

HABITAT FOR HUMANITY VAIL VALLEY, INC. PERMANENTLY AFFORDABLE HOUSING COVENANT

***Compliance with the provisions of this Covenant shall be
deemed to be a requirement of title.***

WHEREAS, HABITAT FOR HUMANITY VAIL VALLEY, INC., a Colorado nonprofit corporation, ("Declarant"), is the owner in fee simple of the following described real estate, situate in the County of Eagle and State of Colorado, to wit:

[INSERT LEGAL DESCRIPTION], County of Eagle, State of Colorado (the "Property"):

WHEREAS, Declarant wishes to provide for certain restrictions relating to the use, ownership and resale the Property for the purpose of maintaining the Property as permanently affordable, as more particularly provided herein; and

NOW THEREFORE, Declarant does hereby publish and declare that the following terms, restrictions and limitations shall be deemed to run with the Property and shall be a burden to any person acquiring or owning an interest in the Property, their grantees, personal representatives, heirs, successors and assigns (hereinafter, an "Owner") for so long as this Covenant remains in force and effect with respect to the Property:

1. Definitions.

The following terms shall have the following meanings herein:

A. "Area Median Income" means the Area Median Income amounts reported annually for single persons and households of various sizes by HUD, or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes Eagle County, Colorado. In the event that the Area Median Income is substantially changed, re-named, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the Area Median Income, as determined by Declarant.

B. "Domestic Partner" means a "partner in a civil union" or "partner to a civil union" with a person as defined in the Colorado Civil Union Act, Colorado Revised Statutes Section 14-15-101, *et. seq.*, as amended from time to time.

C. “Eligible Buyer” means a person who is certified by the Declarant and qualified as described in Paragraph 3.A. hereof.

D. “First Deed of Trust” means a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against the Property to secure a loan made by an institutional lender used to purchase the Property by an Eligible Buyer. The First Deed of Trust does not include any subsequent deeds of trust for refinancing or increasing the debt encumbrance on the Property, or any deed of trust made by a person who is not an Eligible Buyer.

E. “Household” means the definition of household under 24 CFR 92.2 and includes all the people who intend to occupy a housing unit. A Household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit as spouses or Domestic Partners, are also counted as a Household.

F. “HUD” means the United States Department of Housing and Urban Development.

G. “Income” means the definition of income under HUD income qualifying guidelines as defined in 24 CFR 5.609 “Annual Income” and 24 CFR 5.611 “Adjusted Income” as modified by the Declarant to operate a homeownership program. In the event that the above is not in effect or the definition of income under the above is substantially modified, then “Income” shall mean the anticipated total income for the next 12 month period received from all sources by each member of the Household, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, amounts received specifically for the reimbursement of medical expenses for a member of the Household, and other Declarant allowed deductions.

H. “Institutional Lender” means any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.

I. “Owner” means any subsequent certified buyer, devisee, transferee, grantee, owner or holder of title of the Property or any portion of the Property.

J. “Primary Residence” means the residence which Owner occupies for a minimum of 10 full months out of every calendar year and is the usual place of return for housing as documented by the following as applicable: motor vehicle registration, driver's license, Colorado state identification card, voter registration, tax documents, school registration records, employment records, phone bill, credit card bills and utility bills. A person can only have one Primary Residence.

K. “Real Property” means land and improvements or common interest ownership and improvements.

L. “Transfer” means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee’s sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest (except for a lease allowed by Paragraph 14, Rental Conditions), or any interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title.

2. Requirement of Title; Additional Guidelines, Rules and Regulations.

A. Compliance with the provisions of this Covenant shall be deemed to be a requirement of title. The Property may not be transferred to anyone other than an Eligible Buyer. Eligible Buyers must have a current and valid certification from the Declarant in order to be eligible to purchase the Property.

B. Declarant shall have the right to adopt and amend, from time to time, rules, regulations and guidelines with respect to all of the definitions, terms, conditions and obligations contained in this Covenant, and any such rules, regulations and guidelines shall be binding upon the Owner. **OWNERS AND POTENTIAL ELIGIBLE BUYERS ARE ADVISED TO CONTACT DECLARANT WITH RESPECT TO ANY RULES, REGULATIONS AND GUIDELINES IN FORCE OR EFFECT FROM TIME TO TIME RELATED TO THIS COVENANT.**

3. Eligible Buyers.

A. With the exceptions listed below, title to the Property may only be transferred to a buyer or buyers who have been certified by the Declarant as an Eligible Buyer. In order to qualify, a Household’s projected Income may not be more than one hundred percent (100%) of Area Median Income. The Income and assets of all persons in the Household shall be used in determining the buyer’s Income, assets and eligibility.

B. The following transfers are exceptions to the above requirement, provided that the new Owner, other than an estate, shall use the Property as his, her or their Primary Residence:

- i. A transfer resulting from the death of an Owner where the transfer is to the spouse or Domestic Partner who is also an Owner.
- ii. A transfer to the Owner’s estate following the Owner’s death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.
- iii. A transfer resulting from the death of an Owner when the transfer is to one or more children of the deceased Owner.
- iv. A transfer by an Owner where the spouse or Domestic Partner of the Owner becomes the co-owner of the Property.

- v. A transfer resulting from a decree of dissolution of the marriage or legal separation or from a property settlement agreement incidental to such a decree by which a spouse who is an Owner becomes the sole Owner of the Property.
- vi. A transfer directly resulting from a termination of a registered Domestic Partnership by which a Domestic Partner who is an Owner becomes the sole Owner of the Property.

4. Good Faith Marketing and Selection Process.

The Owner shall engage in good faith marketing efforts such that members of the public have a fair chance to become informed of the availability of the Property. The Declarant shall be notified in writing of the Owner's interest in transferring the title to the Property ("Intent to Sell Notice") at least 45 days before any transfer.

5. Resale Price Limit.

A. The Property may not be transferred for more than an amount calculated in accordance with this Paragraph 5.A., as follows:

- i. Start with the contracted purchase price approved by the Declarant that the selling Owner paid for the Property;
- ii. Each year, effective on the anniversary of the date that the selling Owner acquired title to the Property and prorated for any partial year, multiply the original purchase price by one-half percent (0.5%) of the original purchase price;
- iii. Each year add the product of the multiplication described in Paragraph 5.A.ii. to the original purchase price;
- iv. Add the amount of eligible capital improvement credit that has been approved by the Declarant up to the time the Intent to Sell Notice is delivered to Declarant. Eligible capital improvement credits are only those improvements and amounts approved by the Declarant. To qualify for an eligible capital improvement the Owner must submit to the Declarant in advance of constructing the capital improvement a request for approval of any proposed capital improvement and obtain that approval. Eligible capital improvements must be completed in a workmanlike manner. If it is discovered at the time the work is done, or at a later point, the work was not done in a workmanlike manner the amount of credit will be reduced or eliminated;

- v. Deduct the amount of any excessive damage assessment determined by the Declarant. Prior to closing, the Declarant shall have the right to inspect the Property or use a report prepared by a professional home inspector hired by either the Owner or a potential buyer to determine whether the Owner has complied fully with the maintenance obligations set forth in Paragraph 12, Maintenance of the Property, hereof. If, after such an inspection, the Declarant determines in its judgment based on the Declarant's inspection policy that the Owner has not fully complied with this obligation, the Declarant shall determine in its judgment the cost to complete such repairs, replacements, and other work necessary to restore the Property to a good, safe and habitable condition in all respects, and to bring it into full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Property. This amount shall be called the excessive damage assessment, and it shall be included in the calculation of the Resale Price Limit. The Declarant may factor into the calculation any agreement by the Owner to make repairs when determining the Resale Price Limit. The Declarant may adjust the excessive damage assessment up until the date of sale based on changes in the condition of the Property or the Owner's failure to comply with agreements to make repairs; and
- vi. Add the amount of the sales commission paid by the Owner, in a reasonable amount approved by Declarant in advance.

B. Nothing in this Covenant shall prohibit an Owner from making an improvement to the Property which does not qualify as an Eligible Capital Improvement. However, only Eligible Capital Improvements may be included in the calculation of the Resale Price Limit, as set forth herein.

C. If the Owner reasonably disputes the Declarant's determination of the amount of an Eligible Capital Improvement or of an Excessive Damage Assessment, the Owner may request that the dispute be arbitrated. The Owner shall choose the arbitrator from a list provided by the Declarant, and the arbitration shall be conducted in accordance with the applicable rules of the American Arbitration Association, or of any similar successor organization. The decision of the arbitrator shall be final and binding upon the parties. The Owner shall pay for all costs of the arbitration, whatever the arbitrator's decision may be.

D. Nothing in this Covenant represents or guarantees that the Property will be re-sold at an amount equal to the Resale Price Limit. Depending upon conditions affecting the real estate market, the Property may be re-sold for less than the Resale Price Limit.

6. Declarant's Purchase Right.

In order to preserve the affordability of the Property for persons of low or moderate Income, upon receipt of an Intent to Sell Notice from the Owner the Declarant shall have the right to purchase the Property ("Purchase Right") at the lesser of (i) the Appraised Value of the

Property or (ii) Resale Price Limit as calculated in Paragraph 5, Resale Price Limit, but not including any sales commission mentioned in Paragraph 5.A.vi.

If the Declarant elects to purchase the Property, it shall exercise the Purchase Right by notifying the Owner, in writing, of such election (“Notice of Exercise of Right”) within 30 days of the receipt of the Intent to Sell Notice, or the Purchase Right shall expire. Having given such notice, the Declarant may either proceed to exercise the Purchase Right directly by purchasing the Property or may assign the Purchase Right to any other party in Declarant’s discretion. In either case, the Declarant or its assignee shall enter into a contract to purchase the property within seven days of exercising the Purchase Right. The purchase (by the Declarant or the Declarant’s assignee) must be completed within 90 days of the Declarant’s Notice of Exercise of Right, or the Owner may sell the Property as provided in Paragraph 4, Good Faith Marketing and Selection Process. The time permitted for the completion of the purchase may be extended by mutual written agreement of the Owner and the Declarant.

If the Declarant assigns its Purchase Right, the Resale Price Limit shall be increased by the amount set annually by the Declarant as necessary to cover the administrative costs of assigning its Purchase Right and the Declarant shall be entitled to these additional sale proceeds in order to cover the administrative costs associated with assigning its Purchase Right.

If the Purchase Right has expired or if the Declarant, or its assignee, has failed to complete the purchase within the 90-day period allowed above, the Owner may sell the Property according to Paragraph 4, Good Faith Marketing and Selection Process, for no more than the Resale Price Limit as calculated according to Paragraph 5, Resale Price Limit, and subject to all requirements, terms and conditions contained in this Covenant.

7. Complete Consideration Stated on Deed.

The complete consideration for any transfer of the Property shall be stated on the deed transferring title. Owner shall not accept any consideration above the purchase price.

8. Declarant’s Right to Acquire Owner’s Interest.

A. The Owner agrees to give immediate notice to the Declarant upon the first to occur of:

- i. The date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the Property under the First Deed of Trust, or
- ii. The date when Owner becomes 21 days late in making a payment on any indebtedness encumbering the Property required to avoid foreclosure of the First Deed of Trust.

B. At any time within 60 days after receipt of any notice described in Paragraph 8.A., the Declarant may (but shall not be obligated to) proceed to make any payment required

in order to avoid foreclosure or to redeem the Property after a foreclosure. Upon making any such payment, the Declarant shall succeed to all rights of the Owner to the Property and shall assume all of the Owner's rights and obligations under the First Deed of Trust, subject to the terms of this Covenant. In such event the Owner shall forthwith quit the Property and relinquish possession thereof to the Declarant. Failure to quit the property shall subject the Owner to eviction.

C. The Owner may redeem his, her or their interest in the Property by payment to the Declarant of all sums paid by the Declarant in connection with the First Deed of Trust and all other sums reasonably expended by the Declarant in relation to the Property, plus nine percent (9%) simple interest from each date of expenditure. This redemption may only occur within 90 days of the Declarant making any payment described in Paragraph 8.B. As of the date of such redemption, the Owner shall re-assume all of the rights and obligations under the First Deed of Trust. At the end of such 90-day period, if the Owner's interest has not been so redeemed, all right, title and interest of the Owner in the Property shall be extinguished, and the Owner shall execute a quit claim deed to the Declarant to evidence transfer of title to the Declarant. If the Owner fails or refuses to execute such a deed after being sent a written request therefor by the Declarant, the Declarant may execute it on behalf of the Owner as the Owner's attorney-in-fact. But prior to executing such a deed, the Declarant shall pay to the Owner the down payment made by the Owner plus any reduction made by the Owner in the principal amount of the loan, plus the amount of any Eligible Capital Improvement credit, minus the Declarant's costs to the date of execution of the deed.

9. Partial Subordination of Covenant to First Deed of Trust.

With the exception of the Declarant's rights under Paragraph 8, Declarant's Right to Acquire Owner's Interest, the provisions of this Covenant shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Property made by the Institutional Lender that is the beneficiary of the First Deed of Trust. This Covenant shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner. These remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. However, the above notwithstanding, the Institutional Lender, its assignee, or successor in interest may not exercise any remedies under the First Deed of Trust because the Declarant has exercised any of its rights under Paragraph 8, Declarant's Right to Acquire Owner's Interest.

10. Second Deed of Trust Upon Foreclosure.

In the event that the Declarant has not assumed the Owner's interests pursuant to Paragraph 8, Declarant's Right to Acquire Owner's Interest, and a foreclosure is initiated by the Institutional Lender that is the beneficiary of the First Deed of Trust, this covenant will serve as a second deed of trust. The Declarant's rights in the foreclosure - including without limitation the right of redemption under § 38-38-302 C.R.S. or any successor statute - shall be those of a junior lien holder and beneficiary of a second deed of trust. The amount of the debt secured by such junior lien shall be considered to be the difference between the Resale Price Limit in effect immediately before the notice of election and demand for sale was filed with the public trustee

and the fair market value of the Property as of that same time. The fair market value of the Property may be determined by an appraiser selected by the Declarant who is a Member of the Appraisal Institute or a person with equivalent expertise.

After such foreclosure, sale or acceptance of deed in lieu of foreclosure, this Covenant shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, that if and when the Property is sold through foreclosure, the Owner shall nevertheless remit to the Declarant that portion of the net proceeds of the foreclosure sale, after payment of all obligations to the holder of the First Deed of Trust and foreclosure costs, which exceeds the Resale Price Limit that would have applied to the sale of the Property if the Covenant had continued in effect. This Covenant shall automatically and permanently terminate upon issuance of a public trustee's deed of sale for a First Deed of Trust, court issued deed of sale after a foreclosure for a First Deed of Trust, acceptance of a deed-in-lieu of foreclosure for a First Deed of Trust by the mortgagee, or assignment of an Institutional Lender—insured mortgage to HUD for a First Deed of Trust.

11. Post-Purchase Financing.

A. The Owner may only refinance the First Deed of Trust or encumber the Property with any other post purchase financing if the following requirements are met:

- i. If all financing recorded against the Property has a fixed interest rate, then the total amount of all financing must be less than or equal to 93 percent of the Resale Price Limit in effect at the time of new encumbrance.
- ii. If any financing recorded against the Property has a variable interest rate or is a Home Equity Line of Credit, then the total amount of all financing must be less than or equal to 90 percent of the Resale Price Limit in effect at the time of new encumbrance.

B. All refinancing and/or additional financing must be with an Institutional Lender.

C. The Declarant must review and approve all financing that encumbers the Property according to the current mortgage policy, to be updated annually by the Declarant manager.

12. Maintenance of Property.

The Owner shall maintain the Property in a condition consistent with the standards of the Declarant and in good, safe, and habitable condition in all respects and in full compliance with all applicable policies, laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Property. If the Owner fails to properly maintain the Property, any costs needed to rectify such deficiencies may be factored into the Resale Price Formula as described in Paragraph 5.A.(v) of this Covenant. The Owner shall suffer no mechanics' liens to be recorded against the Property.

13. Use of Property as Owner's Primary Residence.

The Owner shall use the Property as his, her or their Primary Residence. At or before the time when title is transferred to the Property, each new Owner shall certify to the Declarant in writing his, her or their intent to occupy the Property as his, her or their Primary Residence. Upon written request of the Declarant, the Owner shall provide the Declarant with such information as the Declarant may reasonably request to satisfy itself that the Property is being used as the Owner's Primary Residence. Failure to comply with this provision shall result in actions described Paragraph 15, Enforcement of this Covenant, including without limitation injunction, loss of appreciation, or disgorgement of rental payments.

14. No Rental Permitted.

Owner may not, except with prior written approval of Declarant, rent the Property or any portion thereof for any period of time.

15. Enforcement of This Covenant.

A. Right to Enforce. Each Owner hereby grants and assigns to the Declarant the right to review and enforce compliance with this Covenant. Compliance may be enforced by the Declarant by any lawful means, including without limitation specific performance, injunction, disgorgement of rental payments, and/or damages to reimburse the Declarant for its enforcement costs. If the Owner violates the terms of this Covenant, the Owner agrees to repay the Declarant with reasonable interest any assistance received in connection with the home purchase and any sales or rental proceeds.

B. Inspection. In the event that the Declarant has reasonable cause to believe that Owner is violating the provisions of this Covenant, the Declarant, by its authorized representative, may inspect the Property after a reasonable attempt to provide such Owner with 24 hours advance written notice.

C. Voiding Transfers. In the event the Property is transferred in a manner that is not in full compliance with the terms and conditions of this Covenant, such transfer shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every transfer of the Property, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, regardless of reference therein to this Covenant.

D. Venue. Venue for a suit enforcing compliance shall be proper in Eagle County, Colorado, and service may be made or notice given by posting such service or notice in a conspicuous place on the Property. As part of any enforcement action on the part of the Declarant, the Owner shall pay all court costs and reasonable attorney's fees incurred by the Declarant in connection with these claims, actions, liabilities or judgments.

E. Waiver. Declarant shall have the right in its sole and absolute discretion to waive the effect of any provision of this Covenant, which waiver shall only be effective if in writing and recorded in the real property records of Eagle County, Colorado.

16. Miscellaneous.

A. This Covenant shall run with the land. It shall bind perpetually, and the benefit hereof shall inure perpetually to the Owner, his, her or their heirs, legal representatives, executors, successors in interest and assignees, and to the Declarant, its successors, designees, or assignees. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Covenant shall be unlawful or void for violation of:

- i. the rule against perpetuities or some other 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 period of the lives of current duly elected and seated members of the Board of Directors of Declarant, their now living descendants, if any, and the survivor of them, plus 21 years.

B. The Owner shall only permit the Property to be used in compliance with all applicable laws and regulations of the United States, State of Colorado, and any other applicable governmental authorities.

C. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

D. Any buyer or transferee of the Property or of any portion of or interest in the Property, by acceptance of a deed therefor, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

E. Notices to the Declarant shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to Declarant at the address set forth below, or such other address designated by the Declarant by recording a notice of change of address in the real property records of Eagle County, Colorado:

Habitat for Humanity Vail Valley, Inc.
c/o Executive Director
PO Box 4149
455 Nottingham Ranch Road
Avon, Colorado 81620

Notices to the Owner may be given in like manner addressed to the Property or to Owners address of record with the office of the Eagle County Assessor.

F. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive, and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

G. The rights of Declarant may be freely assigned by Declarant to Eagle County School District RE-50, a Colorado public school district, or to any other governmental entity, or to any other party whatsoever, in the sole and absolute discretion of Declarant. Any such assignment must be in writing and must be recorded in the real property records of Eagle County, Colorado.

H. The captions of the paragraphs in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

I. The conditions of this Covenant shall be interpreted so as to avoid speculation on the Property and to insure to the greatest extent possible that its purchase price and mortgage payments remain affordable in perpetuity to persons and families of low, moderate, or middle Income.

J. This Covenant is prior and superior to the Owner's right of a homestead exemption under Article XVIII, Section I of the Colorado Constitution and under Part 2, Article 41, Title 38 of the Colorado Revised Statutes or any successor statutes. The Owner waives his, her or their homestead rights to the full extent that they conflict with or impair the Declarant's rights and remedies under this Covenant.

K. The Declarant shall have the right to modify this Covenant to deal with exigent circumstances.

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