

**RESTRICTIVE COVENANT AND AGREEMENT
(Local Workforce Housing)**

THIS RESTRICTIVE COVENANT AND AGREEMENT (“**Restrictive Covenant**”) is dated _____, 2020 and is made and executed by SUMMIT COUNTY, a political subdivision of the state of Colorado (“**County**”).

Recitals

- A. County owns the real property described in Section 1 of this Restrictive Covenant (“Property”).
- B. County desires to create a valid and enforceable covenant running with the land assuring that the Property will be owned, used, occupied, rented, sold, transferred, and conveyed in accordance with the terms, conditions, requirements and limitations of this Restrictive Covenant.
- C. Under this Restrictive Covenant County intends and declares that the regulatory and restrictive covenants contained in this Restrictive Covenant governing the ownership, use, occupancy, rental, sale, transfer, and conveyance of the Property are covenants running with the land and are binding upon all owners of the Property subsequent to the County, unless and until this Restrictive Covenant is released and terminated by the County in this Restrictive Covenant.

NOW, THEREFORE, the County, for itself and its successors and assigns, hereby declares that the Property will at all times be purchased, owned, used, occupied, rented, sold, resold, and conveyed subject to the provisions of this Restrictive Covenant, which runs with the Property and binds all parties having any right, title, or interest in the Property, or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives.

1. Property Subject to Covenant. This Restrictive Covenant applies to the following real property located in Summit County, Colorado:

also known as: _____, CO 80424.

2. Definitions. As used in this Restrictive Covenant:

“**Person**” means a natural person, and excludes any type of entity.

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“**Property**” means the real property described in Section 1 of this Restrictive Covenant.

“**Principal Place of Residence**” means the home or place in which one’s habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom. To determine a person’s Principal Place of Residence, the criteria set forth in § 1-2-201(a) and (b), C.R.S., or any successor statute, shall apply.

“**Qualified Occupant**” means a person 18 years of age or older who, during the entire period of his or her occupancy of the Property, earns his or her living by working in Summit County, Colorado at least 30 hours per week **for a business located in and serving Summit County**, together with such person’s spouse and minor children, if any.

3. Occupancy Restriction. Except as provided in Section 5, the Property shall at all times be occupied by at least one (1) Qualified Occupant as his or her Principal Place of Residence. If the Property is not owner-occupied by a Qualified Occupant, the Property must be rented to a Qualified Occupant.

4. Priority. Except as provided in Section 20 of this document, at the time of the resale of the Property, Qualified Occupants will receive priority in the purchase of the Property in accordance with the County’s rules, regulations, policies and codes for the initial 30 day period commencing with the offering of the Property for sale, after which the Property can be sold to any purchaser.

5. Exceptions. Notwithstanding Section 3, it is not a violation of this Restrictive Covenant if the Property is occupied or used as the principal place of residence by:

A. A person who is partially or fully retired as described in the County’s Housing Guidelines (see Section 19, below); or

B. A person otherwise authorized to occupy the Property pursuant to this Restrictive Covenant who becomes disabled after commencing lawful occupancy of the Property such that he or she cannot work the required number of hours each week required by this Restrictive Covenant; provided, however, that such person is permitted to occupy the Property only for a maximum period of one year following the commencement of such person’s disability unless a longer period of occupancy is authorized by County.

6. Rent or Lease of the Property. Owner may rent or lease the Property provided that: (i) the Property is rented or leased only to a Qualified Occupant(s); (ii) a tenant may not sublease all or any portion of the Property; and (iii) the Property may not be rented or leased for a term of less than 90 days (no short term rental). All leases or rentals of the Property not in compliance with the requirements of this Section 6 are void, and a violation of this Restrictive Covenant.

7. Annual Verification; Other Information.

- A. Owner shall submit to County upon request any information, documents, or certificate regarding the occupancy and use of the Property that County reasonably deems to be necessary to confirm Owner's compliance with the provisions of this Restrictive Covenant.
- B. At the time of purchase, any prospective or new Owner shall execute a Memorandum of Understanding indicating that he or she has read this Covenant in its entirety and agrees to abide by the terms set forth herein.

8. Inspection of the Property. Owner agrees that County may enter the Property to determine compliance with this Restrictive Covenant without an inspection warrant or other legal authorization, subject to the following requirements: (i) entry may be made by County only between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday; and (ii) County shall provide Owner with not less than 24 hours' prior written notice before entering the Property. If County complies with these requirements the Owner shall permit County's entry into the Property. County's rights under this Section 8 may also be exercised by County's authorized agent. If Owner fails or refuses to comply with the requirements of this Section 8 County shall have the right to obtain access to the Property in the manner provided by law.

9. Payment of Taxes and Prior Encumbrances. During the term of this Restrictive Covenant Owner shall pay, prior to delinquency, all taxes and assessments levied against the Property, and all amounts due or to become due on account of principal and interest on any prior encumbrance against the Property.

10. Advances by County for Owner. If Owner fails to do anything required to be done by Owner under the terms of this Restrictive Covenant County may, at its sole option, but without any obligation to do so, do or perform such act or thing on behalf of Owner, and in doing so County shall not be deemed to be a volunteer; provided, however, that before exercising its rights under this Section 9, County shall give Owner written notice and afford Owner not less than five (5) days from the giving of such notice within which to do or perform the act required by Owner. Upon notification to Owner of the costs incurred by County Owner shall promptly pay to County the full amount of costs and/or expenses incurred by County pursuant to this Section 10, together with interest thereon at the legal rate.

11. Default; Notice. If Owner fails to comply with this Restrictive Covenant, County may inform Owner by written notice of such failure and provide Owner a period of time to correct such failure. If the failure is not corrected to the satisfaction of County within the specified time, which shall be at least 30 days after County mails written notice to Owner, or within such further time as County determines is necessary to correct the violation (but not to exceed any limitation set by applicable law), County may without further notice declare a default under this Restrictive Covenant effective on the date of such declaration of default. County may then proceed to enforce this Restrictive Covenant.

12. Equitable Relief. County may specifically enforce this Restrictive Covenant. County may obtain from any court of competent jurisdiction a temporary restraining order, preliminary

injunction, and permanent injunction to obtain specific performance. Any equitable relief provided for in this Section 11 may be sought singly or in combination with such legal remedies as County may be entitled to, either pursuant to the provisions of this Restrictive Covenant or under the laws of the State of Colorado.

13. County Authority To Enforce. The restrictions, covenants, and limitations created by this Restrictive Covenant are only for the benefit of County, and only County may enforce this Restrictive Covenant. Provided, however, County may assign its rights to the Summit County Housing Authority or Summit Combined Housing Authority without prior notice to Owner.

14. Waiver; Termination; Modification of Covenant. The restrictions, covenants, and limitations of this Restrictive Covenant may be waived, terminated, or modified only with the written consent of County and the then-current owner of the Property as of the date of such waiver, termination, or modification. No waiver, modification, or termination shall be effective until the proper instrument is executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado. County may also terminate this instrument by recording a release in recordable form without the signature of the then-current owner of the Property. For convenience, such instrument may run to "Owner or owners and parties interested" in the Property.

15. Statute of Limitations. Owner hereby waives the benefit of and agrees not to assert in any action brought by County to enforce this Restrictive Covenant any applicable statute of limitation, including, but not limited to, the provisions of §38-41-119, C.R.S. If any statute of limitation may be lawfully asserted by Owner in connection with an action brought by County to enforce this Restrictive Covenant, each and every day during which any violation of this Restrictive Covenant occurs shall be deemed to be a separate breach of this Restrictive Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

16. Attorney's Fees. If any action is brought in a court of law by either Party concerning the enforcement, interpretation, or construction of this Restrictive Covenant, the prevailing Party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as well as costs, including expert witness fees, incurred in the prosecution or defense of such action.

17. Notices. All notices provided for or required under this Restrictive Covenant must be in writing, signed by the Party giving the notice, and shall be deemed properly given when actually received or two (2) days after having been mailed, postage prepaid, certified, return receipt requested, addressed to the other Party at such Party's addresses appearing on the signature pages. Each Party, by written notice to the other Party, may specify any other address for the receipt of such instruments or communications. A notice to any owner of the Property subsequent to Owner may be sent to the address to which tax notices are sent according to the records of the Summit County Treasurer.

18. Recording; Covenant Running With the Land. The Restrictive Covenant is to be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado, and shall run with the land and shall be binding upon Owner and all subsequent owners of the real property described in Section 1 until this Restrictive Covenant is lawfully terminated in the manner provided in this Restrictive Covenant.

19. County's Housing Guidelines. This Restrictive Covenant shall be interpreted in accordance with, and Owner shall comply with, the Housing Guidelines in effect from time to time throughout the term of this Restrictive Covenant¹; provided, however, that in the event of a conflict between the restrictions, terms and conditions of this Restrictive Covenant and the Housing Guidelines, this Restrictive Covenant shall control.

20. County's Right of First Offer. County shall have the right of first offer with respect to Owner's sale of the Property as more fully set forth on Exhibit "A", which is attached hereto and incorporated into this Restrictive Covenant by reference. Owner shall comply with the requirements of Exhibit "A". Provided, however, the right of first offer provisions of Exhibit "A" to this Restrictive Covenant shall not apply if the Property is subject to a "right of first refusal" provision in the Declaration of Covenants, Conditions and Restrictions, also known as a "Declaration," or other similar document.

21. Owner To Give County Notice Of Default Under Other Encumbrance: Owner shall: (i) immediately notify the County in writing of the receipt of any notice claiming a default under any mortgage, deed of trust, or other lien or encumbrance against the Property, or a default under any debt or other obligation secured by a mortgage, deed of trust, or other lien or encumbrance against the Property; and (ii) promptly forward to the County a copy of any written notice of such default or foreclosure notice received by the Owner.

22. Miscellaneous.

A. Applicable Law. This Restrictive Covenant shall be interpreted in accordance with the laws of the State of Colorado regardless of any law that might require to be interpreted under the laws of any other state.

B. Vesting and Term. County's rights under this Restrictive Covenant vest upon the execution of this Restrictive Covenant. This Restrictive Covenant shall remain in full force and effect in perpetuity unless terminated in accordance with Section 13. Provided, however, if any of the terms, covenants, conditions, restrictions, uses, limitations, or obligations created by this Restrictive Covenant are held to 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 rule imposing like or similar time limits, then such provision shall continue only for the period of the lives of the duly elected and seated members of the Summit County Board of County Commissioners in office on the date of the

¹ The most current version of the Summit County Housing Guidelines are available for inspection and copying at the County's Housing Department.

execution of this Restrictive Covenant, their now living descendants, if any, and the survivor of them, plus 21 years.

C. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Restrictive Covenant.

D. Terminology. This Restrictive Covenant applies to all genders. Unless the context clearly requires otherwise, the singular includes the plural, and the plural includes the singular.

E. Severability. If any provision of this Restrictive Covenant is finally determined to be invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Restrictive Covenant to fulfill as closely as possible the original intents and purposes of this Restrictive Covenant.

F. Construction. The rule of strict construction does not apply to this Restrictive Covenant. This Restrictive Covenant is to be given a reasonable construction so that the intention of the Parties as expressed in this Restrictive Covenant is carried out.

G. Entire Agreement. This Restrictive Covenant constitutes the entire agreement and understanding between the Parties relating to the subject matter of this Restrictive Covenant, and supersedes any prior agreement or understanding relating thereto.

H. Binding Effect. This Restrictive Covenant is binding upon, and inures to the benefit of, the Parties and their respective heirs, successors, assigns, legal representatives, and personal representatives, and to all subsequent owners of the Property, or any interest therein.

SUMMIT COUNTY

By: _____
Scott Vargo, County Manager

ATTEST:

Lori Dwyer
Deputy Clerk

County's Address:

P.O. Box 68

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Exhibit "A"
County's Right of First Offer

1. Except as provided in Section 20 of this Restrictive Covenant with respect to real property that is subject to a right of first refusal provision in its Declaration or other governing document, during the term of this Restrictive Covenant Owner agrees not to sell the Property, or any part thereof, without first offering the same to County for purchase. This provision creates in County a right of first offer to purchase the Property, or any portion thereof, according to the terms and conditions hereof.

2. The right of first offer granted above shall be honored by Owner and exercised by County in the following manner:

- A. If Owner desires to sell the Property, or any portion thereof, Owner shall first send a written offer to County. Said offer shall state a specified price and all terms and conditions of the proposed sale.
- B. If County desires to accept said offer, County shall, within 30 days from receipt thereof, send its acceptance in writing to Owner.
- C. If a valid offer of sale is made by Owner to County, and the offer is not accepted by County as provided in subsection (B) above, then and for a period of one year from the date of mailing of the offer, Owner shall be free to sell the Property, or the portion thereof offered to County, to any party whomsoever, but not at a greater price than offered to County.

3. If Owner does not sell the Property, or the portion thereof offered, before the expiration of said one-year period, then, before the Property or portion offered may be sold to any other party, Owner shall make a new offer to County of the Property, or any portion thereof, under the provisions of this Restrictive Covenant.

4. County's failure to exercise, or County's disclaimer of, its right of first offer with respect to any transfer of less than all of the Property shall not be deemed a waiver of such right with respect to that part of the Property owned by Owner after such transfer.

5. If any offer made to County by Owner according to the terms and conditions herein stated is rejected or is allowed to expire without acceptance by County, County agrees, within 10 days of receipt of a written request from Owner, to give to Owner or to any third person Owner shall designate, a written statement properly signed and acknowledged in recordable form that:

- A. an offer has been made by Owner in accordance with the terms and conditions of this Restrictive Covenant, together with disclosure of the offering price and the terms of a proposed sale;
- B. Said offer has been rejected by County or has been allowed to expire; and

C. Owner or any designated third person may rely upon such statement by County as evidence of the submission and rejection or expiration of a valid offer made to County pursuant to and in accordance with this Restrictive Covenant.

5. This right of first offer shall apply to all transactions involving a conveyance of title to the Property or any portion thereof, during the term of this Restrictive Covenant, including but not limited to a purchase, an exchange, or any other transfer of an interest in the Property for consideration, other than a lease of no more than three years' duration.