & 34, T2S, R79W, is hereby approved subject to the following conditions:

1. Under no circumstances shall there be any new additions, expansions, or implementation of new uses for the 1½ acre portion of the subject property on the east side of CR #30. The property owners may apply for the necessary permits to conduct remodeling of any existing structures on the east side of CR #30 for the purposes of bringing said structures up to current building codes or to address legitimate concerns for the safety of the owners, guests, and/or general public. Specifically, the existing uses on the 1½ acre portion of the property on the east side of CR #30 are as follows:
  - The existing lodge of 2,620 sq.ft. which includes the owners residence, two lodging bedrooms, a 364 sq.ft. retail area, and assorted support uses
  - Three one bedroom cabins
  - Three small support structures (garage, pump house, & workshop)
  - Ten (10) parking spaces
2. This variance establishes the maximum number of units, structures, and allowable uses for the subject property. It does not guarantee the property owner that such units, structures, or uses can actually be implemented on the property. No new units, structures or uses of any kind shall be constructed until the property owners have obtained site plan approval for such units, structures, or uses from the Lower Blue Planning Commission in compliance with Section 12600 et.seq. of the Summit County Land Use & Development Code. All applicable requirements for sewage disposal and water supply for all uses and structures on the subject property shall be met as part of any future site plan approvals.
3. All rentals of the lodging cabins shall be short term as defined in Section 15100(313) of the Summit County Land Use & Development Code.
4. The number of parking spaces allowed on the west side of CR #30 is limited to 1.5 spaces/lodging bedroom. No additional parking on the west side of CR #30 is allowed.

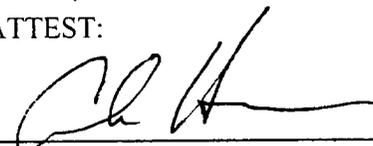
5. Storage of any RVs, boats, or utility trailers owned by the owner(s) of the Melody Lodge shall be regulated as per the requirements of Section 3815.05 et.seq. of the Summit County Land Use & Development Code.
6. Parking of RVs, boats, or utility trailers owned by guests of the Melody Lodge on the property shall be limited to a period not to exceed seven (7) continuous days.
7. Storage of RVs, boats, or utility trailers not owned by guests of the Melody Lodge and/or for periods exceeding seven (7) continuous days is prohibited.
8. Due to the limited area available and lack of access to adjoining open areas suitable for a commercial horseback riding operation, the keeping of horses is hereby limited to those animals owned by the owner of the Melody Lodge as per the requirements of Section 3802 et.seq. of the Summit County Land Use & Development Code.

ADOPTED this 21st day of May, 1997.

BOARD OF ADJUSTMENT  
OF SUMMIT COUNTY, COLORADO

BY:   
Bob Flint, Chairman

ATTEST:

  
Alan Hanson, AICP  
Senior Planner

**RESTRICTIVE HOUSING COVENANT AND NOTICE OF LIEN  
FOR CABIN #1 AND CABIN #2 OF MELODY LODGE CABINS PUD,  
SUMMIT COUNTY COLORADO**

This Restrictive Housing Covenant and Notice of Lien for the Melody Lodge Cabins PUD, Summit County, Colorado, (this "Covenant") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Dale Mitchener and Debra Gregory-Mitchener, hereinafter referred to as "Owner" or "Declarant", and approved and accepted by Summit County, Colorado, a body corporate and politic, hereinafter to as "County" or "Beneficiary,"

**RECITALS**

WHEREAS, Owner is the owner of Cabins #1 and #2, Melody Lodge Cabins, according to the plat of Melody Lodge Cabins P.U.D. recorded on March 12, 2007 at Rec. No. 849370 in the records of the Summit County Recorder, Summit County, Colorado (together, the "Duplex Cabins" and each a "Duplex Cabin"); and

WHEREAS, the Duplex Cabins are subject to The Melody Lodge Cabins Planned Unit Development Designation as amended (the "PUD") as originally recorded on January 9, 2007 at Rec. No. 844040 and amended by a resolution recorded that same day at Rec. No. 844039 created pursuant to the County's Land Use and Development Code (the "Code"); and

WHEREAS, the Duplex Cabins were originally restricted under the PUD to occupancy of any one person to six consecutive and eight cumulative months in any calendar year;

WHEREAS, such occupancy restriction was furthered by a restrictive covenant titled "Restrictive Covenant for the Sale and Use of Vacation Cabin Units" contained in a series of documents recorded under a single entry on March 13, 2007 at Rec. No. 849578, (the "Existing Covenant"); and

WHEREAS, in conjunction with this Restrictive Covenant, the County has amended the PUD to remove the occupancy restriction and replace it with a requirement that each Duplex Cabin must be restricted to occupancy by a "Qualified Occupant" as defined herein;

WHEREAS, this Restrictive Covenant shall replace in its entirety the Existing Covenant;

WHEREAS, the Parties desire to create a valid and enforceable restrictive covenant running with the land assuring that the Duplex Cabins will henceforth be used solely for countywide workforce housing purposes by a "Qualified Occupant" as defined herein; and

WHEREAS, the Parties agree that this Restrictive Covenant, upon execution and recordation, satisfies the intent of the PUD with regards to the use of the Duplex Cabins.

WHEREAS, Declarant agrees to restrict the acquisition and/or transfer of the Units to Qualified Buyers who meet the appropriate income category established by the County for each Unit

purchased, as set forth in Summit County Affordable Workforce Housing Deed Restriction Guidelines, Resolution No. 2019-94, December 10, 2019; and

WHEREAS, Declarant agrees that this Covenant shall constitute an agreement setting forth the maximum sale (“Initial Sale Price”) and resale price for which a Unit may be sold (“Maximum Resale Price”) and the terms and provisions controlling the sale of the Unit; and

WHEREAS, by this Covenant, Declarant hereby restricts the Unit from use and occupancy inconsistent with the terms as set forth in this Covenant; and

WHEREAS, under this Covenant Declarant intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use of the Units described and provided for herein shall be and are hereby made covenants running with the land and are intended to be and shall be binding upon the Declarant and all subsequent owners and occupiers of such Units for the stated term of this Covenant, unless and until this Covenant is released and terminated in the manner hereafter described.

NOW, THEREFORE, for value received, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby represents, covenants, and agrees as follows:

## **ARTICLE 1 PURPOSE AND INTENT**

The purpose and intent of this Restriction is to restrict ownership, occupancy, and sale of each Unit in such a fashion as to provide, on a permanent basis, affordably priced housing for low to moderate income persons. Each Unit is intended to be occupied by Qualified Owners or Authorized Lessees, which Qualified Owners or Authorized Lessees, because of their income, may not otherwise be in a position to afford to purchase, own, occupy, or lease other similar properties. The purpose of this deed restriction is to help establish and preserve a supply of affordably priced housing to help meet the needs of the locally employed residents of the County and to meet the guidelines required by County to meet the TDR exemption.

## **ARTICLE 2 DEFINITIONS**

1. "Area Median Income" or "AMI" means the median annual income for Summit County (or such next larger statistical area calculated by HUD that includes Summit County, if HUD does not calculate the area median income for Summit County on a distinct basis from other areas), as adjusted for household size, that is calculated and published annually by HUD; or any successor index thereto acceptable to the County, in its reasonable discretion, including the Consumer Price Index. If AMI data pertaining to the date of sale of a Unit is not yet available as of the date the sale price is calculated, then the most recent data published by HUD shall be used in its place.

2. "Authorized Lessee" means any tenant approved by the County, who shall meet the definitions of both Qualified Occupant and Eligible Household, and who shall lease a Unit at such rental rates as are specified in this covenant.
3. "County or Summit County" as that term is used herein shall mean Summit County Government or its designee, which may include an employee or other agency; if another agency, Summit County Government shall designate in writing any such certain defined responsibilities of said agency.
4. "Dependent" shall mean a person, including a spouse, child, step-child, child in the permanent legal custody, or a parent of a Qualified Occupant, in each case whose principal place of residence is in the same household as such Qualified Occupant, and who is financially dependent upon the support of the Qualified Occupant. Dependent shall also include any person included within the definition of "Familial Status" as defined in 42 U.S.C. § 3602(k), as that act shall from time to time be amended.
5. "Eligible Household" means a Household approved by the County and whose income meets the parameters set for each Unit identified in Article 4 of this Covenant.
6. "First Mortgage" means a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against the Unit to secure a loan used to purchase the Unit made by a Mortgagee.
7. "Household" means one or more persons who intend to live together in a Unit as a single housekeeping unit.
8. "HUD" means the U.S. Department of Housing and Urban Development.
9. "Local Employer" means an individual or business that has a physical location within and serves Summit County and that employs a Qualified Occupant.
10. "Maximum Resale Price" means the maximum purchase price that may be paid by any purchaser of a Unit, other than the initial purchaser who acquires the Unit from Declarant, that is determined in accordance with the provisions of Article 6 of this Covenant. The Maximum Resale Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of the Unit.
11. "Mortgagee" means any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing mortgage financing for residential real property and which is the beneficiary of a deed of trust or mortgage encumbering any Unit.
12. "Non-Qualified Owner" or "Non-Qualified Transferee" means an Owner that is not a Qualified Owner.
13. "Owner" means the record owner at any time taking and holding fee simple title to a Unit.

14. “Primary Residence” means an individual or Household occupies the deed-restricted property as their principal place of residence at least 9 months of the year. Final determination as to whether the occupancy of an individual or Household meets the intent of this definition shall be made by the County in its sole discretion and in accordance with all other provisions of this Covenant.
15. “Qualified Capital Improvements” means those improvements to a Property performed by the Owner which qualify for inclusion within the calculation of Maximum Resale Price, which requirements and specifications are set forth in the Qualified Capital Improvement (“QCI”) schedule contained in Exhibit A hereto, which exhibit is incorporated herein by this reference.
16. “Qualified Occupant” means a person aged 18 or older, along with his or her Dependents, if any, who at all times during ownership or occupancy of the Unit, resides and is employed within the County year-round, an average of at least 30 hours per week on an annual basis. “Employed within the County,” also referred to as “Local Employment”, shall mean that the person earns his or her living from a business or organization operating in and serving the County, which requires his or her physical presence within the boundaries of Summit County in order to complete the task or furnish the service, by working in the County at such business or organization an average of at least 30 hours per week on an annual basis.
  - A. Local Employment Exemptions: The following exemptions to the local employment requirement may be authorized by the County in writing.
    - i. Self-Employment and residents that work from home. For individuals claiming self-employment or work from home status, the employment must be for an average of at least 30 hours per week on an annual basis for a business that is located within and serves Summit County and requires their physical presence within the boundaries of Summit County in order to complete the task or furnish the service, and such individuals must demonstrate they are earning at least minimum wage from this employment.
    - ii. Retirement. Qualified Occupants may be authorized to retire and remain in deed-restricted units, if the person is at or above the full benefit age for Federal Social Security, has worked in Summit County an average of at least 30 hours per week on an annual basis for at least 10 continuous years prior to retirement, and has owned and occupied that particular deed-restricted housing for at least 7 continuous years prior to retirement. Provisions may be included to authorize an alternate retirement age for public safety field staff based on their years of service and applicable retirement / pension plan.
      - a. Partial Retirement. Qualified occupants may be authorized to reduce local employment to a minimum of 15 hours per week on annual basis, if the occupant has worked in Summit County an average of at least 30 hours per week on an annual basis for at least 15 continuous years prior to partial

retirement and has owned and occupied that particular deed-restricted housing unit for at least 5 continuous years prior to retirement.

- b. Housing Mobility for Retirees. When determined to be appropriate, the County may authorize a qualified retiree who meets the minimum length of employment and age requirements described above to move into a new or different deed-restricted unit, rather than requiring such individual to continue occupying the same deed-restricted unit he/she has been occupying prior to retirement. This provision is intended to allow mobility within the County's deed-restricted housing inventory by allowing retirees to downsize into smaller housing units, if desired, thus making larger units available to larger household sizes in need of deed-restricted housing.
  - iii. Disability. For an individual who becomes disabled after commencing ownership or occupancy of a Unit such that he or she cannot work the required number of hours each week required by this restriction may remain a Qualified Occupant; provided that such person receives authorization by the County to remain in the unit for a specified period of time.
- B. The County or its designee shall have the discretion to determine any person's eligibility as a Qualified Occupant under this section and may request such evidence as is necessary to make said determination.
- 17. "Qualified Owner(s)" means a natural person(s) meeting the income, residency, and all other qualifications set forth in this Covenant.
  - 18. "Summit County" means and includes the entirety of the jurisdictional area of Summit County, Colorado.
  - 19. "Summit County Housing Director" or "Director" is the Director of the Summit County Housing Department, or, if there is no such Director or the Director may be unavailable for an extended period of time, such other position in a governmental or quasi-governmental organization within Summit County as the County may designate to exercise the duties assigned to the Director in this Covenant.
  - 20. "Transfer" or "Transferred" means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in a Unit, including, but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of a Unit is transferred and the Owner obtains title.
  - 21. "Unit" means a physical portion of the Property that is to be or has been constructed for purposes of residential use only and to be created as a separate transferable real property interest by the filing of subdivision or similar plat(s) or map(s) for some or all of the Property.

**ARTICLE 3**  
**USE AND OCCUPANCY**

The use and occupancy of each Unit shall be limited exclusively to housing for individuals meeting the definition of Qualified Occupant and other requirements as set forth in this Covenant, together with the Qualified Occupant's Dependents and Household, if any. The unit must be occupied as the Qualified Occupant's primary full-time residence.

**ARTICLE 4**  
**OWNERSHIP AND OCCUPANCY RESTRICTIONS AND REQUIREMENTS**

1. Ownership. Ownership of a Unit is hereby limited exclusively to a Qualified Owner, which shall include the parties described and approved as set forth herein. In the event that a Unit is owned in violation of this Covenant, all of the remedies set forth by law or in equity, including, but not limited to, the rights set forth in this Covenant, shall be available to enforce the terms of this Covenant.
2. Income Categories. At the time of entering into any purchase contract for a Unit, individuals or households, as applicable, shall be subject to the following income categories for each Unit:

80% AMI Units shall be available for those making up to 100% AMI.
3. Income Testing. Income testing is required at the time of purchase (for the original sale and every subsequent sale of a deed-restricted unit) or initial rental, in order to ensure new owners or occupants qualify to purchase or rent a deed-restricted property matching the particular AMI cap.
4. Asset Testing. At the time of the purchase of any Unit below 120% AMI (for the original sale and every subsequent sale of a deed-restricted unit) a Qualified Owner shall not have more assets, exclusive of retirement, 401K, 529 or other equivalent tax-deferred accounts, than \$200,000 or the amount of the listing price, whichever is lower. Asset testing shall be done only at the time an individual purchases a Unit. Assets acquired by a Qualified Owner after purchasing the Unit shall not have any effect on the ability of the Qualified Owner to continue to own the Unit. The specific requirements for asset testing shall be determined by the County on a case-by-case basis.
5. Rental Procedures.
  - A. Rental of the Unit is allowed pursuant to the following terms and requirements:
    - i. Leases shall be approved in advance by the County Housing Director and shall be for a term of at least three (3) consecutive months in duration. Any such tenancy approved by the County Housing Director shall be to a person meeting the definition of a Qualified Occupant.
    - ii. Roommates. When an affordable workforce housing unit is rented to roommates not meeting the definition of a Household, all prospective tenants must be qualified by the County Housing Director as a Qualified Occupant prior to occupancy in accordance with the requirements set forth herein, and must be included as tenants on

the lease.

- iii. **Maximum Rental Rate.** The maximum monthly rental rate chargeable for the Unit shall be 120% of HUD Fair Market Rent, or other methodology approved by the County. The rental rate shall include the cost of utilities, homeowners' association dues, management costs and taxes. The Maximum Rental Rate for a room shall be the Maximum Rental Rate for the total unit size divided by the number of rooms in the unit. Under no circumstances will an Owner be required to charge a monthly rental rate for the Unit that is less than the amount the Owner must pay each month on Owner's First Mortgage.
  - B. Use as a Short-term Vacation Rental is Expressly Prohibited. Under no circumstances shall the Unit or any portion of the unit be utilized as a short-term vacation rental.
  - C. In the event that any unit, or any portion thereof, is leased or rented without compliance with this Restriction, all of the remedies set forth by law or in equity, including but not limited to the rights set forth in this Covenant, shall be available to enforce the terms of this Covenant.
6. Exceptions to Occupancy Requirements. The Qualified Owner of a Unit may request an exception to the occupancy restrictions of this Covenant through the following process:
- A. The Qualified Owner requesting an exception must provide a narrative explaining the need for the exception as well as written evidence confirming the reason for the request, including, but not limited to, such items as: a former employer's documentation of involuntary unemployment; confirmation of employment requiring a relocation, etc.
  - B. The decision regarding the request for an exception to the occupancy requirements of this Covenant shall be made by the Summit County Housing Director within thirty (30) days of the completed application submittal with supporting information.
  - C. The Summit County Housing Director may grant an exception to an occupancy requirement of this Covenant for any qualifying circumstance(s) upon finding that:
    - i. The circumstance(s) justifying the grant of an exception to an occupancy requirement of this Covenant is a circumstance that has transpired subsequent to occupancy of the Unit and/or is outside the control of the applicant to correct; and
    - ii. Strict application of the terms of this Covenant would result in a significant hardship on the Qualified Owner; and
    - iii. The grant of the requested exception is limited to the scope necessary to grant reasonable relief to the applicant, consistent with the intent and purpose of this Covenant, and will not have an adverse effect on the community or surrounding neighborhood.
  - D. If the exception is granted, the Director may impose specific conditions of approval, and shall fix the duration of the term of such exception.
7. Refinance Restriction. An Owner shall not encumber a unit with debt, exclusive of

interest, in any form which exceeds, at any time, 97% of the Maximum Resale Price as determined in accordance with this Covenant.

8. Maintenance Responsibilities. Owner is responsible for maintaining the Unit in good working order throughout the length of Owner's ownership of the Unit, and adhering to all homeowner's association requirements for maintenance, upkeep and appearance during such tenure of ownership as well.
9. Ownership Interest in Other Residential Property. If at any time an Owner also owns any interest alone, or in conjunction with others, in any other developed residential property within the State of Colorado, the Owner shall immediately disclose such ownership to the County, and may be required to promptly offer such other property interest for sale. This prohibition concerning additional ownership is deemed to include entities, partnerships, trusts and the like in which the Owner is either a party to the entity or a trustee and or beneficiary of a trust. In the event said other property has not been sold by the Owner within one hundred twenty (120) days of its listing required hereunder, then the Owner shall immediately list his or her Unit for sale pursuant to Article 6 of this Covenant. It is understood and agreed by the County that, in the case of an Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties which constitute inventory in such Owner's business shall not constitute "other developed residential property" as that term is used in this Section.
10. Exceptions to Restriction on Ownership of Other Real Estate. The following exceptions to the restriction on owning other developed residential real estate within the State of Colorado may be authorized by the County, with such approval documented in writing by the County.
  - i. Timeshare Units. Qualified Owners may be authorized to purchase or own a timeshare unit as a vacation opportunity and/or to utilize on-site amenities such as pools and recreation areas.
  - ii. Affordable Long Term Rental Housing in Summit County. Qualified Owners may be authorized to own an additional property in Summit County, if the Owner agrees to add a deed-restriction to the property to convert it from a market rate unit to a deed-restricted property, whereby the added deed restriction: 1) Is converting an existing market rate unit to a deed-restricted unit, thus increasing the supply of deed-restricted housing in the County; 2) limits use of the property to long term occupancy (minimum 3 months) to persons employed within the County an average of at least 30 hours per week on an annual basis; and 3) limits the maximum rental rate to comply with the Maximum Affordable Rental Rate provisions set forth in this Covenant.
11. Ownership by Entity. At initial sale, after a 30-day priority period for individuals looking to purchase a Unit. Local Employers may purchase up to two deed-restricted units.
  - A. No Local Employer may own more than two Units at a time.
  - B. The Unit shall be rented to an Employee of the Local Employer or a Qualified Occupant who meets the definition of Qualified Occupant as set forth in this Covenant, and is qualified as such in writing by the County.

- C. Leases shall be reviewed and approved in advance by the County and shall not be for a term of less than 3 months.
- D. The Maximum Rental Rate for Local Employer-owned Units shall be 120% of HUD Fair Market Rent or other methodology approved by the County.
- E. Occupancy of Local Employer-owned Units shall not exceed two people per bedroom or one person per 300 square feet, whichever is less.
- F. At all times, Local Employer shall comply with all applicable local, state, and federal laws, statutes, rules, and regulations regarding the landlord-tenant relationship and attendant obligations.
- G. Local Employer shall maintain the Unit in good condition and at the time of entering into a lease agreement with a Qualified Occupant shall meet the requirements of Article 5, Section 5, below.

**ARTICLE 5**  
**SALE OF A UNIT**

1. Initial Purchase Price. At time of initial sale by Declarant, a Unit shall be sold to a Qualified Owner at a Purchase Price to be determined according to the attached 2020 HUD guidelines for Summit County (**Exhibit B**) and not to exceed the purchase price affordable to a person making the percentage of AMI applicable to the unit as set forth in Article 4. Said initial price may be adjusted upwards in years subsequent to 2020 based on the applicable AMI rates for such years but shall not decrease below the 2020 AMI rates contemplated herein.
2. Notice. In the event that an Owner desires to sell the Unit, or in the event that the Owner shall be required to sell the Unit pursuant to the terms of this Agreement, Owner shall notify County, or such other person or entity as may be designated by the County, in writing of the Owner’s intention to sell the Unit.
3. Priority. At the time of the initial sale and any subsequent resale of any Unit, individuals who have been employed within the County for more than one year will receive priority in the purchase of the Units in accordance with the County’s rules, regulations, policies and codes for the initial 30 day period commencing with the offering of each Unit for sale in a manner accessible to the general public, followed by a period of broader availability extended to Local Employers in Summit County until such time as each Unit is sold. If a lottery is not used, the first individual meeting the priority criteria to submit a good faith offer would satisfy the priority requirement and the seller may accept said offer, etc.
4. Lotteries. County reserves the right to require that a Unit be sold via a lottery process, with such process to be determined by the County at the time of sale, in general conformance with the Guidelines and Purpose and Intent of this Covenant.
5. Maximum Resale Price. In no event shall a Unit be sold for an amount (“Maximum Resale Price”) in excess of the Initial Purchase Price plus an increase of 2% per year to the date of an Owner’s listing or advertising a Unit to sell (Pro-rated at the rate of .167

percent for each whole month of ownership for any part of a year), which percentage shall be calculated annually without compounding.<sup>1</sup> **NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE COUNTY OR THE DECLARANT THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.**

6. Condition of Unit at Resale. Each Owner shall be responsible for ensuring that the Unit is in good condition at the time of resale, with reasonable wear and tear acceptable. This obligation includes all matters which are in the control and responsibility of an Owner, and includes, but is not limited to:
  - i. Cleaning the Unit and making necessary improvements to repair and maintain plumbing and mechanical fixtures, appliances, carpet or other flooring, roofs, painting and other similar items in good working order and condition.
  - ii. The Unit must contain all of the appliances that originally came with the Unit, of similar standard.
  - iii. There must be no outstanding County code violations.

If the Unit is not in good condition, the County has the right to bring the Unit into good condition and collect the costs of taking such efforts, by means of a lien upon the Unit, and the right to collect upon such lien through appropriate means, including the right to be paid the cost of any expenses incurred from the Owner's proceeds at closing of the sale of the Unit.

7. Allowance for Qualified Capital Improvements. Subject to the limitations of this Section, for the purpose of determining the Maximum Resale Price in accordance with this Covenant, the Owner may add to the amount specified in paragraph 4 of this Article 6, the cost of approved and qualified capital improvements ("QCI"), as set forth in the Summit County Qualified Capital Improvements Schedule maintained by the County, as such Schedule is amended from time to time, in total amount not to exceed 10% of the Initial Purchase Price over every consecutive ten (10) year period.
8. Listing a Unit for Sale and Sales Commission. For the purpose of determining the Maximum Resale Price, the Owner may add the amount paid in sales commission, up to 1.75%, to the Maximum Resale Price. The ability to increase the Maximum Resale Price by the allowable sales commission amount does not apply to Units for sale by owner unless owner is a real estate broker licensed according to the laws of the State of Colorado. A seller can pay more sales commission, but only 1.75% can be added onto the Maximum Resale Price.
9. No Additional Consideration. Owner shall not accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer. As described in Article 6, below, an

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<sup>1</sup> For example, if the original purchase price of a Unit is \$100,000, at the end of Year 1 the Unit could be sold for a maximum of \$102,000. At the end of Year 2, the Unit could be sold for a maximum of \$104,000, and at the end of Year 5, the Unit could be sold for a maximum of \$110,000.

Appreciation Limiting Promissory Note and Deed of Trust is required for every property sale, through which the seller affirms that the sale was not contingent upon the sale of any other personal property and that no other compensation has been required of the buyer, in excess of the contracted unit sale price.

**ARTICLE 6**  
**COMPLIANCE AND ENFORCEMENT**

1. Owner agrees to provide, upon request of the County or its designee, all documents and information necessary for the County to establish continued compliance with this Covenant and with the Guidelines as amended from time to time. Documents may include, but are not limited to: Federal and State Income Tax Returns, W2's, 1099's, bank statements, vehicle and license information, and invoices for utility payments. The County shall maintain the confidentiality of financial information as provided by law.
2. Appreciation Limiting Promissory Note and Deed of Trust. Along with the recorded instrument of conveyance evidencing a Transfer of a Unit, any such Transfer of a Unit shall include a completed Appreciation Limiting Promissory Note and Deed of Trust, the forms of which are attached hereto as **Exhibit C**, which Note and Deed of Trust are to be executed by the buyer of each Unit at the closing of the sale to such buyer and recorded immediately following the deed to a buyer and the First Mortgage, if any.
3. Memorandum of Acceptance and Notice of Lien. Each sales contract or lease, as the case may be, for a Unit shall also (a) recite that the proposed purchaser or lessee, as applicable, has read, understands and agrees to be bound by the terms of this Covenant.
4. Vacancy. In the event that a Qualified Owner ceases to occupy a Unit as his or her principal place of residence for a period of more than ninety (90) consecutive days (as reasonably determined by the County), the County may, in its sole discretion and in addition to any other remedies the County may have hereunder, determine that the Unit shall be offered for sale pursuant to the provisions of Articles 4 and 5 and require the Qualified Owner or non-qualified Owner to rent the Unit for a predetermined period of up to one (1) year to a Qualified Occupant while the Unit is listed for sale.
5. Non-Qualified Transferees. In the event that title to a Unit vests in any individual or entity that is not a Qualified Owner ("Non-Qualified Transferee") by descent, by foreclosure and/or redemption by any lien or mortgage holder (except any holder of a HUD-insured First Mortgage), or by operation of law or any other event, the County may elect to notify the Non-Qualified Transferee that it must sell the Unit in accordance with Articles 4 and 5. A Non-Qualified Transferee shall not: (i) occupy a Unit; (ii) rent all or any part of a Unit, except in strict compliance with this Covenant and as approved in writing by the County; (iii) engage in any business activity on or in a Unit; (iv) sell or otherwise transfer a Unit except in accordance with this Covenant; or (v) sell or otherwise transfer a Unit for use in trade or business.
6. Failure to Comply with Restrictions. In the event an owner fails to comply with any of the restrictions contained in this covenant, the County may, but is not required to, provide

notice to the owner of the unit in violation and provide an opportunity for the owner to cease and desist or cure. In addition, the County may, in its discretion, promulgate a notice and penalty schedule for covenant violations. In the event such a schedule is adopted by the County, the County shall provide written notice to all owners of the notice and penalty schedule. Any such notice and penalty schedule shall be in addition to those remedies available pursuant to this covenant. This may include an appreciation pause for any units that are determined to be in violation of their covenant, where the allowable annual rate of appreciation is suspended during a period when a violation notice has been issued, until such violation has been resolved to the satisfaction of the County.

7. Sales to Preserve Unit as Affordable Housing.

- A. In the event a Unit is occupied, Transferred or leased in violation of this Covenant, the County may, at its sole discretion, notify an Owner that it must immediately list the Unit for sale. The highest bid by a Qualified Owner for not less than ninety-five percent (95%) of the Maximum Sale Price shall be accepted by the Owner; provided, however, if the Unit is listed for a period of at least ninety (90) days and all bids are below ninety-five percent (95%) of the Maximum Sale Price, the Unit shall be sold to a Qualified Owner that has made the highest offer for at least the appraised market value of the Unit, as determined by the County in its reasonable good faith judgment, after such ninety (90) day period.
- B. In the case of such an uncured violation, if required by the County, the Owner shall: (i) consent to any sale, conveyance or transfer of such Unit to a Qualified Owner; (ii) execute any and all documents necessary to do so; and (iii) otherwise reasonably cooperate with the County to take actions needed to accomplish such sale, conveyance or transfer of such Unit. For this purpose, Owner constitutes and appoints the County as the Owner's true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions required under this Article 5 or as set forth elsewhere in this Covenant. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees that all power granted to the County under this Covenant may be assigned by it to its successors or assigns.
- C. In order to preserve the affordability of the Units for persons of low to moderate income, the County shall also have and is hereby granted the right and option to purchase a Unit, exercisable within a period of fifteen (15) calendar days after notice is sent by the County to the Owner that requires the Owner to sell the Unit due to a violation pursuant to this Section. The County shall complete the purchase of such Unit within thirty (30) calendar days after exercising its option hereunder for a price equal to the lesser of the appraised market value of the Unit, as determined by the County in its reasonable good faith judgment, or the Maximum Sale Price. The County may assign its option to purchase hereunder to an eligible purchaser which, for the purpose of this Section 7.C., shall be a Qualified Owner.
- D. In all situations in which the provisions of this Article 5 apply, the County may alternatively require the Owner to promptly rent a Unit to a lessee that is deemed a Qualified Occupant in accordance with the requirements of this Covenant and subject to the one (1) year limit while the Unit is listed for sale.

**ARTICLE 7**  
**FORECLOSURE**

1. Release. Notwithstanding anything herein to the contrary, this Covenant shall be deemed released as to a Unit in the event of the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Unit in connection with a foreclosure by the holder of a HUD- insured First Mortgage.
2. Lien and Promissory Note.
  - A. County shall have, and is hereby granted, a lien against a Unit ("County's Lien") to secure payment of any amounts due and owing County pursuant to this Covenant, including, but not limited to, all sales proceeds over and above the Maximum Sales Price. The County's Lien on the respective Unit shall be superior to all other liens and encumbrances except the following:
    - i. liens and encumbrances recorded prior to the recording of this Covenant;
    - ii. real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts;
    - iii. liens given superior priority by operation of law; and
    - iv. the lien of any First Mortgage against a Unit.
  - B. Recording of this Covenant constitutes record notice and perfection of the County's Lien. No further recordation of any claim of lien is required. By virtue of the County's Lien, County shall have all of the rights that a mortgage holder may have against a Unit, including, but not limited to, the right to judicially foreclose upon a Unit. The County shall be entitled to file such notices and other information necessary to preserve its rights, as a lienor, to cure and redeem in foreclosure of a Unit, as provided by C.R.S. 38-38-101 et seq. In addition, unless otherwise instructed by the County in writing, the Owner shall sign, acknowledge, and cooperate in the County's recording in the County Clerk and Recorder's Office immediately subsequent to the recording of the First Mortgage, a Promissory Note and Deed of Trust substantially in the form attached hereto as Exhibit C, in order to assure that the County receives notice and the opportunity to cure in the event of the foreclosure of the First Mortgage pursuant to this Article. The Promissory Note and Deed of Trust shall not alter the priority date of the County Lien as established herein.
  - C. The sale or other Transfer of a Unit shall not affect the County Lien. No sale or deed in lieu of foreclosure shall relieve the Owner from continuing personal liability for payment of his or her obligations hereunder. The County Lien does not prohibit actions or suits to recover sums due pursuant to this Covenant, or to enforce the terms of this Covenant, or to prohibit the County from taking a deed in lieu of foreclosure.
  - D. Upon request, the County shall agree to subordinate the County Lien and Promissory Note to a First Mortgage or deed of trust provided that the total principal indebtedness secured by those mortgages or deed of trust with priority over the County Lien shall not exceed ninety-seven percent (97%) of the current allowed Maximum Resale Price under

this Covenant as of the date of subordination. To the extent that Exhibit C is inconsistent with this provision, the provisions of this Section 6.2.D. shall control.

3. **County Option to Redeem.**
  - A. **Notice of Default to the County.** Within ten (10) days after Owner's receipt of any notice of default from a Mortgagee or the home owner's association governing the Unit, the Owner shall give written notice of such default to the County.
  - B. **Foreclosure/County Option to Redeem.** In the event of a foreclosure of a First Mortgage or the assessment lien of the home owner's association, the County or its authorized agent shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of a Unit that are junior to the First Mortgage (as provided in C.R.S. §38-38-101 et seq., or any succeeding statute). The County shall have a right of redemption, purchase, and such other rights as a lienor and holder of a deed of trust in foreclosure, as its interest appears, in accordance with Colorado law governing foreclosure.
  - C. **Upon Exercising Option.** In the event that the County obtains title to a Unit pursuant to this Article 6, the County or its designee, may sell such Unit to a Qualified Owner, or rent such Unit to a Qualified Occupant.
4. **Perpetuities Savings Clause.** If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Covenant shall be unlawful or void for violation of: (i) the rule against perpetuities or some analogous statutory provision; (ii) the rule restricting restraints on alienation; or (iii) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of (x) the term of this Covenant, or (y) the period of the lives of the current duly elected and seated Commissioners of the County, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.
5. **Notices.** In the event of a foreclosure of a Unit, those parties noted below are to be given written notice of any foreclosure proceedings as part of any and all formal notification requirements pursuant to the foreclosure. Those parties are to include the County and the Summit Combined Housing Authority (SCHA) as provided for in Section 9.13 below.
6. **Enforcement of This Restriction.** Each Owner hereby grants and assigns to the County or its designee the right to review and enforce compliance with this Covenant. Compliance may be enforced by the County by any lawful means, including without limitation, seeking any equitable relief (including, without limitation, specific performance), as well as a suit for damages; provided, however, in the event a Unit is financed by a HUD-insured First Mortgage and is sold in violation of this Covenant, such enforcement shall not include:
  - i. acceleration of a mortgage;
  - ii. voiding a conveyance by an Owner;
  - iii. terminating an Owner's interest in a Unit; or
  - iv. subjecting an Owner to contractual liability.

Notwithstanding the foregoing, in no event shall the County have any equitable remedies (including, but not limited to, the right to sue for specific performance or seek other equitable relief) or the right to sue for damages if the Owner of a Unit that was financed with a HUD-insured First Mortgage breaches or violates the terms, covenants and other provisions of Article 6 hereof and if to do so would violate any existing or future requirement of HUD; it being understood, however, that in such event, the County shall retain all other rights and remedies hereunder for enforcement of any other terms and provisions hereof, including, without limitation: (i) the right to sue for damages to reimburse the County, or its agents, for its enforcement costs and to require an Owner to repay with reasonable interest (not to exceed ten percent (10%) per annum) any assistance received in connection with the purchase of a Unit; (ii) the right to prohibit an Owner from retaining sales or rental proceeds collected or received in violation of this Covenant; and (iii) the option to purchase granted to the County in Article 6 hereof. Venue for a suit enforcing compliance shall be proper in the County and service may be made or notice given by posting such service or notice in a conspicuous place on the applicable Unit. As part of any enforcement action on the part of the County, the applicable Owner shall pay all court costs and reasonable legal fees incurred by the County or its agents, in connection with these claims, actions, liabilities or judgments, including an amount to pay for the time, if any, of the County's, or its agents' attorney fees spent on such claims at the rates generally charged for similar services by private practitioners within the County.

7. Injunctive and other Equitable Relief. Each Owner agrees that in the event of Owner's default under or non-compliance with the terms of this Covenant, the County shall have the right to seek such equitable relief as it may deem necessary or proper, including, without limitation, the right to: (a) seek specific performance of this Covenant; (b) obtain a judgment from any court of competent jurisdiction granting a temporary restraining order, preliminary injunction and/or permanent injunction; and (c) set aside or rescind any sale of a Unit made in violation of this Covenant. Any equitable relief provided for in this Covenant may be sought singly or in combination with such legal remedies as the County may be entitled to, either pursuant to this Covenant, under the laws of the State of Colorado, or otherwise.

## **ARTICLE 8**

### **INSURANCE**

1. Owner Insurance Requirements. Each Owner, shall, in conjunction with the purchase or acquisition of a Unit, keep the Unit and its improvements now existing or hereafter erected, insured against loss or casualty by fire or hazards included within the term "extended coverage" in an amount equal to the replacement costs of returning the Unit to its condition prior to loss ("Property Insurance"). The insurance carrier providing the insurance shall be qualified to write Property Insurance in Colorado and shall be chosen by Owner subject to the County's right to reject the chosen carrier for objectively reasonable cause. All insurance policies and renewals thereof shall provide that the insurance carrier shall notify the County at least ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to the County by Owner at or before closing. The County shall have the right, but not the obligation, to request proof of insurance and/or continued coverage limits from the Owner by written request, at any such time(s) as the County deems appropriate. In the

event of loss, Owner shall give prompt notice to the insurance carrier and the County. Insurance proceeds shall be applied to restoration or repair of the Unit damaged, provided such restoration or repair is economically feasible and the security of any existing deed of trust or mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of an existing deed of trust would be impaired, the insurance proceeds shall be applied to the sums secured by the deed of trust, with the excess, if any, paid to Owner.

## **ARTICLE 9**

### **GENERAL PROVISIONS**

1. Equal Housing Opportunity. Pursuant to the Fair Housing Act and the County's public policy, the County shall not discriminate on the basis of race, religion, creed, color, sex, national origin/ancestry, familial status (children under the age of 18 in the household), marital status, disability or sexual orientation (including transgender status) in the lease, sale, use or occupancy of a Unit.
2. Rules, Regulations, and Standards. The County shall have the authority to promulgate and adopt such rules, regulations and standards as it may deem appropriate, from time to time, for the purpose of carrying out its obligations and responsibilities described herein.
3. Waiver of Exemptions. Every Owner, by taking title to a Unit, shall be deemed to have subordinated to this Covenant any and all right of homestead and any other exemption in, or with respect to, such Unit under state or federal law presently existing or hereafter enacted.
4. Severability. Invalidation of any one of the covenants or restrictions contained herein by judgment or Court order shall in no way affect any other provisions, it being the intent of the County that such invalidated provision be severable.
5. Term. Subject to the termination and/or release provisions contained herein, the restrictions contained herein shall run with the land and bind the land in perpetuity.
6. Amendment. This Covenant may be amended only by an instrument recorded in the records of the County executed by the County and the then-Owner of a Unit; provided, however, the County reserves the right to unilaterally amend this Covenant without the approval or consent of any Owner, Mortgagee, or any other person or entity for the purpose of (a) making non-material changes (such as for correction of technical, typographical, or clerical errors), or for clarification of a statement; or (b) without regard to (a), if such amendment lessens the ownership, use, sales and lease restrictions placed upon the Owners as provided herein. The County may unilaterally execute and record such amendments at any time.
7. No Third Party Beneficiaries. This Covenant is made and entered into for the protection and benefit of the County and the Owner. Except as otherwise specifically provided for herein, no other person, persons, entity or entities, including without limitation prospective buyers of a Unit, shall have any right of action with respect to this Covenant or right to claim any right or benefit from the terms provided in this Covenant or be deemed a third party beneficiary of this Covenant.



and constructed in accordance with the laws of the State of Colorado.

15. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.
16. Headings. Article and Section headings within this Covenant are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
17. Signatures. Signatures to this Covenant may be in counterparts and by facsimile or scanned emailed document.

**[Separate signature and Approval and Acceptance pages follow]**



**APPROVAL AND ACCEPTANCE**

Summit County Board of County Commissioners

By: \_\_\_\_\_  
Scott Vargo, County Manager

STATE OF COLORADO    )  
  ) ss  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Scott Vargo as County Manager, on behalf of the Summit County Board of County Commissioners, a body corporate and politic.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**QUALIFIED CAPITAL IMPROVEMENT SCHEDULE**

**EXHIBIT B**

**HUD GUIDELINES FOR SUMMIT COUNTY**

**EXHIBIT C**

**Appreciation Limiting Promissory Note (C-1) and Deed of Trust (C-2)**

## **EXHIBIT A**

### **Permitted Capital Improvements**

The Owner of a deed restricted unit may add to the resale amount outlined in restrictive covenant the cost of certain permitted qualified capital improvements and maintenance items (“QCI’s”). The specific QCI’s that are permitted by the County are outlined in Section 1 below. These QCI’s are allowed in a total amount not to exceed 10% of the initial purchase price over every consecutive ten (10) year period with a few exceptions. Section 2 provides the process for submitting QCI’s to county for approval and Section 3 provides the Depreciation Table.

#### **Section 1-QCI’s Permitted by the County**

##### **QCI’s with No Depreciation:**

- Structural addition or additions of livable space including bathrooms, bedrooms, exterior door, interior doors, baseboard, window casing, insulation and plumbing (excluding fixtures) garages (detached or attached) and a storage shed requiring a building permit.
- Modifications or improvements to accommodate a person with a disability as defined in the Americans with Disabilities Act of 1990 (adding or removing).

##### **QCI’s depreciated on a 20-year schedule:**

- Renewable energy systems\*
- Energy efficiency home improvements\* (i.e. high efficiency boilers, energy efficient windows)

\* Items that are excluded from the 10% maximum allowed QCI

##### **QCI’s depreciated on 10-year schedule:**

- Countertops of similar spec level
- Cabinets including vanities
- Windows
- Hard flooring
- Hot water heater

##### **QCI’s depreciated on 5-year schedule:**

- Replaced kitchen appliances
- Washer and dryer (including stackable)
- Carpet including pad
- Permanent fitted window blinds
- Plumbing fixtures including sinks and toilets
- Light fixtures

### Items which are NOT Qualifying Capital Improvements:

- All work performed without the issuance of a required building permit.
- Maintenance and replacement items handled by the HOA and paid for by HOA dues or assessments.
- Jacuzzis, saunas, steam showers, hot tubs, etc.
- Maintenance or improvements to existing fixtures, appliances, plumbing, and mechanical systems.
- Painting, cleaning, etc.
- Decorative items including window coverings, lamps and lighting not affixed to walls or ceilings, bath towel bars and hooks, etc.
- Interior paint
- Light bulbs, LED or other
- Cost of tools
- Equipment Rental
- Removable items not attached to the unit.

### Section 2-Process for Submitting QCI's

The process for submitting QCI's is outlined below.

- a. QCI's shall be approved by the Summit County Housing Department and calculated in accordance with this Amended and Restated Deed Restriction Agreement for the Occupancy and Resale of Units at Ophir Mountain Village.
- b. The cost of certain QCI's may be included in a unit's Maximum Resale Price. QCI depreciate under various schedules including a 20-year depreciation schedule, a 10-year depreciation schedule, and a 5-year depreciation schedule. There are other items that have been identified that are not be considered QCI.

For an owner to request that QCI be added to the Maximum Resale Price, he or she must comply with the following:

- a. Obtain any required building permits or property owners' association approval. Any fees associated with a building permit or property association approval will not be included as a QCI.
- b. Upon completion of the work, the Housing Department requests the following:
  - i. Legible copies of receipts and invoices including proof of payment to a third party.
  - ii. Owners must retain original receipts and invoices.
- c. In calculating the costs allowed as QCI, only the owner's actual out of pocket costs and expenses will be eligible for inclusion. Such amount shall not include an amount attributable to owner's labor, unless the work performed is conducted by owner's bona fide business or within owner's professional area of expertise, in which case such work shall be appropriately invoiced at the time the work is completed at no more than the

average going rate for services of that kind. The value of the QCI will be added to the appreciated value of the unit at the time of sale. No appreciation is allowed on QCI.

- d. If an owner pays cash for improvements, the owner must provide third party documentation of payment. An owner must have an invoice for improvements, but if no such documentation of proof of cash payment can be produced, the Housing Department can inspect the improvement completed in the unit. Up to 75% of the documented invoice value may be included after an inspection, subject to depreciation, at the Housing Department's sole discretion.
- e. Other improvements to the Affordable Housing unit are allowed subject to all applicable rules, regulations, and permitting requirements, but adjustments to the Maximum Resale Price will only be given for QCI.
- f. The Housing Department may accelerate depreciation or exclude items if damaged beyond ordinary depreciation.

If a QCI included in the base price of the unit is removed or is no longer operational, the actual cost of the improvement shall be deducted from the base price. No other categories or types of expenditures may qualify as QCI unless pre-approved in writing by the Housing Department.

**Section 3-Depreciation Table**

<b>Schedule % of Cost</b>	<b>20 Year Depreciation QCI</b>	<b>10 Year Depreciation QCI</b>	<b>5 Year Depreciation QCI</b>
100%	From completion to <24 months	From completion to <12 Months	From completion to <6 Months
90%	24 to <48 months	12 to <24 Months	6 to <12 Months
80%	48 to <72 months	24 to <36 Months	12 to <18 Months
70%	72 to <96 months	36 to <48 Months	18 to <24 Months
60%	96 to <120 months	48 to <60 Months	24 to <30 Months
50%	120 to <144 months	60 to <72 Months	30 to <36 Months
40%	144 to <168 months	72 to <84 Months	36 to <42 Months
30%	168 to <192 months	84 to <96 Months	42 to <48 Months
20%	192 to <216 months	96 to <108 Months	48 to <54 Months
10%	216 to <240 months	108 to <120 Months	54 to <60 Months
0%	From 240 months and beyond	From 120 Months and beyond	From 60 Months and beyond

# Exhibit B

## SCHA

### 2020 SUMMIT COUNTY AREA MEDIAN INCOME (AMI)

Figures in RED are directly from HUD 4/1/2020; other numbers have been extrapolated

#### AMIs

Household size	HUD EXTREMELY LOW			HUD LOW	TRUE	85%	90%	95%	100%	105%	110%	115%	120%	125%	130%	140%	160%
	INCOME	50%	60%	INCOME	80%												
1 person	\$20,150	\$33,600	\$40,320	\$53,700	\$53,760	\$57,120	\$60,480	\$63,840	\$67,200	\$70,560	\$73,920	\$77,280	\$80,640	\$84,000	\$87,360	\$94,080	\$107,520
1.5 person	\$21,575	\$36,000	\$43,200	\$57,550	\$57,600	\$61,200	\$64,800	\$68,400	\$72,000	\$75,600	\$79,200	\$82,800	\$86,400	\$90,000	\$93,600	\$100,800	\$115,200
2 person	\$23,000	\$38,400	\$46,080	\$61,400	\$61,440	\$65,280	\$69,120	\$72,960	\$76,800	\$80,640	\$84,480	\$88,320	\$92,160	\$96,000	\$99,840	\$107,520	\$122,880
3 person	\$25,900	\$43,200	\$51,840	\$69,050	\$69,120	\$73,440	\$77,760	\$82,080	\$86,400	\$90,720	\$95,040	\$99,360	\$103,680	\$108,000	\$112,320	\$120,960	\$138,240
4 person	\$28,750	\$47,950	\$57,540	\$76,700	\$76,720	\$81,515	\$86,310	\$91,105	\$95,900	\$100,695	\$105,490	\$110,285	\$115,080	\$119,875	\$124,670	\$134,260	\$153,440
4.5 person	\$29,900	\$49,875	\$59,850	\$79,775	\$79,800	\$84,788	\$89,775	\$94,763	\$99,750	\$104,738	\$109,725	\$114,713	\$119,700	\$124,688	\$129,675	\$139,650	\$159,600
5 person	\$31,050	\$51,800	\$62,160	\$82,850	\$82,880	\$88,060	\$93,240	\$98,420	\$103,600	\$108,780	\$113,960	\$119,140	\$124,320	\$129,500	\$134,680	\$145,040	\$165,760
6 person	\$35,160	\$55,650	\$66,780	\$89,000	\$89,040	\$94,605	\$100,170	\$105,735	\$111,300	\$116,865	\$122,430	\$127,995	\$133,560	\$139,125	\$144,690	\$155,820	\$178,080
7 person	\$39,640	\$59,500	\$71,400	\$95,150	\$95,200	\$101,150	\$107,100	\$113,050	\$119,000	\$124,950	\$130,900	\$136,850	\$142,800	\$148,750	\$154,700	\$166,600	\$190,400
8 person	\$44,120	\$63,300	\$75,960	\$101,250	\$101,280	\$107,610	\$113,940	\$120,270	\$126,600	\$132,930	\$139,260	\$145,590	\$151,920	\$158,250	\$164,580	\$177,240	\$202,560

#### Rentals

##### Maximum affordable monthly rent

Assumes affordability = 30% of monthly household income

Maximum affordable monthly rent amounts should also include the following utilities: electric, gas, water, sewer, trash, & snow removal

Unit Size	HUD EXTREMELY LOW			HUD LOW	TRUE	85%	90%	95%	100%	105%	110%	115%	120%	125%	130%	140%	160%
	INCOME	50%	60%	INCOME	80%												
Studio (1 person)	\$503.75	\$840.00	\$1,008.00	\$1,342.50	\$1,344.00	\$1,428.00	\$1,512.00	\$1,596.00	\$1,680.00	\$1,764.00	\$1,848.00	\$1,932.00	\$2,016.00	\$2,100.00	\$2,184.00	\$2,352.00	\$2,688.00
1 bed (1.5 person)	\$539.38	\$900.00	\$1,080.00	\$1,438.75	\$1,440.00	\$1,530.00	\$1,620.00	\$1,710.00	\$1,800.00	\$1,890.00	\$1,980.00	\$2,070.00	\$2,160.00	\$2,250.00	\$2,340.00	\$2,520.00	\$2,880.00
2 bed (3 person)	\$647.50	\$1,080.00	\$1,296.00	\$1,726.25	\$1,728.00	\$1,836.00	\$1,944.00	\$2,052.00	\$2,160.00	\$2,268.00	\$2,376.00	\$2,484.00	\$2,592.00	\$2,700.00	\$2,808.00	\$3,024.00	\$3,456.00
3 bed (4.5 person)	\$747.50	\$1,246.88	\$1,496.25	\$1,994.38	\$1,995.00	\$2,119.69	\$2,244.38	\$2,369.06	\$2,493.75	\$2,618.44	\$2,743.13	\$2,867.81	\$2,992.50	\$3,117.19	\$3,241.88	\$3,491.25	\$3,990.00
4 bed (6 person)	\$879.00	\$1,391.25	\$1,669.50	\$2,225.00	\$2,226.00	\$2,365.13	\$2,504.25	\$2,643.38	\$2,782.50	\$2,921.63	\$3,060.75	\$3,199.88	\$3,339.00	\$3,478.13	\$3,617.25	\$3,895.50	\$4,452.00

#### For Sale

##### Maximum Monthly Principal & Interest Payment

Based on the affordable monthly rent amounts above, less a \$350 allowance to cover taxes, insurance, and HOA dues

Unit Size	HUD EXTREMELY LOW			HUD LOW	TRUE	85%	90%	95%	100%	105%	110%	115%	120%	125%	130%	140%	160%
	INCOME	50%	60%	INCOME	80%												
Studio (1 person)	\$153.75	\$490.00	\$658.00	\$992.50	\$994.00	\$1,078.00	\$1,162.00	\$1,246.00	\$1,330.00	\$1,414.00	\$1,498.00	\$1,582.00	\$1,666.00	\$1,750.00	\$1,834.00	\$2,002.00	\$2,338.00
1 bed (1.5 person)	\$189.38	\$550.00	\$730.00	\$1,088.75	\$1,090.00	\$1,180.00	\$1,270.00	\$1,360.00	\$1,450.00	\$1,540.00	\$1,630.00	\$1,720.00	\$1,810.00	\$1,900.00	\$1,990.00	\$2,170.00	\$2,530.00
2 bed (3 person)	\$297.50	\$730.00	\$946.00	\$1,376.25	\$1,378.00	\$1,486.00	\$1,594.00	\$1,702.00	\$1,810.00	\$1,918.00	\$2,026.00	\$2,134.00	\$2,242.00	\$2,350.00	\$2,458.00	\$2,674.00	\$3,106.00
3 bed (4.5 person)	\$397.50	\$896.88	\$1,146.25	\$1,644.38	\$1,645.00	\$1,769.69	\$1,894.38	\$2,019.06	\$2,143.75	\$2,268.44	\$2,393.13	\$2,517.81	\$2,642.50	\$2,767.19	\$2,891.88	\$3,141.25	\$3,640.00
4 bed (6 person)	\$529.00	\$1,041.25	\$1,319.50	\$1,875.00	\$1,876.00	\$2,015.13	\$2,154.25	\$2,293.38	\$2,432.50	\$2,571.63	\$2,710.75	\$2,849.88	\$2,989.00	\$3,128.13	\$3,267.25	\$3,545.50	\$4,102.00

##### Maximum Sales Prices

Assumes interest rate of 5.59%, 30 year loan term, and 90% loan-to-value (Interest rate is the Freddie Mac 10-year trailing average for 2010-2019)

Unit Size	HUD EXTREMELY LOW			HUD LOW	TRUE	85%	90%	95%	100%	105%	110%	115%	120%	125%	130%	140%	160%
	INCOME	50%	60%	INCOME	80%												
Studio (1 person)	\$29,791	\$94,942	\$127,494	\$192,306	\$192,597	\$208,873	\$225,149	\$241,424	\$257,700	\$273,976	\$290,252	\$306,528	\$322,803	\$339,079	\$355,355	\$387,907	\$453,010
1 bed (1.5 person)	\$36,693	\$106,568	\$141,444	\$210,956	\$211,198	\$228,636	\$246,075	\$263,513	\$280,951	\$298,390	\$315,828	\$333,266	\$350,705	\$368,143	\$385,581	\$420,458	\$490,212
2 bed (3 person)	\$57,643	\$141,444	\$183,296	\$266,662	\$267,001	\$287,927	\$308,853	\$329,779	\$350,705	\$371,631	\$392,557	\$413,483	\$434,409	\$455,335	\$476,261	\$518,113	\$601,817
3 bed (4.5 person)	\$77,019	\$173,778	\$222,097	\$318,613	\$318,734	\$342,894	\$367,053	\$391,213	\$415,372	\$439,531	\$463,691	\$487,850	\$512,009	\$536,169	\$560,328	\$608,647	\$705,285
4 bed (6 person)	\$102,499	\$201,752	\$255,666	\$363,299	\$363,493	\$390,450	\$417,406	\$444,363	\$471,320	\$498,277	\$525,234	\$552,190	\$579,147	\$606,104	\$633,061	\$686,974	\$794,802

Effective 4/1/2020

THESE FIGURES ARE SUBJECT TO CHANGE WITHOUT NOTICE

**EXHIBIT C-1**

**APPRECIATION LIMITING PROMISSORY NOTE**

(Melody Lodge Cabin # \_\_)

(the "Note")

\_\_\_\_\_  
Date

FOR VALUE RECEIVED, \_\_\_\_\_ (the "Maker"), jointly and severally if more than one, promises to pay to the order of SUMMIT COUNTY, P.O. Box 68, Breckenridge, CO 80424 ("County"), fifteen (15) days after written demand for payment ("Due Date"), all sums that become due to County from Maker after the date of this Note under the "Restrictive Housing Covenant And Notice Of Lien For Cabin #1 And Cabin #2 Of Melody Lodge Cabins PUD", Summit County, Colorado," dated \_\_\_\_\_ and recorded \_\_\_\_\_ under Reception No. \_\_\_\_\_ of the records of the Clerk and Recorder of Summit County, Colorado.

This Note shall not bear interest until the Due Date. If this Note is not paid on or before the Due Date, it shall thereafter bear interest at the rate of eighteen percent (18%) per annum from the Due Date until fully paid.

The Maker and any surety, guarantor, and endorser of this Note, jointly and severally, hereby waive notice of, and consent to any and all extensions of this Note or any part thereof without notice and each hereby waives demand, presentment for payment, notice of nonpayment and protest, and any and all notice of whatever kind or nature.

No waiver by the County of any one or more of the terms and conditions herein contained shall be deemed a waiver of the other terms and conditions herein contained; nor shall any such waiver be considered for any reason as continuing or perpetual in nature.

This Note is secured by a deed of trust on the following real property located in Summit County, Colorado:

MELODY LODGE CABIN # \_\_

According to the plat of Melody Lodge Cabins P.U.D. recorded on March 12, 2007 at Rec. No. 849370., and according to the Restrictive Housing Covenant And Notice Of Lien For Cabin #1 And Cabin #2 Of Melody Lodge Cabins PUD recorded at \_\_\_\_\_ on \_\_\_\_\_ and any and all Amendments and/or Supplements thereto,

The undersigned hereby acknowledges receipt of a true copy of this Note.

\_\_\_\_\_  
Maker

\_\_\_\_\_  
Maker

**EXHIBIT C-2**

**Deed of Trust**

IF THIS FORM IS USED IN A CONSUMER CREDIT TRANSACTION, CONSULT LEGAL  
COUNSEL

THIS IS A LEGAL INSTRUMENT IF NOT UNDERSTOOD, LEGAL, TAX, OR OTHER COUNSEL  
SHOULD BE CONSULTED BEFORE SIGNING

DEED OF TRUST

(Melody Lodge Cabins)

THIS DEED OF TRUST is made this \_\_\_ day of \_\_\_\_\_, between  
\_\_\_\_\_ (Borrower), whose address is \_\_\_\_\_ and  
the Public Trustee of the County in which the Property (see paragraph 1) is situated (Trustee); for the  
benefit of the SUMMIT COUNTY (Lender), whose address is P.O. Box 68, Breckenridge, CO 80424.

Borrower and Lender covenant and agree as follows:

**Property is Trust.** Borrower, in consideration of the indebtedness herein recited and the trust herein  
created, hereby grants and conveys to Trustee in trust, with power of sale, the following described property  
located in the County of Summit, State of Colorado:

Melody Lodge Cabin # \_\_\_\_\_, according to the plat of Melody Lodge Cabins P.U.D. recorded on March  
12, 2007 at Rec. No. 849370.

**Note; Other Obligations Secured.** This Deed of Trust is given to secure to Lender Borrower's obligations  
as set forth in the Appreciation Limiting Promissory Note of even date herewith. Without limiting the  
generality of the preceding sentence, this Deed of Trust secures Borrower's obligations to Lender as set  
forth in the Amended And Restated Deed Restriction Agreement For The Occupancy And Resale Of Units  
At Ophir Mountain Village, Summit County, Colorado, dated \_\_\_\_\_, and recorded  
\_\_\_\_\_, under Reception No. \_\_\_\_\_ of the records of the Clerk and  
Recorder of Summit County, Colorado.

**Title.** Borrower covenants that Borrower owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date.

**Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower's other covenants contained in the Note.

**Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any prior deed of trust and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust by Borrower making payment when due, directly to the payee thereof. Despite the foregoing, Borrower shall not be required to make payments otherwise required by this paragraph if Borrower, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.

**Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on Leasehold. Borrower shall perform all of Borrower's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership, or occupancy of the Property.

**Protection of Lender's Security.** Except when Borrower has exercised Borrower's rights under paragraph 6 above, if the Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in prior lien, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, with notice to Borrower if required by law, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to:

any general or special taxes or ditch or water assessments levied or accruing against the Property;  
the premiums on any insurance necessary to protect any improvements comprising a part of the Property;  
sums due on any prior lien or encumbrance on the Property; if the Property is a leasehold or is subject to a lease, all sums due under such lease; the reasonable costs and expenses of defending, protecting, and maintaining the Property and Lender's interest in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney in the employment of the Lender or holder of the certificate of purchase; all other costs and expenses allowable by the evidence of debt or this Deed of Trust, and such other costs and expenses which may be authorized by the court of competent jurisdiction.

Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Such amounts shall be payable upon notice from the Lender to Borrower requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any actions hereunder.

**Borrower Not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower, nor Borrower's successors in interest, from the original terms of this Deed of Trust. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower nor Borrower's successors in interest.

**Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

**Remedies Cumulative.** Each Remedy provided in the Note and this Deed of Trust is distinct from and cumulative to all other rights or remedies under the Note and this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

**Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 18 Transfer of the Property; Assumption. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

**Notice.** Except for any notice required by law to be given in another manner: (a) any notice to Borrower provided for in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such notice by first-class mail, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be effective upon (1) delivery to Lender or (2) mailing such notice by first-class mail, addressed to Lender at Lender's address stated herein or at such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower and Lender when given in any manner designated herein.

**Governing Law; Severability.** The Note and this Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust or the Note conflicts with the law, such conflict shall not affect other provisions of the Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and Note are declared to be severable.

**Acceleration: Foreclosure: Other Remedies.** Except as provided in paragraph 18 Transfer of Property; Assumption, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, or upon any default in a prior lien upon the Property, (unless Borrower has exercised Borrower's rights under paragraph 5 above), at Lender's option, all of the sums secured by this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Lender may invoke the power of sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give notice to Borrower of Borrower's rights as provided by law. Trustee shall record a copy of such notice as required by law. Trustee shall advertise the time and place of the sale of the Property, for not less than four weeks in a newspaper of general circulation in each county for which the Property is situated, and shall mail copies of such notice of sale to Borrower and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcel as Trustee may think best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not be obligatory upon the Purchaser at any such sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order; (a) to all reasonable costs and expenses of the sale, including but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

**Borrower's Right to Cure Default.** Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payment due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

**Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall cause Trustee to release this Deed of Trust and shall produce for Trustee the Note. Borrower shall pay all costs of recordation and shall pay the statutory Trustee's fees. If Lender shall not produce the Note as aforesaid, the Lender, upon notice in accordance with paragraph 12 (Notice) from Borrower to Lender, shall obtain , at Lender's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect the release of this Deed of Trust.

**Waiver of Exemptions.** Borrower hereby waives all right of homestead and any other exemptions in the Property under state or federal law presently existing or hereafter enacted.

**Transfer of Property; Assumption.** The following events shall be referred to herein as a "Transfer": (1) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property ( or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial

interest in the Borrower, (v) the reorganization, liquidation or dissolution of the Borrower. Not to be included as a Transfer are (1) the creation of the lien or encumbrance subordinate to this Deed of Trust, (ii) the creation of a purchase money security interests for household appliances, or (iii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the event of each and every transfer:

All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration). If a Transfer occurs and should Lender not exercise Lender's option pursuant to this paragraph 18 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with Transferee in the same manner as with the Borrower with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging the Borrower's liability hereunder for the obligations hereby secured. Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to (b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be stopped therefrom by virtue thereof. The issuance on behalf of the Lender of a routine statement showing the status of the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

**Borrower's Copy.** Borrower acknowledges receipt of a copy of the Note and this Deed of Trust.

EXECUTED BY BORROWER:

\_\_\_\_\_

STATE OF COLORADO )

)ss

COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_

Notary Public