

**EXHIBIT 1-**

**EXAMPLE RESTRICTIVE COVENANT**

**RESTRICTIVE HOUSING COVENANT AND NOTICE OF LIEN  
FOR UNIT \_\_, OF \_\_\_\_\_  
SUMMIT COUNTY COLORADO**

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**RESTRICTIVE HOUSING COVENANT AND NOTICE OF LIEN**

This Restrictive Housing Covenant and Notice of Lien for the \_\_\_\_\_ Housing Development, Summit County, Colorado, (this "Covenant") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ , by \_\_\_\_\_, hereinafter referred to as "Declarant" or "Owner", and approved and accepted by Summit County, Colorado, a body corporate and politic, hereinafter to as "County" or "Beneficiary,"

**RECITALS**

WHEREAS, \_\_\_\_\_ acting as the Declarant, is in the process of developing (This language may change depending on the development) \_\_\_\_\_, as described in the subdivision plat dated \_\_\_\_\_ and recorded at Reception Number \_\_\_\_\_ in the Office of the Summit County, Colorado Clerk and Recorder, which plat is attached and incorporated as **Exhibit A** and the deed dated \_\_\_\_\_ and recorded at Reception Number \_\_\_\_\_ (the "Property").

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 \_\_\_\_\_; 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.

Specific projects may have differing and additional purposes and intents.

## **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 Exhibit \_\_ 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 \_\_ 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. **Income categories should be customized by project.**
  - A. **70% AMI Units shall be available for those making up to 90% AMI**
  - B. **80% AMI Units shall be available for those making up to 100% AMI.**
  - C. **90% AMI Units shall be available for those making up to 110% AMI.**
  - D. **100% AMI Units shall be available for those making up to 120% AMI.**
  - E. **110% AMI Units shall be available for those making up to 130% 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. Income testing requirements will vary by project.
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 than \$\_\_\_\_\_ in combined real and personal property assets. 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. **Examples of potential asset limitations that could be established include: 1) Assets cannot exceed a set amount (e.g., \$150k or \$200k); 2) Assets cannot exceed two times the annual household income for the respective AMI category and household size; 3) Assets cannot exceed two times the original purchase price of the housing unit.**
5. Rental Procedures.
  - A. **[If authorized, insert following provisions]:** 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. 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. When the project purpose and intent allows ownership by an entity the following provisions should be inserted and customized.
  - A. At initial sale, after a 30-day priority period for individuals looking to purchase a Unit. Local Employers may purchase up to \_\_\_\_ deed-restricted units.
  - B. No Local Employer may own more than \_\_\_\_ Units at a time.
  - C. The Unit shall be rented to an Employee of the Local Employer who meets the definition of Qualified Occupant as set forth in this Covenant, and is qualified as such in writing by the County.
  - D. Leases shall be reviewed and approved in advance by the County and shall not be for a term of less than [30 days/3 months/6 months].
  - E. The Maximum Rental Rate for Local Employer-owned Units shall be 120% of HUD Fair Market Rent or other methodology approved by the County.
  - F. Occupancy of Local Employer-owned Units shall not exceed two people per bedroom or one person per 200 square feet, whichever is less. [Project specific occupancy restrictions or allowances may be agreed upon and specified here as well]

- G. 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.
- H. 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.** Upon completion of construction of each Unit by the Declarant, a Unit shall be sold to a Qualified Owner at a Purchase Price to be determined according to the attached 20\_\_ HUD guidelines for Summit County (**Exhibit C**) and not to exceed the purchase price affordable to a person making the percentage of AMI applicable to the unit as set forth in Exhibit B. Said initial price may be adjusted upwards in years subsequent to 20\_\_ based on the applicable AMI rates for such years but shall not decrease below the 20\_\_ AMI rates contemplated herein.
- 2. **Priority.** Use any of the below Priority clauses when appropriate for a project. This section should be customized to individual projects when desired.
  - A. At the time of the initial sale and any subsequent resale of any Unit, individuals working within the \_\_\_\_\_ Basin will receive priority in the purchase of the Units in accordance with the County's rules, regulations, policies and codes for the initial \_\_ day period commencing with the offering of each Unit for sale, followed by a period of broader availability extended to all individuals working in Summit County until such time as each Unit is sold. If a lottery sales process is used, then \_\_\_\_\_ Basin workers will receive priority in a first lottery separate from other Summit County workers. Persons who qualify as an area employee should be addressed with specificity in the respective deed restriction. For example, the deed restriction should address whether employees who provide service throughout the entire county (e.g., sheriff, transit drivers, contractors) qualify as area employees for purposes of determining priority.
  - B. At the time of the initial sale and any subsequent resale of any Unit, individuals who have been working in the County for more than \_\_ years will receive priority in the purchase of the Units in accordance with the County's rules, regulations, policies and codes for the initial \_\_ day period commencing with the offering of each Unit for sale, followed by a period of broader availability extended to all individuals working in Summit County until such time as each Unit is sold. If a lottery sales process is used, workers who have been working in the County longer than \_\_ years will receive priority in a first lottery separate from other Summit County workers.
  - C. At the time of the initial sale and any subsequent resale of any Unit, individuals who have been residing in the County for more than \_\_ years will receive priority in the purchase of the Units in accordance with the County's rules, regulations, policies and codes for

the initial \_\_\_ day period commencing with the offering of each Unit for sale, followed by a period of broader availability extended to all individuals working in Summit County until such time as each Unit is sold. If a lottery sales process is used, workers who have been residing in the County longer than \_\_\_ years will receive priority in a first lottery separate from other Summit County workers.

- D. At the time of the initial sale and any subsequent resale of any Unit, individuals who make below \_\_\_% AMI will receive priority in the purchase of the Units in accordance with the County’s rules, regulations, policies and codes for the initial \_\_\_ day period commencing with the offering of each Unit for sale, followed by a period of broader availability extended to all individuals working in Summit County until such time as each Unit is sold. If a lottery sales process is used, individuals who make below \_\_\_% AMI will receive priority in a first lottery separate from other Summit County workers.
3. 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.
4. 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 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.**
5. 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

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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.

be paid the cost of any expenses incurred from the Owner's proceeds at closing of the sale of the Unit.

6. 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 [Schedule may also be attached as an Exhibit to the Covenant], in total amount not to exceed 10% of the Initial Purchase Price over every consecutive ten (10) year period.
7. 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.
8. 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 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** \_\_, 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 D, 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 D 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, creed, color, sex, national origin, familial status, disability or sexual orientation 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.
8. Non-Liability. The County and its respective employees, members, officers and agents shall not be liable to any Owner or third party by virtue of the exercise of the rights of the County or the performance of their obligations under this Covenant. The parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this Covenant, the monetary limitations or any other rights, immunities or protections afforded by the Governmental Immunity Act, CRS §§ 24-10-101, et seq., as



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**

**Property**

**EXHIBIT B**

**AMI and Unit Designations**

**EXHIBIT C**  
**HUD GUIDELINES**

**EXHIBIT D**

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