

**DEED RESTRICTION  
LOT 3A, CLEVELAND PLACE II SUBDIVISION  
TOWN OF CARBONDALE**

**DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE  
SALE, OCCUPANCY AND RESALE OF LOT 3A, CLEVELAND PLACE II  
SUBDIVISION, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO**

THIS DECLARATION OF MASTER DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY AND RESALE OF LOT 3A, CLEVELAND PLACE II SUBDIVISION, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO ("Agreement") is made and entered into this 9th day of April, 2014, by 211 Eighth LLC, a Colorado limited liability company, and/or its successors and assigns (the "Declarant"), by and through Timothy C. Yeager, acting as court-appointed receiver for 211 Eighth LLC, a Colorado limited liability company pursuant to that Order for Appointment of Receiver issued by the Garfield County District Court in Case No. 2012CV239 on November 8, 2012, for the benefit of the parties and enforceable by the Garfield County Housing Authority ("GCHA"), a duly constituted housing authority established pursuant to Colorado law, its successor or agent, and the Board of Trustees of the Town of Carbondale, Colorado (the "Town").

**RECITALS AND DEFINITIONS**

A. Declarant is the owner of an existing townhome unit located upon Lot 3A, Cleveland Place II Subdivision, Town of Carbondale, pursuant to the Final Plat thereof recorded in the real property records of Garfield County Colorado on July 31, 2007, Reception No. 729236 (the "Unit"); and

B. In consideration of, among other things, the unconditional release of a prior Deed Restriction against other properties that was recorded on October 17, 2008 at Reception No. 757370, Declarant desires to permanently deed restrict the Unit for the purpose of providing affordable housing for residents of the Roaring Fork Valley in Colorado; and

C. The Unit shall only be conveyed to "Qualified Buyers" as that term is defined in this Agreement; and

D. The term "Qualified Buyers," as used herein, means natural persons who are employed a minimum of 30 hours per week by a business with operations within the "Area of Eligibility" as defined in the Community Housing Guidelines, whose Household Incomes do not exceed 100% of the Garfield County Area Median Income or "AMI" (provided that the initial purchaser of the Property following recordation of this Deed Restriction may have a Household Income of up to 130% AMI so long as the initial gross sales price of the Property does not exceed \$258,400.00), and who otherwise satisfy the other qualifications contained in Carbondale Community Housing Guidelines in effect on January 1, 2013 (the "Guidelines"), who must represent and agree pursuant to this Agreement to occupy the Unit as their sole place of residence for a minimum of nine (9) months per year, which occupancy shall commence within

sixty (60) days after purchase of the Unit, not engage in any business activity within the Unit other than that permitted in that zone district or by applicable ordinance, and not sell or otherwise transfer the Unit for use in a trade or business.

E. The term "Owner," as used herein shall mean the Qualified Buyer(s) who acquire(s) an ownership interest in a Unit in compliance with the terms and provisions of this Agreement, it being understood that such person(s) shall be deemed an "Owner" hereunder only during the period of his, her or their ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period; and

F. All capitalized terms used in this Agreement shall be defined as set forth herein or in the Guidelines.

NOW, THEREFORE, for value received, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares, covenants, and agrees as follows:

## SECTION 1 DECLARATION

1.1 For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares that the Unit shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered and enjoyed subject to the covenants, conditions, restrictions, privileges, rights and other provisions herein set forth, for the duration hereof, and all of which shall run with the land and be binding upon all Owners, occupants and other persons having or acquiring any right, title or interest in or to the Unit, and their respective heirs, personal representatives, successors and assigns and shall be binding upon and inure to the benefit of the Town, and their respective successors and assigns. All persons who purchase the Unit shall be Qualified Buyers, as such term is defined in this Agreement.

1.2 Declarant hereby restricts the acquisition or transfer of the Unit to Qualified Buyers. In addition, Declarant agrees that this Agreement shall constitute a resale agreement setting forth the maximum resale price for which the Units may be sold ("Maximum Resale Price"), the amount of appreciation, and the terms and provisions controlling the resale of the Units. Declarant restricts the Unit against use and occupancy inconsistent with the terms of this Agreement.

1.3 By the acceptance of any deed conveying the Unit subject hereto, the grantee of such deed shall accept all of the terms, conditions, limitations, restrictions and uses contained in this Agreement. In addition, prior to the delivery of a deed conveying the Unit to a grantee, such grantee shall execute a Memorandum of Acceptance evidencing grantee's acknowledgment and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement. A form of Memorandum of Acceptance is attached hereto as **Exhibit A**.

1.4 Notwithstanding any provision of this Agreement to the contrary, it is expressly agreed and acknowledged that the terms, conditions, and restrictions of this Agreement with respect to the use and occupancy of the Unit thereof shall not apply to Declarant during its ownership thereof following the issuance of a Certificate of Occupancy for the Unit, provided,

however, that the Declarant shall make no transfer of the Unit except to a Qualified Buyer as defined in this Agreement.

## SECTION 2 USE AND OCCUPANCY OF THE UNIT

2.1 Except as otherwise provided herein, the use and occupancy of the Unit shall henceforth be limited exclusively to housing for natural persons who meet the definition of Qualified Buyer(s) and their families.

2.2 An Owner, in connection with the purchase of a Unit, must: (a) occupy the Unit as his or her sole place of residence during the time that such Unit is owned; (b) not engage in any business activity on or in such Unit, other than as permitted in that zone district or by applicable ordinance; (c) satisfy the residency and employment requirements of the Guidelines; and (d) sell, convey, or otherwise transfer such Unit only in accordance with this Agreement and the Guidelines.

## SECTION 3 SALE OF UNIT; MAXIMUM RESALE PRICE

3.1 The initial gross sales price of the Unit shall not exceed \$258,400.00. In the event that an Owner subsequently desires to sell the Unit, the Owner shall consult with the GCHA, or its agent, to review the requirements of this Agreement, including the method for determining the Maximum Resale Price. Following approval of the Maximum Resale Price by the GCHA, the Owner shall list such unit for sale with the GCHA, or as otherwise provided in the Guidelines then in effect, for a sales price not exceeding the Maximum Resale Price. GCHA may charge a fee for its services in connection with resale in the amount of 1.5% of the actual Resale Price. In order to be able to offer the Unit for sale at the Maximum Resale Price, the Unit must be reasonably clean, all fixtures must be in working condition and any damage to the Unit beyond normal wear and tear must be repaired. If these conditions are not satisfied, GCHA may require that the Owner agree to escrow at closing a reasonable amount to achieve compliance with these requirements or reduce the Maximum Resale Price accordingly.

3.2 In no event shall the Unit be sold for an amount in excess of the Maximum Resale Price as determined in accordance with this paragraph. The Maximum Resale Price shall equal the purchase price for the Unit paid by the Owner selling the Unit divided by the West Region, Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100), not seasonally adjusted, published by the U.S. Department of Labor, Bureau of Labor Statistics ("Consumer Price Index"), published at the time of Owner's purchase as stated on the settlement sheet, multiplied by the Consumer Price Index current at the date of intent to sell, plus the cost of Permitted Capital Improvements as defined on **Exhibit B** attached hereto and incorporated herein by this reference (and as limited in paragraph 3.3 hereof). For the purposes of this subsection, "date of intent to sell" shall be the date of execution of a listing contract, or if a listing contract is not used, the date shall be the date when the Unit is first offered for sale. In no event shall the Maximum Resale Price be less than the Owner's purchase price, plus an increase of three percent (3%) simple interest of such price per year from the date of purchase to the date of Owner's notice of intent to sell, prorated by simple interest for each whole month for any part of the year, plus Permitted Capital Improvements. The full amount of any monetary grant from a



federal, state or local government sponsored or administered housing assistance program received by a Qualified Buyer which is utilized to pay a portion of the purchase price for a Unit which the Qualified Buyer is not obligated to repay shall not be included for the purpose of determining the Maximum Resale Price.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE DECLARANT, THE GCHA OR THE TOWN THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

3.3 In order to qualify as Permitted Capital Improvements, the Owner must furnish to the Town or GCHA the following information with respect to the improvements which the Owner seeks to include in the calculation of Maximum Resale Price:

- a. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements; and
- b. Owner's affidavit verifying that the receipts tendered are valid and correct; and
- c. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town with respect to the Permitted Capital Improvements. Notwithstanding anything else contained herein, the total cost of Permitted Capital Improvements shall not exceed ten percent (10%) of the initial sales price of that particular unit.

3.4 For the purpose of determining the Maximum Resale Price in accordance with this Section, the Owner may also add to the amounts specified in **subsection 3.2**, the cost of any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency, provided that written certification is provided to the Town or GCHA of both the applicable requirement and the information required by **subsection 3.3**.

3.5 In calculating the costs under **subsections 3.2 and 3.3** only the Owner's actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to Owner's "sweat equity" or to any appreciation in the value of the improvements.

3.6 An Owner shall not permit any prospective buyer to assume any or all of the Owner's customary closing costs nor accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer. Such other consideration include, among other things, any non-cash incentives to consummate a sale, including any options, rights of first refusal, or other pre- or post-closing commitments by buyer to seller in addition to and other than payment of the Maximum Sales Price at closing.

3.7 Prior to Owner entering into a sales contract for the Unit to a prospective buyer, such potential buyer shall be qualified by the Town or GCHA pursuant to the requirements of the Guidelines then in effect. Documented proof of qualification shall be provided by the potential buyer, as requested by the Town or GCHA, prior to purchase. An Owner shall neither enter into

a sales contract for the sale of the Unit with any person other than a Qualified Buyer nor any contract which provides for a sales price greater than the Maximum Resale Price established in accordance with this Section. The Owner may reject any and all offers; provided, however, offers in excess of the Maximum Resale Price shall be rejected. Prior to closing, all sales contracts for the sale of the Unit subject to this Agreement shall be submitted to the Town or GCHA for review and approval of the contract for consistency with this Agreement.

3.8 In the event that title to the Unit vests in individuals or entities who are not Qualified Buyers as that term is defined herein (hereinafter referred to as "Non-Qualified Transferee(s)"), and such individuals are not approved as Qualified Buyers within thirty (30) days after obtaining title to the Unit, in the manner described in this Section, the Unit shall immediately be listed for sale or advertised for sale by the Non-Qualified Transferee(s) in the same manner as provided for Owners in **subsection 3.1** above; provided such action does not otherwise conflict with applicable law. The highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, whichever is less, which satisfies all obligations under any existing first lien deed of trust or mortgage, shall be accepted. If all such bids are below the lesser of ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Unit shall continue to be listed for sale or advertised for sale by the Non-Qualified Transferee(s) until a bid in accordance with this subsection is made, which bid must be accepted. The cost of any appraisal shall be paid by the Non-Qualified Transferee(s). In the event the Non-Qualified Transferee(s) elect to sell the Unit without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the subject Unit for sale in a manner approved by the GCHA and shall use due diligence and make all reasonable efforts to accomplish the sale of the Unit. In the event the GCHA finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, the GCHA may require the Non-Qualified Transferee(s) to execute a standard listing contract on forms approved by the Colorado Real Estate Commission, or its successor, with a licensed real estate broker or agent.

a. Non-Qualified Transferee(s) shall join in any sale, conveyance or transfer of the Unit to Qualified Buyer(s) and shall execute any and all documents necessary to effect such conveyance.

b. Non-Qualified Transferee(s) shall not: (1) occupy the Unit; (2) rent all or any part of the Unit, except in strict compliance with **Section 5** hereof; (3) engage in any other business activity on or in the Unit; (4) sell, convey or otherwise transfer the Unit except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Unit for use in a trade or business.

c. Where the provisions of this **subsection 3.8** apply, the Town or GCHA may require the Non-Qualified Transferee(s) to rent the Unit in the same manner as provided for Owners in **Section 5**, below.

d. Until sale to a Qualified Buyer is effected, Non-Qualified Transferee(s) shall comply with all obligations of Owners set forth in this Agreement.

## SECTION 4 OWNER RESIDENCY REQUIRED

4.1 The Unit shall be utilized only as the sole and exclusive place of residence of an Owner.

4.2 In the event an Owner ceases to utilize the Unit as his sole and exclusive place of residence, the Unit shall be offered for sale pursuant to the provisions of **subsection 3.8** of this Agreement. The Owner shall be deemed to have ceased utilizing the Unit as his sole and exclusive place of residence by becoming a resident elsewhere or by residing on the Unit for fewer than nine (9) months per calendar year without the express written approval of the GCHA. Where the provisions of this **subsection 4.2** apply, the GCHA may require the Owner to rent the Unit in accordance with the provisions of **Section 5**, below.

4.3 If an Owner of the Unit must leave the Area of Eligibility for a limited period of time, and desires to rent the Unit during such absence, a leave of absence may be granted by the GCHA for up to one (1) year upon clear and convincing evidence demonstrating a bona fide reason for leaving and a commitment to return to the Area of Eligibility. A letter must be sent to the GCHA at least thirty (30) days prior to leaving, requesting permission to rent the Unit during the leave of absence. Notice of such intent, and the ability to comment, shall be provided to any applicable homeowners' association at the time of request to the GCHA. The leave of absence shall be for one (1) year and may, at the discretion of the GCHA, be extended for an additional one (1) year; but in no event shall the leave exceed two (2) years. The Unit may be rented during the one (1) or two (2) year period in accordance with **Section 5**, below.

## SECTION 5 RENTAL OF UNIT

5.1 An Owner may not, except with prior written approval of the GCHA, and subject to the GCHA's conditions of approval, rent the Unit. Prior to occupancy, any tenant must be approved by the GCHA in accordance with the income, occupancy and all other qualifications established by the GCHA in the Guidelines. The GCHA shall not approve any rental if such rental is being made by Owner to utilize the Unit as an income-producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the GCHA prior to occupancy by any tenant. The maximum rental amount under any such lease approved by the GCHA shall be "Owner's cost" prorated on a monthly basis. "Owner's cost," as used herein, includes the monthly expenses for the cost of principal and interest payments, taxes, property insurance, homeowner's assessments, utilities remaining in Owner's name, plus an additional Twenty Dollars (\$20) per month and a reasonable (refundable) security deposit. The requirements of this subsection shall not preclude the Owner from sharing occupancy of a Unit with non-owners on a rental basis, provided Owner continues to meet the obligations contained in this Agreement, including **Section 4**.

5.2 NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE THE TOWN OR GCHA TO PROTECT OR INDEMNIFY THE OWNER AGAINST ANY LOSSES ATTRIBUTABLE TO THE RENTAL, INCLUDING (NOT BY WAY OF LIMITATION) NON-PAYMENT OF RENT OR DAMAGE TO THE PREMISES; NOR TO REQUIRE THE

GCHA TO OBTAIN A QUALIFIED TENANT FOR THE OWNER IN THE EVENT THAT NONE IS FOUND BY THE OWNER.

## SECTION 6 BREACH OF AGREEMENT; OPPORTUNITY TO CURE

6.1 In the event that the Town or GCHA has reasonable cause to believe the Owner is violating the provisions of this Agreement, either, by their authorized representative, may inspect the Unit 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.

6.2 In the event a violation of this Agreement is discovered, the Town or GCHA may, after a review of the evidence of a breach and a determination that a violation may have occurred, send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing by GCHA within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement. If a hearing is held before the GCHA, it shall be conducted in accordance with the hearing procedures set out in **Section 7**, below, and the decision of the GCHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

6.3 The failure of the Town or GCHA to insist upon the strict and prompt performance of any of the terms, conditions and restrictions of this Agreement shall not constitute or be construed as a waiver or relinquishment of the Town's or GCHA's right or rights thereafter to enforce any term, condition or restriction and the same shall continue in full force and effect.

## SECTION 7 GRIEVANCE PROCEDURES

7.1 A grievance is any dispute that a tenant or Owner may have with the Town or GCHA with respect to action or failure to act in accordance with the individual tenant's or Owner's rights, duties, welfare, or status. A grievance may be presented to a special review committee established by the Town and GCHA (hereinafter referred to as the "Committee" under the following procedures).

7.2 Filing a Grievance.

a. Any grievance must be presented in writing to the Committee. It may be simply stated, but shall specify the particular ground(s) upon which it is based; the action requested; and the name, address, and telephone number of the complainant, and similar information about his/her representative, if any.

b. Upon presentation of a written grievance, a hearing before the Committee shall be scheduled as soon as reasonably practical. The matter may be continued at the discretion of the Committee. The complainant shall be afforded a fair hearing providing



the basic safeguard of due process, including notice and an opportunity to be heard in a timely, reasonable manner.

c. The complainant and the Committee shall have the opportunity before the hearing, and at the expense of the complainant, to examine and to copy all documents, records, and regulations of the Town that are relevant to the hearing. Any document not made available after written request may not be relied upon at the hearing.

d. The complainant may be represented by counsel at their own expense.

### 7.3 Conduct of the Hearing.

a. If the complainant fails to appear at the scheduled hearing, the Committee may make a determination to postpone the hearing or make a determination based upon the written documentation and the evidence submitted.

b. The hearing shall be conducted by the Committee as follows: oral or documentary evidence may be received without strict compliance with the rules of evidence applicable to judicial proceedings.

c. The right to cross-examine shall be at the discretion of the Committee and may be regulated by the Committee as it deems necessary for a fair hearing.

d. Based on the records of proceedings, the Committee will provide a written decision and include therein the reasons for its determination. The decision of the Committee shall be binding on the Town and GCHA which shall take all actions necessary to carry out the decision.

## SECTION 8 REMEDIES

8.1 This Agreement shall constitute covenants running with the Unit, as a burden thereon, for the benefit of, and shall be specifically enforceable by the GCHA, the Town, and their respective successors and assigns, as applicable, by any appropriate legal action, including, but not limited to, specific performance, injunction, reversion, or eviction of non-complying Owners and/or occupants.

8.2 In the event the parties resort to litigation with respect to any or all provisions of this Agreement, should the Town or GCHA prevail in such proceeding, the Town or GCHA shall be entitled to recover damages and costs, including reasonable attorney's fees.

8.3 In the event of any sale, transfer or conveyance of the Unit thereof in violation of this Agreement, such sale, transfer or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee(s). Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.



8.4 In the event that the Owner or occupant fails to cure any breach, the Town or GCHA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of the Unit by Owner as specified in **subsection 3.8**. The costs of such sale shall be taxed against the proceeds of the sale with the balance being paid to the Owner.

8.5 In the event of a breach of any of the terms or conditions contained herein by the Owner, his heirs, successors or assigns, the Owner's purchase price of the Unit as referred to in **Section 3** of this Agreement shall, upon the date of such breach as determined by the Town or GCHA, automatically cease to increase as set out in **Section 3** of this Agreement, and shall remain fixed until the date of cure of said breach.

## SECTION 9 DEFAULT/FORECLOSURE

9.1 The Owner may only finance its initial purchase of the Unit with a loan in an amount which does not exceed 97% of the purchase price from an Institutional Lender which is secured by a First Deed of Trust. For the purpose of this limitation and as the terms are used in this Agreement, an "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 estate and a "First Deed of Trust" means a deed of trust or mortgage which is recorded senior to any other deed of trust or lien against the unit to secure a loan used to purchase the Unit. The Owner may only refinance a loan secured by a First Deed of Trust so long as the total amount of such refinancing does not exceed 97% of the Maximum Resale Price in effect at the time of such refinancing and only if the lender is an Institutional Lender. The total debt of an Owner secured by the Unit, including the First Deed of Trust, shall not exceed 97% of the Maximum Resale Price in effect at the time that the security interest is created.

9.2 The Town is authorized to negotiate, execute and record such consents or agreements as it may deem necessary which have the affect of subordinating this Agreement to the terms of a First Deed of Trust in order to facilitate favorable financing for the benefit of a qualified buyer of the Unit.

9.3 It shall be a breach of this Agreement for Owner to default in the payment or other obligations due or to be performed under a promissory note secured by any deed of trust encumbering the Unit, including the First Deed of Trust, or to breach any of Owner's duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for Owner to default in the payment of real property taxes or obligations to the Cleveland Place II Homeowners Association for general or special assessments. Owner must notify GCHA and the Town, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five (5) calendar days of Owner's notification from lender, or its assigns or within five (5) calendar days of Owner's notification from any other creditor specified herein, of any default, past due payment or breach.

9.4 Upon notification of a default as provided in **Section 9.3**, above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available, and the Town is entitled to require the Owner to sell the Unit in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of the Unit, Owner shall, immediately upon request, execute a standard Listing Contract with GCHA on forms approved by the Colorado Real Estate Commission providing for ninety (90) day listing period. GCHA shall promptly advertise the property for sale by competitive bid to Qualified Buyers. In the event of a listing of the Unit pursuant to this subsection, GCHA and/or the Town are entitled to require the Owner to accept a qualified bid for the Maximum Resale Price or, if none are received, to accept a qualified bid for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner's financial obligations pursuant to the promissory note or notes secured by the First Deed of Trust and any junior deeds of trust. The Listing Contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale pursuant to **Section 3** of this Agreement.

9.5 Upon receipt of any notice of default by Owner, whether the notice described in **Section 9.3**, above, or otherwise, the Town shall have the right, but not the obligation, in its sole discretion, to cure the default or any portion thereof. In that event, the Owner shall be personally liable to the Town for any payments made by it on the Owner's behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of the Town incurred in curing the default, including reasonable attorney's fees. The Owner shall be required by the Town to execute a promissory note to be secured by a junior deed of trust encumbering the Unit in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Unit. Otherwise, Owner's indebtedness to the Town shall be satisfied from the Owner's proceeds at closing upon sale of the Unit. The provisions of this **Section 9.5** are not subject to the provisions of **Section 9.1** limiting the amount of secured indebtedness.

9.6 The Town shall be a "person with an interest in the property....." as described in CRS 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in CRS 38-38-103(1)(a). And, as a "contract vendee" pursuant to CRS 38-38-104(1)(d), the Town shall be entitled to cure any default which is the basis of a foreclosure action in accordance with CRS 38-38-104 *et seq.* Upon filing with the Public Trustee of Garfield County of a Notice of Election and Demand for Sale ("NED") pursuant to CRS 38-38-101(4) by the holder of the First Deed of Trust, the Town shall have the right and option, but not the obligation, exercisable in the Town's sole discretion, to purchase the Unit for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Unit (including interest, late fees, penalties, costs and other fees and reimbursement due to lender) to be assumed by the Town or the amount required to pay off all indebtedness secured by the Unit, whichever is greater. If the Town desires to exercise said option, it shall give written notice thereof to the Owner within thirty (30) days following the filing of the NED. In the event that that the Town timely exercises its option, the closing on the purchase of the Unit shall occur no less than seventy-five (75) days nor more than ninety (90) days after the date of the NED. At closing, Owner shall execute and deliver a Special Warranty Deed conveying the Unit free and clear of all monetary liens and encumbrances, except those to be assumed by the Town, and shall execute normal and customary closing documents. The proceeds of sale shall be applied first to

cure the default by paying off the indebtedness secured by the Unit which is the subject of the pending foreclosure action, then to Owner's closing costs, then to the payment of other indebtedness secured by the Unit, and the balance, if any, shall be disbursed to Owner. If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the Town's option to purchase the Unit shall terminate. Such termination shall not, however, operate to extinguish the Town's option to purchase the Unit in the event that any subsequent NED is filed.

9.7 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 Unit made by an Institutional Lender ("First Deed of Trust"). 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. After such foreclosure sale or acceptance of deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Unit or any transfer thereafter, provided, however, that if and when the Unit is sold through foreclosure, the Owner shall nevertheless remit to the Town that portion of the net proceeds of the foreclosure sale, after payment of all obligations to the holder of the Deed of Trust and foreclosure costs, which exceeds the Maximum Resale Price that would have applied to the sale of the Unit if the Agreement had continued in effect. This Agreement shall be senior to any lien or encumbrance, other than a First Deed of Trust, as defined herein, recorded in the Office of the Clerk of Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in the Unit by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed a Non-Qualified Transferee subject to the provisions of **Section 3.8** of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement.

## SECTION 10 GENERAL PROVISIONS

10.1 Notices. Any notice, consent or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:  
c/o: Timothy C. Yeager  
5061 S. Florence Dr.  
Greenwood Village, CO 80111  
(303) 475-4305  
[tim@z2partners.com](mailto:tim@z2partners.com)

To Town:  
The Town of Carbondale, Colorado

511 Colorado Avenue  
Carbondale, CO 81623

To Owner: [To be set forth in a subsequent recorded Memorandum  
of Acceptance for each individual Unit]

10.2 Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such a manner as to be valid under applicable law, but if any provisions of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Agreement or other related document.

10.3 Delegation. The Town and GCHA may delegate their authority hereunder to Garfield County Housing Authority (GCHA) or another organization qualified to manage and enforce the rights and obligations of either the Town or GCHA pursuant to this Agreement.

10.4 Choice of Law. This Agreement and each and every related document are to be governed and construed in accordance with the laws of the State of Colorado.

10.5 Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

10.6 Section Headings. Paragraph or section headings within this Agreement 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.

10.7 Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Board of Trustees of the Town of Carbondale, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

10.8 Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

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

10.10 Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.



10.11 Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

10.12 Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by the Town, and recorded with the Clerk and Recorder of Garfield County, Colorado. Notwithstanding the foregoing, the GCHA reserves the right to amend this Agreement unilaterally when deemed necessary to effectuate the purpose and intent of this Agreement, when such unilateral action does not materially impair an Owner's or lender's rights under this Agreement, and when such amendment has been approved by the Town.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first above written.

**DECLARANT:**

**211 EIGHTH, LLC**  
**a Colorado limited liability company**

By: Timothy C. Yeager, as court-appointed receiver for 211 Eighth, LLC pursuant to the Order for Appointment of Receiver dated November 8, 2012 in *NBH Bank, N.A., as successor to Community Banks of Colorado, v. Prince Creek Construction, Inc. et al.*, Case No. 2012CV239, District Court in and for Garfield County, Colorado.

\_\_\_\_\_  
Timothy C. Yeager (date)

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

Subscribed and sworn to before me by Timothy C. Yeager as Receiver for 211 Eighth, LLC this \_\_\_\_ day of \_\_\_\_\_, 2014.

WITNESS my hand and official seal.  
My commission expires:

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

**LENDER CONSENT AND SUBORDINATION:**

Notwithstanding anything to the contrary in Section 9, above, NBH Bank, N.A., as successor to Community Banks of Colorado, hereby consents to the foregoing terms and



ACCEPTANCE BY THE GARFIELD COUNTY HOUSING AUTHORITY  
AND THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO

The foregoing Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy and Resale of Lot 3A, Cleveland Place II Subdivision, Town of Carbondale, Garfield County, Colorado and its terms are hereby adopted and declared by the Garfield County Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

GARFIELD COUNTY HOUSING AUTHORITY

By: *Cheryl R. Strauss*

Title: Executive (CFO) Garfield County Housing  
Authority

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Garfield )

The above and foregoing document was acknowledged before me by Cheryl R. Strauss this 29<sup>th</sup>  
day of May, 2014.

Witness my hand and official seal.

My commission expires:  
July 24, 2014



*Vickie R. Walton*  
Notary Public

BOARD OF TRUSTEES OF THE TOWN OF  
CARBONDALE, COLORADO

By: *Stacey Patch Bernot*  
Stacey Patch Bernot, Mayor

ATTEST:

*Cathy Derby*  
Cathy Derby, Town Clerk



STATE OF COLORADO )  
 ) ss.  
COUNTY OF Garfield )

The above and foregoing document was acknowledged before me this 27<sup>th</sup> day of  
May, 2014, by Stacey Patch Bernot as Mayor and Cathy Derby as Town  
Clerk of the Town of Carbondale, Colorado.

Witness my hand and official seal.

My commission expires:

July 24, 2014



Vickie R. Walton  
Notary Public



**EXHIBIT A**

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND  
AGREEMENT CONCERNING THE SALE, OCCUPANCY AND RESALE OF LOT 3A,  
CLEVELAND PLACE II PUD, TOWN OF CARBONDALE, GARFIELD COUNTY,  
COLORADO

**RECITALS:**

\_\_\_\_\_, (hereinafter referred to as "Owner"), has simultaneous  
with execution of this Memorandum purchased a residential dwelling unit described as:

Lot Number 3A of the Cleveland Place II Subdivision, according to  
the Final Plat thereof recorded on July 31, 2007 as Reception Number  
729736 in the Office of the Clerk and Recorder of Garfield County,  
Colorado.

As a condition of the sale transaction, the Buyer acknowledges and agrees to the terms,  
conditions and restrictions found in that certain instrument entitled Declaration of Deed  
Restriction and Agreement Concerning the Sale, Occupancy and Resale of Lot 3A in Cleveland  
Place II PUD, Town of Carbondale, Garfield County, Colorado recorded on  
\_\_\_\_\_ as Reception Number \_\_\_\_\_ in the Office of the Clerk and  
Recorder of Garfield County, Colorado (hereinafter the "Declaration and Agreement").

NOW, THEREFORE, as required by the Declaration and Agreement and in consideration  
of the covenants and agreements contained therein and contained herein, the Owner agrees and  
acknowledges as follows:

1. Owner hereby acknowledges having carefully read the entire Declaration and  
Agreement, has had the opportunity to consult with legal and financial counsel  
concerning it, fully understands its terms and conditions and agrees to comply with all  
covenants, restrictions and requirements thereof. In particular, Owner acknowledges  
and agrees that the Town of Carbondale shall be entitled to exercise the rights and  
options as set forth in **Section 9** of the Declaration and Agreement in the event of a  
default as described therein, and that the Owner will be required to document the cost of  
and obtain approval of Improvements to be included in the Maximum Resale Price.
2. The Declaration and Agreement as described above is modified as follows:
  - a. The Buyer's purchase price for paragraph 3.4 is \$\_\_\_\_\_.
  - b. The address of Owner for the purpose of **Section 10.1** of the Declaration and  
Agreement is as follows:  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. This Memorandum shall be recorded in the Office of the Clerk and Recorder of Garfield County, Colorado.

**OWNER:**

\_\_\_\_\_

Dated: \_\_\_\_\_

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

The above and foregoing document was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires:

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

**OWNER:**

\_\_\_\_\_

Dated: \_\_\_\_\_

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

The above and foregoing document was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires:

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

Agreed and Approved with regard to paragraph 2.a. above.

TOWN OF CARBONDALE

By: \_\_\_\_\_  
Town Manager

Attest:

\_\_\_\_\_  
Town Clerk

## EXHIBIT B

### PERMITTED CAPITAL IMPROVEMENTS

1. The term "Permitted Capital Improvements" as used in the Agreement shall only include the following:

- a. Improvements or fixtures erected, installed or attached as permanent, functional, nondecorative improvements to real property, excluding repair, replacements 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 protection devices;
- e. Improvements to add and/or finish permanent/fixed storage space;
- f. Improvements to finish unfinished space;
- g. Garages;
- h. The cost of adding decks and any extension thereto;
- i. Landscaping; and
- j. Jacuzzis, spas, saunas, steam showers and other similar items.

2. Permitted Capital Improvements as used in this Agreement shall **NOT** include the following:

- a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the unit;
- b. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting and other similar items; or
- c. Upgrades or addition of decorative items, including lights, window coverings, floor coverings and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by the GCHA prior to being added to the Maximum Resale Price as defined herein.