

**DEED RESTRICTION  
COOPER PLACE PROJECT  
TOWN OF CARBONDALE, COLORADO**

**DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE  
OCCUPANCY OF CERTAIN UNITS AT 10 COOPER PLACE AND 15 COOPER PLACE,  
TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO**

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE OCCUPANCY OF CERTAIN UNITS LOCATED AT 10 COOPER PLACE AND 15 COOPER PLACE, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO ("Agreement") is made and executed this 31<sup>st</sup> day of May, 2017, (the "Effective Date"), by Cooper Place Rentals, LLC a Colorado limited liability company and/or its assigns (the "Owner"), for the benefit of and enforceable by the Board of Trustees of the Town of Carbondale, Colorado (the "Town") and the Garfield County Housing Authority ("GCHA"), a duly constituted housing authority established pursuant to Colorado law (together, the "Beneficiaries").

**I. RECITALS**

A. WHEREAS, Owner is the owner of 100% of the two real properties described as follows (each a "Property" and collectively the "Properties"):

A PARCEL OF LAND SITUATED IN LOT 13 OF SECTION 34, TOWNSHIP 7 SOUTH, RANGE 88 WEST OF THE 6TH PRINCIPAL MERIDIAN, SAID PARCEL BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, WHENCE THE SOUTHWEST CORNER OF BLOCK 29 IN THE TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO, BEARS SOUTH 52 DEGREES 51 MINUTES 45 SECONDS EAST 330.60 FEET;  
THENCE WEST 75.00 FEET;  
THENCE NORTH 03 DEGREES 29 MINUTES 00 SECONDS WEST 100.00 FEET;  
THENCE EAST 75.00 FEET;  
THENCE SOUTH 03 DEGREES 29 MINUTES 00 SECONDS EAST, 100.00 FEET TO THE POINT OF BEGINNING.

also known by street and number as: 10 Cooper Place, Carbondale, CO 81623 ("10 Cooper Place").

AND

All that part of Lot 13, Section 34, Township 7 South, Range 88 West of the 6<sup>th</sup> P.M., described as follows:

Beginning at a point whence the Southwest corner of Block 29 in the town of Carbondale, County of Garfield, State of Colorado, bears South 64° 51' 08" East 411.05 feet;  
Thence West 100.00 feet;  
Thence North 03° 29' 00" West 75.00 feet;  
Thence East 100.00 feet;  
Thence South 03° 29' 00" East 75.00 feet to the Point Of Beginning.

also know by street and number as: 15 Cooper Place, Carbondale, CO 81623 ("15 Cooper Place").

B. WHEREAS, pursuant to the Improvements Agreement for Cooper Place Project recorded on September 23, 2016, Reception No. 882809, records of Garfield County, Colorado, Owner agreed to permanently restrict one (1) one-bedroom apartment unit within a five-unit building at 10 Cooper Place and one (1) one-bedroom apartment unit rental unit within a five-unit building at 15 Cooper Place, each to be rented to occupants at lease rates affordable to persons earning not more than 80% of the Garfield County area median income ("AMI");

C. WHEREAS, Owner, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Improvements Agreement by restricting the use of Unit 3 of 10 Cooper Place and Unit 2 of 15 Cooper Place ("Restricted Units") as hereinafter described.

NOW, THEREFORE, in consideration of the Recitals as set forth above and for value received, the receipt and sufficiency of which is hereby acknowledged, Owner does hereby declare, covenant, and agree as follows:

**SECTION 1**  
**DEFINITIONS**

A. The following definitions shall apply to the terms used in this Agreement:

1. "Area of Eligibility" shall mean the Roaring Fork Valley and the area encompassing Aspen, Colorado, to Parachute, Colorado, including Redstone, Colorado, and Marble, Colorado.

2. "Guidelines" shall mean the Town's Community Housing Guidelines as amended from time to time and in effect at the time of the lease of the Restricted Units.

3. "Institutional Lender" shall mean 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.

4. "Qualified Tenant" or "Qualified Tenants" shall mean natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed eighty percent

(80%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines. In the event that there are no Qualified Tenants whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed eighty percent (80%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines, Qualified Tenants shall include natural persons whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed one-hundred fifty percent (150%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines.

## **SECTION 2** **DECLARATION**

A. For the purposes set forth herein, Owner, for itself and its successors and assigns, hereby declares that the Restricted Units shall be leased, rented, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement, 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 a Restricted Unit, and their respective heirs, personal representatives, successors and assigns and shall be binding upon and inure to the benefit of the Town and GCHA, and their respective successors and assigns. All persons who rent a Restricted Unit shall be Qualified Tenants, as such term is defined in this Agreement. No modification or amendment to this Agreement may be effectuated without the consent of the Beneficiaries. Owner further represents and warrants to the Town and GCHA that that the declarations herein are free and clear of any financial liens or encumbrances.

B. Owner hereby restricts the lease of a Restricted Unit to Qualified Tenants. Qualified Tenants may not sublet or assign a lease for a Restricted Unit in violation of this Agreement or the Guidelines.

C. By the acceptance of any lease of a Restricted Unit, the lessee under such lease shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement.

## **SECTION 3** **USE AND RENTAL OF RESTRICTED UNITS**

A. Except as otherwise provided herein, the use and occupancy of the Restricted Units shall be limited exclusively to rental housing for Qualified Tenants and their families. Each Restricted Unit shall be utilized as a Qualified Tenant's sole and exclusive place of residence.

B. Owner may not, except with prior written approval of the GCHA, and subject to the GCHA's conditions of approval, rent a Restricted 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 Guidelines. The GCHA shall not approve any rental if such rental is being made to utilize the Unit as an income-producing asset, 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 in accordance with the Guidelines. In the event that there are no Qualified Tenants whose maximum gross household incomes, as that term is defined in the Guidelines, do not exceed eighty percent (80%) of the AMI, then persons in the next higher Income Category may bid on a lower Income Category unit. In such event, the monthly rental rate for the Restricted Unit shall remain the same as if the Restricted Unit were rented to a Qualified Tenants earning no more than 80% of the AMI, and the term of any such lease to a Qualified Tenant whose income exceeds 80% of the AMI shall extend for no more than one year, in order that GCHA may attempt to find a replacement tenant whose maximum household income does not exceed eighty percent (80%) of the AMI.

C. Nothing herein shall be construed to require Owner, the Town or GCHA to (a) protect or indemnify the Owner against any losses attributable to the rental of a Restricted Lot, including, but not limited to, non-payment of rent or damage to the premises, or (b) obtain a qualified tenant for the Owner in the event that none is found by the Owner.

#### **SECTION 4** **BREACH OF AGREEMENT; OPPORTUNITY TO CURE**

A. In the event that the Town or GCHA has reasonable cause to believe an Owner is violating the provisions of this Agreement, either, by their authorized representative, may inspect a Restricted Unit between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours' written notice to Owner of said inspection.

B. In the event a violation of the 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 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.

C. 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 5** **GRIEVANCE PROCEDURES**

A. A grievance is any dispute that the Owner or a tenant may have with the Town or GCHA with respect to action or failure to act in accordance with the individual tenant'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") pursuant to and under the procedures set forth in the Guidelines

**SECTION 6**  
**REMEDIES**

A. This Agreement shall constitute covenants running with the Restricted 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 tenants and/or occupants.

B. 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.

C. Each and every conveyance of a Property, 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. In the event that the Owner or any successor owner of either Property should desire to condominiumize or subdivide either Property into multiple ownership units, the Town may require the then-owner(s) to execute an amendment to this Deed Restriction for purposes of updating the legal descriptions to conform with the applicable condominium or subdivision plat and/or to require the Restricted Units to be further restricted as to maximum allowable appreciation and resale price in accordance with the Guidelines in effect at such time.

D. In the event that the Owner or tenant 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 the appointment of a receiver to manage a Restricted Unit.

**SECTION 7**  
**DEFAULT/FORECLOSURE**

A. 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 either Property 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. 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.

B. Upon notification of a default as provided in **Section 4.B**, above, GCHA or the Town may offer loan counseling or distressed loan services to the Owner, if any of these services are available.

C. Upon receipt of any notice of default by Owner, whether the notice described in Section 4.B, 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 Restricted Lot 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 property that includes the Restricted Unit. Otherwise, Owner's indebtedness to the Town shall be satisfied from the Owner's proceeds at closing upon sale of the property that includes the Restricted Unit.

D. 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 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.*

E. The provisions of this Agreement shall be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the property that includes the Restricted Unit made by an Institutional Lender. 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 property that includes the Restricted Unit or any transfer. 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 and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. 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 8**  
**GENERAL PROVISIONS**

A. Notices. Any notices, 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 in this subsection 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 Owner:  
Andy Mishmash  
Cooper Place Rentals, LLC  
P.O. Box 2140  
Basalt, CO 81621

*With a copy to:*  
Kelcey Nichols  
Wood Nichols, LLC  
201 Main Street, Suite 305  
Carbondale, CO 81623

To Town:  
Town of Carbondale, Colorado  
Attn: Town Manager  
511 Colorado Avenue  
Carbondale, Colorado 81623

B. Delegation. The Town and GCHA may delegate their authority hereunder to one another or to another organization qualified to manage and enforce the rights and obligations of either the Town or GCHA pursuant to this Agreement.

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

D. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any legal action arising from this Agreement shall be in Garfield County, Colorado.

E. Successors. Except as provided herein, the provisions and covenants contained herein shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.

F. 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.

G. 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.

H. 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. However, the Party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing.

I. 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.

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

K. 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.

L. Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained herein.

M. 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.

N. Attorney's Fees. In the event any of the parties resorts to litigation with respect to any of the provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

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

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06/01/2017 12:45:09 PM Jean Alberico  
9 of 11 Rec Fee:\$63.00 Doc Fee:0.00 GARFIELD COUNTY CO

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OWNER:

Cooper Place Rentals, LLC  
a Colorado limited liability company

Andy Mishmash

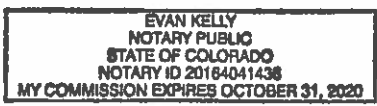
Andy Mishmash, Managing Member and Authorized Agent  
Cooper Place Rentals, LLC

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF Garfield )

The foregoing instrument was acknowledged before me this 30 day of may, 2017, by Andy Mishmash, Managing Member and Authorized Agent, Cooper Place Rentals, LLC.

WITNESS my hand and official seal.  
My commission expires: 10-31-2020

Evan Kelly  
Notary Public





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06/01/2017 12:45:09 PM Jean Alberico  
10 of 11 Rec Fee \$63.00 Doc Fee 0.00 GARFIELD COUNTY CO

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 OCCUPANCY, AND LEASE OF CERTAIN UNITS LOCATED AT 10 COOPER PLACE AND 15 COOPER PLACE, 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

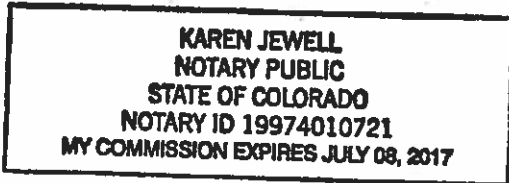
By: Katherine Gazunis  
Katherine Gazunis, Executive Director  
Garfield County Housing Authority

STATE OF COLORADO )  
  ) ss.  
COUNTY OF Garfield )

The above and foregoing document was acknowledged before me by Katherine Gazunis this 31 day of May, 2017.

Witness my hand and official seal.  
My commission expires July 8, 2017

Karen Jewell  
Notary Public





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06/01/2017 12:45:09 PM Jean Alberico  
11 of 11 Rec Fee: \$63.00 Doc Fee: 0.00 GARFIELD COUNTY CO

TOWN OF CARBONDALE, COLORADO  
a Colorado home rule municipal corporation

By: Dan Richardson  
Dan Richardson, Mayor

ATTEST:  
Cathy Derby  
Cathy Derby, Town Clerk



STATE OF COLORADO )  
) ss.  
COUNTY OF Garfield )

The above and foregoing document was acknowledged before me by Dan Richardson, as Mayor, and Cathy Derby, as Town Clerk, of the Town of Carbondale, Colorado, this 31<sup>st</sup> day of May, 2017.

Witness my hand and official seal.  
My commission expires:

Patricia A. Sprang  
Notary Public

