

**WHEN RECORDED, RETURN TO:**

Helen E. Strachan  
Deputy Summit County Attorney  
Summit County Courthouse  
60 North Main Street  
Coalville, Utah 84017

**ENTRY NO. 01105123**

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Restrictive Covenants PAGE 1/23

SUMMIT COUNTY, UTAH RECORDER

FEE 0.00 BY SUMMIT COUNTY



**RESTRICTIONS  
CONCERNING AFFORDABLE HOUSING UNIT  
AT BEAR HOLLOW VILLAGE**

(Bear Claw Unit 102)

THESE RESTRICTIONS CONCERNING AFFORDABLE HOUSING UNIT AT BEAR HOLLOW VILLAGE (hereinafter this “**Deed Restriction**”) governs unit number 102 (the “**Unit**”) of Bear Claw Condominiums located at 5573 N. Oslo Lane, Park City, Utah 84098 (“**Bear Claw Condominiums**”), as more particularly described in Exhibit A attached hereto, and is made and entered into as of the 28<sup>th</sup> day of January, 2019 (the “**Effective Date**”) by Mountainlands Community Housing Association d/b/a Mountainlands Community Housing Trust (“MCHT”), for and on behalf of Summit County, a political subdivision of the State of Utah (the “**County**”).

**Recitals**

A. On or about February 17, 2000, the master developer of the Bear Hollow Village Specially Planned Area (the “**Bear Hollow Village SPA**”) executed certain *Affordable Housing Master Deed Restrictions for Bear Hollow Village* (the “**Master Deed Restrictions**”) which placed restrictions on certain units to be developed within the Bear Hollow Village SPA including all of the units planned for Bear Claw Condominiums. The Master Deed Restrictions were recorded on February 17, 2000 as Entry No. 559329 (Book 1307, Pages 846-851) in the Office of the Summit County Recorder.

B. On or about July 26, 2006, the County and a subsequent developer of the Bear Hollow Village SPA executed certain *Restrictions Concerning Affordable Units at Bear Hollow Village* (the “**2006 Restrictions**”) to clarify the affordable housing covenants encumbering Bear Claw Condominiums as well as additional units at The Lodges of Bear Hollow Village. The 2006 Restrictions were recorded on August 4, 2006 as Entry No. 786047 (Book 1808, Pages 1051-1065) in the Office of the Summit County Recorder.

C. On or about December 3, 2008, the County and the developer of Bear Claw Condominiums executed the *First Amendment to Restrictions Concerning Affordable Units at Bear Hollow Village* (the “**2008 Restrictions**”) which amended and restated the affordable housing covenants encumbering certain units under the 2006 Restrictions, including all of the

units at Bear Claw Condominiums. The 2008 Restrictions were recorded on December 15, 2008 as Entry No. 860498 (Book 1959, Page 51) in the Office of the Summit County Recorder.

D. On or about December 10, 2018, MCHT, exercising an option to purchase assigned to it by the County under the 2008 Restrictions, acquired title to the Unit for the purpose of recording new deed restrictions and resetting the resale of the price of the Unit to ensure that the Unit remains affordable to, and occupied by, members of the Summit County workforce.

E. MCHT, as owner of the Unit, is exercising and recording this Deed Restriction for and on behalf of the County, intending that subsequent owners of the Unit be bound by its terms. With respect to the Unit, this Deed Restriction supersedes, in its entirety, the 2008 Restrictions and the 2006 Restrictions. Upon its recording in the public records of the County Recorder of Summit County, Utah, this Deed Restriction shall govern the terms and conditions of ownership, use, and occupancy of the Unit by subsequent owners and their heirs, successors, executors, administrators, devisees and assigns as addressed herein.

### Covenants and Restrictions

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants set forth herein, MCHT, for and on behalf of the County, hereby submits the Unit to the following covenants and restrictions:

#### 1. DEFINITIONS.

1.1 **“Capital Improvements”** means material improvements or structural changes to a Unit that are more than repairs or cosmetic changes, including changes that would adapt a Unit to a new or different use or materially affect the value or use of the Unit and including, but not limited to, all Permitted Capital Improvements.

1.2 **“County”** means Summit County, a political subdivision of the State of Utah. Actions to be taken or decisions to be made by the County hereunder are to be taken or made by the Summit County Council or the department, employee or third-party designee selected by the County Council to carry out such responsibilities or to administer, generally, the affordable housing programs for the County. As of the date of this Deed Restriction, Mountainlands Community Housing Trust is the County’s third-party designee.

1.3 **“Disability”** means a physical or mental impairment that substantially limits one or more of a person’s major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

1.4 **“Domicile”** means the place where an individual has a fixed permanent home and principal establishment to which the individual, if absent, intends to return and in which the individual and/or his or her household voluntarily reside not for a special or

temporary purpose but with the intention of making a permanent home for a minimum of nine (9) months out of each calendar year.

1.5 “**Employment-Qualified Purchaser**” means the purchaser (or at least one purchaser if the Unit is being purchased by two or more individuals) meets the “Employment Qualified” terms and conditions of Subsection 1.16(b).

1.6 “**First Mortgage**” means a Mortgage (as defined in Section 1.9) having priority as to all other Mortgages encumbering the Unit or any part thereof or interest therein.

1.7 “**Household**” means all related and unrelated individuals occupying a Unit as their Primary Residence.

1.8 “**Maximum Resale Price**” means the price above which the Unit may not be sold as calculated by the County using the formula included in Section 4.3. The initial Maximum Resale Price for the Unit is \$ 266,416.

1.9 “**Mortgage**” means a mortgage, deed of trust or similar security instrument by which the Unit or any part thereof or interest therein is encumbered.

1.10 “**Net Worth**” means the amount of total assets of the individuals or household that exceed total liabilities, as determined by the County. Total assets does not include funds in retirement accounts that have an early withdrawal penalty.

1.11 “**Notice**” means correspondence complying with the provisions of Section 14.1.

1.12 “**Owner-occupied**” means a Unit that is occupied by the Unit Owner as the Unit Owner’s Primary Residence.

1.13 “**Permitted Capital Improvements**” means certain Capital Improvements made to the Unit with the prior written consent of the County in compliance with this Deed Restriction that may increase the Maximum Resale Price under Section 4.3.

1.14 “**Primary Residence**” means the place where Domicile has been established.

1.15 “**Partially Qualified Purchaser**” means a prospective purchaser of the Unit who meets the requirements of a “Qualified Purchaser” in Section 1.16 except that the household income of the prospective purchaser shall not exceed 100% of the AMI for Summit County.

1.16 “**Qualified Purchaser**” means a prospective purchaser of the Unit who meets the following eligibility requirements:

a. Is **“Income Qualified,”** which means the Household of the purchaser earns not more than eighty percent (80%) of the Summit County Area Median Income (“AMI”) for the household size of the purchaser(s) as determined by the County with reference to the U.S. Department of Housing and Urban Development calculation of AMI, or other AMI calculation adopted by the County; AND

b. Is **“Employment Qualified”** which means

i. the purchaser (or at least one purchaser if the Unit is being purchased by two or more individuals) is employed full time at a business or businesses if multiple part-time jobs) located in Summit County. For purposes of this Section 1.16, “full time” is defined as working for a business or businesses located in Summit County a minimum of 1,560 hours per year (or approximately 30 hours per week), or if self-employed, the purchaser must be registered as a business entity in the State of Utah, have a current Summit County business license, and provide substantial goods and/or services within Summit County; or

ii. the purchaser (or at least one purchaser if the Unit is being purchased by two or more individuals) is a retired person who was a full-time employee of a business located within Summit County for at least two continuous years immediately preceding his or her retirement; or

iii. the purchaser is unable to work due to a Disability; AND

c. The prospective purchaser’s Household shall not have a Net Worth in excess of four (4) times the AMI for Summit County at the time of reference (with AMI being for a household of four regardless of the household size of the purchaser).

The County may establish policies and procedures for evaluating whether an applicant is a Qualified Purchaser, and any determinations made regarding an applicant’s qualifications shall be final.

1.17 **“Reasonable Efforts”** means good faith efforts to advertise the Unit for sale at its Maximum Resale Price through appropriate local means as determined by the County. The County may establish standards for what constitutes Reasonable Efforts under this Deed Restriction.

1.18 **“Unit Owner”** means the transferee or transferees receiving title to, or a fee interest in, the Unit and all subsequent person(s) vested with record title of the Unit according to the records of the County Recorder of Summit County, Utah. Unit Owner shall not include a person who holds an interest in a Unit merely as security for the performance of an obligation.

## 2. OCCUPANCY REQUIREMENT.

Each Unit shall be Owner-occupied unless a Unit Owner receives the prior written consent of the County, who, in its sole and absolute discretion, may grant an exception. Each Unit Owner shall occupy his or her Unit as a Primary Residence.

## 3. RENTING THE UNIT.

3.1 Owner Occupancy Required. The Unit shall be Owner-occupied and shall not be rented without the express written consent of the County.

3.2 Rental Allowed in Limited Circumstances and on Restricted Terms. Under certain extenuating circumstances and upon the written request of the Owner, the County may allow rental of the Unit on a limited basis. Upon written consent of the County (which shall be at the discretion of the County), the Unit may be rented on the following terms:

a. *Rental Period.* The rental period shall be for a minimum of ninety (90) days, but shall not exceed twelve (12) months. **Short-term/nightly rental of the Unit is expressly prohibited absent prior written consent as outlined in Article 2.**

b. *Eligible Tenant(s).* The Unit may be rented to an individual or Household earning no more than 60% of the Summit County AMI for a family of four (regardless of family size of tenant) who has been Income Qualified (as described in Section 1.16(a), above) by the County.

c. *Rental Amount.* Unless otherwise approved in writing by the County, the rent charged shall not exceed the "Maximum Gross Rents" allowed for a one-bedroom unit at 60% AMI as established and updated annually by the Utah Housing Corporation.

d. *Audit.* For any rentals allowed under this Article 3, the Unit Owner shall keep accurate and complete records which shall be made available to the County upon request for verification of compliance with these provisions.

e. *Documentation and Affidavit of Owner.* The County may require the Unit Owner to provide documentation of the circumstances underlying the need to lease the Unit. In addition, the Unit Owner may be required to sign an affidavit stating it is their intent to reestablish the Unit as their Primary Residence at the end of the temporary rental period.

3.3 Unauthorized Rental. Any rental of the Unit in violation of this Deed Restriction shall trigger, in favor of the County, an option to purchase the Unit from the Owner under the terms set forth in Article 4. If the County determines that the Unit is being rented in violation of this Deed Restriction, then the County shall send Notice to the Unit Owner and the tenants indicating that the tenants' rights, including but not limited to occupancy, are immediately extinguished and the option to purchase has been

triggered. The Notice shall serve as a Notice of Intent to Sell under Section 4.1. Thereafter, the County's Option shall follow the procedures and timing as provided in Article 4. If the Unit Owner fails to execute conveyance documents necessary to complete a sale of the Unit to the County, the Unit Owner shall be responsible for any and all court costs and attorney's fees to compel performance of such conveyance.

#### 4. SELLING THE UNIT.

Any sale of the Unit shall comply with the terms of this Article 4.

4.1 County Option to Purchase. Before the Unit Owner may sell the Unit to a third party, the Unit must first be offered to the County as follows:

a. *Notice of Intent to Sell*. Once the Unit Owner decides to sell the Unit, the Unit Owner shall provide Notice to the County of its intent to sell, which shall be substantially the same form as set forth in Exhibit B (the "**Notice of Intent to Sell**"). The Notice of Intent to Sell shall include a proposed sale price not to exceed the Maximum Resale Price. The Notice of Intent to Sell shall be served on the County in accordance with Section 14.1(b). The date on which the Notice of Intent to Sell is served on the County is the "**Offer Date**."

b. *Option to Purchase*. The County shall have the option (the "**Option**"), for a period of sixty (60) days after the Offer Date (the "**Option Period**") to purchase the Unit at the offered price. The Option shall be freely assignable by the County to a third party. The County may exercise the Option by delivering the Unit Owner Notice of exercise of the Option (the "**Exercise Notice**") before the expiration of the Option Period. The County shall endeavor to notify the Unit Owner of whether it will exercise the Option as early as possible within the Option Period. If the County elects to exercise the Option, the County shall close within thirty (30) days after delivering the Exercise Notice. During the Option Period, the Unit Owner shall not sell any interest in such Unit, however, if the County: (i) notifies the Unit Owner that it will not exercise the Option; (ii) fails to deliver the Exercise Notice (or notice that it will not exercise the Option) during the Option Period; or (iii) exercises the Option but fails to close within thirty (30) days after delivering the Exercise Notice (unless such closing date is extended by the parties), then the Option shall automatically terminate without the need for further notice or documentation.

4.2 Sale to a Qualified Purchaser. Upon termination of the County's Option under Section 4.1, the Unit Owner shall have the right to sell the Unit to a Qualified Purchaser as follows:

a. *Potential Purchasers List*. The County shall maintain a list of persons interested in purchasing deed restricted housing that potentially meet the definition of a Qualified Purchaser (the "**Potential Purchasers List**"). Once the Unit is available for sale, the County shall, if requested by the Unit Owner, assist

in facilitating delivery of Unit Owner's marketing information to parties on the Potential Purchasers List.

The County may adopt written guidelines and policies to more specifically regulate the eligibility and priorities of Qualified Purchasers that are not inconsistent with the criteria set forth in Section 1.16 above and this Deed Restriction. Persons wishing to be evaluated for Qualified Purchaser status will be required to provide income and employment documentation to the County for evaluation. Notwithstanding that the County will assist the Owner in locating a purchaser for the Unit, the County makes no representation that a Qualified Purchaser that is willing and able to close on the purchase will be identified through the Potential Purchasers List.

**The Unit Owner is not prohibited from entering into a purchase contract with a potential purchaser prior to the purchaser being approved by the County; however, the Unit Owner does so at the risk of the purchase contract being voided if the potential purchaser is not subsequently approved. In any event, a potential purchaser must be approved as a Qualified Purchaser by the County for the purchase of the Unit within five (5) business days after entering into a purchase contract.**

b. *Sale to Qualified Purchaser.* If the County does not exercise its Option under Section 4.1, the Unit Owner shall undertake Reasonable Efforts for a period of not less than thirty (30) days after termination of the Option Period, to negotiate a contract for sale of the Unit to a Qualified Purchaser. In no instance shall the Unit Owner be required to sell the Unit for less than the Maximum Resale Price.

c. *Sale to Partially-Qualified Purchaser.* If, after thirty (30) days of Reasonable Efforts of marketing the Unit for sale, the Unit Owner is unable to enter into a purchase contract with a Qualified Purchaser, the Unit Owner shall, for a period of thirty (30) additional days, undertake Reasonable Efforts to enter into a contract with a Partially-Qualified Purchaser.

d. *Sale to an Employment-Qualified Purchaser.* If, after sixty (60) total days of Reasonable Efforts of marketing the Unit for sale, the Unit Owner is unable to enter into a purchase contract with a Qualified Purchaser or a Partially-Qualified Purchaser, the Unit Owner, shall for a period of sixty (60) additional days, undertake Reasonable Efforts to enter into a contract with an Employment-Qualified Purchaser.

e. *Sale to Non-Qualified Purchaser.* If, after undertaking Reasonable Efforts to sell the Unit to a Qualified Purchaser (30 days), to a Partially Qualified Purchaser (additional 30 days), and to an Employment Qualified Purchaser (additional 60 days – for 120 days total), the Unit Owner has not entered into a purchase contract to sell the Unit to a person who qualifies under this Deed Restriction, then the Unit Owner shall have the right to sell the Unit to any person

who will meet the Owner-occupancy requirement. **The sale of the Unit to such purchaser does not limit the applicability of this Deed Restriction in any way with respect to such purchaser's use, occupancy and subsequent resale of the Unit.**

4.3 Maximum Resale Price. In no event shall the Unit Owner sell the Unit for an amount that exceeds the Maximum Resale Price. The Maximum Resale Price shall be calculated by the County by taking the price the Unit Owner paid for the Unit (the "**Owner's Purchase Price**") and adding to that amount the following: (i) 0.25% of Owner's Purchase Price for each complete month that the Unit Owner owned the Unit (equivalent to 3% per year), which percentage increase shall not be compounded; (ii) the amount of any Permitted Capital Improvements; and (iii) a unit transfer fee that may be charged by the County at closing to defray the cost of monitoring this Deed Restriction and facilitating the sale of the Unit, which fee may not exceed one-half of one percent (0.5%) of the Maximum Resale Price (or the actual sales price if less). The Maximum Resale Price is further subject to the maintenance requirements (and possible adjustments) of Article 5. Appreciation of the Owner's Purchase Price as described in this paragraph shall not apply for the period the Unit Owner is found in default pursuant to Article 9.

A purchaser shall pay no more for the Unit than is set forth in this Section 4.3 and shall not pay on behalf of seller any real estate commissions, closing costs, or other capital improvements attached to the Unit that are not Permitted Capital Improvements, or any other costs or fees not made a part of the purchase contract. The sale of any separate personal property such as appliances or furnishings may not be a condition of sale of the Unit. A purchaser shall pay all costs associated with financing the purchase of the Unit and all other closing costs customarily paid by purchasers of similar property in Summit County.

4.4 Recording of Affidavit Prior to Sale. In conjunction with conveyance of the Unit, the parties (Unit Owner and purchaser) and the County shall execute a *Combined Certification and Affidavit* in substantially the same form as set forth in Exhibit C, which document shall be recorded in the Office of the Summit County Recorder. Failure to record the signed Combined Certification and Affidavit within five (5) business days after the closing shall be considered grounds for default and possibility of reverter pursuant to Article 9.

4.5 Permitted Capital Improvements. The Unit Owner may include the cost of certain Permitted Capital Improvements, as more particularly described in Exhibit D attached hereto in the Maximum Resale Price. Permitted Capital Improvements must be approved in advance by the County and shall be added to the Maximum Resale Price only after the Unit Owner submits to the County: a signed Unit Owner's affidavit (on a form provided by the County) verifying that the work was performed on the Unit, paid for by the Unit Owner, and that any submitted receipts are valid and correct; receipts (original or duplicate) to verify the actual amounts expended by the Unit Owner; and copies of any building permit(s) or certificate(s) of occupancy issued by the Summit County Building Department with respect to the improvements, if required.



Note: The County shall have no obligation to approve requests for qualifying Permitted Capital Improvements that are submitted more than six (6) months after the completion date of the work. The County shall have the right to inspect the work prior to making a determination whether it qualifies as Permitted Capital Improvements. Capital Improvements that failed to obtain any needed building permits, including final inspections and certificates of occupancy, shall not qualify as Permitted Capital Improvements.

a. *Out of Pocket Costs.* In calculating the costs included under this Section 4.5, only the Unit Owner's actual out of pocket costs and expenses shall be eligible. Amounts related to profit, labor (sweat equity) or appreciation in Unit value will not be approved.

b. *Other Limitations.* At no point in time shall the total amount of the Permitted Capital Improvements exceed ten percent (10%) of the Maximum Resale Price, on a cumulative basis, unless approved by the County in writing. The cost of all non-permanent Permitted Capital Improvements shall be depreciated on a straight line basis at the rate of ten percent (10%) per annum for ten (10) years commencing one (1) year after the date of installation.

c. *County Discretion to Approve.* The County shall have the ultimate authority to determine whether any requested improvement qualifies as a Permitted Capital Improvement.

d. *No Limitation on Owner's Right to Make Improvements.* The provisions of this Section 4.5 and any related terms in this Deed Restriction shall not be interpreted as prohibiting the Unit Owner from making any desired and lawful modifications or improvements to the Unit at any time whatsoever. These provisions merely serve to establish a cap on the amount and type of improvements that may increase the price of the Unit for a subsequent purchaser, as it is the intent of this Deed Restriction that the Unit remain permanently affordable to members of the local workforce. Note, however, that improvements to the exterior of the Unit and certain interior improvements may be subject to design review and approval in accordance with the governing documents for Bear Claw Condominiums and Bear Hollow Village Master Association.

**4.6 No Guaranty.** Nothing herein shall be construed as a representation or guaranty by the County that the Unit Owner will receive the Maximum Resale Price for the Unit upon sale.

## **5. MAINTENANCE OF UNIT; PRE-SALE INSPECTION; INSURANCE.**

5.1 Minimum Maintenance Standards. The Unit shall at all times be maintained in good, safe, and habitable condition in all respects, normal wear and tear excepted, and in full compliance with all applicable laws, ordinances, rules and regulations of any authority having jurisdiction over the Unit. In addition, **the Unit must be maintained to**

**certain minimum standards of physical condition, as set forth in Exhibit E, for the Unit to be offered for sale at the Maximum Resale Price.**

5.2 Pre-Sale Inspection and Assessment. Thirty (30) days prior to offering the Unit for sale (which period may be waived or reduced at the discretion of the County), the Unit Owner must contact the County, and the County will conduct an inspection of the Unit. After inspection, the Unit Owner will be provided a list of items that must be remedied prior to closing to bring the Unit to the minimum maintenance standards such that it may be offered at the Maximum Resale Price. The list will include the County's estimate of the cost to complete necessary maintenance and repairs. The Unit Owner shall then either make the necessary repairs, or the estimated cost of said repairs will be deducted from the Maximum Resale Price. If the Unit Owner chooses not to perform the repairs and accept the reduction in the Maximum Resale Price, then the inspection results and the repair estimate must be disclosed to any potential purchaser before the expiration of any inspection contingency periods associated with the purchase. This requirement applies to any sale of the Unit including under the County's Option as set forth in Section 4.1.

5.3 Insurance. To the extent such insurance is not provided by the Bear Claw Condominium Homeowners Association, the Unit Owner shall continuously insure the Unit against all risks of physical loss for the full replacement cost of the Unit.

## **6. ANNUAL COMPLIANCE REPORT.**

The Unit Owner shall complete and provide to the County an annual compliance report on a form to be provided by the County. Failure of the County to mail or otherwise provide the annual compliance report form to the Unit Owner does not discharge the obligations of the Unit Owner to comply with this Deed Restriction or report compliance to the County on an annual basis. As part of the reporting process, the County may request additional documentation from the Unit Owner to demonstrate compliance, and the Unit Owner shall provide such additional documentation in the timeframe and manner requested or shall be subject to default as outlined in Article 9. In conjunction with the annual compliance report, the County may conduct a physical inspection of the Unit.

## **7. MORTGAGE PROTECTION.**

7.1 Subordination to First Mortgage. Except as provided in this Article 7, this Deed Restriction shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage encumbering the Unit and to all advances validly secured by said First Mortgage.

7.2 Notice of Default; Notice of Foreclosure. Notwithstanding the subordination provision above, the holder of a First Mortgage shall serve Notice on the County per Section 14(b)): (a) if the Unit Owner is in default of the First Mortgage for more than 60 days; and (b) if foreclosure proceedings have commenced against the Unit.

7.3 Option to Acquire Unit from First Mortgagee. If the holder of a First Mortgage takes title to the Unit by way of trustee's sale, foreclosure, deed-in-lieu of foreclosure or similar means, the County shall have the right to purchase the Unit from the holder by delivering Notice to said holder of the First Mortgage within sixty (60) days after the date the holder takes title to the Unit (the "Exercise Period"); provided, however, that said holder shall have served Notice of such event upon the County in accordance with Section 14(b) below or the Exercise Period shall be extended to 60 days after the date of service of Notice. The purchase price to be paid by the County for the Unit shall be equal to the lesser of: (a) the amount of outstanding principal, delinquent payments, and any advances validly secured by the First Mortgage; or (b) the Maximum Resale Price, plus the sum of all taxes, interest, insurance, and title insurance then due and payable. Provided the lender has acted to cure any default within one hundred eighty (180) days or within a reasonable time established by industry standards (if greater), the purchase price may also include reasonable attorneys' fees and other reasonable costs incurred to recover the Unit through a trustee's sale, foreclosure, deed-in-lieu of foreclosure or other similar means. In the event the County timely exercises such right to purchase the Unit, the County shall close on the purchase within thirty (30) days following the date that the County delivers Notice of its intent to acquire the Unit (the "Closing Deadline").

7.4 No Impact on Foreclosure Sale. The provisions of Section 7.3 shall not impair the holder of a First Mortgage from causing the Unit to be sold at public sale by way of judicial or non-judicial foreclosure. Any purchaser at such sale (other than the holder of the First Mortgage as provided in this Article 7) shall acquire the Unit subject to this Deed Restriction. In the event of such public foreclosure sale, the County shall have no rights greater than or different from others bidding for the Unit, except that the County shall have the post-foreclosure option to purchase described in Section 7.3.

7.5 Termination of Deed Restriction Upon Foreclosure; Applicability. If the holder of a First Mortgage acquires the Unit via foreclosure sale or similar legal means as described in Section 7.3 above and the County does not exercise its option to purchase the Unit (by either failing to deliver Notice to the holder within the Exercise Period or failing to close on such purchase by the Closing Deadline), then the provisions of this Deed Restriction shall automatically terminate with respect to the Unit and the holder of the First Mortgage shall be entitled to transfer the Unit free and clear of this Deed Restriction. In such event the owner of the Unit may, but shall not be required to, file in the Office of the Summit County Recorder an affidavit or other notice of termination, reciting the events giving rise to the termination of this Deed Restriction. Any such termination of this Deed Restriction with respect to the Unit shall not affect the enforceability of this Deed Restriction or similar restrictions with respect to other units in Bear Claw Condominiums.

The above-described termination of this Deed Restriction shall apply only to the acquisition of the Unit by (or through) the holder of a First Mortgage strictly as described in the preceding paragraph. **If any other person or entity (including the County) shall acquire the Unit through foreclosure or trustee's sale or by any similar means, such**

**acquisition shall be made, and the Unit shall remain, subject to the terms and conditions of this Deed Restriction which shall not be automatically terminated by said foreclosure sale or other transfer event.**

**8. CERTAIN MORTGAGES VOID; PENALTY FOR FRAUD.**

8.1 Encumbrance Exceeding Maximum Resale Price is Void. In the event any encumbrance, including the refinance of a First Mortgage, when recorded against the Unit causes the total lien amount of all encumbrances (regardless of whether caused individually or cumulatively, and regardless of the actual amount of the offending encumbrance) to exceed the Maximum Resale Price, the encumbrance, subject to the provisions of this Article 8, shall be **void ab initio**. This Deed Restriction exists to preserve affordability for targeted income households and any encumbrance that exceeds the Maximum Resale Price (whether taken individually or as the result of the cumulative of all encumbrances) violates public policy and, on its face, constitutes predatory and illegal lending practices. The encumbrance exceeding the Maximum Resale Price is void in its entirety and there shall be no replacement equitable encumbrance in an amount not exceeding the Maximum Resale Price. An affidavit filed by County reciting this requirement and the Maximum Resale Price at the time of the recording of the encumbrance declaring the intention to void the encumbrance shall be sufficient to void the encumbrance of record. Notwithstanding the foregoing, the voiding of the security for a promissory note or underlying debt instrument shall not automatically void such indebtedness. For purposes of loans from governmental agencies or other approved (by the County) lenders such as the Veterans Administration or the U.S. Department of Agriculture – Rural Development wherein 100% of the purchase price is financed and costs of loans (not to exceed 5% of the loan amount) are permitted, such loans shall not be deemed a violation of the provisions of this Section 8.1.

8.2 Fraud by Owner; Penalty. The Unit Owner has acknowledged the existence of this Deed Restriction and is aware of the provisions contained herein. The act of executing a debt instrument and encumbrance in an amount exceeding the Maximum Resale Price with the intent to defraud is an act of fraud and against public policy. Accordingly, the perpetrator of such act should not benefit from such activities so, upon the recording of an encumbrance executed by the Unit Owner exceeding the Maximum Resale Price, all right, title and interest of Unit Owner in the Unit shall revert to the County. This reversion to the County shall be perfected by the County recording an affidavit stating this requirement and the Maximum Resale Price at the time of the recording. The reversion of the Unit to the County and the voiding of the encumbrance recorded against the Unit shall not relieve the Unit Owner of any underlying debt obligations to the lender.

**9. DEFAULT AND REMEDIES.**

9.1 Default. Noncompliance with any part of this Deed Restriction constitutes a default, which shall include but are not limited to: (a) unauthorized rental of all or a portion of the Unit; (b) obtaining financing or a combination of financings that in the

aggregate exceed the Maximum Resale Price; (c) not using a Unit as an Owner-occupied Primary Residence; (d) failure to pay the monetary penalties of Section 9.3; (e) failure to submit the Annual Compliance Report required by Article 6; (f) failure to make timely payments or otherwise defaulting on a lien or mortgage on any Unit; or (g) failure to record the affidavit required in Section 4.4.

9.2 Monetary Penalties. Upon Notice from the County to a Unit Owner of default, the Unit Owner shall have thirty (30) days to cure such noncompliance. If the Unit Owner does not cure the noncompliance within thirty (30) days, the County may assess monetary penalties against the Unit Owner of up to two-hundred and fifty dollars (\$250.00) per day beginning on the thirty-first (31) day after providing Notice per Article 14. Unless prior approval was obtained per Article 2, rental of any Unit on a short-term/nightly basis shall constitute an automatic default without the need to provide the Unit Owner Notice and an opportunity to cure the noncompliance. In those instances, the County may charge the Unit Owner automatic fines of up to the greater of \$500 per day or the rate charged for rental of the Unit per night.

9.3 County to Maintain a Possibility of Reverter. If a Unit Owner does not cure the default within thirty (30) days, then the County may initiate the process of obtaining title to such Unit Owner's Unit as further described in this paragraph. The County shall send Notice to the Unit Owner that contains the specific default, the dates of such noncompliance, a record of other Notices sent regarding such default, and that notifies the Unit Owner of an informal hearing before the County Council to take place within thirty (30) days of such Notice, at which the Unit Owner may present evidence or call witnesses. After such Notice and informal hearing, the County Council shall issue a final ruling within thirty (30) days of the hearing which shall make a finding as to the Unit Owner's default. Upon a final ruling of default against such Unit Owner, the occurrence of such condition subsequent shall trigger the County's right to title in fee simple to the Unit Owner's Unit, and, upon the exercise of such right by the County, title will revert to and become revested in the County, and such title will be revested fully and completely in it, and the County will be entitled to and, subject to applicable law, may of right enter upon and take possession of the Unit; provided that, contemporaneously with the County's exercise of its reversionary interest, the County shall repay, or cause to be repaid any debt or obligation incurred by the Unit Owner for the acquisition of the Unit to the extent such debt or obligation is secured by a lien against the Unit. Upon successful closing of the Unit, any reversionary interest of the County granted by this Section shall terminate in regards only to that specific finding of default. If the County pays, or causes to be paid, pursuant to this Section amounts to satisfy liens against the Unit that are more than the Maximum Resale Price, then the County may seek a deficiency judgment against such Unit Owner for the difference between the amount paid and the Maximum Resale Price.

9.4 Right To Purchase. Upon a finding of default by an informal hearing conducted by the County Council as described in Section 9.3, a Unit Owner shall work with the County to sell the Unit to the County for the Maximum Resale Price less any penalties owed. Upon such finding of default, the County shall have the option, in its sole

discretion, to exercise or assign its reversionary interest pursuant to Section 9.3, to exercise or assign its right to purchase pursuant to this Section, or to seek any other remedy provided to it at law or in equity.

9.5 Violation of Criminal Code. In addition to the remedies contained herein, the Unit Owner and other individuals dealing with the transfer and/or management of the Unit (including lenders, Realtors, attorneys and title professionals) may be subject to the provisions of Summit County Code §5-2-7: Affordable Housing Fraud (as may be amended or replaced).

9.6 Remedies Not Exclusive. Except as provided in Section 9.3 regarding the termination of the County's reversionary interest upon a sale pursuant to Section 9.4, no remedy conferred by any of the specific provisions of this Deed Restriction is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other remedies.

9.7 Attorney Fees. If any party shall take or defend against any action for any relief against another party arising out of this Deed Restriction, the prevailing party in such action or defense shall be entitled to reimbursement by the other party for all costs including but not limited to reasonable attorney fees and court costs incurred by the prevailing party in such action or defense and/or enforcing any judgment granted therein, all of which costs shall be deemed to have accrued upon the commencement of such action and/or defense and shall be paid whether or not such action or defense is prosecuted to judgment. Any judgment or order entered in such action or defense shall contain a specific provision providing for the recovery of attorney fees and costs incurred in enforcing such judgment.

## 10. ENFORCEMENT.

The County shall monitor compliance with the terms of this Deed Restriction and have the power to exercise all remedies available at law and in equity to ensure compliance by the Unit Owner and their successors in interest.

## 11. TERM.

This Deed Restriction shall continue in full force and effect for 99 years after the Effective Date unless terminated sooner by the mutual agreement of the Unit Owner and the County (the "**Term**"). If the Deed Restriction is so terminated, or terminated for any reason whatsoever, the Unit Owner shall remain subject to the restrictions herein regarding the Maximum Resale Price until such time as they sell the Unit, at which time the Unit shall be sold at a market price but such Unit Owner shall be entitled to retain the proceeds of sale as if the Unit sold at the Maximum Resale Price, with the difference between the net proceeds at the Maximum Resale Price and the actual (market rate) sales price being transferred to the County to be utilized in furtherance of the County's affordable housing goals (as determined by the County

Council). Alternatively, the Unit Owner at the time of termination may have an appraisal performed of the Unit (by an appraiser of the County's choosing), at the Unit Owner's expense, and pay directly to the County the difference between the then Maximum Resale Price and the proceeds from a hypothetical market rate sale (based on the appraisal value), and continue to own the Unit except that it shall be unencumbered by any provision of this Deed Restriction. In either case the Deed Restriction shall not terminate with respect to the Unit until the required payment is actually received, unencumbered, by the County.

## **12. CHOICE OF LAW.**

This Deed Restriction shall be governed and construed in accordance with the laws of the State of Utah.

## **13. RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND.**

13.1 Recordation. Upon execution by the County, this Deed Restriction shall be recorded and filed in the Official Records of Summit County, Utah.

13.2 Covenants Run with the Land. The County intends, declares and covenants, on behalf of itself and all future Unit Owners, that this Deed Restriction and the covenants and restrictions set forth herein, regulating and restricting the rents, use, occupancy and transfer of the Unit shall be covenants running with the land and improvements constituting the Unit, for the benefit of the County, shall encumber the Unit, and shall be binding upon the County and all subsequent Owners of the Unit.

## **14. MISCELLANEOUS.**

### 14.1 Notice.

a. Any and all notices or demands to the Unit Owner or person(s) required or desired to be given hereunder shall be in writing and shall be validly given or made if (a) deposited in the U.S. mail, certified or registered, postage prepaid, return receipt requested, (b) sent by commercial courier keeping records of deliveries and attempted deliveries, or (c) via hand delivery with signed acknowledgment of receipt by a person of suitable age and discretion. Service by U.S. mail or courier shall be conclusively deemed made on the first business day delivery is attempted. Any notice or demand to the Unit Owner shall be addressed to the address of the Unit Owner appearing on the County tax records.

b. Any and all notices or demands to the County shall be in writing and shall be served by (a) mail or commercial courier provided to the Summit County Clerk or his/her authorized agent authorized by appointment or by law to receive service by signing a document indicating receipt or (b) via hand delivery with signed acknowledgment of receipt by the Summit County Clerk or his/her authorized agent authorized by appointment or by law. Service shall be complete on the date the receipt is signed. Any notice or demand to the County shall be addressed to:

Summit County Clerk  
P.O. Box 128  
Coalville, Utah 84017

With a copy to:

Summit County Attorney  
P.O. Box 128  
Coalville, Utah 84017

c. The parties may change their respective addresses for the purpose of receiving notices or demands as herein provided by Notice given in the manner aforesaid to the others, which notice of change of address shall not become effective, however, until the actual receipt thereof by the others or the recording of a change of address by the County.

14.2 Paragraph Headings. Paragraph or section headings within this Deed Restriction are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

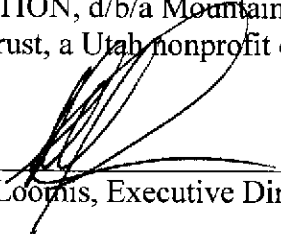
14.2 Gender and Number. Whenever the context so requires herein, the neuter and gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

14.4 Modifications. Any modification of this Deed Restriction shall be effective only when made by writings signed by the County and the Unit Owner and recorded in the Official Records of Summit County, Utah.

14.5 Incorporation of Recitals. The recitals set forth at the beginning of this Amended Deed Restriction are incorporated herein by this reference.

IN WITNESS WHEREOF, the County has executed this Deed Restriction as of the Effective Date.

MOUNTAINLANDS COMMUNITY HOUSING  
ASSOCIATION, d/b/a Mountainlands Community  
Housing Trust, a Utah nonprofit corporation

By:   
Scott Loomis, Executive Director



Acknowledged and assented to by Summit County,  
a political subdivision of the State of Utah.

By: Janna B. Young  
Deputy County Manager

APPROVED AS TO FORM:

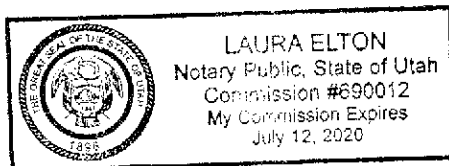
Helen Strachan  
Helen E. Strachan Deputy County Attorney

**Notary Acknowledgment**

STATE OF UTAH  
COUNTY OF SUMMIT

On this 25 day of January 2019, this Deed Restriction was acknowledged before me by  
Scott Loomis, as Executive Director of Mountainlands Community Housing Association.

[Signature]  
Notary Public



**EXHIBIT A**

Legal Description of Unit

Unit 102, contained within the BEAR CLAW CONDOMINIUMS, as the same is identified on the official recorded plat of said Condominium Project, recorded September 25, 2008, as Entry No. 855670, in Book 1950 of Plats, at Page 1110, and further defined and described in the Declaration of Condominium recorded May 20, 2008, as Entry No. 844967, in Book 1930, at Page 1952, of official records (as said Map and Declaration may heretofore be amended and/or supplemented).

Together with (a) The undivided ownership interest in said Condominium Project's Common Areas and Facilities which is appurtenant to said Unit, (the referenced Declaration of Condominium providing for periodic alteration both in the magnitude of said undivided ownership interest and in the composition of the Common Areas and Facilities to which said interest relates); (b) The exclusive right to use and enjoy each of the Limited Common Areas which is appurtenant to said Unit, and (c) The non-exclusive right to use and enjoy the Common Areas and Facilities included in said Condominium Project (as said Project may hereinafter be expanded) in accordance with the aforesaid Declaration and Survey Map (as said Declaration and Map may hereafter be amended or supplemented) and the Utah Condominium Ownership Act.

(Tax Serial No. BCLAW-102)

Subject to City and/or County taxes and assessments, not delinquent; Easements, Rights-of-Way, Covenants, Conditions and Restrictions now of record.

**EXHIBIT B**

**Notice of Intent to Sell**

I [insert name], the owner of [insert property address] (the "Unit"), am hereby providing Summit County with a Notice of Intent to Sell as outlined in Section 4.1 of the Deed Restriction covering the Unit. I intend to sell the Unit at the following price (which may not exceed the Maximum Resale Price as set forth in the Deed Restriction):

\$ \_\_\_\_\_

The terms and conditions of such intended sale are as follows [if none, write 'none']:

I understand that after the County's receipt of this Notice, the County has the option, for a period of sixty (60) days, to purchase the Unit under the terms of Article 4 of the Deed Restriction. I understand that during such 60 day period, the County may:

A. Exercise the option to purchase on the terms and within the time periods set forth in the Deed Restriction; or

B. Notify me that the option to purchase will not be exercised, at which point I will be free to sell the Unit to a Qualified Purchaser (or other eligible party) in accordance with the Deed Restriction.

Sincerely,

[Owner]

**EXHIBIT C**

**Combined Certification and Affidavit**

A. Certification and Consent to Transfer.

Summit County hereby certifies that \_\_\_\_\_, of \_\_\_\_\_, is a 'Qualified Purchaser' under the terms set forth in the RESTRICTIONS CONCERNING AFFORDABLE HOUSING UNITS AT BEAR HOLLOW VILLAGE dated \_\_\_\_\_ and recorded in the Summit County Recorder's Office on \_\_\_\_\_ as Entry No. \_\_\_\_\_ (Book \_\_\_\_, Pages \_\_\_\_), and consents to the transfer of the residence located at \_\_\_\_\_, Park City, Utah for a sales price not to exceed \$ \_\_\_\_\_ as calculated pursuant to the Deed Restriction.

**Summit County**

By: \_\_\_\_\_

Date \_\_\_\_\_

B. Affidavit of Buyer and Seller.

The undersigned, "Seller" and "Buyer", hereby affirm that the restricted affordable housing unit located at \_\_\_\_\_ Park City, Utah 84098 (Unit \_\_\_\_, Bear Claw) is being sold at or below the Maximum Resale Price set forth in the TO RESTRICTIONS CONCERNING AFFORDABLE HOUSING UNITS AT BEAR HOLLOW VILLAGE executed on \_\_\_\_\_ and recorded in Book \_\_\_\_ Pages \_\_\_\_ in the Office of the Summit County Recorder (the "Deed Restriction"). A copy of the Deed Restriction is attached hereto.

As of the date of the contract for sale the approved Maximum Resale Price is \$ \_\_\_\_\_. The property is being sold for a total purchase price of \$ \_\_\_\_\_. There is no other consideration paid by or on behalf of Buyer to Sellers or Sellers' agents other than the purchase price set forth herein.

Seller and Buyer affirm and acknowledge that under the Deed Restriction the price upon resale has limits and any attempt to circumvent such Deed Restriction could be a violation of applicable criminal ordinances.

Buyer further affirms that any income and employment information provided to Summit County or its designee in conjunction with the purchase of the residence is true and accurate and that Buyer is purchasing the residence for personal use. By affirmation hereof, Buyer acknowledges the applicability and validity of the Deed Restriction and understands and agrees that any subsequent conveyance or sale will be subject to limitations and requirements set forth therein including, but not limited to, sales price, income qualifications of the purchaser, improvements and the like. Buyer acknowledges that any future conveyance of the residence not

approved in advance by the County under the Deed Restriction will be null and void and of no force or effect.

Finally, Seller and Buyer hereby authorize the release of the Closing Statement by the closing agent to the County or its designee for the sole purpose of tracking the ownership change and financial details of the sale.

**Seller**

**Buyer**

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Notary Acknowledgments

STATE OF UTAH  
COUNTY OF SUMMIT

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_ by  
"Seller" \_\_\_\_\_.

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

STATE OF UTAH  
COUNTY OF SUMMIT

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_ by  
"Buyer" \_\_\_\_\_.

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

## EXHIBIT D

### **Permitted Capital Improvements**

1. The term “**Permitted Capital Improvements**” as used in Section 4.5 of the Deed Restriction shall include only new construction and/or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, and shall be limited to the following items:

- a. the addition of new residential square footage (or conversion of existing space to residential square footage), or the addition of new decks, patios or similar space that expands or extends the practical residential use of the unit;
- b. improvements made for the purpose of energy and/or water conservation;
- c. improvements to benefit seniors and/or handicapped persons;
- d. improvements made for the purpose of improving the safety, health and/or quality of life of occupants including fire safety/suppression systems, air conditioning, water or air filtration, water softeners and similar items; and
- e. improvements required by any government agency.

2. Permitted Capital Improvements shall not include any of the following items:

- a. upgrades to, or replacement of, appliances, plumbing and mechanical fixtures, carpets, and similar items that were included as part of the original construction of the Unit;
- b. upgrades to, or the addition of, decorative items, including lights, window coverings, and similar items;
- c. repairing, replacing and/or maintaining existing fixtures, appliances, plumbing and other mechanical fixtures, painting, carpeting and other similar items;
- d. hot tubs, spas, saunas/ steam showers and other similar items;
- e. any changes or additions to the Unit made by the County prior to sale of the Unit to the Owner; and
- f. landscaping.

3. Permitted Capital Improvement items and their associated costs must be approved by Summit County in writing prior to being added to the Maximum Resale Price as described in Section 4.3 of the Deed Restriction. If there is a disagreement regarding the eligibility of any Permitted Capital Improvements, Summit County shall have the final and exclusive authority to interpret the provisions of this Exhibit D.

**Exhibit E**

**MINIMUM STANDARDS FOR  
SELLER TO RECEIVE MAXIMUM RESALE PRICE**

- Clean Unit
- No excessive wear and tear of carpet
- Scratches, holes, burned marks (other than normal wear and tear) repaired in hardwood floors, linoleum, tile, counter tops, etc.
- Walls and ceilings paint ready – no unpatched holes or stickers etc left thereon
- No broken or foggy windows
- All screens in windows (if screens were originally provided)
- All doors in working order with no holes
- All locks on doors work
- All keys will be provided (e.g., door, mailbox, garage)
- All mechanical systems in working order
- All light fixtures in working order
- All appliances are in good working order and good condition
- No plumbing leaks or drips
- Any safety hazard remedied prior to closing
- Satisfaction of radon issue: if found at time of inspection
- Landscaping maintained
- Concrete steps, walks, driveways in good condition (if applicable)