

# Habitat for Humanity Homes

Fairplay, Colorado

## MASTER DEED RESTRICTION

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

**Master Deed Restriction agreement contains limitations and requirements for initial sale and resale of affordable homes offered by Summit Habitat for Humanity.**

This Master Deed Restriction Agreement (the Agreement) is in effect ninety (90) years from the date of this Agreement. Compliance with this Agreement is a condition of sale and a requirement of title.

This Agreement applies to the real properties commonly known as 521 Castello Ave, Fairplay Colorado (the Property). The Property is residential single-family units and is entered into this \_\_\_\_\_, between Summit Habitat for Humanity, Grantor and \_\_\_\_\_ as Grantee.

### RECITALS

**WHEREAS**, the Summit Habitat for Humanity and the United States Department of Agriculture have provided funds toward the acquisition and development of the Property; and

**WHEREAS**, the intent of the Summit Habitat for Humanity and the United States Department of Agriculture in providing these funds is to produce and preserve the affordability of the Property for persons of low and moderate income; and

**WHEREAS**, the initial purchaser and subsequent purchasers will benefit from these funds through limitations on the purchase price of the Property; and

**WHEREAS**, the availability of the Property for persons of low and moderate income will be maintained by restricting the initial purchaser and subsequent purchasers to persons qualifying based on the person's income; and

**WHEREAS**, to preserve the affordability of the Property for subsequent purchasers, any resale shall be subject to limitation on the maximum sale price of the Property; and

**WHEREAS**, the Grantor desires to assign to the Estes Park Housing Authority, its successor or designee, or any other any third party at Grantor's election in the future, the right to enforce compliance with this Master Deed Restriction pursuant to the terms of this Agreement.

In consideration of the benefits received by the parties, the sufficiency of which is herebyacknowledged, the parties agree as follows:

**1. Definitions**

The following terms shall have the following meanings herein:

- A. "Affordability Period" means 90 years from the date of this Agreement.
- B. "Agreement" means this Master Deed Restriction and all amendments.
- C. "SCHA" means the Summit Combined Housing Authority.
- D. "Eligible Buyer" means a person who is eligible to buy the Property as more fully set forth in Section 4 of this Agreement.
- E. "First deed of trust" means a deed of trust or mortgage that is recorded senior to any other deeds of trust or liens against the Property to secure a loan used to purchase the Property made by an Institutional Lender.
- F. "HUD" means the United States Department of Housing and Urban Development.
- G. "Area Median Income" means the Area Median Income (AMI) reported annually for single persons and households of various sizes by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency, or instrumentality, for Park County, Colorado.
- H. "Income" is defined as per Section 8 of the U.S. Housing Act of 1937 and shall mean the anticipated total income for the next twelve-month period to be received from all sources by each member of the household including spouse, and children 18 years of age and older, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household.

- I. "Institutional Lender" means any bank, savings and loan association, or any other institutional lender, which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.
- J. "Owner" means the Grantee and any subsequent buyer and/or transferee of the Property resulting in buyer or transferee having status of being an owner on title to the Property via public record recorded with the Park County Clerk and Recorder's Office. Owner does not include a person or entity having an interest in the Property solely as the security for the performance of an obligation including, but not limited to, a mortgagee or beneficiary under any deed of trust or any other form of collateralized agreement.
- K. "Primary Residence" means the residence, which the Owner occupies for a minimum of ten (10) full months out of every calendar year.
- L. "Property" means the single family home as more fully described in Section 2, which is subject to the terms and conditions of this Agreement.
- M. "Purchase Price" shall mean the total amount of consideration paid for the property by the Grantee, which is \$ 325,000.00.
- N. "Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property.

**2. Property Description**

The Property subject to the terms and conditions of this Master Deed Restriction is more specifically described as follows:

REPLAT OF LOTS 23, 24, 25, AND THE EAST HALF OF LOT 27, BLOCK 13, CLARK AND BOUGES ADDITION TO THE TOWN OF FAIRPLAY LOCATED IN THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 9 SOUTH, RANGE 77 WEST OF THE 6TH, TOWN OF FAIRPLAY COUNTY OF PARK STATE OF COLORADO

**3. Agreement Binds the Property**

This Agreement shall constitute covenants, conditions and restrictions, which run with the Property as a burden thereon, for the benefit of, and enforceable by SCHA and its respective successors and assigns or enforceable by any other third party Grantor so chooses to manage and otherwise enforce this Agreement. This Agreement shall bind each Owner and each Owner shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein, during the Owner's period of ownership of the Property. Each and every conveyance of the Property, for all

purposes, shall be deemed to include and incorporate by this reference, the covenants, covenants and restrictions contained in this Agreement, even without reference to this Agreement in any documents of conveyance. Each Owner agrees to comply with the provisions of this Deed Restriction as a requirement for title.

#### 4. **Eligible Buyers**

Resale of the Property by the Owner can only be to an eligible buyer defined as follows:

- A. The buyer must be a natural person.
- B. The buyer's income shall not exceed 100% of HUD's AMI adjusted by household size, and no more than 43% of the buyer's debt to income ratio shall be used for housing costs adjusted by household size.

Eligible buyers, prior to executing a contract to purchase the Property, must have a current and valid income certification from SCHAs or other subsequent designated third party attorney-in-fact stating that the person is an eligible buyer. Income certification will involve verification of income from all available sources including but not limited to federal and state income tax records, loan records and applications, and employer pay records. Falsification or misrepresentation of information provided by the potential buyer to SCHAs or other subsequent designated third party attorney-in-fact will result in automatic termination of eligibility status. As part of the eligibility process, the buyer will be required to provide to SCHAs or other subsequent designated third party attorney-in-fact their most recent income tax return, including all attached information supporting such return, and other information as requested.

- C. Property title transfer will only occur after the buyer/s has/have been certified to meet the HUD income limit according to household size, and have been pre-qualified by an Institutional Lender for financing to be used to purchase the property. Asset limits of the buyer/s cannot exceed 20% of the purchase price. Assets include all cash access such as stocks, savings and checking accounts, as well as one vehicle per person is permitted, any additional would be an asset. Retirement accounts are not included in the asset calculation.
- D. The following transfers are exceptions to the buyer eligibility requirement, provided that the new Owner, other than an estate, shall use the Property as his or her principal residence:
  - i. A transfer resulting from the death of an Owner where the transfer is to the<sup>4</sup> spouse who is also an Owner as defined above.
  - ii. A transfer to the Owner's estate following his or her death for

the purpose of administering the estate and distributing the assets thereof during a limited period of time. Any transfer from an estate shall be to an eligible buyer. A transfer resulting from the death of an Owner when the transfer is to one or more children of the deceased Owner.

- iii. A transfer by an Owner where the spouse of the Owner becomes the co-owner of the Property, with "co-owner" relating to the term "Owner" as defined above.
- iv. A transfer resulting from a decree of dissolution of the marriage or legal separation or from a property settlement agreement incidental to such a decree by which a spouse, who was already an Owner (co-owner) of the Property prior to such transfer by way of a joint tenancy or tenancy in common, becomes the sole Owner of the Property.

F. The requirements set forth in Paragraph 4(B) above may be modified by a modification agreement entered into among the Colorado Division of Housing (DOH) and United States Department of Agriculture (USDA), the Summit Habitat for Humanity, Colorado, and SCHA. In order for said modification to be effective, said modification must be recorded in the records of the Clerk and Recorder of Park County, Colorado. In no event shall any modification of this Agreement allow a buyer's income to exceed 120% of AMI adjusted by household size. Any modification above 120% AMI adjusted by household size shall receive written approval from HUD (not to exceed 140% of the AMI).

## **5. Re-Sale: Maximum Sales Price**

- A. In no event shall the Property be sold to an eligible buyer for an amount in excess of the Owner's original purchase price plus an amount equal to 25% of the appreciation in market value of the Property from the date of purchase of the Property by the Owner to the date of Owner's execution of the Sale Contract to an eligible buyer. Appreciation in market value shall be determined by a market value appraisal from a qualified appraiser. SCHA or other subsequent designated third party attorney-in-fact shall maintain a list of qualified appraisers. The Owner shall be responsible for obtaining said appraisal, including all associated expense with such appraisal. The appreciation in market value shall not include any value for any approved improvements as set forth in Paragraph 5(C) below.
- B. The maximum sales price shall be increased by seller's cost of sale, including, but not limited to, a reasonable commission, customary closing costs and title insurance premiums. Also, the maximum sales price shall be increased by the reasonable<sup>5</sup> cost of improvements as set forth in Paragraph 5(C) below.

C. Improvements shall only include those improvements made to the Property, which prior to construction, have received the written approval of SCHA or othersubsequent designated third party attorney-in-fact. Following completion of approved improvement, the Owner and SCHA or other subsequent designated third party attorney-in-fact shall execute a document that specifies the reasonablecost of the improvement.

D. NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY GRANTOR OR THE SCHA THAT THE OWNER WILL BE ABLE TO OBTAIN THE MAXIMUM SALE PRICE, AND THE GRANTOR AND SCHA HEREBY DISCLAIM ANY SUCH REPRESENTATION OR WARRANTY THAT MIGHT OTHERWISE BE ALLEGED OR ATTRIBUTED.

**6. Complete Consideration Stated on Deed**

The purchase price for any transfer of the Property shall be stated on the deed transferring title and shall constitute sufficient consideration by the parties to this Agreement for each of the terms and restrictive covenants, conditions and restrictionsset forth in this Agreement.

**7. Attorney-in-Fact & Assignment of Grantor Rights to Manage and Otherwise Enforce this Agreement**

Grantor has the right to assign its right to enforce the covenants, conditions, and restrictions and all other terms under this Agreement to SCHA, any of its successors or designees, for the purpose of managing and otherwise enforcing this Agreementby authorizing SCHA to act as its attorney-in-fact by way of power of attorney. Grantor reserves the right to assign such rights and attorney-in-fact designation and role to a different and subsequent third party in the future, and shall give Owner notice of such change. As attorney-in-fact, SCHA and any subsequent third party designated attorney-in-fact, shall have the right to manage, oversee and enforce allterms under this Agreement.

A. The Owner agrees that he or she will give immediate written notice to SCHAor Grantor's other subsequent designated attorney-in-fact upon the first to occur of: (i) the date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the Property under the first deed of trust, whether initiated by way of the Public Trustee process or judicial foreclosure or (ii) the date when Owner becomes 60 days late in making a payment on the first deed of trust mortgage. Power of Attorney, for the purpose of verifying mortgage account is in good standing.

**8. Partial Subordination of Covenant**

- A. The provisions of this Agreement shall be subordinate only to the lien of a first deed of trust to secure a loan to purchase the Property, created by an Institutional Lender and recorded with the Park County Clerk and Recorder's Office. This Agreement shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the first deed of trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure.
- B. After the issuance of a public trustee's deed pursuant to a foreclosure of a first deed of trust or a sale or acceptance of a deed in lieu of foreclosure by the Institutional Lender, this Agreement shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter.

**9. Re-Financing of the First Deed of Trust**

The Owner may only re-finance the first deed of trust so long as the total amount of such proposed re-financing loan, plus all other liens, does not exceed eighty percent (80%) of the Maximum Sales Price (Paragraph 5 of this Agreement) in effect at the time of the refinancing of the Property. Such refinancing must be with an Institutional Lender and any loan obtained through the refinancing process must remain a first deed of trust.

Summit Combined Housing  
Authority  
County Commons  
Building; 37 Peak One  
Circle, # 224, Frisco,  
CO 80443  
Attn: Executive Director

**10. Maintenance of Property**

The Owner shall maintain the Property in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Property. The Owner shall prevent third parties such as contractors, subcontractors and/or suppliers from recording mechanics' liens against the Property, and further, if Owner receives Notice of a Lien from any such contractor, subcontractor and/or supplier, Owner must immediately furnish such Notice of Lien in writing to SCHA or other subsequently designated attorney-in-fact with assurances of preventing the recordation of such Statement of Lien accompanying the Notice of Lien to avoid any mechanics' lien encumbering the Property. Owner agrees to fully indemnify SCHA, other third party attorney-in-fact, and/or Grantor from any harm resulting from a recorded mechanics' lien.

**11. Use of Property as Owner's Primary Residence**

The unit Owner shall use the Property as his or her primary residence.

**12. Rental Conditions**

The Owner may not rent or lease the Property for any period of time except upon approval of SCHA or other attorney-in-fact under conditions of hardship such as disability, illness, forced relocation, death in family or other hardship or unusual circumstance. In such case, the maximum rental period shall be limited to 12 months. The only other allowed exception being if SCHA or other subsequent designated attorney-in-fact has obtained the unit by default of the unit owner, then SCHA or other subsequent designated attorney-in-fact may rent the unit while the property is being marketed for sale or until transfer to a new eligible buyer.

**13. Enforcement of This Agreement**

The Grantee and each Owner grants and assigns SCHA or other subsequent designated attorney-in-fact the right to review and enforce compliance with this Agreement. If there is reasonable cause to believe that a violation of this Agreement has occurred, SCHA or other subsequent designated attorney-in-fact will send a notice to the unit owner describing the nature of the violation and allow the unit owner fifteen (15) days from the date of such notice to fully cure the stated violation.

If the violation is not cured within the 15-day period of SCHA's or subsequent other designated attorney-in-fact's notice, the unit Owner shall be considered in violation of this Agreement

Any legal action to enforce any term of this Agreement or concerning any dispute related to this Agreement shall be commenced in Park County, Colorado. Colorado law shall govern any dispute under this Agreement. The Owner shall pay all court costs and reasonable attorneys' fees incurred by SCHA or other subsequent designated attorney-in-fact in the enforcement of any of the terms and conditions of this Agreement.

With regard to any violation of the terms and conditions of this Master Deed Restriction, the following remedies shall not be available to nor pursued by SCHA or other subsequent designated attorney-in-fact.

- A. The violation of the terms and conditions of the Master Deed Restriction shall not void any conveyance of the Property by the Owner.



- B. The violation of the terms and conditions of the Master Deed Restriction shall not terminate the Owner's interest in the Property nor any secured party's interest in the Property.
- C. The violation of the terms and conditions of the Master Deed Restriction shall not accelerate any Promissory Note secured by a first deed of trust nor shall be a default under the terms and conditions of any first deed of trust on the Property.
- D. A violation of the terms and conditions of the Master Deed Restriction shall not increase any interest rate of any Promissory Note secured by a first deed of trust on the Property.

The only remedy available to SCHA other subsequent designated attorney-in-fact for the violation of any of the terms and conditions of this Master Deed Restriction by Owner shall be for SCHA other subsequent designated attorney-in-fact to recover all sums due and any funds advanced by SCHA other subsequent designated attorney-in-fact pursuant to default of Owner as more fully set forth in Paragraph 8(B) of this Master Deed Restriction, all court costs and reasonable attorneys' fees incurred by SCHA other subsequent designated attorney-in-fact in the enforcement of this Agreement, and all sums received by Owner from any transfer that exceeds the maximum sales price set forth in Paragraph 5 of this Master Deed Restriction.

**14. Right of First Refusal**

Grantor, SCHA or any subsequently designated attorney-in-fact shall have the Right of First Refusal with respect to any transfer of the Property except those transfers specified in Paragraph 4(D) of this Agreement. This Right of First Refusal is as follows:

- A. If the Owner receives from any third party a bona fide offer to purchase the Property, Owner agrees to disclose the terms of such offer to SCHA or other attorney-in-fact in writing within five (5) days following receipt of the offer.
- B. SCHA or other attorney-in-fact shall have forty-five (45) days after receiving notice of the terms of the offer within which to elect to purchase the Property on terms identical to those offered by the third party. Such an election shall be made by written notice to Owner. Within ten (10) days thereafter the parties shall enter into a formal contract of sale in the form approved by the Colorado Real Estate Commission and expressly including all terms of the original bona fide offer, except as the parties may mutually agree.

- C. If SCHA or other attorney-in-fact fails to give the written notice of its election to exercise its First Right of Refusal, the Owner shall be relieved of all liability with regard to this First Right of Refusal and may dispose of the property to the third party under the same terms and conditions of the original bona fide offer.

**15. Miscellaneous**

- A. This Agreement shall run with the land. It shall bind the land for 90 years from the date of this Agreement and the benefit hereof shall inure perpetually to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assignees, and to SCHA or any subsequent attorney-in-fact, and their successors, designees, or assignees.
- B. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered and occupied subject to the covenants, conditions, restrictions and limitations of this Agreement.
- C. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute covenants running with the land.
- D. Any buyer or transferee of the Property or of any portion of or interest in the Property, by acceptance of a deed therefore, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.
- E. Notices to SCHA shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, at the address set forth below, or such other address designated by the SCHA by like notice as:

Summit Combined Housing  
Authority  
County Commons  
Building; 37 Peak One  
Circle, # 224,  
Frisco, CO 80443  
Attn: Executive Director

- F. If any provision of this Agreement shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining

provisions shall survive and their validity, legality or unenforceability shall not in anyway be affected or impaired thereby.

- G. The conditions of this Covenant shall be interpreted so as to avoid speculation on the Property and to insure to the greatest extent possible that its purchase price and mortgage payments remain affordable throughout the affordability period to persons and families of low [moderate] income.
- H. This Covenant is prior and superior to the Owner's right of a homestead exemption under Article XVIII, Section I of the Colorado Constitution and under Part 2, Article 41, Title 38 of the Colorado Revised Statutes or any successor statutes. The Owner waives his or her homestead rights to the full extent that they conflict with or impair SCHA's or other attorney-in-fact's rights and remedies under this Covenant.
- I. If SCHA or any subsequent attorney-in-fact has reasonable cause to believe that an Owner is violating any provision of this Agreement, SCHA or any subsequent attorney-in-fact, through its authorized representative, may immediately inspect the Property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours written notice.
- J. This Agreement cannot be modified except in writing and only upon the express written approval of SCHA or any subsequent attorney-in-fact.

16. **Administrative Fee:**

Upon any transfer or sale of the Property, the Owner (Seller) shall pay at closing to SCHA a sum equal to 0.5% of the purchase price. Said sum is for the purpose of reimbursing SCHA for the administrative costs of monitoring this Agreement and matters related thereto. Remit payment and mail to:

Summit Combined Housing  
Authority  
County Commons  
Building; 37 Peak One  
Circle, # 224,  
Frisco, CO 80443  
Attn: Executive Director

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first stated above.

Summit Habitat for Humanity,  
**GRANTOR**

By: April-Dawn Knudsen, Executive Director

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by the Executive Director, Summit Habitat for Humanity, as Grantor.

Witness my hand and official seal.

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

Notary Public

(seal)

**GRANTEE**

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ by

Witness my hand and official seal.

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

(seal)

Notary Public