

WHEN RECORDED, RETURN TO:

Park City Municipal Corporation
Attention: City Recorder
PO Box 1480
Park City, Utah 84060

**RESTRICTIVE COVENANT AGREEMENT PROTECTING THE AFFORDABILITY
AND SUSTAINABILITY OF TEN (10) UNITS AT RAIL CENTRAL BUILDING #3
(SECOND FLOOR)**

THIS RESTRICTIVE COVENANT AGREEMENT PROTECTING THE AFFORDABILITY AND SUSTAINABILITY OF TEN (10) UNITS AT RAIL CENTRAL BUILDING #3 (SECOND FLOOR), (the “*Covenant*”) is made and entered into as of the 30 day of July, 2020 (the “*Effective Date*”), by and between RAIL CENTRAL, LLC, a Utah limited liability company with an address of 1790 Bonanza Drive, Suite E-200, PO Box 683010, Park City, UT 84068, (the “*Initial Project Owner*”), and PARK CITY MUNICIPAL CORPORATION (the “*City*”), a Utah municipal corporation.

RECITALS

A. Whereas the Initial Project Owner owns a parcel of land (the “*Property*”), which parcel is more particularly described on Exhibit A, which is attached hereto and incorporated herein, which includes a building identified as building #3 used for single-room occupancy, including units on the second floor currently identified as units 1, 2, 3, 4, 5, 9, 13, 14, 18, and 24, (the “*Units*,” which, collectively with the Property and all appurtenant buildings, improvements, structures, rights of way, easements, interests, and fixtures, shall be referred to herein as the “*Project*”);

B. Whereas Physician Holdings, LLC, a Utah limited liability company, (the “*Developer*”), is the owner of certain parcel(s) within the Intermountain Healthcare Park City Medical Campus USSA Headquarters and Training Facility Subdivision Second Amended, as may be further amended from time to time, and is subject to the terms of that Annexation Agreement recorded as entry no. 00802747 with the Summit County Recorder as of January 23, 2007 (the “*Annexation Agreement*”);

C. Whereas, the City Council has adopted a series of resolutions, including Resolution 17-99 and Resolution 03-2017, each as amended, (“*City Affordable Housing Resolutions*”), which establish policies to support and increase affordable housing in the City, and pursuant to these resolutions, the Annexation Agreement contains a requirement to develop a total of 90.47 “Affordable Unit Equivalents” (“*AUEs*”);

D. Whereas, the obligations of the Developer to develop the AUEs have been set forth in that Housing Mitigation Plan dated as of June 4, 2015 as amended by that First Amended Affordable Housing Mitigation Plan for the Medical Campus at Park City Medical Center dated as of February 2, 2017 and that modification approved by the City Housing Authority as of April

18, 2019 titled the “Park City Medical Center Medical Campus Physician Holding LLC Housing Mitigation Plan Park City Housing Authority,” as contained in that Action Letter: Notice of Housing Authority Action, dated July 30, 2019 (collectively, the “**Housing Mitigation Plan**”);

E. Whereas, 4.996 AUEs remain to be fulfilled by Developer, and the Units, consisting of 10 single-room occupancy (SRO) sleeping units totaling 1,823.25 square feet, if operated in accordance with this Covenant, the Housing Mitigation Plan, the Annexation Agreement, and the City Affordable Housing Resolutions shall satisfy 2.28 AUEs;

F. Whereas, the Developer and the Initial Project Owner have entered into an agreement whereby the Initial Project Owner, for valuable consideration, has agreed to assume 2.28 AUEs of the Developer’s obligations arising from the Annexation Agreement, and the Initial Project Owner shall assume any and all further obligations of the Developer as to these 2.28 AUEs only, as specified in the Housing Mitigation Plan and this Covenant;

G. Whereas, for the purpose of satisfying the 2.28-AUE obligation, the Initial Project Owner desires to record these Covenants against the Project as covenants running with the land, and the Project, subject to the terms of this Covenant, and if operated in accordance with the terms found herein, shall satisfy the 2.28-AUE obligation which the Initial Project Owner has assumed from the Developer; and

H. Whereas this Covenant shall govern the terms and conditions of ownership, use, and occupancy of the Project, shall be enforceable by the City, and, upon its execution and recording in the public records of the County Recorder of Summit County, Utah, shall run with the land, enforceable against the Initial Project Owner; any successors in interest, assignees, heirs, devisees, mortgagees, lenders, trustees, beneficiaries, executors, administrators, personal representatives; any subsequent owners; and any other parties claiming an interest in the Project.

COVENANT

NOW THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS.

When used in this Covenant, the capitalized terms identified in this Article 1 shall have the following assigned meanings:

- 1.1. AFFORDABLE UNIT EQUIVALENT (AUE). A separate unit of 800 SF.
- 1.2. ANNUAL COMPLIANCE REPORT. The reports attached to this Covenant as Exhibit D, *Park City Affordable Housing Affidavit for Rented Units*, and Exhibit E, *Park City Affordable Housing Affidavit for Owner Occupied Units*, as they may be amended from time to time by the City or its designee, required to be provided

to the City by the Project Owner or Unit Owner yearly according to Sections 2.8 and 3.18.

- 1.3. APPROVED FINANCING FOR PROJECT OWNERS. Financing secured by an interest in the Project or the Project Owner for which the City gave prior written consent after determining, using its then-current underwriting standards, which may take into consideration characteristics of the Project and market conditions, that the following requirements were met:
 - 1.3.1. Debt service coverage ratio of 1.30x for any period specified by the City (or if no period is specified, on an annual basis), calculated as the ratio of net cash flow for such period to the total of (i) actual and proposed principal and interest on any mortgage loan, plus (ii) actual and proposed payments required on any mezzanine or subordinate financing or hard preferred equity; and
 - 1.3.2. Loan-to-value ratio of 60%, calculated as of the date of determination, as the ratio of (a) the actual aggregate unpaid principal balance of (i) any new proposed mortgage loans, plus (ii) any pre-existing mortgage loans, plus (iii) any new proposed hard preferred equity or mezzanine or subordinate financing, plus (iv) any pre-existing hard preferred equity or mezzanine or subordinate financing, to (b) the underwritten value of the Project, expressed as a percentage.
- 1.4. AREA MEDIAN INCOME. (AMI) As of any date, the definition given “area median income” by the latest Park City Affordable Housing Resolution, or, should the City cease releasing periodic affordable housing resolutions and replace such resolutions with superseding provisions in the City Code governing the authority and implementation of affordable housing in the City, the definition given in such provisions of the City Code, and if “area median income” is not defined in such provisions of the City Code, as defined by the City Council of Park City, Utah.
- 1.5. CAPITAL IMPROVEMENTS. 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.
- 1.6. CITY CODE. The Municipal Code of Park City, Utah, as amended.
- 1.7. DISABILITY. 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.
- 1.8. DOMICILE. 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 voluntarily resides, 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.

- 1.9. EXERCISE NOTICE. Written Notice sent by the City to the Project Owner or the Unit Owner within forty-five (45) days of an applicable Offer Date notifying such Project Owner or Unit Owner whether or not the City or its assign will exercise the Option.
- 1.10. EVENT OF DEFAULT. Noncompliance with any part of this Covenant.
- 1.11. HOUSEHOLD. A single individual, doing his/her own cooking and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth, marriage or other domestic bond as distinguished from a group occupying a boarding house, lodging house, club, fraternity or hotel.
- 1.12. MAXIMUM RENT. The Maximum Rent the Project Owner may charge the Qualified Renter of a Unit as established according to Section 2.3.
- 1.13. MAXIMUM RESALE PRICE. The highest price at which a Unit may be sold, as calculated by the City, its designated agent, department or assign, using the formula set forth in Section 3.14.
- 1.14. NET WORTH. The amount of total assets of the individuals or family that exceed total liabilities, as determined by the City.
- 1.15. NON-QUALIFIED BUYER. A buyer of a Unit that is not a Qualified Buyer.
- 1.16. NOTICE. Correspondence complying with the provisions of Section 6.8.
- 1.17. OFFER DATE shall have meaning assigned in Section 3.9.
- 1.18. OPTION. The assignable right of the City beginning upon the Offer Date and terminating after the expiration of the Option Period to purchase a Unit at or below such Unit's Maximum Resale Price.
- 1.19. OPTION PERIOD. The period extending forty-five (45) days from an Offer Date during which either the City or its assign may elect to purchase a Unit at or below such Unit's Maximum Resale Price.
- 1.20. OWNER-OCCUPIED. A Unit that is occupied by the title owner of record of the Unit as his or her Primary Residence.

- 1.21. PARK CITY SCHOOL DISTRICT BOUNDARIES. The latest school district boundaries as duly adopted and as reflected on the most current mapping issued by the Utah State Automated Geographic Reference Center school district map.
- 1.22. PERMITTED CAPITAL IMPROVEMENTS. Capital Improvements made to a Unit with the prior written consent of the City that are designated on Exhibit B; that are completed with all necessary building permits, including final inspections required by such permits, and deemed completed by the City building department; and that may increase the Maximum Resale Price subject to Section 3.14.
- 1.23. PRIMARY RESIDENCE. The place where a Domicile has been established.
- 1.24. PROJECT OWNER. The Initial Project Owner along with any subsequent owners of the Project or of individual Units, each of which are obligated to operate the Project or such Unit as the AUEs detailed in the Recitals and in accordance with the terms and conditions of this Covenant, including, without limitation, the restriction to rent the Units to Qualified Renters. Project Owner shall not include a person who holds an interest in the Unit merely as security for the performance of an obligation and, solely in regards to the restrictions contained in this Covenant, the City shall not be considered a Project Owner.
- 1.25. PURCHASE PRICE. The amount paid for the Unit as consideration to obtain title to that Unit Owner(s)' Unit, not including any title insurance, transaction costs or real estate commissions. The initial Purchase Price shall be determined by the City according to the following calculation: the price affordable to a single-person household earning 80% of AMI (the "Target Household Income") for the year in which the sale occurs. For these purposes, "affordable" shall mean that the total mortgage payment for the Unit, including principal, interest, taxes and insurance ("PITI") as well as annual HOA dues, does not exceed 30% of the Target Household Income. The assumptions used to calculate the sales price shall be: (i) a 5% down payment; (ii) a 30-year term; and (iii) an interest rate equal to the prevailing FirstHome rate, or its program equivalent, of the Utah Housing Corporation (www.utahousingcorp.org) at the time of the offer.
- 1.26. QUALIFIED BUYER. Qualified Buyer shall be a person or persons who are determined by the City to meet the following criteria:
 - 1.26.1. A person who does not own any other real property; and
 - 1.26.2. A person with a minimum of one adult in his or her Household who meets one of the following criteria:
 - (a) A full-time (aggregate of 30 hours of employment per week) employee of an entity or entities located within the Park City School District Boundaries; or
 - (b) An owner of a business or entity with a primary place of business within the Park City School District Boundaries; or

(c) A full-time (aggregate of 30 hours of employment per week) worker who is self-employed or works out of their home must provide their entire list of clients/workload so that it can be verified that a minimum of 75% of their work/clients are based within the Park City School District Boundaries; or

(d) A retired person who immediately preceding retirement was a full-time employee of an entity located within the Park City School District Boundaries for at least two continuous years and continued living as a full-time resident within the Park City School District Boundaries following his or her retirement; or

(e) A person who is unable to work or does not have a work history required under subsections (a) through (d) of this Section 1.26 due to a Disability; and

1.26.3. A Household with an income that is 80% or less of the Area Median Income; and

1.26.4. The combined Net Worth of the persons eighteen years of age and older in the Household does not exceed an amount equal to four times the Area Median Income for the Household size.

1.27. QUALIFIED RENTER. Qualified Renter shall be a person or persons who are determined by the City to meet the following criteria:

1.27.1. A person with a minimum of one adult in his or her Household who is a full-time (aggregate of 30 hours of employment per week) employee of an entity or entities located within the Park City School District Boundaries, and this requirement may not be met via self-employment, and

1.27.2. A Household with an income that is 45% or less of the Area Median Income.

1.28. REASONABLE EFFORT. Good faith effort to advertise a Unit for rent at the Maximum Rent or for Sale at its Maximum Resale Price through the City's affordable housing program or the Mountainlands Community Housing Trust; advertising through local media, including a paper with state or local circulation and such other widely distributed printing or flyer; and advertising through online resources specially designed to market and sell or rent real estate.

1.29. SALE. The term "sale," or any derivative thereof (e.g., "sales," "sold," and "sell"), shall include any transfer of title of a Unit, regardless of whether or not any consideration is provided to the transferor in exchange. This shall include, but is not limited to, any gift, assignment, or other transfer.

1.30. SECURED CREDITOR. A person or entity who is the beneficiary of any obligation secured by a lien on a Unit, whether through a lien on the Project or

through a lien on any individual Unit that is a condominium unit, including under any mortgage, deed of trust, or other security instrument.

- 1.31. **SENIOR SECURED CREDITOR.** A Secured Creditor who is the named beneficiary, mortgage insurer, or mortgage guarantor of a mortgage, deed of trust, or other security instrument which takes priority or precedence over the liens or encumbrances securing another Secured Creditor so that the liens or encumbrance of the Senior Secured Creditor must be satisfied before such other Secured Creditor is entitled to participate in the proceeds of any sale or other disposition of the Unit or Project.
- 1.32. **UNIT.** Designated portions of the Project designed to provide complete, independent living facilities for one person or Household, including permanent provisions for living, sleeping, eating, cooking and sanitation, and when used in this Covenant, "Unit" shall refer to a certain 10 of such independent living quarters in the Project, those units located on the second floor of Building #3 and identified as Units 1, 2, 3, 4, 5, 9, 13, 14, 18, and 24.
- 1.33. **UNIT OWNER.** Unit Owner shall mean (i) any transferee receiving title to or a fee interest in a Unit (a) after having been determined to be, or having represented his or her self as, a Qualified Buyer or (b) based on any representation or intent to own and occupy the Unit as an Owner-Occupied Unit or as such owner's Primary Residence and (ii) all subsequent person(s) vested with record title of a Unit according to the records of the County Recorder of Summit County, Utah; however, Unit Owner shall not include a person who holds an interest in a Unit merely as security for the performance of an obligation, and, solely in regards to the restrictions contained in this Covenant, neither the City nor any Project Owner shall be considered a Unit Owner.

2. COVENANT RESTRICTING THE PROJECT OWNER'S RENTAL OF THE UNIT TO QUALIFIED RENTERS.

- 2.1. **RENTING RESTRICTED TO QUALIFIED RENTERS.** Each of the Units have been designated as fulfilling AUE requirements, and as such each Unit owned by the Project Owner may only be occupied by Qualified Renters. The Project Owner shall cause each Unit it owns to be rented to Qualified Renters with rents no higher than the Maximum Rent. The foregoing requirements of this Section 2.1 may be only be waived on a case-by-case basis if the City determines a Unit is no longer needed as an affordable rental and the City gives prior written approval to the Project Owner to sell that Unit to a Qualified Buyer pursuant to Sections 2.9 and 3.1 herein and subject to all terms and conditions of this Covenant. While the Initial Project Owner recognizes and agrees that the fulfillment of its AUE requirements described herein are conditional on the Units being rented to a Qualified Renter for no more than the Maximum Rent or, with consent of the City, sold to a Qualified Buyer at no more than the Maximum Resale Price and, in the event the Unit is sold for more than the Maximum Resale Price, or in the

event this Covenant becomes unenforceable due to bankruptcy or lender foreclosure or any other event, the City may require the Initial Project Owner provide further AUEs in the amount which had previously been fulfilled by any Unit to which this Covenant is no longer enforceable, the City acknowledges and agrees that the recordation of this Covenant against the Units fully and completely satisfies Developer's obligation to provide the 2.28 AUEs, as required in the Housing Mitigation Plan.

- 2.2. WHEN RENTING NOT RESTRICTED TO QUALIFIED RENTERS. Project Owner shall utilize Reasonable Efforts to give preference to Qualified Renters in renting each Unit so long as: (i) the Qualified Renter meets all the standard income, background, employment, and other tenant checks, as uniformly and fairly applied to all prospective or renewal tenants; and (ii) giving such priority does not violate any applicable laws. Except as provided below, Project Owner will not knowingly allow any tenant to sublease, assign, or otherwise convey any interest in the lease. In the event that Project Owner uses Reasonable Effort to rent to a Qualified Renter for at least sixty (60) days and is unable to rent to a Qualified Renter, the Project Owner shall give the City written notice of such a vacancy, in which case the Unit shall become available for rent to a Qualified Renter identified by the City for a period of sixty (60) days following City's receipt of such written notice, and if no Qualified Renter is identified during this sixty-day period, the Project Owner may rent to any tenant for up to six (6) months. The option to rent under this Section 2.2. to any tenant for up to six (6) months with written permission from the City shall not be exercised by the Project Owner for consecutive six (6) month terms. Nightly rentals (rentals for less than 30 days) are prohibited.
- 2.3. LIMITATION ON RENTAL RATES AND TERMS. Monthly rent for each Unit shall not exceed the Maximum Rent. The Maximum Rent in the year 2020-2021 shall be \$610.00 per month if the Project Owner covers all utility charges and \$535.00 per month if the lease holder is responsible for electrical utility costs. HOA fees shall be paid by the Project Owner (or the Master Lessee) and shall not be charged to any residential tenant of the Units. The Maximum Rent shall be adjusted in June 2021 and June of each year thereafter upon publication of the annual percentage increase in the Consumer Price Index for May of that year (the Department of Labor and Commerce Bureau of Labor Statistics Consumer Price Index, All Urban Consumers for the Western Region, using the expenditure category Housing – Shelter – Rent of Primary Residence, unless data for such category is unavailable, and in that case All Items). At no time shall the Unit Maximum Rent exceed 30% of Household income for a single-person Household earning 45% of AMI. Project Owner may enter into one or more master lease agreements with a business entity or entities doing business within the Park City School District Boundaries (each a "*Master Lessee*") whereby the Master Lessee agrees to rent the Units to its employees or other Qualified Renters for no more than the Maximum Rent. The Master Lessee must agree, as a covenant and condition of the master lease, to rent the Units only to Qualified Renters at no

more than the Maximum Rent. In the event that either a Project Owner or a Master Lessee charges rent to any residential tenant in excess of the Maximum Rent as described above, any rents charged in excess of these amounts shall be due and payable to the City immediately upon receipt thereof by the Project Owner or Master Lessee charging such excess rent. Such amounts, when received by the City, shall be used to further the City's affordable housing purposes. Notwithstanding anything else herein, the Project Owner may charge the Master Lessee rent which is more than the Maximum Rent.

- 2.4. RENT AS PART OF EMPLOYEE COMPENSATION PACKAGE. Rent for the Unit may be included as part of an overall employee compensation package. The value of this benefit shall not exceed the Maximum Rent.
- 2.5. MINIMUM LEASE TERM FOR A UNIT. The minimum lease term for the Unit shall be six (6) months. In no event shall the Unit be offered for rent on a nightly basis.
- 2.6. VACANCY OF UNIT. Should the Unit become vacant for a period of more than sixty (60) consecutive days, the Project Owner shall use Reasonable Effort to rent the Unit, including without limitation giving the City written notice of such a vacancy, in which case the Unit shall become available for rent by a Qualified Renter identified by the City, subject to the provisions of Section 2.2.
- 2.7. CONDITION OF RENTAL UNIT. The Project Owner and the Qualified Renter shall keep and maintain the Unit in a safe, sound, habitable, good, sanitary condition and in a good state of repair. The Project Owner shall maintain the Unit according to the standards outlined in Exhibit C, *Minimum Standards*. The Project Owner shall repair damage or replace or restore any destroyed parts of the Unit within six (6) months. In conjunction with the Annual Compliance Report, the Unit shall be subject to an annual inspection by the City.
- 2.8. ANNUAL COMPLIANCE REPORTS. The Project Owner shall submit an *Annual Compliance Report for Rented Units* (Exhibit D) to the City by June 30 of each year. The Annual Compliance Report shall be accompanied by a signed affidavit by the Project Owner certifying that such Project Owner is in compliance with the terms of this Covenant. Failure of the City to mail or otherwise provide the Annual Compliance Report form to a Project Owner does not discharge the obligations of such Project Owner to make the Annual Compliance Report. The City may request additional documentation to demonstrate that the Unit is rented to a Qualified Renter as outlined in this Covenant. The Project Owner shall provide such additional documentation as may be requested by the City. In conjunction with the Annual Compliance Report, the City may conduct a yearly physical inspection of the Units.
- 2.9. DETERMINATION THAT UNIT IS NO LONGER NEEDED AS A RENTAL UNIT. Should the City determine, based on an independent housing needs assessment, that the Unit is no longer necessary as a rental unit to satisfy the

affordable/employee housing needs in Park City, the Project Owner may sell the Unit to a Qualified Buyer according to the Restrictions on the Sale of Unit to Qualified Buyers provided in Article 3. The Park City Housing Authority or its successor shall make the final determination of whether the affordable housing needs of Park City will be best met by the Unit's continuance as an affordable rental or by its availability for Sale to Qualified Buyers as an Owner-Occupied Unit.

- 2.9.1. If the Park City Housing Authority or its successor makes a final determination that the affordable housing needs of Park City will be best met by the Unit's availability for Sale to Qualified Buyers as an Owner Occupied Unit, the Project Owner shall be responsible for converting the Property into a condominium project and each Unit into a condominium unit in accordance with Utah's Condominium Ownership Act and Park City Land Management Code ("*Condominium Project*") prior to issuing a Notice of intent to Sell required to be provided to the City in Section 3.9.
 - 2.9.2. The declaration for such Condominium Project shall include a provision subordinating the declaration and the Condominium Project's assessment lien to this Covenant.
 - 2.9.3. Nothing in this Covenant shall be interpreted as providing any review, recommendation, or approval required by the City or any of its departments in connection with the Condominium Project or any condominium conversion, or guaranty or assurance of such; nor shall this Covenant be interpreted as providing any waiver of any requirement found in Utah State law or Park City Code related to condominium development.
- 2.10 PROJECT OWNER IS SUBJECT TO EVENT OF DEFAULT PROVISIONS. Should the Project Owner trigger an Event of Default, the provisions outlined in Article 5, Event of Default, including the enforcement remedies of the City, shall apply to the Project Owner as well as to any Unit Owner.
- 2.11 INSURANCE. The Project Owner shall at all times provide, maintain, and keep in full force, or cause to be provided, maintained or kept in full force, at no expense to the City or Qualified Renters, insurance for the Project meeting the following requirements:
- 2.11.1 Property damage insurance for 100% of the insurable replacement value of the Project, including boiler and machinery. If such policy excludes any type of wind-related event, a separate windstorm insurance policy must be obtained with a maximum deductible of 5% of the total insured value, as listed in the policy.
 - 2.11.2 Flood insurance in the form of the standard policy issued by members of the National Flood Insurance Program (NFIP) shall be required if the Project is within A and V flood zones.

- 2.11.3 If the Project is located within a high probability earthquake zone (i.e. Zone 3 or 4), then earthquake insurance must be maintained at an amount equal to the replacement cost of the Project with a maximum deductible of 5% of the total insured value, as listed in the policy.
- 2.11.4 Commercial general liability (primary coverage) with limits:
- (a) \$2,000,000 Aggregate Limit
 - (b) \$1,000,000 Products/Completed Operations Aggregate
 - (c) \$1,000,000 Contract
 - (d) \$1,000,000 Personal & Advertising Injury
 - (e) \$1,000,000 Each Occurrence
 - (f) \$50,000 Fire Damage
 - (g) Maximum \$5,000 Deductible or Retention
- 2.11.5 The Project Owner, and legal owner, must be the “Named Insured.” The City, its beneficiaries, successors and assigns, must be listed as an “Additional Insured” for liability coverage and a “Loss Payee” and “Additional Insured” for all property coverage policies.
- 2.11.6 Each policy must have a cancellation provision requiring the carrier to notify the Certificate Holder at least 30 days in advance of any policy reduction or cancellation for any reason except non-payment of premium. The cancellation provision must provide for at least a 10-day written notification for non-payment of premium. In the cancellation section of the ACORD Form the words “Endeavor to” and “But failure..through..Representatives” must be deleted. If this cannot be done, The City will accept the following sentence under the Description of Operations: “Certificate holder will receive 30 days written notice of cancellation.” The Certificate Holder’s rights of direct notice must be listed as Park City Municipal Corporation.
- 2.11.7 All carriers must meet the following rating requirements: A.M. Best general policyholder’s rating of “A-” or better and a financial performance index rating of VI or better in Best’s Insurance Reports, or Key Ratings Guide or A- or better by Standard and Poor’s; or various state wind pools or flood companies approved under the National Flood Insurance Program (NFIP).
- 2.11.8 Yearly, with its Annual Compliance Report, the Project Owner shall submit to the City either of the following as evidence of insurance: (i) an ACORD 28 (either the 2003 or 2006 version is acceptable), combined with ACORD 25S; (ii) ACORD 75S; (iii) the Policy Declaration page of a National Flood Insurance Policy (NFIP) for evidence of flood insurance coverage; (iv) or such other certificate or evidence which the City deems acceptable.

3. COVENANT RESTRICTING SALE OF UNIT TO QUALIFIED BUYERS FOR OWNER OCCUPATION.

- 3.1 **SALE OF UNIT TO QUALIFIED BUYER FOR OWNER OCCUPATION.** The Project Owner may convert the Project into a Condominium Project, and, should the City determine that the Unit is no longer needed as an affordable rental Unit in accordance with Section 2.9 above, the Project Owner may sell the Unit according to the restrictions in this Article 3 of this Covenant to a Qualified Buyer, and the Unit shall be owned and used by the Unit Owner as an Owner-Occupied Unit. The covenants and conditions in this Article 3 shall be binding, as applicable and as specified, upon the Project Owner for so long as it is title owner of any Unit or portion thereof and each Unit Owner, including but not limited to the City's Option to purchase the Unit pursuant to Section 3.11 and the City's Right to Purchase Unit in Default in Section 3.12. The Project Owner; each Unit Owner; each of the Project Owner and Unit Owners' heirs, successors, executors, administrators, devisees and assigns; and all persons acquiring an interest in the Unit, whether or not so expressed in any deed or other instrument of conveyance, shall be deemed to covenant and agree during the period of each holder's interest in the Unit to hold their interest subject to the covenants and restrictions contained in this Covenant, which shall be deemed to run with the land. Project Owner and each Unit Owner shall not permit any ownership, use, or occupancy of his or her Unit except in compliance with this Covenant. Any transfer deed conveying an interest in the Unit shall clearly state that it is made subject to these Covenants, including the possibility of reverter to the City pursuant to Article 5 herein, and these Covenants and such possibility of reverter shall be part of the deed. Failure to comply with the preceding sentence shall not affect the validity of the conveyance, the validity or enforceability of the City's reverter, or the enforceability of the terms of this Covenant as covenants running with the land binding upon all holders of an interest in the Unit.
- 3.2 **ADMINISTRATION AND ENFORCEMENT.** The City shall have the right to enforce the terms of this Covenant and may enforce its terms as it deems administratively proper through its employees, administrative offices, agents or assigns. The Park City Police Department is authorized to investigate certain affordable housing violations and to issue citations pursuant to City Code § 8-3-6. The City may enforce this Covenant by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement, damages and such other remedies and penalties as may be specified in this Covenant.
- 3.3 **OWNER OCCUPANCY.** Any Unit not owned and operated by a Project Owner and rented to Qualified Renters as specified herein shall be Owner-Occupied unless the Unit Owner receives prior written consent of the City, in its sole and absolute discretion, for an exception. Each Unit Owner shall occupy his or her Unit as a Primary Residence.

- 3.4 **OTHER PROPERTY OWNERSHIP IS PROHIBITED.** Unless the City gives its prior written consent, each Unit Owner shall not obtain, purchase or otherwise acquire any other direct or indirect interest in real property while the Unit Owner is a Unit Owner; neither the Unit Owner nor any person in the Unit Owner's Household shall establish a trust of which the Unit Owner is a beneficiary, if such trust's corpus contains any other real property.
- 3.5 **LIMITATIONS ON REFINANCING.** Unit Owner and Project Owner shall not under any circumstances obtain any financing or combination of financings that in the aggregate exceeds the Maximum Resale Price for the Unit calculated at the time such financing is completed.
- 3.6 **MAINTENANCE.** Each Unit Owner shall make all repairs and maintain the Unit Owner's Unit in a safe, sound, habitable and good condition and state of repair. In the case of damage to the Unit, the Unit Owner shall repair damage or replace or restore any destroyed parts of the Unit within six (6) months.
- 3.7 **INSURANCE.** To the extent such insurance is not provided by any applicable association of homeowners organized pursuant to a declaration of covenants, conditions, and restrictions governing the Project, each Project Owner and Unit Owner shall continuously insure the Unit Owner's Unit against all risks of physical loss for the full replacement value of the Unit.
- 3.8 **UNIT RENTAL PROHIBITED; EXCEPTION.** Unit Owner shall not rent or lease all or any portion of the Unit, including nightly rentals; provided, however, that only with the prior written consent of the City, Unit Owner may rent or lease the Unit under any one of the following circumstances:
- 3.8.1 Subject to other zoning and land use regulations, each Unit Owner may rent out a portion of his or her Unit to a roommate for a term of six (6) months or longer, and the amount of respective rent a Unit Owner may charge such roommate per month shall not exceed forty-five percent (45%) of the sum of the mortgage payments and regular assessments of the Condominium Project for that period and utilities owed per month for such Unit.
- 3.8.2 At a rate determined by the City after accounting for the Unit Owner's costs, a Unit Owner may rent out the Unit Owner's Unit for a period not to exceed twelve (12) months, if the Unit Owner is unable to Sell the Unit after ninety (90) days of Reasonable Effort. The option to rent under this Section 3.8.2 shall not be exercised by any Unit Owner more than once.
- 3.8.3 At a rate determined by the City after accounting for the Unit Owner's costs, a Unit Owner may rent out the Unit Owner's Unit, if the Unit Owner is required to relocate for a period not to exceed two (2) years by

the Unit Owner's employer; for religious, civic, or community service; or for military service.

3.8.4 Other circumstances as may be required by law.

3.9 SALE OF UNIT. Unit Owner and the Project Owner shall send Notice to the City of the Project Owner or such Unit Owner's intent to Sell the Unit (the date of such Notice to the City shall be the "**Offer Date**"), and the Project Owner and Unit Owner shall not Sell any interest in the Unit until the earlier of (i) the expiration of the Option Period without receipt of an Exercise Notice from the City, (ii) the date of an Exercise Notice notifying the Unit Owner that neither the City nor its assign will be exercising its rights under the Option, or (iii) sixty (60) days after receipt of an Exercise Notice if the Sale to the City or its assign has not yet closed by that date.

3.10 COVENANT TO RESTRICT SALES TO QUALIFIED BUYERS. Except as (i) otherwise previously agreed to by the City in writing, (ii) allowed by Paragraph 3.12.7 or Section 3.13, or (iii) provided for by amendment to this Covenant, the Unit shall only be sold to (a) Qualified Buyers who agree to use their respective Units as an Owner-Occupied Primary Residence or (b) the City.

3.11 OPTION TO THE CITY. The City may only assign its Option to a Qualified Buyer. If the City elects to exercise its Option or assigns the Option, the City or its assign shall complete the acquisition of a Unit within sixty (60) days of the date of the Exercise Notice; provided that any lack of cooperation by the Project Owner or Unit Owner in measures reasonably necessary to effect the sale shall extend such sixty-day period by the length of the delay caused by such lack of cooperation. The City shall promptly give the Project Owner or Unit Owner written notice of the lack of cooperation and the length of the extension added to the sixty-day period. If (i) the Option Period expires without receipt of an Exercise Notice by a Unit Owner; (ii) the Unit Owner receives an Exercise Notice that neither the City nor its assign will be exercising its rights under the Option; or (iii) sixty (60) days (or such longer period set forth by notice of lack of cooperation pursuant to the preceding sentence) expires after receipt of an Exercise Notice and Sale to the City or its assign has not yet closed, the Option shall automatically terminate with respect to such Sale or offering for Sale without the need for further Notice or documentation.

3.12 RIGHT TO PURCHASE UNIT IN DEFAULT OF LIEN.

3.12.1. Whenever all or a portion of the principal sum of any obligation secured by a lien or mortgage on a condominium Unit or the Project has, prior to the maturity date fixed in the obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the lien or mortgage, including any default in the payment of interest or of any installment of principal, or by reason of failure of the

Project Owner or Unit Owner to pay, in accordance with the terms of the applicable agreement or legal document, taxes, assessments, premiums for insurance, or advances made by the Secured Creditor in accordance with the terms of the obligation or of the applicable agreement or legal document, it shall be considered an Event of Default under this Covenant, and the Secured Creditor shall notify the City and any Senior Secured Creditor in the event of any default for which such Secured Creditor intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the “**Foreclosure Notice**”), which notice shall be sent to the City as set forth in this Covenant, and to any Senior Secured Creditor as set forth in such Senior Secured Creditor’s mortgage, not less than ninety (90) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure. The Project Owner and each Unit Owner expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by a Secured Creditor to the City pursuant to this Covenant.

- 3.12.2. The Project Owner, each Unit Owner, and each Secured Creditor agree that before a deed of trust sale or judicial foreclosure may be exercised, the City shall have an option to purchase the condominium Unit or the Project, as the case may be, at the Applicable Foreclosure Price (defined below) for ninety (90) days from the date the City receives the Foreclosure Notice (the “**Right to Purchase Unit in Default**”). The Applicable Foreclosure Price shall be calculated as follows: (a) for each condominium Unit, at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Secured Creditor’s mortgage, together with the outstanding principal balance(s) of any note(s) secured by Senior Secured Creditors plus all future advances (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated in accordance with Section 3.14 below at the time of the granting of the mortgage), accrued interest and all reasonable costs and expenses which the foreclosing Secured Creditor and any Senior Secured Creditor are entitled to recover from the borrower pursuant to the terms of such mortgages (the “**Mortgage Satisfaction Amount**”), and (ii) the Maximum Resale Price calculated as of the date of the proposed transfer pursuant to the City’s Right to Purchase Unit Default; or (b) for the Project, at a price equal to the sum of the outstanding principal balance of any Approved Financing for Project Owners plus future advances (provided such advances were made for the protection of the security or within an amount for which the City gave its prior approval), accrued interest, and all reasonable costs and expenses which the foreclosing Secured Creditor and any Senior Secured Creditor are entitled to recover from the borrower pursuant to the terms of such mortgages (the greater of (a)(i) and (a)(ii) shall mean the “**Applicable Foreclosure Price**” for a condominium Unit, and the sum described in (b) shall mean the Applicable Foreclosure Price

for the Project). Beginning on the date the City receives a Foreclosure Notice, it may elect to exercise its Right to Purchase Unit in Default at any time for 90 days but shall not take title to the Unit or Project before the date which is 60 days from the Foreclosure Notice, and during this 60-day period, if the defaults under each loan of a Secured Creditor are cured, each loan is reinstated, and the Project Owner or Unit Owner provides the City documentation which, in the City's reasonable discretion, is adequate assurance of such cure, including a recorded notice of cancellation of any recorded notice of default, the City's Right to Purchase Unit in Default shall terminate as to that Foreclosure Notice.

- 3.12.3. In the event that the foreclosing Secured Creditor conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Unit or Project is sold for a price in excess of the Applicable Foreclosure Price, such excess shall be paid to the City to use for its affordable housing purposes after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Unit, that the City is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the City. To the extent that the Project Owner or the Unit Owner possesses any interest in any amount which would otherwise be payable to the City under this Paragraph 3.12.3, to the fullest extent permissible by law, the Project Owner and each Unit Owner hereby assigns its interest in such amount to the foreclosing Secured Creditor for payment to the City.
- 3.12.4. Each Project Owner or Unit Owner shall send Notice to the City of any notice of default under obligations secured by a lien on the Project or such Project Owner or Unit Owner's Unit.
- 3.12.5. The Project Owner and Unit Owner shall provide any further consents necessary to allow each Secured Creditor to provide the City or its designee with the information and amounts necessary to cure any default or exercise the Right to Purchase Unit in Default.
- 3.12.6. The Project Owner and each Unit Owner hereby assigns the City all of the Project Owner and each Unit Owner's rights to cure the default as are provided to the Project Owner or Unit Owner by law or the applicable loan documents; provided the City shall have no obligation to cure such. If the City elects, in its sole discretion, to cure any such defaults, it shall regain title to the Unit either from the Project Owner or Unit Owner or from the Secured Creditor, if title to the Unit has passed to the Secured Creditor and to the extent the Project Owner or Unit Owner would be allowed to cure such default by law or the loan documents, at the Applicable Foreclosure Price.

- 3.12.7. If (i) the City receives timely Foreclosure Notice and (ii) and the City declines to exercise its Right to Purchase Unit in Default, then the Secured Creditor may initiate a trustee's sale, foreclosure proceeding, or other remedy affecting the title to the Unit or Project, and may Sell the Unit, provided that conditions (i) and (ii) in this Paragraph 3.12.7 were met, to a non-Qualified Buyer and upon such sale, all deed restrictions in this Covenant shall be deemed removed with respect to the Unit. Proceeds of the initial Sale of a Secured Creditor conducted under this Paragraph 3.12.7 shall be subject to Paragraph 3.12.3.
- 3.13 SALE TO A NON-QUALIFIED BUYER. If after using Reasonable Efforts for a period of ninety (90) days, a Unit Owner is unable to sell that Unit, such Unit Owner shall send Notice to the City and may request that the City either (i) purchase that Unit at a price mutually agreed upon by such Unit Owner and the City, but in no event more than the Maximum Resale Price, or (ii) give written approval permitting the Sale of that Unit, subject to the terms of this Covenant, to a Non-Qualified Buyer.
- 3.14 MAXIMUM RESALE PRICE. Maximum Resale Price for sale of the Unit as a condominium unit by the Initial Project Owner shall be at a price determined by the City at the time of its written consent to such sale, as calculated using the Purchase Price and in accordance with the then applicable Affordable Housing Resolution, at a price affordable to a single-person household at 80% of AMI. Sale of the Unit, as well as limitations on refinancing under Section 3.5 and the Applicable Foreclosure Price, shall be governed by a resale formula that establishes the Maximum Resale Price. In no event shall a Unit Owner Sell a Unit for more than the Maximum Resale Price. The Maximum Resale Price is equal to the sum of the Purchase Price paid by the selling Unit Owner(s) (i) *plus* an increase of three percent (3%) per year from the date of such Unit Owner(s)' purchase of the Unit until the date of such Unit Owner(s)' Offer Date, prorated for partial years; (ii) *plus* Permitted Capital Improvements, if applicable, in an amount no greater than five percent (5%) of the Purchase Price paid by the selling Unit Owner(s), and depreciated on a straight line basis, ten percent (10%) per year for ten (10) years; (iii) *minus* any reductions in price pursuant to Section 4.2; (iv) *plus* (notwithstanding anything else herein) reasonable real estate commissions but only if (a) (1) the Option Period expires without receipt of an Exercise Notice by the Unit Owner or Project Owner, (2) the Unit Owner or Project Owner receives Exercise Notice that neither the City nor its assign will be exercising its rights under the Option, or (3) sixty (60) days expires after receipt of an Exercise Notice and Sale to the City or its assign has not yet closed, and (b) the Option automatically terminates with respect to such Sale or offering for Sale. Capital Improvements that are not Permitted Capital Improvements and seller's closing costs shall not be included in the Maximum Resale Price.

Real estate commissions, seller's closing costs, and Capital Improvements that are not Permitted Capital Improvements shall not be included in the

Maximum Resale Price. Nothing in this Covenant shall be construed to constitute a representation or a guarantee by the City that any sale of a Unit by a Unit Owner shall obtain the Maximum Resale Price.

- 3.15 TRANSFER OF TITLE. The Project Owner and each Unit Owner shall not enter into or execute any transaction that Sells any interest in a Unit without the prior written consent of the City.
- 3.16 NON-COMPLYING SALES OR TRANSFERS. Any Sale or transfer of the Unit in violation of this Covenant is null and void and does not confer title whatsoever upon the purported buyer. This includes a Sale, transfer, or other transaction with financing, or multiple financings, that in the aggregate exceeds the Maximum Resale Price at the time such financing is completed. The Unit Owner or Project Owner is liable for all costs and attorney's fees incurred in setting aside a non-complying Sale or transfer of the Unit.
- 3.17 NO DISCRIMINATION. The City, the Project Owner, and Unit Owner shall not discriminate against any person in the Sale of a Unit because of race, color, religion, sex (including pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding), national origin, age, familial status, source of income, Disability, genetic information, sexual orientation, gender identity or protected expressions. The Project Owner or Unit Owner shall take such action with respect to this Covenant as may be required to ensure full compliance with applicable local, state, and federal laws prohibiting discrimination.
- 3.18 ANNUAL COMPLIANCE REPORT. The Unit Owner shall provide the City with an Annual Compliance Report, *Park City Affordable Housing Affidavit for Owner-Occupied Units* (Exhibit E), by June 30 of each year. The Annual Compliance report shall be accompanied by a signed affidavit by the Unit Owner certifying that such Unit Owner is in compliance with the terms of this Covenant. Failure of the City to mail or otherwise provide the Annual Compliance Report form to a Unit Owner does not discharge the obligations of such Unit Owner to make the Annual Compliance Report. The City may request additional documentation to demonstrate that each Unit Owner uses that Unit Owner's Unit as a Primary Residence and is otherwise in compliance with all terms of this Covenant, and each Unit Owner shall provide such additional documentation as may be requested by the City. In conjunction with the Annual Compliance Report, the City may conduct a yearly physical inspection of the Units.

4. PHYSICAL CONDITION OF UNITS.

- 4.1. CHANGES AND/OR CAPITAL IMPROVEMENTS. No substantial or non-cosmetic changes or capital improvements may be made to a Unit that, in the case of a Unit Owner, are valued at more than \$1,000, or in the case of a Project Owner, are valued at more than \$2,500, without the prior written approval of the City. Any City approval under this Section 4.1 may be assumed if the City has not

responded to a written request within 45 days. Emergency repairs may be made without receiving the City's prior approval, but the Project Owner or Unit Owner shall provide the City with any notice required by this Section 4.1 as soon as reasonably practicable after commencement.

- 4.2. MINIMUM STANDARDS OF PHYSICAL CONDITION. The Project Owner and Unit Owner are required to maintain a minimum standard of physical conditions, as set forth in Exhibit C – Minimum Standards, for the Unit in order to receive the Maximum Resale Price. Sixty (60) days prior to any sale of the Unit, the City or a designee will conduct an inspection and provide a list to the Project Owner or Unit Owner as to the items that need to be remedied prior to closing to bring the Unit to minimum standards. If said inspection reflects items that do not meet the minimum standards for Project Owner or Unit Owner to receive Maximum Resale Price pursuant to Exhibit C, the Project Owner or Unit Owner shall be required to either bring the Unit to minimum standards or an equal cost will be deducted from the Maximum Resale Price. If the Unit meets the minimum standards for Project Owner or Unit Owner to receive Maximum Resale Price, the Unit may be sold for the Maximum Resale Price. The City will determine the Maximum Sales Price according to the formula set forth in Section 3.14, above.

5. EVENTS OF DEFAULT

- 5.1. IT IS A CRIMINAL OFFENSE TO DISREGARD THE RESTRICTIONS HEREIN. Each Unit Owner and Project Owner, by acquiring the Unit, is deemed to acknowledge Ordinance 14-47 and Park City Municipal Code section 8-3-6, each as amended, which establish that it is a crime to commit affordable housing fraud. Ordinance 14-47 was ratified to “ensure that any fraud and unjust enrichment in the process is stopped and that buyers, sellers . . . and other intended beneficiaries of deed restricted affordable housing are protected from any fraudulent acts or statements.” Any violation of Ordinance 14-47 and Park City Municipal Code section 8-3-6 as amended in connection with any Unit is an Event of Default, and the responsible party is subject to criminal prosecution.
- 5.2. EVENT OF DEFAULT. Noncompliance with any part of this Covenant constitutes an Event of Default. Events of Default shall include but are not limited to: (a) rental of all or a portion of the Unit without prior written consent of the City; (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 5.3; (e) failure to submit the Annual Compliance Report required by Sections 2.8 or 3.18; (f) failure to make timely payments or otherwise defaulting on a lien or mortgage on any Unit; or (g) using the Unit for purposes other than as an affordable Unit for a Qualified Renter or an Unit for a Qualified Buyer.
- 5.2.1. Rental of any Unit on a nightly or weekly basis shall constitute an automatic Event of Default. Notwithstanding the cure period under

Section 5.3, following a Notice from the City to a Project Owner or Unit Owner of an Event of Default, the City may charge any Project Owner or Unit Owner that rents that Unit Owner's Unit on a nightly or weekly basis, automatic fines of up to the greater of \$500 per day or the rate charged for rental of the Unit per night.

- 5.3. MONETARY PENALTIES. Upon Notice from the City to the Project Owner or Unit Owner of an Event of Default, the Project Owner or Unit Owner shall have thirty (30) days to cure such noncompliance. If the Project Owner or Unit Owner does not cure the Event of Default within thirty (30) days, the City may assess monetary penalties against the Project Owner or Unit Owner of up to two-hundred and fifty dollars (\$250.00) per day beginning on the thirty-first (31) day after Notice of the Event of Default.
- 5.4. CITY TO MAINTAIN A POSSIBILITY OF REVERTER. If the Project Owner or Unit Owner does not cure an Event of Default within thirty (30) days, then the City may initiate the process of obtaining title to the Unit (or Project, as the case may be) as further described in this paragraph. The City shall send Notice to the Project Owner or Unit Owner that contains the specific Event(s) of Default, the dates of such noncompliance, a record of other Notices sent regarding such Event(s) of Default, and that notifies the Project Owner or Unit Owner of an informal hearing before the City Council to take place within thirty (30) days of such Notice, at which the Project Owner or Unit Owner may present evidence or call witnesses. After such Notice and informal hearing, the City Council shall issue a final ruling within thirty (30) days of the hearing which shall make a finding as to the Project Owner or Unit Owner's Event(s) of Default. Upon a final ruling of an Event of Default against such Project Owner or Unit Owner, the occurrence of such condition subsequent shall trigger the City's right to title in fee simple to the Project Owner or Unit Owner's Unit, and, upon the exercise of such right by the City, title will revert to and become revested in the City, and such title will be revested fully and completely in it, and the City 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 City's exercise of its reversionary interest, the City shall repay, or cause to be repaid any outstanding debt or obligation incurred by the Project Owner or Unit Owner who is the then current holder of fee title to the Unit for the acquisition of the Unit to the extent such debt or obligation is secured by a recorded lien against the Unit. Upon successful closing of a Sale of the Unit from such Project Owner or Unit Owner to the City or its assign pursuant to Section 5.5, any reversionary interest of the City granted by this Section 5.4 shall terminate in regards only to that specific finding of Event of Default. If the City pays, or causes to be paid, pursuant to this Section 5.4, amounts to satisfy liens against the Unit that are more than the Applicable Foreclosure Price then the City may seek a deficiency judgment against such Project Owner or Unit Owner for the difference between the amount paid and the Applicable Foreclosure Price.

- 5.5. **RIGHT TO PURCHASE.** Upon a finding of an Event of Default by an informal hearing conducted by the City Council as described in Section 5.4, the Project Owner or Unit Owner shall offer to sell the Unit to the City at or below the Applicable Foreclosure Price. Upon such finding of an Event of Default, the City shall have the option, in its sole discretion, to exercise or assign its reversionary interest pursuant to Section 5.4, to exercise or assign its right to purchase pursuant to this Section 5.5, or to seek any other remedy provided to it at law or in equity.
- 5.6. **REMEDIES NOT EXCLUSIVE.** No remedy conferred by any of the specific provisions of this Covenant 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. Notwithstanding the foregoing or anything to the contrary herein, the City shall not seek to enforce the covenants and obligations of the Initial Project Owner pursuant to this Covenant or pursuant to the 2.28 AUEs specified herein against Developer for any reason, it being acknowledged and agreed to by the City and the Initial Project Owner that the Initial Project Owner has assumed all obligations arising under applicable law and this Covenant concerning the 2.28 AUEs that are the subject hereof.

6. GENERAL PROVISIONS

- 6.1. **TERM OF COVENANT.** The term of this Covenant shall commence as of the Effective Date set forth above and shall continue in full force and effect for a period not less than forty (40) years. Upon the expiration of the initial forty (40) year term, or any subsequent term, the City shall have six (6) months in which to determine, based on an independent market study, that the Unit is no longer necessary to satisfy the affordable or employee housing needs of the City. The City Council or its successor shall make the final determination of such continuing need, and if the City makes no such determination, the Covenant shall automatically renew for one or more additional consecutive ten (10) year terms.
- 6.2. **AMENDMENTS.** Any amendments or modification to this Covenant in whole or in part must be made in writing and agreed to by the then current holder of fee title and the City and must be recorded with the Clerk and Recorder of Summit County, Utah. Amendments or modifications to this Covenant may be made to affect the individual Unit only, and such amendments or modifications shall be effective only when made by writings signed by the then current holder of fee title to the Unit specified in such modification or amendment at the time of the amendment or modification and the City and recorded with the Clerk and Recorder of Summit County, Utah. The City may unilaterally modify the Covenant to provide clarification to any provisions that may be subject to differing interpretations, to correct any errors identified, or where the City deems such modification or amendment necessary to effectuate the purposes and intent of the Covenant or bring this Covenant in compliance with applicable City Code

or State of Utah or federal law and where such modification does not in the City's reasonable discretion materially impair the rights of the then current fee title owner or any Secured Creditor.

- 6.3. NO WAIVER. No waiver of any Event of Default or breach of this Covenant shall be implied from any omission by the City to take action on account of such Event of Default, and no express waiver shall affect any Event of Default other than the Event of Default specified in the waiver, and then the waiver shall be operative only for the time and to the extent therein stated. Waivers by the City of any covenant, term or condition contained in this Covenant shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by either Party to or of any act by either Party requiring further consent or approval shall not be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.
- 6.4. WAIVERS. The Project Owner and each Unit Owner hereby waives any defenses, rights, or remedies that each might otherwise assert against the City in connection with: (a) the application of the rule against perpetuities to this Covenant; or (b) any claim that the Covenants recorded against the Unit are not real covenants running with the land. This waiver shall be binding upon the successors and assigns of each of the Project Owner and Unit Owner and inure to the benefit of the successor and assigns of the City.
- 6.5. DISCONTINUANCE OF LIABILITY AFTER CONVEYANCE. Following the recording of a deed conveying the Unit to a Qualified Buyer, provided such conveyance was made in accordance with the requirements of this Covenant, including proper notice or consent rights of the City, the transferor of such Unit shall have no further liability under this Covenant respecting the Unit, except to the extent caused by the negligence or intentional misconduct of the transferor and excepting any outstanding fines or penalties due to the City hereunder and incurred during transferor's ownership of the Unit.
- 6.6. SALE AGAINST OWNER'S WILL. Without in anyway limiting the remedies and enforcement provisions granted the City by Sections 3.12, 5.4, and 5.5, nothing in this Covenant shall be interpreted to require the Project Owner or a Unit Owner to Sell the Unit against such Project Owner or Unit Owner's will.
- 6.7. SEVERABLE OBLIGATIONS AND LIABILITIES. Different individuals and entities may eventually own the Unit. Each Unit Owner of the Unit shall not be liable to the City or encumbered by the obligations or liabilities incurred by the Project Owner or any other Unit Owner pursuant to this Covenant.
- 6.8. NOTICES. Any and all Notices and demands required or desired to be given hereunder shall be in writing and shall be validly given or made if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, sent by Federal Express or other similar courier service keeping

records of deliveries and attempted deliveries, or served by facsimile transmission. Service by mail or courier shall be conclusively deemed made on the first business day delivery is attempted. Facsimile transmissions received during normal business hours on a business day shall be deemed made at the time of receipt. Facsimile transmissions not received during normal business hours on a business day shall be deemed made on the next business day. Each Party to this Covenant, including the City, the Project Owner, and each Unit Owner, may change their respective addresses for the purpose of receiving Notice by a written Notice to the other Parties.

Notice to a Unit Owner or Project Owner shall be sent to the address on file with the Office of the Recorder of Summit County, Utah.

Notice to the Initial Project Owner shall be addressed to the following address or to the address on file with the Office of the Recorder of Summit County, Utah:

Rail Central, LLC
1790 Bonanza Drive, Suite E-200
Box 683010
Park City, UT 84068

Any Notice or demand to the City shall be addressed to the City at the following address:

Park City Municipal Corporation
PO Box 1480
Park City, Utah 84060-1480
ATTN: City Recorder and Housing Office
Fax: (435) 615-4901

- 6.9. SEVERABILITY. If any term, provision, covenant or condition of this Covenant is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Covenant shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of such remaining provisions. In the event that all or any portion of this Covenant is found to be unenforceable, this Covenant or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and the Parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid this Covenant or that portion which is found to be unenforceable.
- 6.10. ATTORNEYS' FEES. If any Party, including any Unit Owner, shall take or defend against any action for any relief against another party arising out of this Covenant, 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 attorneys' 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 attorneys' fees and costs incurred in enforcing such judgment.

- 6.11. CHOICE OF LAW. This Covenant shall be governed and construed in accordance with the laws of the State of Utah.
- 6.12. SUCCESSORS. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to the benefit of, and be binding upon, the heirs, successors, and assigns of the Parties.
- 6.13. THIRD PARTY BENEFICIARY. Except as expressly set forth herein with respect to the Developer, this Covenant is not intended to, and does not, confer rights on third parties.
- 6.14. PARAGRAPH HEADINGS. Paragraph or section headings within this Covenant 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.
- 6.15. 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.
- 6.16. COVENANTS RUN WITH LAND. The City intends, declares, and covenants on behalf of itself, all future owners of any Unit, and all parties that obtain any interest in a Unit that this Covenant and the restrictions set forth herein regulating and restricting the rent, use, occupancy and transfer of the Units shall be covenants running with the land and improvements constituting the Units for the benefit of the City and shall encumber the Units and shall be binding upon all subsequent assigns of the Project Owner and each Unit Owner and any other party with an interest in any Unit.
- 6.17. INTEGRATION. This Covenant constitutes the entire Covenant between the Parties with respect to the matters set forth herein.
- 6.18. INTERPRETATION. The terms of this Covenant shall be interpreted so as to avoid speculation on the Unit and to ensure to the extent possible that the Unit Maximum Rent or the Unit Maximum Resale Price remains affordable.
- 6.19. SUPERIORITY OF COVENANT. The Project Owner and each Unit Owner acknowledges that each have not and will not execute any other covenants or agreements with provisions contradictory to or in opposition to the provisions of

this Covenant and that this Covenant is controlling as to rights and obligations between the City and each Unit Owner and Project Owner related to the Units.

- 6.20. **NO CITY LIABILITY.** Nothing herein requires or shall be construed to require the City or any officer, director, employee, agent, designee, assignee, or successor thereof to protect or indemnify the Project Owner or the Unit Owner against any loss.
- 6.21. **COUNTERPARTS.** This Covenant may be executed in several counterparts, all of which together shall constitute one binding Covenant on all parties hereto, notwithstanding that all the parties have not signed the same counterpart.
- 6.22. **RECORDATION.** Upon execution of this Covenant, the Initial Project Owner shall cause this Covenant to be recorded in the public records of the County Recorder of Summit County, Utah, and shall pay all fees and charges incurred in connection therewith.
- 6.23. **PROJECT OWNER CERTIFICATION.** By execution of this Covenant the Initial Project Owner represents and warrants as follows in Paragraphs 6.23.1 through 6.23.9.
 - 6.23.1 Rail Central, LLC is duly and validly organized and validly existing in good standing under the laws of the State of Utah.
 - 6.23.2 The Initial Project Owner has the requisite power and authority to own or operate the Project, to enter into this Covenant, and to operate the Project according to the terms of this Covenant.
 - 6.23.3 The agent named below and signing on behalf of Rail Central, LLC has received all necessary approvals and is duly authorized to bind Rail Central, LLC to all of the terms and conditions found in this Covenant.
 - 6.23.4 The execution and delivery by the Initial Project Owner of this Covenant, and the consummation of the transactions described herein, do not conflict with or result in a breach of any of the terms, provisions or condition of any agreement or instrument to which the Initial Project Owner may be bound, or of any order, law, rule or regulation of any court or governmental body or administrative agency having jurisdiction over the Initial Project Owner or the Project.
 - 6.23.5 This Covenant is a legal, valid and binding obligation of the Initial Project Owner, enforceable in accordance with the terms herein.
 - 6.23.6 The execution of this Covenant and its enforceability as a covenant running with the land, when recorded in the public land records of Summit County, Utah, does not require any additional notice or filing or the consent or approval of any partner, officer, or any other party, except

those notices and filings which have heretofore been made and delivered to the City.

- 6.23.7 There is no litigation, action, or suit pending against or affecting or involving the Initial Project Owner or the Project which would materially and adversely affect the ability of the Initial Project Owner to operate the Project in accordance with this Covenant.
- 6.23.8 There is no default existing, or any condition existing which, with the passage of time, or the giving of notice, or both, would result in a default of the due performance or observance of any material obligation, agreement, covenant, or condition contained in any contract, indenture, mortgage, loan agreement, lease or other document binding upon the Initial Project Owner or the Project which would materially and adversely affect the ability of the Initial Project Owner to operate the Project in accordance with this Covenant.
- 6.23.9 Regarding the conveyance to the City pursuant to that Special Warranty Deed recorded AUGUST 7, 2020 as Entry No. 01138353, at Book No. 2588, Page No. 1632 in the Office of the Summit County Recorder, at the time of such conveyance, the Initial Project Owner (a) held good and marketable fee simple title to the Property, subject to all covenants, conditions, restrictions, easements, encumbrances and other matters of record that are listed on Exhibit "F;" (b) owned all of the beneficial and equitable interest in and to the Project; and (c) was lawfully seized and possessed of the Project. The Initial Project Owner has the right and authority to enter into this transaction as contemplated by this Covenant, including each Recital and this paragraph, and to restrict use of the Units, and the Units shall be bound by the terms herein. There are no Encumbrances on the Project except for those Encumbrances listed on Exhibit "F" hereto. As used in this Paragraph 6.23.9, "Encumbrances" shall mean any lien, easement, right of way, roadway (public or private), declaration, condition, covenant, or restriction (including any declaration, condition, covenant, or restriction in connection with any condominium development or cooperative housing development), lease or other matter of any nature that would affect title to the Units or that would affect the ability of the City to enforce the terms and conditions of this Covenant.
- 6.24 **INDEMNIFICATION.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PROJECT OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS AGENTS, MEMBERS, SERVANTS, EMPLOYEES, AFFILIATES, SUCCESSORS, REPRESENTATIVES, OFFICERS AND DIRECTORS (COLLECTIVELY "INDEMNIFIED ENTITIES"), FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, EXPENSES, ATTORNEYS' FEES, AND CAUSES OF ACTION ARISING OUT OF OR RESULTING FROM THIS COVENANT, THE PROJECT, OR THE CITY'S

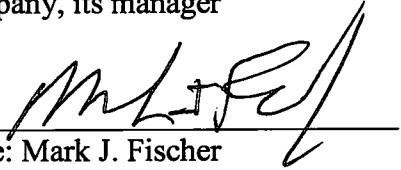
ENFORCEMENT OF THE TERMS HEREIN AGAINST SUCH PROJECT OWNER. SHOULD ANY PROJECT OWNER FAIL TO OPERATE THE PROJECT AS AUES IN FULFILLMENT OF THE AUE REQUIREMENTS SPECIFIED HEREIN, SUCH PROJECT OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY FROM ALL COSTS, EXPENSES, AND ATTORNEYS' FEES INCURRED IN ENFORCING THE AUE REQUIREMENTS ASSUMED BY THE INITIAL PROJECT OWNER AND INTENDED TO BE FULFILLED BY THE OPERATION OF THE PROJECT IN ACCORDANCE WITH THIS COVENANT. IN THE EVENT THAT TITLE TO THE PROJECT OR ANY UNITS IS JOINTLY HELD BY MORE THAN ONE PROJECT OWNER, THE OBLIGATIONS OF SUCH PROJECT OWNERS PURSUANT TO THIS SECTION 6.24 SHALL BE JOINT AND SEVERAL.

IN WITNESS WHEREOF, the undersigned have executed this Covenant as of the Effective Date.

INITIAL PROJECT OWNER

RAIL CENTRAL, LLC,
a Utah limited liability company

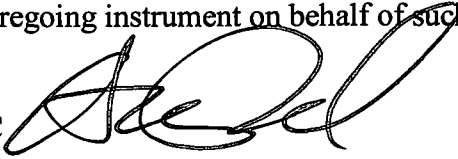
MJF Investments, LLC, a Utah limited liability company, its manager

By: 
Name: Mark J. Fischer
Its: Manager

ACKNOWLEDGMENT

STATE OF UTAH)
 Salt Lake) ss.
COUNTY OF ~~SUMMIT~~)

The foregoing instrument was acknowledged before me this 20th day of JULY, 2020 by Mark J. Fischer, as the manager of MJF Investments, LLC, which is the manager of Rail Central, LLC, and, being personally known to me or proved to me through identification document allowed by law, and being by me duly sworn, did say that he is authorized to sign and acknowledge the foregoing instrument on behalf of such entities.

NOTARY PUBLIC 

Residing at: Salt Lake city, Utah

My Commission Expires: 9/4/22



THE CITY

**Park City Municipal Corporation
a Utah Municipal Corporation**

By: Andy Beerman

Name: Andy Beerman

Is: Mayor



Attest:

Michelle Kellogg
City Recorder

Approved as to Form:

[Signature]
City Attorney

ACKNOWLEDGEMENT

STATE OF UTAH)
 :SS.
COUNTY OF SUMMIT)

On the 30 day of July, 2020, personally appeared before me Andy Beerman, who being by me duly sworn did say that he is the Mayor of Park City Municipal Corporation, a Utah municipal Corporation, and that the within and foregoing instrument was signed on behalf of such entity.

Michelle Kellogg
NOTARY PUBLIC

Residing at: Park City, Utah

My Commission Expires: 5-19-2023



EXHIBIT A

The following described real Property is located in Summit County, Utah:

Lot A, CENTURA COMMONS, A TWO LOT SUBDIVISION, according to the official plat thereof on file and of record in the Summit County Recorder's Office.

Parcel No. CCOM-A

EXHIBIT B
PERMITTED CAPITAL IMPROVEMENTS

1. The term "Permitted Capital Improvement" as used in this Covenant shall only be allowed as they are consistent with the CCRs and design guidelines and shall only include the following:
 - a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacement and/or maintenance improvements.
 - b. Improvements for energy and water conservation;
 - c. Improvements for the benefit of seniors and/or handicapped persons;
 - d. Improvements for health and safety;
 - e. Installation of health and safety protection devices (including radon);
 - f. Improvements to add and/or finish permanent/finished storage space; and/or
 - g. Improvements to finish unfinished space.

2. Permitted Capital Improvements as used in this Agreement shall **NOT** include the following:
 - a. Jacuzzis, saunas, steam showers and other similar items;
 - b. Upgrades or addition of decorative items, including lights, window coverings and other similar items.
 - c. Upgrades of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of a Unit and/or improvements required to repair and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, and other similar items, unless replacement is energy efficient or for safety and health reasons.

3. All Permitted Capital Improvement items and costs shall be approved by the City or its Designee prior to construction in order to be added to the Maximum Resale Price **at the time of resale** subject to depreciation as defined herein Permitted Capital Improvements are not included in the additional 3% calculation in paragraph 3.14(i). In order to get credit for an improvement where a building permit is required, the improvement will not be counted unless a Letter of Completion was obtained by the Building Department.

EXHIBIT C
MINIMUM STANDARDS FOR
SELLER TO RECEIVE MAXIMUM RESALE PRICE

- Clean Unit
- Carpets steam-cleaned two or three days prior to closing
- All scratches, holes, burned marks repaired in hardwood floors, linoleum, tile, counter tops, etc. other than normal wear and tear.
- No broken or foggy windows
- All screens in windows (if screens were originally provided)
- All doors will be in working order with no holes
- All locks on doors will work
- All keys will be provided; e.g., door, mail box, garage
- All mechanical systems shall be in working order
- Walls paint ready
- Other than normal wear and tear on carpet; if carpet has holes, stains, etc., the carpet and padding shall be replaced or escrow funds at current market value per square foot for a comparable product shall be held at the time of closing to be used by the new Qualified Buyer
- No leaks from plumbing fixtures
- Any safety hazard remedied prior to closing
- Satisfaction of radon issue if found at time of inspection
- All light fixtures shall be in working order
- All appliances that existed in the original Unit remain and are in good working order and good condition

DEFINITIONS:

Clean Unit: All rooms will be cleaned as stated below:

Kitchen:

- Range – Inner and outer services will be cleaned.
- Range hood and Exhaust Fan
- Refrigerator and Freezer – Inner and outer surfaces of refrigerator and freezer will be clean. Freezer will be defrosted.
- Cabinets and Countertops – Exterior and interior surfaces of cabinets and drawers will be clean. Door and drawer handles, if provided, shall be clean and in place.
- Sink and Garbage Disposal – Sink and plumbing fixtures will be clean. Garbage disposal must be in working order.
- Dishwasher – Must be in working order and inner and outer surfaces shall be clean.

Blinds, Windows, Screens:

- Mini-blinds, Venetian Blinds, Vertical Blinds, and Pull Shades – Will be clean.
- Windows – All window surfaces, inside and outside of the window glass, shall be clean.
- Screens – Screens will be clean and in place with no holes or tears.

Closets: Closets, including floors, walls, hanger rod, shelves and doors, shall be clean.

Light Fixtures: Light fixtures will be clean and shall have functioning bulbs/florescent tubes.

Bathrooms:

- Bathtub, Shower Walls, Sinks – Bathtubs, shower walls and sinks shall be clean.
- Toilet and Water Closet – Water closets, toilet bowls and toilet seats will be clean. If the toilet seat is broken or peeling, the seat shall be replaced.
- Tile – All tile and grout will be clean.
- Mirrors and Medicine Cabinets – Mirrors and medicine cabinets shall be cleaned inside and out.
- Shelves and/or Other Cabinetry – All other shelving or cabinetry shall be cleaned inside and out.

Walls, Ceilings, Painted Doors and Baseboards: Painted surfaces must be cleaned with care to ensure the surface is clean without damaging the paint.

Floors: Floor cleaning includes sweeping and mopping and could include stripping, waxing and buffing. Types of floor surfaces include bamboo and marmoleum.

Interior Storage/Utility Rooms: Storage/utility rooms shall be cleaned. Properly cleaned storage/utility rooms will be free from odors, removable stains, grease marks or accumulations.

Washer/Dryer- Must be in working order and inner and outer surfaces shall be clean

Safety Hazard: Any item that provides a safety hazard shall be fixed. This would include, but is not limited to, exposed electrical wiring, satisfaction of any radon issue found, ventilation for gas hot water system, etc.

Walls Paint-Ready: All holes shall be patched; all posters, pictures, etc., shall be removed from all walls; all nails, tacks, tape, etc., shall be removed from all walls; and all walls shall be clean and ready for the new buyer to paint. If wallpaper has been placed on the wall and in good condition, the wallpaper can remain; if the wallpaper is peeling off, the wallpaper must be removed.

Windows: If a window is broken, including the locking mechanism, the window shall be replaced. If the window has a fog residue in the inside, it shall be replaced.

EXHIBIT D

**Park City Affordable Housing Affidavit
For Rented Units**



**State of Utah
County of Summit**

BEFORE ME, the undersigned Notary, _____ *[name of Notary before whom affidavit is sworn]*, on this _____ *[day of month]* day of _____ *[month]*, 20____, personally appeared _____ *[name of affiant]*, known to me to be a credible person and of lawful age, who being by me first duly sworn, on _____ *[his or her]* oath, deposes and says:

I currently own the property at _____ *(street address)* which is a deed restricted home for affordability. I am fully aware of the restrictions and am to the best of my knowledge in compliance. I verify that I am currently renting it to a qualified individual for \$ _____ per month.

[signature of affiant]

[printed name of affiant]

(phone)

[mailing address of affiant, line 1]

[mailing address of affiant, line 2]

Subscribed and sworn to before me, this _____ *[day of month]* day of _____ *[month]*, 20____.

[Notary Seal]

[signature of Notary]

[typed name of Notary]

NOTARY PUBLIC

My commission expires: _____, 20____.

Please return completed form to the attention of Rhoda J. Stauffer, PCMC, PO Box 1480, Park City, Utah 84060 by no later than November 29, 2013. rhoda.stauffer@parkcity.org or fax 435-658-0010

EXHIBIT E

**Park City Affordable Housing Affidavit
For Owner Occupied Units**



**State of Utah
County of Summit**

BEFORE ME, the undersigned Notary, _____ *[name of Notary before whom affidavit is sworn]*, on this _____ *[day of month]* day of _____ *[month]*, 20____, personally appeared _____

_____ *[name of affiant]*, known to me to be a credible person and of lawful age, who being by me first duly sworn, on _____ *[his or her]* oath, deposes and says:

*I currently own my residence at _____ (street address) which is a deed restricted property to preserve affordability. I am fully aware of the restrictions and am to the best of my knowledge in compliance including the requirement for owner occupancy. I verify that I continue to live in it as my primary residence. * I have never rented my home even for short periods of time. I have not acquired any direct interest in other real property since my purchase of the deed restricted unit listed above. As is allowed in my Deed Restriction, I am renting to a roommate at the following rent: _____.*

[signature of affiant]

(printed name of affiant)

(phone)

[mailing address of affiant, line 1]

[mailing address of affiant, line 2]

(email address)

Subscribed and sworn to before me, this _____ *[day of month]* day of _____ *[month]*, 20____.

[Notary Seal:]

[signature of Notary]

[typed name of Notary]

NOTARY PUBLIC

My commission expires: _____, 20____.

**Primary Residence is defined as the domicile in which you live for no less than 9 months out of any given 12 month period.*

EXHIBIT F
PERMITTED ENCUMBRANCES

The exceptions listed on Schedule B, Part II, to that Commitment for Title Insurance, File No. 28349 for the Property, with an effective date of July 31, 2019, by Stewart Title Guaranty Company, and signed by Coalition Title Agency of Park City, UT.