

**AMENDED AND RESTATED DEED RESTRICTION AGREEMENT  
FOR THE OCCUPANCY AND RESALE OF  
UNITS AT OPHIR MOUNTAIN VILLAGE**

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**AMENDED AND RESTATED DEED RESTRICTION AGREEMENT  
FOR THE OCCUPANCY AND RESALE OF  
UNITS AT OPHIR MOUNTAIN VILLAGE**

THIS AMENDED AND RESTATED DEED RESTRICTION AGREEMENT FOR THE OCCUPANCY AND RESALE OF UNITS AT OPHIR MOUNTAIN VILLAGE (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between \_\_\_\_\_ (“Owner”) and SUMMIT COUNTY, a public body and political subdivision of the State of Colorado (“Summit County”) and SUMMIT COUNTY HOUSING AUTHORITY, a statutory housing authority organized under the laws of the State of Colorado (“Housing Authority”).

**WITNESSETH:**

**WHEREAS**, Summit County is the owner of a parcel of real property described on Exhibit A (“Land”) which is being held by Summit County for the purpose of providing affordable housing to qualified residents in Summit County, Colorado;

**WHEREAS**, the Housing Authority is organized for public purposes that include the provision of affordable housing within Summit County, Colorado;

**WHEREAS**, pursuant to the Land Lease for Affordable Housing Development effective January 13, 1997, recorded March 25, 1997 under Reception No. 535670 and on April 29, 1997 under Reception No. 538024 of the Summit County Clerk and Recorder’s records (the “Lease”); and the Development Agreement, recorded previously in the Summit County Clerk and Recorder’s records at Reception Number 552792 on November 25, 1997; and to which agreements Summit County and the Housing Authority are parties, the Housing Authority has developed an affordable residential leasehold condominium community on the Land to be known as OPHIR MOUNTAIN VILLAGE; and

**WHEREAS**, the Housing Authority, as Declarant, submitted the leasehold estate created by the Lease and all the condominium Units, appurtenances, improvements and fixtures to be constructed thereon, as further depicted on Exhibit B attached hereto (collectively the “Property”), to the provisions of the Colorado Common Interest Ownership Act, and to that end recorded a Declaration for Ophir Mountain Village in the Summit County Clerk and Recorder’s records at Reception Number 556203 recorded on January 14, 1998; and

**WHEREAS**, the Housing Authority and Summit County initially restricted the acquisition, leasing and resale of condominium Units in the Property to "Qualified Buyers" and "Qualified Residents" as those terms were defined in the original covenant and as those terms may be further defined in the Intergovernmental Agreement ("IGA") adopted by Summit County and the Housing Authority, as the same may be amended from time to time, via the recordation of a Master Deed Restriction Agreement for the Occupancy and Resale of Units at Ophir Mountain

Village, recorded in the records of the Summit County Clerk and Recorder at Reception No. 552794 and re-recorded at 556204 (“Master Deed Restriction”); and

**WHEREAS**, over time, elements of the Master Deed Restriction have become outdated and/or irrelevant, and the County has adopted new policies regarding workforce housing that will benefit the Owner; and

**WHEREAS**, County, Housing Authority, and Owner desire to amend the Master Deed Restriction in a manner that will continue to accomplish the goals set forth therein, in accordance with the County’s Affordable Workforce Housing Guidelines; and

**WHEREAS**, accordingly, County, Housing Authority, and Owner agree to amend and restate the Master Deed Restriction as set forth in more detail below.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the promises and covenants hereinafter set forth, the parties hereby declare, covenant and agree as follows:

**ARTICLE 1  
DEFINITIONS**

**A.**        Declaration Definitions Apply. Unless expressly provided in this Agreement the definitions set forth in the Declaration for Ophir Mountain Village recorded contemporaneously herewith in the Summit County Clerk and Recorder's records (the Declaration) shall apply to this Agreement.

**B.**        "Act" shall mean and refer to the Colorado Common Interest Ownership Act, sections 38-33.3-101 *et seq.*, C.R.S., as amended from time to time.

**C.**        "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.

**D.**        "Association" shall mean and refer to Ophir Mountain Village Homeowners' Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

**E.**        "Common Elements" shall mean and refer to all of the Property, as hereafter defined, except the Units. Common Elements shall be divided into two categories:

1. "General Common Elements" shall mean and refer to all Common Elements except all Limited Common Elements, and may be designated by abbreviation on the Condominium Map as "GCE."
2. "Limited Common Elements" shall mean and refer to those Common Elements designated or reserved in the Declaration or on the Condominium Map for the exclusive use by one or more, but fewer than all, of the Owners of Units, and may be designated by abbreviation on the Condominium Map as "LCE."

**F. "Condominium Map"** shall mean and refer to that certain map, recorded against the Property in the real estate records of Summit County, that depicts all or any portion of the Property in three dimensions, meeting the requirements of a land survey plat as set forth in section 38-51-105, C.R.S., and further meeting the requirements of the Act, and shall include any supplements or amendments thereto.

**G. "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.

**H. "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.

**I. "Eligible Household"** means a Household approved by the County and whose income meets the parameters set for each Unit identified in this Covenant.

**J. "First Mortgage"** shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Clerk and Recorder of Summit County, Colorado, encumbering any Unit having priority of record over all other recorded liens except those liens made superior by statute.

**K. "First Mortgagee"** shall mean and include the holder or beneficiary of any recorded First Mortgage.

**L. "Household"** means one or more persons who intend to live together in a Unit as a single housekeeping unit.

M. **“Housing Authority”** has the meaning as set forth above in the recitals, and shall include any assignee or transferee of the Housing Authority.

N. **“Housing Guidelines or Guidelines”** shall mean the Summit County Affordable Workforce Housing Deed Restriction Guidelines adopted by the Summit Board of County Commissioners December 10, 2019 by Resolution No. 2019-94.

O. **“HUD”** means the U.S. Department of Housing and Urban Development.

P. **“IGA”** shall mean and refer to that certain Intergovernmental Agreement dated May 30, 1997 between Summit County and the Housing Authority, publicly promulgated pursuant to the authority vested in said governmental entities, which IGA contains the affordability guidelines relating to ownership, residency and transfer of affordable housing in Summit County, including Units at Ophir Mountain Village. The IGA shall be subject to amendment from time to time by Summit County and the Housing Authority, according to said governmental entities; procedures for implementing public policy. To the extent that an amendment to the IGA affects a change in the terms of this Agreement, such amendment shall amend this Agreement effective upon recording such amendment in the records of the Clerk and Recorder of Summit County. Whenever the IGA is referenced herein, such reference shall always refer to the IGA in its then current form as reflected by said recorded amendments. A copy of the current IGA shall be available at the offices of the Housing Authority.

Q. **“Land”** shall mean and refer to that certain parcel of real estate subject to the Lease and located in Summit County, Colorado and further described on Exhibit A attached to the Declaration.

R. **“Local Employer”** means an individual or business that has a physical location within and serves Summit County and that employs a Qualified Occupant.

S. **“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.

T. **“Mortgage”** shall mean and refer to any mortgage, deed of trust or other interest in a Unit held solely as security for the performance of an obligation.

U. **“Mortgagee”** shall mean and refer to any person or entity named as the mortgagee or beneficiary under any mortgage, deed of trust, or other interest in a Unit held solely as

security for the performance of an obligation.

V. **"Owner" or "Unit Owner"** shall mean and refer to any person or entity at any time owning a Unit in compliance with the terms and provisions of this Agreement and the Declaration; it being understood that such person or persons shall be deemed an "Owner" hereunder only during the period of his, her or their ownership interest in the Unit. "Owner" and "Unit Owner" does not include a person having an interest in a Unit solely as security for the performance of an obligation.

W. **"Property"** shall mean and refer to the leasehold estate created by the Lease and the improvements constructed thereon as further depicted and described in Exhibit B attached hereto. The Property shall be a "Condominium" and a "Leasehold Common Interest Community" for purposes of the Act, and shall include the Units and the Common Elements.

X. **Qualified Owners, Qualified Buyers and Qualified Residents.** As used in this Agreement, Qualified Buyer and Qualified Resident shall have the same meaning as "Qualified Occupant", which is as follows:

**"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, and must meet the income and priority requirements set forth in Article 5 at time of purchase. "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 the prevailing minimum wage in the State of Colorado 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.

- 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. 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.

Y. **"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.

Z. **"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.

AA. **"Unit"** shall mean and refer to a Unit for residential use and for sale to persons meeting the terms of this Agreement, together with an appurtenant undivided interest in the Common Elements as set forth in the Declaration. A "Unit" is a physical portion of the Property designated for separate ownership and consisting of an individual air-space unit. Unless otherwise stated in the Declaration or depicted or shown on the Condominium Map as set forth in the Declaration, the boundaries of a Unit are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors as shown on the Condominium Map. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint and finish, flooring and any other materials constituting any part of the finished surfaces are part of the Unit, and all other portions of the walls, floors and ceilings are part of the Common Elements. All spaces, interior partitions and other fixtures and improvements within the boundaries of the Unit are part of the Unit. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of the Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the General Common Elements shall be a part of the General Common Elements unless specifically designated as a Limited Common Element serving more than one, but fewer than all, of the Units. Any shutters, awnings, window-boxes, doorsteps, stoops, porches, balconies and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit.

## ARTICLE 2

### AGREEMENT BINDS THE PROPERTY

This Agreement shall constitute covenants running with the Property as a burden thereon, for the benefit of, and enforceable by, the Housing Authority and Summit County and their respective successors and assigns. This Agreement expressly incorporates the terms of the IGA, as amended from time to time. This Agreement shall bind each Unit Owner, and each Unit Owner shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Unit Owner's period of ownership of a Unit. Each and every conveyance of a Unit, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Agreement, even without reference to this Agreement in any document of conveyance.

**ARTICLE 3  
NATURAL PERSONS**

Other than the Housing Authority and Summit County, the use and occupancy of the Units shall be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers or Qualified Residents.

**ARTICLE 4  
RESTRICTIONS**

The terms, conditions and restrictions of the Declaration are incorporated herein by this reference. A Unit Owner shall:

- A. Occupy the Unit as his or her sole place of residence, except as otherwise provided herein;
- B. Sell or otherwise transfer such Unit only in accordance with this Agreement, the IGA, and the Summit County Housing Guidelines, To the extent the Guidelines conflict with the IGA, the Guidelines shall prevail. To the extent this Agreement conflicts with the IGA and/or the Guidelines, this Agreement shall prevail.
- C. Not sell or otherwise transfer such Unit for use in a trade or business;
- D. Not permit any use or occupancy of such Unit except in compliance with this Agreement;
- E. At time of purchase, all priority and income requirements must be met as set forth in Article 5 below.
- F. Under no circumstances utilize the Unit or any portion thereof as a short-term vacation rental; and
- G. Not encumber the Unit in an amount in excess of 97% of the Maximum Resale Price.

**ARTICLE 5  
RESALE AND MAXIMUM SALE PRICE**

A. 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.**

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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.

B. Notice of Intent to Sell. A Unit Owner shall notify the County in writing of their intent to sell the Unit prior to taking any action to list, offer for sale, or otherwise make the Unit available for sale.

C. Lotteries. The 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 of this Covenant. The County shall have seven days after receiving the Notice of Intent of Sell to determine whether a lottery will be required. No private lotteries will be allowed.

D. Priority. At the time of the initial sale and any subsequent resale of any Unit, individuals who make 80% AMI and below will receive priority in the purchase of the Units in accordance with the County's rules, regulations, policies and codes. If a lottery process is not used, the priority shall operate as follows: for an initial 10 day period after the Unit is publicly offered for sale in a manner approved by the County, only those individuals or Households meeting the priority criteria of making 80% AMI or less will be allowed to make, and the Unit Owner will be allowed to accept, offers to purchase the Unit. After the close of the priority period, individuals or Households making 90% AMI or less will be allowed to make, and the Unit Owner will be allowed to accept, offers to purchase the Unit.

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:

- i. Cleaning the Unit and making necessary improvements to repair and maintain plumbing and mechanical fixtures, appliances, carpet or other flooring, roofs, painting and other similar items in good working order and condition.
- ii. The Unit must contain all of the appliances that originally came with the Unit, of similar standard.
- iii. There must be no outstanding County code violations.

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

F. Allowance for Qualified Capital Improvements. Subject to the limitations of this Article, for the purpose of determining the Maximum Resale Price in accordance with this Covenant, the Owner may add to the amount specified in this Article 5, the cost of approved and qualified capital improvements ("QCI"), as set forth in the Summit County Qualified Capital Improvements Schedule, attached as **Exhibit C**, in total amount not to exceed 10% of the Initial Purchase Price over every consecutive ten (10) year period of ownership.

G. 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.

H. No Additional Consideration. 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.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.

I. Income Testing. Income testing is required at the time of purchase (for the original sale and every subsequent sale of a deed-restricted unit), in order to ensure new owners qualify to purchase a Unit. In accordance with the priority provision above in Section C above, Qualified Buyers shall not make more than 80% or 90% of AMI.

J. Asset Testing. At the time of the purchase of any Unit, a Qualified Owner shall not have more in combined real and personal property assets than an amount equal to or greater than the listing price of the unit at the time of sale. 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.

## **ARTICLE 6 COMPLIANCE AND ENFORCEMENT**

A. Documents. 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.

B. 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 D-1 and D-2**, 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 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.

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 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 5 and 6 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.

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 Articles 5 and 6. 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.

F. 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.

G. Sales to Preserve Unit as Affordable Housing.

1. 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.

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 under this Article 6 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.

3. 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 6.G. shall be a Qualified Owner.

4. In all situations where the provisions of this Article 6 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**

A. 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.

B. Lien and Promissory Note. 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:

1. liens and encumbrances recorded prior to the recording of this Covenant;
2. real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts;
3. liens given superior priority by operation of law; and
4. the lien of any First Mortgage against a Unit.

C. 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.

D. 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.

E. Upon request, the County may agree to subordinate the County Lien and Promissory Note to a bona fide 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 7.E. shall control.

F. County Option to Redeem.



1. 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.

2. 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.

3. Upon Exercising Option. In the event that the County obtains title to a Unit pursuant to this Article 7, 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 Housing Authority as provided for in Article 11.A. 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 OWNER RESIDENCE**

A. Units Only For Residential Purposes. The Units shall be utilized only as the exclusive and permanent place of residence of the respective Unit Owner. A permanent residence shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom. In determining what is a permanent residence, the County may take into account,

without limitation, the following circumstances relating to a Unit Owner: Location of business pursuits, employment and income sources; residence for income tax purposes; residence of parents, spouse and children, if any; location of personal and real property; and motor vehicle registration. By way of example, a Unit Owner may be deemed to have changed his or her permanent residence by becoming a resident elsewhere, by accepting permanent employment outside Summit County, or by residing in the Unit for fewer than nine (9) months per calendar year without the express written approval of the County.

B. Involuntary Sale Upon Change in Residence. In the event a Unit Owner changes residence or ceases to utilize the Unit as his or her exclusive and permanent place of residence, as determined by the County, the Unit shall be offered for sale pursuant to the provisions of Article 6.D. of this Agreement. The County may further require the Unit Owner to rent the Unit in accordance with the provisions of Article 9 below.

C. Ownership Interest in Other Colorado Property. If at any time the Unit Owner also owns any interest alone or in conjunction with others in any other developed residential property located in Colorado, the Unit Owner shall immediately list such other property interest for sale and sell his or her interest in such property. In the event said other property has not been sold by the Unit Owner within one hundred twenty (120) days of its listing required hereunder, then the Unit Owner shall immediately list his or her Unit for sale pursuant to the provisions of Article 6 of this Agreement. It is understood and agreed between the parties hereto that, in the case of a Unit 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 a Unit Owner's business shall not constitute "other developed residential property" as that term is used in this Section 8.C.

## ARTICLE 9 RENTAL

A. Rent Restriction. No Unit Owner may, except with prior written approval of the County and subject to the County's conditions of approval, rent his or her Unit for any period of time. Prior to occupancy, any tenant must be approved by the County as a Qualified Resident, and by the Association if required by its bylaws. Except as provided below, the County shall not approve any Unit rental if such rental is being utilized by the Unit Owner as an income producing asset. 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. A signed copy of the lease must be provided to the County prior to occupancy by any tenant.

B. Maximum Rental Rate. The maximum monthly rental rate chargeable for the Unit shall

be 120% of the current published 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.

C. Sharing Occupancy. The requirements of this Article 9 shall not preclude the Unit Owner from sharing occupancy of the Unit with non-owners on a rental basis provided the Unit Owner continues to meet the obligations contained in this Agreement. At all times the Unit Owner and any non-owner occupants shall meet the definition of a Qualified Occupant.

D. No Subdivision. In no event shall a Unit Owner convert a Unit into multiple dwelling units or subdivide a Unit, as such term is defined in Summit County's land use codes.

E. No Indemnity. Nothing herein shall be construed to require the Housing Authority or Summit County to protect or indemnify any Unit Owner against any losses attributable to the rental of a Unit, including, without limitation, non-payment of rent or damage to the Unit; nor to require the Housing Authority or Summit County to obtain a qualified tenant for any Unit Owner in the event that none is found by the Unit Owner.

## **ARTICLE 10 EXCEPTIONS**

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.

## **ARTICLE 11 GENERAL PROVISIONS**

A. Notices. All notices and demands required or permitted under this Agreement shall be in writing, as follows: (1) by actual delivery of the notice to the party entitled to receive it; (2) by mailing such notice by certified mail, return receipt requested, in which case the notice shall be deemed to be given three days after the date of its mailing; (3) by Federal Express or any other overnight carrier, in which case the notice shall be deemed to be given as of the date it is sent; or (4) by facsimile to the facsimile number of the appropriate party indicated below, in which case it will be deemed received at the time indicated on the facsimile confirmation report. All notices which concern this Agreement shall be sent to the address or facsimile number of the appropriate party as set forth below:

**Summit County Housing Authority:**

Address:  
Summit County Housing Authority  
C/O Summit County Attorney  
PO Box 68  
208 E. Lincoln  
Breckenridge, CO 80424  
FAX: (970) 453-3535  
PHONE: (970) 453-2561

**Summit County:**

Address: 208 E. Lincoln  
P.O. Box 68 Breckenridge, CO 80424  
ATTN: County Manager  
FAX: (970) 453-3535

PHONE: (970) 453-2561

Copy to:

Jeff Huntley

Summit County Attorney 208 E. Lincoln

P.O. Box 68 Breckenridge, CO 80424

FAX: (970) 453-3535

PHONE: (970) 453-2561

**To Unit Owner:** To the Unit address of the Unit Owner as set forth in the recorded deed by which the Unit Owner took title to the Unit.

B. **Exhibits.** All exhibits attached hereto (Exhibits A, B, C, D-1 and D-2) are incorporated herein and by this reference made a part hereof

C. **Severability.** Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Agreement.

D. **Choice of Law.** This Agreement and each and every related document is to be governed and construed in accordance with the laws of the State of Colorado.

E. **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.

F. **Section Headings.** Article and Section headings within this Agreement 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.

G. **Waiver.** No claim of waiver, consent or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

H. **Gender and-Number.** Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

I. Personal Liability. All Unit Owners shall be personally liable for any of the transactions contemplated herein.

J. Further Actions. The parties to this Agreement agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

K. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of Summit County, Colorado.

[Separate signature and Approval and Acceptance pages follow]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has set its hand unto this Covenant this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_

Unit Owners

STATE OF COLORADO )

) ss

COUNTY OF \_\_\_SUMMIT )

The foregoing instrument was acknowledged before me as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

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

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

Summit County Board of County Commissioners

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

Summit County Housing Authority

By: \_\_\_\_\_  
Karn Stiegelmeier



STATE OF COLORADO )

) ss

COUNTY OF \_\_\_SUMMIT )

The foregoing instrument was acknowledged before me as of the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

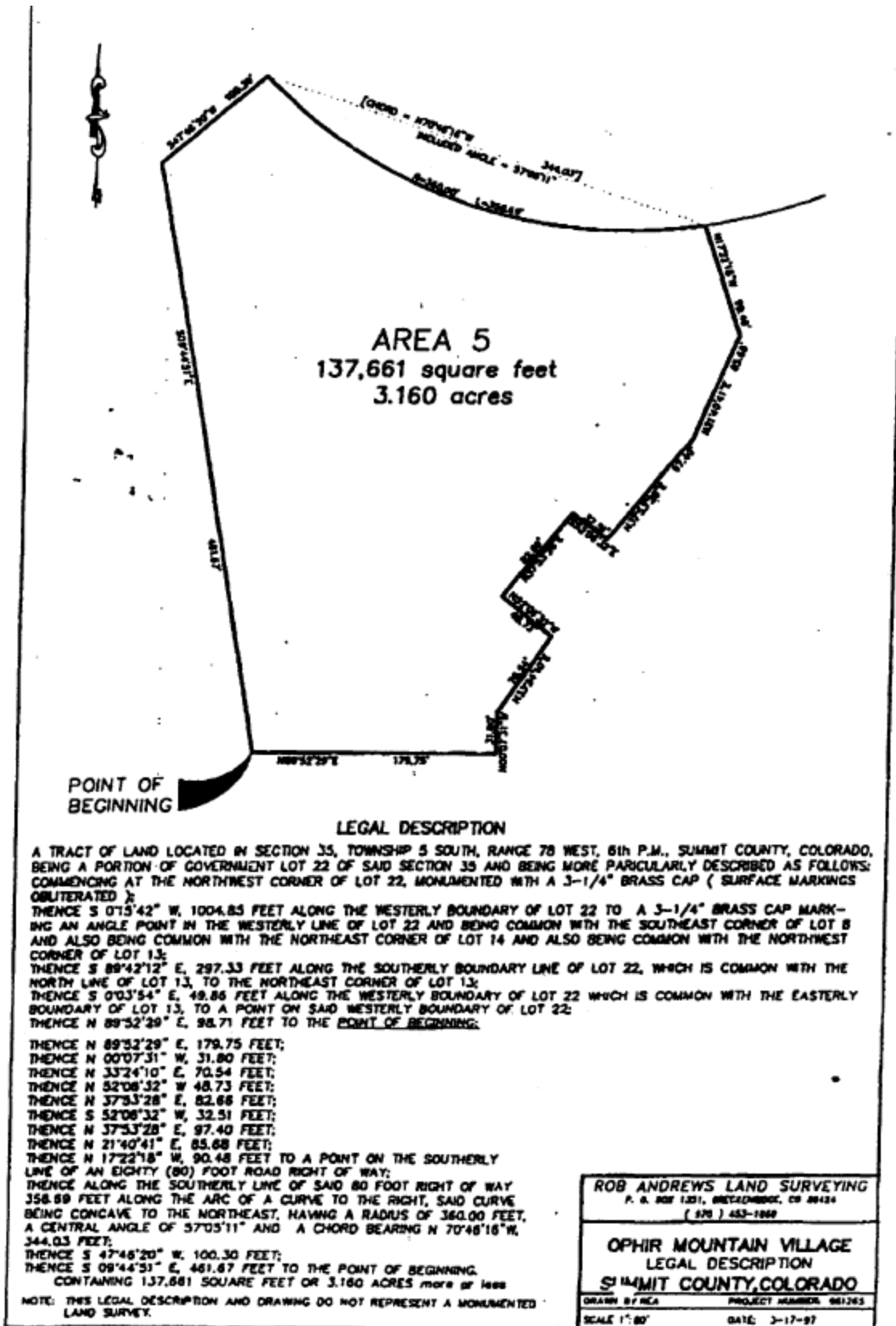
Witness my hand and official seal.

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

\_\_\_\_\_

Notary Public

**EXHIBIT A**  
**Land Description**



**EXHIBIT B**  
**Property Description**

Unit \_\_ Ophir Mountain Village Condo

## **EXHIBIT C**

### **Permitted Capital Improvements**

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

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

##### **QCI’s with No Depreciation:**

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

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

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

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

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

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

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

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

Items which are NOT Qualifying Capital Improvements:

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

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

The process for submitting QCI's is outlined below.

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

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

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

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

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

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

**Section 3-Depreciation Table**

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



**EXHIBIT D-1**

**APPRECIATION LIMITING PROMISSORY NOTE**

(Ophir Mountain Village)

(the "Note")

\_\_\_\_\_  
Date

FOR VALUE RECEIVED, \_\_\_\_\_ (the "Maker"), jointly and severally if more than one, promises to pay to the order of SUMMIT COUNTY, P.O. Box 68, Breckenridge, CO 80424 ("County"), fifteen (15) days after written demand for payment ("Due Date"), all sums that become due to County from Maker after the date of this Note under the "Amended and Restated Deed Restriction Agreement For The Occupancy And Resale Of Units At Ophir Mountain Village", Summit County, Colorado," dated \_\_\_\_\_ and recorded \_\_\_\_\_ under Reception No. \_\_\_\_\_ of the records of the Clerk and Recorder of Summit County, Colorado.

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

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

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

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

Unit \_\_\_\_\_, OPHIR MOUNTAIN VILLAGE

According to the Plat recorded December 9, 1997 at Reception No. 553751, and according to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Homes at Ophir Mountain Village recorded at 556203 on January 14, 1998 and any and all Amendments and/or Supplements thereto,

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

\_\_\_\_\_  
Maker

\_\_\_\_\_  
Maker

**EXHIBIT D-2**

**Deed of Trust**

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

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

DEED OF TRUST

(OPHIR MOUNTAIN VILLAGE)

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

Borrower and Lender covenant and agree as follows:

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

Unit \_\_\_\_, OPHIR MOUNTAIN VILLAGE, according to the map thereof recorded or to be recorded in the records of the Clerk and Recorder of the County of Summit, Colorado and as defined and described in the OPHIR MOUNTAIN VILLAGE Declaration to be recorded in the Records, subject to the rules and regulations of the Association (as hereinafter defined), together with any "Common Elements" of the Homes, in each case that are appurtenant to such Unit (Property).

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

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

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

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

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

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

any general or special taxes or ditch or water assessments levied or accruing against the Property;  
the premiums on any insurance necessary to protect any improvements comprising a part of the Property;  
sums due on any prior lien or encumbrance on the Property; if the Property is a leasehold or is subject to a lease, all sums due under such lease; the reasonable costs and expenses of defending, protecting, and

maintaining the Property and Lender's interest in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney in the employment of the Lender or holder of the certificate of purchase; all other costs and expenses allowable by the evidence of debt or this Deed of Trust, and such other costs and expenses which may be authorized by the court of competent jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Transfer of Property; Assumption.** The following events shall be referred to herein as a "Transfer": (1) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrower, (v) the reorganization, liquidation or dissolution of the Borrower. Not to be included as a Transfer are (1) the creation of the lien or encumbrance subordinate to this Deed of Trust, (ii) the creation of a purchase money security interests for household appliances, or (iii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the event of each and every transfer:

All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).

If a Transfer occurs and should Lender not exercise Lender's option pursuant to this paragraph 18 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with Transferee in the same manner as with the Borrower with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging the Borrower's liability hereunder for the obligations hereby secured.

Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to (b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be stopped therefrom by virtue thereof. The issuance on behalf of the Lender of a routine statement showing the status of the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

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

EXECUTED BY BORROWER:

\_\_\_\_\_  
  
\_\_\_\_\_

STATE OF COLORADO        )  
  )ss  
COUNTY OF SUMMIT        )

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

Witness my hand and official seal.

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

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