

SUMMIT COUNTY AFFORDABLE WORKFORCE HOUSING DEED RESTRICTION GUIDELINES

Adopted by the Summit County Board of County Commissioners: December 10, 2019
Resolution No. 2019-94

INTRODUCTION:

The purpose of the Summit County Affordable Workforce Housing Deed Restriction Guidelines (“Guidelines”) is to outline the provisions that should be addressed in deed restrictions for affordable workforce housing units and other local housing programs located within the County, including:

- Private sector development authorized through County land use approvals;
- Public sector development of affordable workforce housing in the unincorporated areas of the County;
- Affordable workforce housing units in development projects that the County contributes to financially (either within the unincorporated County or the incorporated Towns);
- Housing Helps deed restrictions, as applicable; and
- Accessory apartment deed restrictions, as applicable.

In addition to guiding the development of new deed restrictions, these Guidelines can also be used to guide amendments to existing deed restrictions in a manner that is consistent with current recommended best practices. Accordingly, owners of existing deed-restricted housing units may work with the County to pursue amendments to existing deed restrictions in a manner consistent with these Guidelines, with such deed restriction amendments approved and executed by the County in partnership with the current unit owner(s).

In some cases, the deed restriction standards set forth in these Guidelines are very prescriptive and contain minimum requirements that must be met (e.g., in the case of requiring occupants to be employed locally within Summit County). However, in other instances a range of potential options may be acceptable, with the exact deed restriction language determined on a case-by-case basis depending upon the purpose and intent of a particular development, the current market conditions and other project specific considerations. The required elements and standards that must be contained in a deed restriction include, at a minimum, those described in these Guidelines. While the Guidelines set forth below outline the standard provisions to be included in all deed restrictions for affordable workforce housing units in the County, it should be noted that additional provisions may be required to address circumstances unique to a particular project.

Flexibility in the Application of the Affordable Workforce Housing Deed Restriction

Guidelines: These Guidelines should be utilized when drafting deed restrictions for all affordable workforce housing units in the County. However, when reviewing site-specific development applications, the County has the ability to deviate from the Guidelines when determined to be appropriate based on unique situations or considerations associated with a particular development proposal.

Periodic Review and Amendment: In recognition of the changing nature of the housing market in the County, and the County’s desire to keep these Guidelines current for the benefit of all interested parties, these Guidelines may be subject to periodic review and amended by the County from time to time, as determined to be necessary.

A. DEED RESTRICTION REQUIRED: In accordance with Section 3809.02 et. seq. of the Summit County Land Use and Development Code, restrictions on the sale, resale, rental (when authorized) and occupancy of affordable workforce housing units must be guaranteed in perpetuity through a deed restriction, or other mechanism acceptable to the County.

B. DEED RESTRICTION ARTICLES: These Guidelines provide guidance on the recommended best practices and required content to be included in each of the following nine (9) key Articles of all County deed restrictions:

- Article 1 – Purpose and Intent
- Article 2 – Definitions
- Article 3 – Use and Occupancy
- Article 4 – Ownership and Occupancy Restrictions and Requirements
- Article 5 – Sale of a Unit
- Article 6 – Compliance and Enforcement
- Article 7 – Foreclosure
- Article 8 – Insurance
- Article 9 – General Provisions

An **example / template deed restriction** is attached as **Exhibit I**, to provide example language for each of the required Articles described in these Guidelines.

ARTICLE 1 - PURPOSE AND INTENT: All deed restrictions should include an introductory purpose and intent section, to clearly describe the purpose and intent of that particular project and the corresponding deed restriction covenant.

ARTICLE 2 – DEFINITIONS:

County deed restrictions must include definitions for the relevant terms included throughout the deed restriction covenant. These Guidelines are intended to provide recommended direction on the key definitions to be included in most County deed restrictions, including the following:

- Area Median Income (AMI)
- Authorized Lessee (where rental is authorized)
- Dependent
- Eligible Household
- First Mortgage
- Household
- HUD

Maximum Resale Price
Mortgagee
Non-Qualified Owner or Transferee
Owner
Primary Residence
Qualified Capital Improvements (QCI)s
Qualified Occupant(s)
Qualified Owner(s)
Summit County
Summit County Housing Director or Director.
Transfer or Transferred
Unit

Each of these definitions should be considered when drafting County deed restrictions. The exact language may vary, depending upon the purpose and intent set forth in the respective deed restriction for each project. Accordingly, the exact definitions to be included in each County deed restriction will be determined at the time of County review / approval of a development project, as determined to be necessary based on the agreed upon purpose and intent of each respective County deed restriction. Refer to **Exhibit I** for example language for each of these definitions.

ARTICLE 3 - USE AND OCCUPANCY:

This Article in County deed restrictions should include the following statement:

The use and occupancy of each Unit shall be limited exclusively to Qualified Occupants and other requirements as set forth in this Covenant. The unit must be occupied as the Qualified Occupant’s primary residence.

The full details of the required ownership and occupancy restrictions should then be outlined in the subsequent Article 4 discussed below.

ARTICLE 4 - OWNERSHIP AND OCCUPANCY RESTRICTIONS AND REQUIREMENTS:

A. Local Employment: The occupancy of for sale or rental units (when authorized) is restricted to persons who, at all times during ownership or occupancy of the unit, reside and are employed within the County year round, an average of at least 30 hours per week on an annual basis. “Employed within the County” 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.

- 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. Authorization that an individual's self-employment or work from home status complies with the intent of the local employment requirement shall be approved in writing by the County.

B. Local Employment Exemptions: The following exemptions to the local employment requirement may be authorized by the County in writing, in accordance with the review and approval process outlined in Section D. below.

1. **Retirees:** 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.
 - c. **Retirement Provisions for Housing Helps Program Deed Restrictions:** While a Housing Helps deed restriction may allow for an owner who meets the above criteria to retire in the deed restricted unit, such an allowance should not be interpreted to mean that an applicant for the Housing Helps program can be a retiree or a retiree can be an authorized occupant in the deed restricted unit unless the goals of the Housing Helps program and these guidelines are otherwise met, which determination will be made in the sole discretion of the County.
2. **Disabled Persons:** Persons who become disabled after commencing ownership or occupancy of a unit, when such disability prevents the person(s) from working the required number of hours set forth in the deed restriction, may be permitted to remain in their unit for a period of occupancy authorized by the County.

Note – In the template deed restriction attached as Exhibit 1, the local employment provisions and exemptions described above are included in Article 2, within the definition of Qualified Occupant.

C. Primary Residence: An owner or renter (when authorized) of a deed-restricted property must occupy the property as their principal place of residence at least 9 months of the year.

D. Relief in Extraordinary Circumstances: All County deed restrictions should include a section outlining the process for a Qualified Owner of a Unit to request an exception to the occupancy restrictions of the deed restriction covenant through the following process:

1. 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.
2. The decision regarding the request for an exception to the occupancy requirements of a Covenant shall be made by the Summit County Housing Director within thirty (30) days of the completed application submittal with supporting information.
3. The Summit County Housing Director may grant an exception to an occupancy requirement for any qualifying circumstance(s) upon finding that:
 - a. The qualifying 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,
 - b. Strict application of the terms of this Covenant would result in a significant hardship on the Qualified Owner; and,
 - c. 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.
4. If the exception is granted, the Director may impose specific conditions of approval, and shall establish the duration of the term of such exception.

E. Ownership by Entity: When authorized in writing by the County, local employers may purchase deed-restricted units as rentals for their workforce and must follow the guidelines for maximum affordable monthly rent included in these Guidelines. The allowance for employer-owned units will be determined by the County on a case-by-case basis. Employer-owned units are potentially appropriate in some neighborhoods, but not others. The Purpose and Intent section of each deed restriction should articulate the overall goal of that project and whether employer ownership of units fits within the purpose and intent for that particular development. Where authorized, the deed restriction should specify:

- Which units (types and price points) are eligible for employer ownership.
- The maximum number or percentage of units eligible for employer ownership.
- Provisions for the Maximum Affordable Rental Rate, approved by the County in accordance with Section G.3 of these Guidelines.
- Renters must be qualified by the County, and occupancy limits should be stated for the maximum number of unrelated occupants.

- A 30-day priority period may be provided for persons wishing to purchase a unit, after which the unit sales could be opened up to interested local employers.

F. Income Categories: Affordable workforce housing developments will have varying AMI targets / income categories, to be determined by the County for each project at the time of development approval. This includes both: 1) Setting initial unit sales prices or rental rates to target certain AMI levels / income categories; and 2) Establishing the allowable income range for qualified households to purchase or rent these units. Flexibility and variation in unit pricing will be needed to meet different needs over time. Targeted income categories and ranges, both for unit pricing and qualifying purchasers and renters, are therefore subject to periodic review and adjustment by the County depending on market conditions.

I. Income Testing: Income testing is recommended at the time of initial 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. The specific requirements for income testing should be determined by the County on a case-by-case basis and addressed in the deed restriction.

- a. For the purposes of determining income eligibility under this section when qualifying prospective buyers or renters:
 - 1) For new developments, the most recent AMI numbers available should be utilized, unless otherwise agreed upon by the County and developer at the time of County site plan approval or by another timeframe mutually agreed upon by the developer and the County based on market conditions, or relevant development proforma or project financing considerations; and
 - 2) For resales, the most recent AMI numbers available at the time of entering into a purchase contract should be utilized.
- b. When qualifying household income eligibility to purchase or rent a unit, the County should evaluate the prospective household's annual household income for the previous two (2) years, and may look back to previous years of annual household income if necessary to adjust for any anomalies (i.e., any significant spikes or dips) in the household's income during the previous 2 years.
- c. Household Size: For the purposes of income qualifying households, the following strategies are recommended when determining household size:
 - i. The County should use the actual household size or 1.5 people per bedroom, whichever is greater. This is intended to cast the widest net for qualifying households.
 - ii. An unborn child can be counted as one person, if one household member is pregnant and desires the unborn child to be counted in the household size.
 - iii. All co-signers listed on the title or occupying the unit will be included in the household income testing; co-signers not included on the title will not be included in the household income testing, if they are not occupying the unit.

2. **AMI Flexibility:** Deed restrictions should be written to allow flexibility for households earning up to 20% above the targeted income level to qualify to purchase or rent an affordable workforce housing unit. This provides some flexibility for prospective homebuyers to qualify for financing, and avoid becoming stretched on their monthly housing payments to cost burdened status (greater than 30% of gross household income).
 - a. **Additional Flexibility for Units priced at 120% AMI and Above:** For units priced to be affordable to households earning 120% AMI and above, additional AMI flexibility may be authorized, allowing qualifying households to earn up to 30% above the targeted income level, if determined to be appropriate based on the project-specific considerations and targeted workforce housing needs to be met by a particular development.
3. **Asset Testing:** For ownership units priced to be affordable to households earning less than 120% AMI, asset testing is recommended at the time of initial purchase (for the original sale and every subsequent sale of a deed-restricted unit), in order to ensure buyers do not have the means to acquire free market housing or higher priced (and thus less heavily subsidized) deed-restricted housing. The specific requirements for asset testing will be determined by the County on a case-by-case basis and addressed in the deed restriction. 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.
 - a. Household Assets include the sum of all real and personal property, money, and other items of value owned or controlled by all persons in the household at the time of initial purchase of a unit. Applicants will be required to complete a Buyer Qualification Application and provide a comprehensive list of household assets and liabilities. Certain assets are exempt, including retirement accounts, health savings and college savings accounts.

G. Rental Procedures:

1. **Minimum Lease Term:** When rental of an affordable workforce housing unit is authorized, all rental contracts shall be at least three (3) consecutive months in duration and no short-term rentals shall be allowed. Any such tenancy approved by the County Housing Director or SCHA shall be to a person meeting the definition of a Qualified Occupant.
2. **Roommates:** When an affordable workforce housing unit is rented to unrelated roommates, all tenants must be qualified by the County Housing Director or SCHA as a Qualified Occupant prior to occupancy in accordance with the applicable deed restriction requirements, and must be included as tenants on the lease.
3. **Maximum Affordable Rental Rate:** Specific rental rate provisions will vary by project and individual deed restrictions may reference limiting the maximum rental rate to HUD Fair Market Rent, a certain percentage above HUD Fair Market Rent, or another methodology approved by the County. For purposes of this section, rental rates shall include the cost of utilities, homeowners' association dues, management costs and taxes.

4. **Use as a Short-term Vacation Rental is Expressly Prohibited:** The use restrictions enumerated in County deed restriction covenants include, but are not limited to, an absolute prohibition on rentals of a Unit, or portion of a Unit, as a short-term vacation rental.

H. 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 the deed restriction covenant.

I. OWNERSHIP OF OTHER REAL ESTATE: An owner occupying a deed-restricted workforce housing unit as a Qualified Owner or Qualified Occupant may not at any time own any interest, alone or in conjunction with others, in any other developed residential property within the State of Colorado.

I. 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.

a. **Timeshare Units** - Deed-restricted unit 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.

b. **Affordable Long Term Rental Housing in Summit County** – Deed-restricted unit owners may be authorized to own an additional property in Summit County, if the Owner agrees to add a deed-restriction to this property to convert it from a market rate unit to a deed-restricted property, whereby the added deed restriction contains all standard provisions of the County approved Housing Helps Program deed restriction, plus an additional provision limiting the maximum rental rate to comply with the Maximum Affordable Rental Rate provisions set forth in these Guidelines, with such rental rate approved by the County. This exception is intended to help increase the supply of long-term affordable rental housing in the County and work in tandem with the County’s Housing Helps Program.

For the purposes of qualifying prospective buyers to purchase deed-restricted units priced below 120% AMI, when income and asset testing households in accordance with the provisions outlined in these Guidelines, any net monthly income earned from an additional rental property (monthly rent payment – monthly housing expenses, not including depreciation or amortization) should be included in the applicant’s household income, and the property value of such real estate should be included in any applicable asset testing.

ARTICLE 5 – SALE OF A UNIT:

A. Initial Purchase Price or Rental Rate: The sale price or rental rate (when authorized) shall be affordable to households earning incomes at an approved percentage of the area median income (AMI). The County may specify the AMI cap on a case-by-case basis. Determination of the

appropriate AMI cap should take into consideration the most recent housing demand analysis, relevant market studies and other reliable information pertaining to current needs for affordable housing within the County.

1. **Affordable Purchase Price:** For purposes of this section, the purchase price is considered “affordable” if the monthly housing payment, inclusive of principal and interest on any loan, taxes, insurance, utilities and homeowners’ association dues and assessments, is less than 30% of the household’s gross income at the particular AMI cap established in the deed restriction.
2. **Affordable Rental Rate:** Specific rental rate provisions will vary by project and individual deed restrictions may reference limiting the maximum rental rate to HUD Fair Market Rent, a certain percentage above HUD Fair Market Rent, or another methodology approved by the County. For purposes of this section, rental rates shall include the cost of utilities, homeowners’ association dues, management costs and taxes.

B. Priority: Based upon the purpose and intent of each individual affordable workforce housing development, certain categories of applicants may be given priority in the purchase or rental of housing units within a particular development. The specific details and procedures for granting such priority should be approved by the County at the time of development approval and included in the deed restriction as determined to be necessary or desirable. Examples of categories of applicants that may be granted priority status include the following:

1. **Area Employees:** To facilitate reductions in traffic and automobile use throughout the County, persons employed within a specific geographic area proximate to the proposed development (e.g., within a specific town or basin) may receive priority in the purchase or rental of affordable workforce housing units. 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.
2. Persons with longevity in the County workforce and/or longevity living in Summit County.
3. Lower income households within the approved income range for qualified buyers or renters. For example, if the approved income range for qualified buyers or renters includes households earning between 100 – 120% AMI, lower income households within this range could be given priority status.
4. If a development allows employer-owned units, priority may be given to persons who wish to purchase a unit, before opening up the sale to local employers / businesses.

C. Maximum Resale Price: In no event shall a Unit be sold for an amount (“Maximum Resale Price”) in excess of the total sum calculated by adding the following components of the Maximum Resale Price calculation in the order listed below:

1. **Appreciation:** 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.

2. **Allowance for Qualified Capital Improvements:** For the purpose of determining the Maximum Resale Price, the Owner may add to the amount specified in Paragraph 1. above, the cost of certain qualified capital improvements and maintenance items (“QCI”), as set forth in the QCI schedule approved by the County for the particular unit at the time of development review and attached as an Exhibit to the respective deed restriction covenant. An example QCI schedule is attached as **Exhibit 2** for reference.

Allowing owners to recoup the costs of certain QCIs can be beneficial to encourage homeowners to upkeep their units and make improvements that increase the livability and affordability of their homes (e.g., finishing unfinished interior living spaces, adding a garage, or installing energy efficiency improvements or renewable energy systems that decrease the monthly utility expenses). However, allowing reimbursement for these expenses will increase the permitted Maximum Resale Price, and therefore, must be carefully regulated to ensure that the Maximum Resale Price remains affordable to the targeted income level over time.

It is therefore recommended that deed restrictions clearly specify any QCIs that may be included in the resale calculation and the terms and conditions for such allowances. On a project-specific basis, certain qualifying QCIs should be allowed to be added onto the permitted resale price, up to 10% of the Initial Purchase Price over every cumulative ten (10) year period of ownership.

3. **Real Estate Sales Commission:** For the purpose of determining the Maximum Resale Price, the Owner may add to the amounts specified in Paragraph 1. and 2. above the amount paid in sales commission, up to 1.75%, to the Maximum Resale Price. Please note that 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.

D. No Additional Consideration: The Owner shall not accept any other consideration which would cause an increase in the purchase price above the Maximum Resale Price so as to induce the Owner to sell to such prospective buyer. As described in Article 6, Section B. 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.

E. 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:

1. 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.
2. The Unit must contain all of the appliances that originally came with the Unit, of similar standard.
3. There must be no outstanding County code violations.

If the Unit is not in good condition, the County or its designee 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.

- F. Multiple Qualified Bids:** The process to administer unit sales in accordance with any priority provisions set forth in the deed restriction covenant and to handle multiple qualified bids should be determined at the time of County development approval and outlined in the deed restriction. A lottery process is preferable as lotteries tend to be fairer for all involved parties and reduce the potential for side deals to occur between buyers and sellers. Therefore, the deed restriction should reserve to the County the right to require a lottery for initial sales and resales with the details of the lottery process to be determined by the County.

ARTICLE 6 – COMPLIANCE AND ENFORCEMENT:

- A.** All deed restrictions shall include a statement acknowledging that the 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 the deed restriction 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, and invoices for utility payments. The County shall maintain the confidentiality of financial information as provided by law.
- B. Appreciation Limiting Promissory Note and Deed of Trust:** If subject to an appreciation cap, County deed restrictions shall include a section requiring an appreciation limiting promissory note and deed of trust, to clearly indicate that deed restricted housing units may not be sold for more than the Maximum Resale Price and to explicitly prevent Sellers from making side deals where other compensation is paid to the Seller. Accordingly, this section shall be written to require an appreciation limiting promissory note and deed of trust 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. Example language is as follows:

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.

- C. **Memorandum of Acceptance and Notice of Lien:** Each sales contract shall include a Memorandum of Acceptance and Notice of Lien, reciting that the proposed purchaser has read, understands and agrees to be bound by the terms of the deed restriction covenant.
- D. **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 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 the deed restriction covenant and require the Qualified Owner or non-qualified Owner to rent the Unit for up to one (1) year to a Qualified Occupant while the Unit is listed for sale.
- E. **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 the deed restriction covenant. A Non-Qualified Transferee shall not: (i) occupy a Unit; (ii) rent all or any part of a Unit, except in strict compliance with the deed restriction covenant; (iii) engage in any business activity on or in a Unit; (iv) sell or otherwise transfer a Unit except in accordance with the deed restriction covenant; or (v) sell or otherwise transfer a Unit for use in trade or business.
- F. **Failure to Comply with Use Restrictions:** In the event an Owner fails to comply with any of the use restrictions contained in a County deed restriction, the County may, but is not required to, provide notice to the Owner of the violation and an opportunity to cease and desist or cure. In addition, the County may, in its discretion, promulgate a notice and penalty schedule for use restriction 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.
- G. **Sales to Preserve Unit as Affordable Housing:**
- I. In the event a Unit is occupied, Transferred or leased in violation of the deed restriction 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.

2. 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 or as set forth in the deed restriction. 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 the deed restriction may be assigned by it to its successors or assigns.
3. In order to preserve the affordability of the Units for persons of low to moderate income, the County, or its agent, as applicable, 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.G., shall be a Qualified Owner.
4. In all situations in which the provisions of this Article 7 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 the deed restriction and subject to the one (1) year limit while the Unit is listed for sale.

ARTICLE 7 – FORECLOSURE:

All County deed restrictions shall include language to protect the deed restriction from being released in the event of a foreclosure, to the greatest extent possible. Deed restrictions shall further specify that, if the deed restriction is released in the event of a foreclosure, the County or its assignee shall have the first right of refusal to purchase the unit, in order to preserve the unit as affordable workforce housing to the greatest extent possible. Reference **Exhibit I** for the recommended foreclosure provisions to be included in Article 7 of County deed restrictions.

ARTICLES 8 AND 9 - INSURANCE AND GENERAL PROVISIONS:

All County deed restrictions should also include the provisions set forth in the **example / template deed restriction** attached as **Exhibit I** for Article 8 – Insurance, and Article 9 – General Provisions.