

**BROWN RANCH COMMUNITY AFFORDABILITY AGREEMENT,
RESIDENTIAL HOUSING RESTRICTIVE COVENANT, AND NOTICE OF LIEN**

This Community Affordability Agreement, Residential Housing Restrictive Covenant, and Notice of Lien (this "Restriction"), is made this ___ day of _____, 20___, by _____ ("Developer"), and the **YAMPA VALLEY HOUSING AUTHORITY**, a body corporate and politic of the State of Colorado ("YVHA").

RECITALS

A. Developer is the fee owner of land located in Routt County, Colorado legally described on **Exhibit A** attached hereto (the "**Property**").

B. YVHA is a multijurisdictional housing authority pursuant to the laws of the State of Colorado with the purpose of planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs pursuant to a multijurisdictional plan in order to provide dwelling accommodations at rental prices or purchase prices within the means of families of low or moderate income living within the jurisdiction of the Authority, and to provide affordable housing projects or programs for employees of employers located within the jurisdiction of the Authority.

C. Developer has or will construct an income and residency restricted housing development containing ___ units of for-sale condominiums at the Property. Developer agrees to restrict the acquisition and/or transfer of the Units to Qualified Buyers, as define herein.

D. Developer is entering into this Restriction in exchange for YVHA's contribution of the Property to Declarant.

RESTRICTION

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer hereby declares that the Property and the Units shall hereafter be held, sold, and conveyed subject to the following covenants, restrictions, and conditions, all of which shall be covenants running with the land, and which are for the purposes of ensuring that the Property and the Units remains available for purchase and occupation by persons residing and working in Routt County, Colorado, as affordable and attainable housing, and protecting the value and desirability of the Property and the Units, and which covenants, restrictions, and conditions shall be binding on all parties having any right, title, or interest in the Property or the Units, or any part thereof, and their heirs, successors, and assigns, and shall inure to the benefit of YVHA.

ARTICLE I DEFINITIONS

- 1.1. Definitions.** Words used in this Restriction shall have the meanings as defined in the *Definitions & Miscellaneous Provisions for the Brown Ranch Community Affordability Agreement* document recorded at Reception No. _____ in the real property records of the Routt County Clerk & Recorder, which is incorporated herein by this reference, or the meanings set forth in this Restriction, and the use of capitalization or lower case letters shall have no bearing on the meaning.

ARTICLE II INITIAL SALE OF THE UNITS

- 2.1. Initial Sales.** Upon completion of construction by the Developer, the Units shall be sold to initial purchasers who are Qualified Owners at the time of the purchase.

A Qualified Owner means one or more individuals who intend to live together in the Unit as a single household, together with their dependents, at least one of whom is a Resident, and is Income Eligible, as determined and approved by YVHA prior to the purchase.

A. A Resident means an individual who:

- i. works at a business physically located in Routt County for an average of at least 30 hours per week on an annual basis;
- ii. is retired, and who prior to retirement had worked at a business physically located in Routt County for an average of at least 30 hours per week on an annual basis for at least five (5) consecutive years;
- iii. is partially retired, working at a business physically located in Routt County for an average of at least 15 hours per week on an annual basis, and who prior to partial retirement had worked for a business physically located in Routt County for an average of at least 30 hours per week on an annual basis for at least seven (7) consecutive years; or
- iv. is disabled and unable to work due to their disability, but who prior to becoming disabled had worked for a business physically located in Routt County for an average of at least 30 hours per week on an annual basis for at least five (5) consecutive years.

For individuals claiming self-employment or work-from-home status, the employment must be for an average of at least 30 hours per week on an annual basis for a business that is located within and serves Routt

County, and requires their physical presence within the boundaries of Routt County in order to complete the task or furnish the service, and such individuals must demonstrate they are earning at least minimum wage from this employment.

- B. Income Eligible means the household's combined income does not exceed the applicable percentage of AMI for which the specific Unit is designated, as identified in **Exhibit B**.

2.2. Initial Purchase Price. The Purchase Price for the sales to the initial Qualified Owners shall be set and determined by YVHA as follows:

- A. The number of bedrooms in the Unit shall determine the household size from which the AMI Income Limit will be calculated. A one-bedroom unit will use the 1.5-person household size. A two-bedroom unit will use the 3-person household size. A three-bedroom unit will use the 4.5-person household size. A four-bedroom unit will use the 6-person household size;
- B. The AMI Income Limit for a household of the size determined in subpart (a), at the applicable percentage of AMI designated for the Unit in accordance with **Exhibit B**, shall be determined;
- C. The AMI Income Limit determined in accordance with subpart (b) above shall be divided by twelve (12), and that number shall then be multiplied by .30, to determine the total dollar amount available to the household on a monthly basis for the payment of principal, interest, payment protection insurance, taxes, insurance and homeowner's association dues in connection with the purchase of the Property;
- D. The amount of \$450 shall be subtracted from the total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (c) above) in order to determine the total dollar amount available to the household on a monthly basis for the payment of principal and interest on a mortgage loan for purchase of the Property; and
- E. The total dollar amount available to the household on a monthly basis for the payment of principal and interest (as determined in accordance with subpart (d) above) shall be used to determine the Purchase Price, through extrapolation, by determining the maximum loan amount that said dollar amount will support, assuming a mortgage loan with a standard amortization schedule, a term of thirty (30) years, a 95% loan to value ratio, and an annual interest rate determined by calculating, from data published by the Federal

Home Loan Mortgage Corporation, the average interest rate, for the preceding twelve (12) months calendar years, for a thirty-year fixed rate loan.¹

- 2.3. YVHA As Listing Broker.** As otherwise provided for in a separate agreement between Developer and YVHA, Developer shall use YVHA, or its designated listing affiliate, as the Listing Broker for the initial sales of the Units. YVHA reserves the right to require that the Unit be sold via a lottery system, as set forth in the *Brown Ranch Lottery System Rules* maintained by YVHA, as may be amended from time-to-time, and which will be published on the YVHA website.

ARTICLE III RESALES OF THE UNIT

- 3.1. Resales.** Units shall not be transferred after the original purchase from the Developer except upon full compliance with the procedures set forth in this Article.
- 2.4. General Rules on Resales.** If an Owner desires to Transfer their Unit, the Owner shall notify YVHA in writing of their intention to Transfer the Unit. The Owner must list the Unit for sale through YVHA, or its designated listing affiliate, for a commission equal to 2.0% of the sales price, and upon such other reasonable and customary terms as YVHA may determine. YVHA reserves the right to require that the Unit be sold via a lottery system, as set forth in the *Brown Ranch Lottery System Rules* maintained by YVHA, as may be amended from time-to-time, and which will be published on the YVHA website.

Units shall **NOT** be sold, transferred, and/or conveyed (1) to any person(s), entity, or entities other than a Qualified Owner, as defined in Article II and as approved by YVHA; (2) for consideration to be paid by such Qualified Owner that exceeds the Maximum Resale Price as such is determined pursuant to the provisions of this Article; or (3) without listing the Unit for sale through YVHA.

3.2. Maximum Resale Price.

- A. The Maximum Resale Price of a Property shall be no greater than the sum of:
- i. The Original Purchase Price paid by the Owner when the Owner acquired ownership of the Unit;

¹ For example: Using 2022 AMI numbers, a two-bedroom unit designated for 100% AMI would use the three-person income limit (\$92,100). $\$92,100 \div 12 = \$7,675$. $\$7,675 \times .3 = \$2,303$. $\$2,303 - \$450 = \$1,853$. With a 5% downpayment and assuming a 6.13% interest rate, the maximum loan amount \$1,853 would support is \$304,950. As such, together with the downpayment in the amount of \$16,050, the Purchase Price would be \$321,000.

- ii. Plus a percentage not more than the greater of (1) a two-percent (2%) increase in the Original Purchase Price per year (prorated at the rate of 1/12th for each whole month) from the date the Owner acquired ownership of the Unit to the date of the listing of the Unit for resale by YVHA, which percentage shall be calculated annually without compounding²; or (2) fifty-percent (50%) of the average annual increase in AMI, annualized over the period of Owner's ownership of the Unit, from the date the Owner acquired ownership of the Unit to the date of the listing of the Unit for resale by YVHA, which percentage shall be calculated annually without compounding³ ; and
- iii. Plus the cost of Qualified Capital Improvements, except that the increase to the Maximum Resale Price due to Qualified Capital Improvements shall not exceed one-percent (1%) of the Original Purchase Price per year of ownership.⁴

Qualified Capital Improvements means those improvements to the Unit performed by the Owner, which qualify for inclusion in the preceding paragraph, as set forth in the *Brown Ranch Qualified Capital Improvements Rules* maintained by YVHA, and as may be amended from time-to-time, and which will be published on the YVHA website.

No Owner-Seller shall permit any prospective buyer to assume any or all of the Owner's customary closing costs or accept any other consideration which would cause an increase in the Purchase Price above the Maximum Purchase Price.

The Maximum Purchase Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of the Unit. YVHA, as listing broker, will use commercially reasonable efforts to sell the Unit for the Maximum Purchase Price. However, market conditions, the condition of the Unit, etc., may preclude a sale at the Maximum Purchase Price. Failure by YVHA to obtain a sale for the Maximum Purchase Price does NOT entitle the Owner to seek to sell the Unit via any other method than the method prescribed herein.

² For example: If the Original Purchase Price of a Unit is \$100,000, at the end of Year 1 the Unit could be sold for a maximum of \$102,000. At the end of Year 2, the Unit could be sold for a maximum of \$104,000, and at the end of Year 5, the Unit could be sold for a maximum of \$110,000.

³ For example: An owner purchases their Unit for \$100,000, and sells the Unit at the end of Year 5. The average annual increase in AMI over those five years was 10%. The maximum the Unit could be sold for would be \$125,000 (a simple five-percent (5%) annual increase from the original purchase price).

⁴ For example: An owner purchases their Unit for \$100,000, and sells the Unit at the end of Year 5. The owner installed \$10,000 in capital improvements to the Unit in those 5 years. The Unit could be sold for a maximum of \$105,000 (\$5,000 being 1% of the original purchase price over 5 years).

3.3. Maintenance Responsibilities. Each Owner shall be responsible for ensuring that the Unit is in good condition at the time of resale, with reasonable wear and tear acceptable. This obligation includes all matters which are in the control and responsibility of an Owner, and includes, but is not limited to cleaning the Unit and making necessary improvements to repair and maintain plumbing and mechanical fixtures, appliances, carpet or other flooring, roofs, painting and other similar items in good working order and condition, the Unit must contain all of the appliances that originally came with the Unit, of similar quality, and there must be no outstanding health or safety code violations.

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

ARTICLE IV SALES AND REALES COMPLIANCE

4.1. Compliance. Any sale, transfer, and/or conveyance of a Unit **SHALL BE WHOLLY NULL AND VOID AND SHALL CONFER NO TITLE WHATSOEVER** upon the purported transferee unless there is recorded the real property records of the Routt County Clerk & Recorder, along with the instrument of conveyance, a completed copy of the *Acceptance of Brown Ranch Community Affordability Agreement, Residential Housing Restrictive Covenant, and Notice Of Lien, and Approval of Conveyance*, in the form recorded at Reception No. _____ in the real property records of the Routt County Clerk and Recorder, executed by the transferee(s) and acknowledged by a notary public, and bearing the acknowledged signature of an authorized representative of YVHA.

Each sales contract for a Unit shall also (a) recite that the proposed purchaser has read, understands, and agrees to be bound by the terms of this Restriction; and (b) require the proposed purchaser to submit such information as may be required by YVHA under its rules and regulations or policies adopted for the purpose of ensuring compliance with this Restriction.

4.2. Non-Compliance. If a Unit is sold, resold, transferred and/or conveyed without compliance with this Restriction, YVHA shall have the remedies set forth herein, including, but not limited to, the rights set forth in Section 7.3 (Forced Sale for Violations). Except as otherwise provided herein, every conveyance of a Unit, for any purpose, shall be deemed to include and incorporate the terms and conditions of this Restriction.

4.3. Liquidated Damages for Noncompliant Transfers. The parties acknowledge and agree that in the event that an Owner Transfers a Unit in violation of this Restriction, the determination of actual monetary damages to YVHA would be difficult to ascertain. Therefore, YVHA and Owner hereby agree that liquidated damages shall be calculated and applied in the event an Owner Transfer a Unit in violation of this Restriction. The amount of liquidated damages shall be the amount of consideration given to Owner in relation to the Transfer, less the then applicable Maximum Purchase Price. In the event of a transfer or conveyance of a Unit which violates the terms of this Restriction, both the grantor and grantee shall be jointly and severally liable for any damages and costs due under this Agreement. The foregoing is in addition to any other relief or remedy YVHA may have be entitled to, either pursuant to this Restriction, under the laws of the State of Colorado or otherwise, and shall not preclude YVHA from enforcing this Restriction against any Non-Qualified Transferee who acquired title to a Unit in violation of this Restriction.

ARTICLE V OWNERSHIP RULES & RESTRICTIONS

- 5.1. Ownership Requirement.** Ownership of a Unit is hereby limited exclusively to individual(s), who, at the time they acquired title to the Unit, was a Qualified Owner approved by YVHA.
- 5.2. Ownership Interest By Inheritance.** Any person who acquires title or ownership of a Unit, in whole or part, through inheritance, shall within 30 days of acquiring title or ownership notify YVHA of the same. The Owner-by-inheritance may request a determination from YVHA as to whether they meet the requirements to be a Qualified Owner of the Unit (meeting Resident and Income Eligible requirements for the Unit), and submit such information as may be required by YVHA under its rules and regulations or policies to make that determination. The Owner-by-inheritance shall have twelve (12) months from the date which they acquired title or ownership of the Unit to meet the requirements of a Qualified Owner. If the Owner-by-inheritance has not been approved by YVHA as a Qualified Owner during that twelve (12) month period, and the Owner-by-inheritance has not otherwise had YVHA list the Unit for resale pursuant to Article III, YVHA may sell the Unit as provided for in Section 7.3 (Forced Sale For Violations), in addition to any other remedies YVHA may have hereunder. Until such time as the Owner-by-inheritance is determined by YVHA to be a Qualified Owner, the Owner-by-inheritance will not occupy the Unit. Until such time as the Owner-by-inheritance is approved as a Qualified Owner, there will be an appreciation pause for the Unit, where the allowable annual rate of increase to the Maximum Purchase Price is suspended.
- 5.3. Ownership Interest in Other Residential Property.** If at any time an Owner also owns any interest, alone or in conjunction with others, in any other developed residential property in the State of Colorado, the Owner shall immediately list such

other property interest for sale and sell his or her interest in such property. If said other property has not been sold by the Owner within one hundred eighty (180) days of its listing required hereunder, then the Owner shall immediately list the Property for resale pursuant to the Article III. In the case of an Owner whose business is the construction and sale of residential properties, the properties which constitute inventory in such Owner's business shall not constitute "other developed residential property" as that term is used in this Article.

- 5.4. Additional Financing and Refinancing Restriction.** An Owner shall not encumber a Unit, exclusive of interest, in any form(s) which exceeds, in total, at any time, an amount in excess 95% of the Purchase Price.
- 5.5. Owner Insurance Requirements.** Each Owner shall maintain, with a generally accepted insurance carrier, property insurance insuring against loss or casualty of the Unit by fire or hazards included within the term "extended coverage" in an amount equal to the replacement costs of returning the Unit to its condition prior to the loss. YVHA shall have the right, but not the obligation, to request proof of insurance and/or continued coverage limits from the Owner by written request, at any such time(s) as YVHA deems appropriate. Insurance proceeds shall be applied to restoration or repair of the Unit damaged, provided such restoration or repair is economically feasible and the security of any existing deed of trust or mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of an existing deed of trust would be impaired, the insurance proceeds shall be applied to the sums secured by the deed of trust, with the excess, if any, paid to Owner.

So long as a Homeowners Association maintains a "master" or "blanket" policy for the entire condominium project which the Unit is in, which provides insurance coverage for the amounts and against the losses specified in the preceding paragraph, YVHA waives the provisions of the preceding paragraph.

ARTICLE VI USE RULES & RESTRICTIONS

- 6.1. Occupancy.** Except as otherwise provided in this Restriction, a Unit shall be occupied solely as the principal place of residence of the Owner, along with his or her Dependents. If the Owner ceases to occupy the Unit as their principal place of residence for a period of more than ninety (90) consecutive days (as reasonably determined by YVHA), and the Owner has not otherwise had YVHA list the Unit for resale pursuant to Article III, YVHA may sell the Unit as provided for in Section 7.3 (Forced Sale For Violations), in addition to any other remedies YVHA may have hereunder.

An Owner who has established the Unit as his or her principal place of residence shall not be considered to have ceased occupancy of the Unit during any period of time the Owner is serving on active duty with the United States Armed Services.

6.2. Exceptions to Occupancy Requirements. The Owner of a Unit may request an exception to Section 7.1 through the following process:

- A. The Owner requesting an exception must provide a narrative explaining the need for the exception (e.g., a temporary relocation to care for an ill family member, a temporary work relocation) as well as written evidence confirming the reason for the request.
- B. The decision regarding the request for an exception to the occupancy requirements of this Restriction shall be made by YVHA within thirty (30) days of the completed application submittal with supporting information.
- C. YVHA may, in its sole discretion, grant an exception to the occupancy requirement of this Restriction upon finding that the circumstances justify granting the exception and that strict application of the occupancy requirements would result in a significant hardship on the Owner.

If the exception is granted, YVHA may impose specific conditions of approval, and shall fix the duration of the term of such exception.

6.3. Rentals. Under no circumstances shall a Unit, or any part thereof, be used as a Short-Term Rental. Under no circumstances shall an entire Unit be wholly leased or rented, including for a long-term rental. If an Unit, or any portion thereof, is leased or rented in violation of this Restriction, such rental or lease shall be wholly null and void and shall confer no right or interest whatsoever to or upon the purported tenant or lessee.

Provided that the Owner continues to reside in the Unit on a permanent basis, an Owner may request from YVHA permission to rent additional bedroom(s) within the Unit. The request may be approved or denied in YVHA's sole discretion.

Any rental approved by YVHA shall be to a Resident, and at or below the rent rates set in the *Brown Ranch Bedroom Rental Rates Rules* maintained by YVHA, and as may be amended from time-to-time, and which will be published on the YVHA website.

Any tenancy will be required to use a YVHA-approved form Lease Agreement, and be for a period of at least six (6) months. A single bedroom may only be rented to one individual, or to a couple. An Owner shall not cause the Unit, through leasing, to exceed the maximum occupancy standards as established by the City.

ARTICLE 7 ENFORCEMENT

7.1. Failure to Comply with Restrictions. If an Owner fails to comply with any of the provisions of this Restriction, YVHA may send a written notice of default and provide the Owner an opportunity to cure the default. The notice provisions are set forth in the *Brown Ranch Covenant Violations Regulations & Penalty Schedule* maintained by YVHA, as may be amended from time-to-time, and which will be published on the YVHA website. If the foregoing schedule is not maintained by YVHA, a minimum of fourteen (14) days notice of default and opportunity to cure is hereby declared to be reasonable and sufficient.

In addition, an Owner who violates the provisions of this Restriction will be liable to YVHA for reasonable monetary penalties, as set forth in the *Brown Ranch Covenant Violation Regulations & Penalty Schedule* maintained by YVHA, as may be amended from time-to-time. This may include an appreciation pause for any Units that are determined to be in violation of this Restriction, where the allowable annual rate of increase to Maximum Purchase Price is suspended during a period when a violation notice has been issued, until such violation has been resolved to the satisfaction of YVHA.

In YVHA has reasonable cause to believe that a violation of this Restriction is occurring, YVHA may inspect the Unit during normal business hours and upon at least twenty (24) hours written notice to the Owner, which may be given by posting notice on the door of the Unit. This Restriction shall constitute permission to enter the Unit during such times and upon such notice, without further consent.

7.2. Relief. In the event of Owner's default under or non-compliance with the terms of this Restriction, YVHA shall have the right to enforce this Restriction by an action for any equitable remedy, including injunction or specific performance or an action to set aside or rescind any sale of a Unit made in violation of this Restriction, as well as pursue an action to recover damages. Any amount due and owing to YVHA shall bear interest at the rate of 12% per annum until paid in full. YVHA shall be entitled to recover any costs related to enforcement of this Restriction including but not limited to attorneys' fees, court filing costs and county recording costs. Any relief provided for in this Section may be sought singly or in combination with such legal remedies as YVHA may be entitled to, either pursuant to this Restriction, under the laws of the State of Colorado or otherwise. The remedies provided herein are cumulative and not exclusive, of all other remedies provided by law.

7.3. Forced Sale For Violations.

A. If a Unit is occupied, vacated, owned, transferred, or leased in violation of this Restriction, or for any other violation of this Restriction, after notice and

opportunity to cure, YVHA may, at its sole discretion, notify an Owner that it must immediately list the Unit for sale. The sale will be conducted as provided for in Article III, except that the real estate sales commission charged by YVHA, or its designated listing affiliate, shall be six percent (6%).

B. The owner shall (1) consent to such sale, conveyance, or transfer of the Unit to a Qualified Owner; (2) execute any and all documents necessary to do so; and (3) otherwise reasonably cooperate with YVHA to take actions needed to accomplish such sale, conveyance or transfer of such Unit. For this purpose, Owner constitutes and appoints YVHA as the Owner's true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions required under this Restriction. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees that all power granted to YVHA under this Covenant may be assigned by it to its successors or assigns.

7.4. Owner agrees to provide, upon request of YVHA or its designee, all documents and information necessary for YVHA to establish continued compliance with this Restriction, including rules and regulations promulgated by YVHA as provided herein. Documents may include, but are not limited to Federal and State Income Tax Returns, W2's, 1099's, and bank statements. YVHA shall maintain the confidentiality of financial information as provided by law.

ARTICLE VIII FORECLOSURE

8.1. **YVHA Option to Buy Upon Foreclosure.** In the event of a foreclosure or acceptance of a deed in lieu of foreclosure by the holder (including assigns of the holder) of the promissory note secured by a first deed of trust on a Unit, and subject to the issuance of a public trustee's deed to the holder following expiration of all statutory redemption rights, or issuance of a deed in lieu of foreclosure to the holder, YVHA or its assigns shall have the option to buy the Unit as provided in the Option to Purchase as recorded in the real property records of the Routt County Clerk & Recorder at Reception No. _____.

Notwithstanding any provision herein to the contrary, except for persons or entities having a valid lien on the Subject Property, only Qualified Owners may acquire an interest in at Unit at a foreclosure sale or in lieu of foreclosure.

Notwithstanding the foregoing, in the event of foreclosure or acceptance of a deed in lieu of foreclosure by the holder (including assigns of the holder) of the promissory note secured by a first deed of trust on a Unit, if the holder of such deed of trust is the grantee under the public trustee's deed or deed in lieu of foreclosure and YVHA

does not exercise its Option to Purchase as provided herein, then the YVHA agrees to release the Unit from the requirements of this Restriction.

It is specifically agreed that nothing contained herein shall require YVHA to release and waive its ability to enforce this Restriction in the event of a foreclosure of a lien secured in second or subsequent position.

8.2. Non-Qualified Transferees. In the event that title to a Unit vests in any individual or entity that is not a Qualified Owner (“Non-Qualified Transferee”) by foreclosure and/or redemption by any lien or mortgage holder (except any holder of a First Mortgage), or by operation of law or any other event, YVHA may elect to notify the Non-Qualified Transferee that it must sell the Unit in accordance with Articles III. A Non-Qualified Transferee shall not occupy the Unit, or sell or otherwise Transfer the Unit except in compliance with Article III. There will be an appreciation pause for any Units owned by a Non-Qualified Transferee, where the allowable annual rate of increase to Maximum Purchase Price is suspended during the term of the Non-Qualified Transferee’s ownership of the Unit.

The Non-Qualified Transferee shall (1) consent to such sale, conveyance, or transfer of the Unit to a Qualified Owner; (2) execute any and all documents necessary to do so; and (3) otherwise reasonably cooperate with YVHA to take actions needed to accomplish such sale, conveyance or transfer of such Unit. For this purpose, Non-Qualified Transferee constitutes and appoints YVHA as the Non-Qualified Transferee’s true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions required under this Restriction. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Non-Qualified Transferee specifically agrees that all power granted to YVHA under this Covenant may be assigned by it to its successors or assigns.

8.3. All liens and other encumbrances recorded of record against the Unit and subsequent to the recording of this Restriction shall be subordinate to terms hereof.

**ARTICLE IX
GENERAL PROVISIONS**

9.1. Section 2 (Miscellaneous Provisions) of the *Definitions & Miscellaneous Provision for the Brown Ranch Community Affordability Agreement* document recorded at Reception No. _____ in the real property records of the Routt County Clerk & Recorder, is hereby incorporated herein by this reference, as if said Section 2 was set forth in full herein.

IN WITNESS WHEREOF, the parties have executed and adopted this Restriction this ___ day of _____, 20__.

Exhibit F

USE COVENANT

THIS USE COVENANT (this "**Covenant**") is made as of the ___ day of _____, 20__ (the "**Effective Date**"), by and between _____, a Colorado limited liability company ("**Project Owner**"), and **YAMPA VALLEY HOUSING AUTHORITY**, a body corporate and politic of the State of Colorado ("**YVHA**").

RECITALS

This Covenant is entered into upon the basis of the following facts, understandings and intentions of the parties:

A. Project Owner is the fee owner of land located in Routt County, Colorado legally described on Exhibit A attached hereto (the "**Property**").

B. YVHA is a multijurisdictional housing authority pursuant to the laws of the State of Colorado with the purpose of planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs pursuant to a multijurisdictional plan in order to provide dwelling accommodations at rental prices or purchase prices within the means of families of low or moderate income living within the jurisdiction of the Authority, and to provide affordable housing projects or programs for employees of employers located within the jurisdiction of the Authority.

C. Project Owner intends to construct an income and residency restricted housing development containing _____ units of rental apartments (each, a "Unit"), on that _____ real property _____ legally described as _____ (the "Project"), with the renderings, drawings, and specifications for construction of which are attached hereto as Exhibit B (the "Plans and Specifications");

D. Project Owner is entering into this Covenant in exchange for YVHA's contribution of the Property to Project Owner.

E. The parties desire to establish the terms and conditions of this Covenant to govern Project Owner's construction of the Project on the Property and otherwise fulfill the foregoing objectives.

COVENANT

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the foregoing recitals are true and correct and incorporated herein by this reference, and further agree as follows:

1. **Property Subject to Covenant; Agreement Binds the Property.** The Use Covenant applies to the Units in the Property throughout the term of this Covenant. This Restriction shall constitute covenants running with title to the Property as a burden thereon, for benefit of, and enforceable by, the YVHA and its successors and assigns, and this Use Covenant shall bind Project Owner and all subsequent Owners of the Property. Each Owner, upon acceptance of a deed to the Property, 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 contained in this Restriction, even without reference to this Restriction in any document of conveyance.

2. **Income and Rent Restriction Set-Asides.**

a. *Income Restrictions.* ___ of the ___ Units will be set aside to households that, on average, earn up to ___ of AMI (as defined below), and ___ of the ___ Units will be set aside to households that, on average, earn up to ___ of AMI (collectively, all such Units, the "**Restricted Units**"). The Unit designations and AMI limits are set forth in Exhibit B.

b. *Income Restrictions for New Tenants.* The income restrictions for the Restricted Units shall be calculated upon initial occupancy. Thereafter, for each new tenant, Project Owner shall ensure compliance with average AMI for the Restricted Units based on the last available information for tenants in the Restricted Units and the new tenant (that is, Project Owner need not obtain new certificates from all tenants in Restricted Units each time a new tenant moves into the Project).

c. *Compliance with Income Restrictions.* To the extent YVHA is not acting as property manager for Project Owner, YVHA shall be entitled to obtain reasonable evidence of annual compliance by Project Owner and

the tenants in the Restricted Units. To the extent a tenant does not comply with income restrictions in a Restricted Unit, Project Owner and YVHA shall work in good faith to effect a cure, as more particularly set forth below.

d. *Initial Rent Restrictions.* The Restricted Units will be initially offered at a maximum of an average rental rate set at the greater of (i) the applicable 20__ AMI Rent Level for the Restricted Units or (ii) the applicable AMI Rent Level for the Restricted Units in the year during which all the Restricted Units are available for rental.

e. *Rent Increases for Renewing Tenants.* On an annual basis for each renewing tenants in the Restricted Units, Project Owner may increase rent on the Restricted Units to an amount equal to not more than the greater of (i) fifty percent (50%) of any increase in the revised AMI Rent Level published by HUD for the applicable year; or (ii) two percent (2%) of existing rent.

f. *Rent for New Tenants.* Project Owner shall set rent for new tenants in the Restricted Units at the greater of: (i) the then applicable AMI Rent Level for said Restricted Unit; or (ii) the rent payable by the previous occupant.

g. *Default and Cure.* In the event Project Owner discovers that an existing tenant no longer complies with the restrictions set forth in this Section 2, Project Owner shall ensure the Project is brought back into compliance within one year, including by causing the tenant in question to physically move out of the Restricted Unit to another development (to the extent permitted by applicable law), or such other action as determined by Project Owner.

h. *Definitions.*

- i. **"AMI"** shall mean the median annual income for Routt County, Colorado, adjusted for household size that is calculated and published annually by the United States Department of Housing and Urban Development ("**HUD**").
- ii. **"AMI Rent Level"** shall mean the maximum allowable rent adjusted for unit size that is calculated and published annually by HUD. For the avoidance of doubt, HUD's

published AMI Rent Level shall be deemed to be exclusive of utility costs, notwithstanding any HUD guidance to the contrary. Therefore, AMI Rent Level as used in this Covenant is not intended to restrict Project Owner from charging the maximum AMI Rent Level and also causing tenants in the Restricted Units to pay their own utility costs. In the event HUD does not publish AMI Rent Level for any specific income percentage level, the AMI Rent Level for such Units shall be calculated by multiplying AMI by said percentage level, dividing the same by twelve (12), and then multiplying the same by 30%.

3. **Workforce Restrictions.** Each of the Restricted Units shall be initially set-aside for households with at least one family member that is employed in Routt County and who reasonably expects to work on a full-time basis within Routt County during the term of the lease, which means being employed at least 1800 hours in a 12-month period (a "**Routt County Employed Tenant**").

a. *Ongoing Workforce Restrictions.* After initial occupancy for each Restricted Unit, Project Owner shall target the Restricted Units for Routt County Employed Tenants; provided, however, that after 15 calendar days of good faith efforts to rent a Restricted Unit to a Routt County Employed Tenant without a successful lease, Project Owner may rent the Restricted Unit to a household without a Routt County Employed Tenant.

b. *Default and Cure.* For the avoidance of doubt, Project Owner shall not be deemed in default if a tenant commits fraud to Project Owner regarding the tenant's status as a household with a Routt County Employed Tenant. In the event a Routt County Employed Tenant changes jobs during the term of its lease and, as a result, the household no longer has a Routt County Employed Tenant, Project Owner has no obligation to attempt to remove or relocate the tenant, other than upon the expiration of the lease term.

4. **Default.** If Project Owner is in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Project Owner under this Covenant, and any such default continues beyond any notice or cure period set forth herein, YVHA will be entitled bring suit for the specific performance this Covenant. The foregoing remedy is in addition to all remedies otherwise provided in this Covenant, or as otherwise

available at law or in equity under the laws of the United States or the State of Colorado.

5. **Notice.** Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either party to the other must be given or communicated in writing by (i) reputable overnight courier service which keeps receipts of deliveries (e.g., Federal Express), (ii) United States certified mail (return receipt requested with postage fully prepaid), (iii) express mail service or (iv) via electronic delivery, provided such delivery is followed by one of the foregoing methods of delivery, addressed to the other party as follows:

OWNER:

with a copy to:

MANAGER: Yampa Valley Housing Authority
Attn: Jason Peasley
2100 Elk River Road
Steamboat Springs, CO 80477

with copy to: Elevation Law Group, P.C.
attn: George M. Eck III
P.O. Box 770908
Steamboat Springs, CO 80487

or at such other address as may be specified from time to time in writing by either party. All such notices hereunder will be deemed to have been given on the date delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark will be deemed the date notice has been given.

YVHA will provide notice to any mortgagee, to the extent YVHA has been made aware of the mortgagee's interest in the Property. YVHA will accept any cure proffered by a mortgagee or by a member of Project Owner in the same manner as if proffered directly by Project Owner.

6. **Term; Amendment.** This Covenant shall be perpetual, provided, however, the parties shall work together in good faith to ensure the Property is financeable to lenders and investors, such that Project Owner is able to construct and operate the Project with the Restricted Units. To that

end, the parties agree to consider modifications requested by the other party, including, without limitation, with respect to clarifications related to income averaging, setting rent amounts, and compliance. The parties may also agree to terminate this Covenant by mutual assent, in each party's sole discretion.

7. Recording And Filing; Covenant Running With The Land.

a. This Covenant is to be recorded in the real property records of Routt County, Colorado.

b. Project Owner and YVHA agree that all of the requirements of the State of Colorado which must be satisfied for the provisions of this Covenant to constitute a restrictive covenant running with the land are deemed to be fully satisfied. All requirements of privity of estate are intended to be satisfied, or in the alternative, an equitable servitude is created to ensure that these restrictions run with the land. During the term of this Covenant, each and every material contract, deed or other instrument executed relating to the Property will expressly provide that such contract, deed or instrument is subject to this Covenant. However, the covenants contained in this Covenant survive and will continue to be effective as to successors and assigns of all or any portion of the Property regardless of whether such contract, deed or other instrument provides that it is subject to this Restrictive Covenant.

c. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Covenant shall be unlawful or void for violation of: (1) the rule against perpetuities or some analogous statutory provision; (2) the rule restricting restraints on alienation; or (3) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of (x) the term of this Restriction, or (y) the period of the lives of the current duly elected and seated board of directors of YVHA, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

8. Partial Invalidity. If any provision of this Covenant or the application thereof to any person or circumstance is, to any extent, held to be invalid, the remainder of this Covenant or the application of such provision to persons or circumstances other than those as to which it is held invalid will not be affected thereby, and each provision of this Covenant will be valid and enforceable to the fullest extent permitted by law.

9. **Interpretation.** In interpreting this Covenant in its entirety, any additions written or typed thereon will be given equal weight, and there will be no inference, by operation of law or otherwise, that any provision of this Covenant will be construed against either party hereto. This Covenant will be construed without regard to any presumption or other rule requiring construction against the parties causing this Covenant to be drafted.

10. **Headings, Captions and References.** The section captions contained in this Covenant are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof," "hereunder," and "herein" will refer to this Covenant as a whole, inclusive of the Exhibits, except when noted otherwise. The terms "include," "includes," and "including" incorporate the meaning "without limitation." The use of the masculine or neuter genders herein includes the masculine, feminine, and neuter genders, and the singular form includes the plural when the context so requires.

11. **Governing Law.** This Covenant will be construed under the laws of the State of Colorado.

12. **Execution of Documents.** Project Owner and YVHA will each cooperate with the other and execute such documents as the other party may reasonably require or request so as to enable it to conduct its operations, so long as the requested conduct or execution of documents does not derogate or alter the powers, rights, duties, and responsibilities of the respective parties.

13. **Counterparts.** For the convenience of the parties, this Covenant may be executed in one or more counterparts, and each executed counterpart will for all purposes be deemed an original and will have the same force and effect as an original, but all of such counterparts together will constitute in the aggregate but one and the same instrument. Any electronic counterpart of this Covenant will be deemed to be an original.

14. **Assignment.** The rights and interests of YVHA pursuant to this Covenant may be assigned by YVHA, in whole or in part, by an instrument in writing signed by YVHA and recorded in the Routt County, Colorado real property records. In addition, the rights and interests of YVHA pursuant to this Covenant shall automatically transfer to any entity or organization succeeding to all or substantially of the property and assets of YVHA.

15. **Attorneys' Fees.** If any action is commenced between the Parties concerning this Agreement or for the enforcement of rights and duties of any Party

pursuant to this Agreement, the court shall award the substantially prevailing Party in the action its reasonable attorneys' fees in addition to any other relief that may be granted.

16. **No Subleasing.** The Project Owner shall cause the property manager to include in any leasing agreement with residents that no subleases shall be permitted without the express written consent of the Project Owner, in its sole and absolute discretion. The Project Owner shall not agree to such sublease provisions as a matter of course but only in the case of extreme hardship (i.e., the tenant is relocating outside of Routt County).

[Signature Pages Follow]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

UNIT DESIGNATIONS & AMI LIMITS