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DECLARATION OF MASTER DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY AND RESALE OF LOT C, 489 NORTH EIGHTH STREET, SPRUCE TOWNHOMES, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

THIS DECLARATION OF MASTER DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY AND RESALE OF LOT #C, 489 NORTH EIGHTH STREET, IN THE SPRUCE TOWNHOMES, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO ("Agreement") is made and entered into this 12th day of June, 2008, by SMI, LLLP, (the "Declarant"), for the benefit of the parties and enforceable by the Carbondale Housing Authority ("CHA"), a duly constituted housing authority established pursuant to Colorado law, or its agent, and the Board of Trustees of the Town of Carbondale, Colorado (the "Town").

RECITALS AND DEFINITIONS

- A. Declarant is the owner of and is in the process of developing and platting a residential community known as Spruce Townhomes, in the Town of Carbondale, Garfield County, Colorado; and
- B. Declarant desires to set aside one (1) condominium unit ("Unit") within Spruce Townhomes, for the purpose of providing affordable housing for residents of the Roaring Fork Valley in Colorado, which Units are described on **Exhibit A** attached hereto and incorporated herein by this reference; and
- C. Each Unit shall 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 minimum of 30 hours per week by a business whose principal office is located within the "Area of Eligibility," whose Household Incomes do not exceed 150% of the Garfield County Area Median Income and who otherwise satisfy the other qualifications contained in Carbondale Community Housing Guidelines, as amended and in effect at the time of the closing of the sale of the Unit to Qualified Buyers (collectively, "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, 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. The "Area of Eligibility" means those portions of Garfield, Eagle or Pitkin Counties within five (5) miles of the Roaring Fork, Crystal and Colorado Rivers. Within the Area of Eligibility, priority will be afforded to qualified buyers who are employed by a business whose principal office is located in the geographic area identified

on the attached map as the "Priority Area" which generally consists of the Roaring Fork River corridor between the Highway 82 and Snowmass Creek Road intersection on the east and Highway 82 and Colorado Mountain College Road intersection on the west, together with the Crystal River corridor between Carbondale and Redstone. The Area of Eligibility and any priorities may be revised from time to time by the Board of Trustees of the Town of Carbondale, Colorado, by ordinance. For the purpose of sale or resale of a Unit pursuant to this Agreement, the Area of Eligibility shall be the one that is in effect on the date that the Unit is listed for sale pursuant to **subsection 3.1**, below; and

E. The term "Owner," as used herein shall mean the person(s) who acquire 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. It is expressly understood that the term "Owner" as used in this Agreement does not include the Declarant; 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 each 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 any Unit thereof, 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 Units shall be Qualified Buyers, as such term is defined in this Agreement.

1.2 Declarant hereby restricts the acquisition or transfer of the Units 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 Units against use and occupancy inconsistent with the terms of this Agreement.

1.3 By the acceptance of any deed conveying any 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 any Unit to a grantee, such grantee shall execute a Memorandum of Acceptance (**Exhibit D**) evidencing grantee's acknowledgment and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement.

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 any Unit thereof shall not apply to Declarant during its ownership thereof prior to the issuance of a Certificate of Occupancy for dwelling units constructed thereon; provided, however, that upon issuance of a Certificate of Occupancy, the Declarant shall be subject to all terms and conditions of this Agreement and, provided further, that the Declarant shall make no transfer of any Unit except to a Qualified Buyer as defined in this Agreement; and provided further, that Declarant shall not grant any deed of trust, or mortgage upon the Units, or otherwise allow the Units to be encumbered by any matter which could extinguish this Agreement, unless such deed of trust, mortgage, or other encumbrance is subordinate to this Agreement.

SECTION 2 USE AND OCCUPANCY OF UNITS

2.1 Except as otherwise provided herein, the use and occupancy of Lot C, 489 North Eighth Street, 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 Lot C, 489 North Eighth Street, 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.

2.3 It shall be a breach of this Agreement for an Owner who defaults in payments or other obligations due or to be performed under a promissory note secured by a first lien deed of trust or mortgage encumbering the Unit to fail to notify the Town of Carbondale, in writing, 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 first lien deed of trust or mortgage, as described herein, within five (5) calendar days of Owner's notification from lender, or its assigns, of said default or past due payments.

2.4 Upon receipt of notice as provided in **subsection 2.3**, the Town shall have the right, in its sole discretion, and with the agreement of the Owner, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to the Town for

past due payments made by the Town together with default interest thereon at the rate specified in the existing promissory note(s) secured by the first lien deed of trust or mortgage, and all actual expenses of the Town incurred in curing the default. The Owner shall be required by the Town to execute a promissory note secured by a 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 cure the default and satisfy its obligation to the Town under this subsection at any time prior to execution of a contract for sale, upon such reasonable terms as specified by the Town and, if applicable, any such satisfaction shall comply with Fannie Mae's community seconds program requirements. Otherwise, an Owner's indebtedness to the Town shall be satisfied from the Owner's proceeds at closing, or, if there are no proceeds, by the Owner from other funds.

SECTION 3 SALE OF UNIT; MAXIMUM RESALE PRICE

3.1 In the event that an Owner desires to sell his Unit, the Owner shall consult with the CHA, 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 CHA, the Owner shall list such unit for sale with the CHA, or as otherwise provided in the Guidelines then in effect, for a sales price not exceeding the Maximum Resale Price. CHA shall charge a fee for its services in connection with resale in accordance with the fee schedule set forth in the Guidelines then in effect.

3.2 In no event shall a 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 plus the cost of Permitted Capital Improvements as defined on **Exhibit B** attached hereto and incorporated herein by this reference (and as limited in **subsection 3.3** hereof) divided by the Consumer Price Index, All Items, Denver/Boulder, Urban Wage Earners and Clerical Workers (Revised), 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. In no event shall the multiplier be less than one (1). 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 as established by a Settlement Statement approved by the CHA, plus the cost of Permitted Capital Improvements, plus an increase of three percent (3%) of such price per year from the date of purchase to the date of Owner's notice of intent to sell; nor greater than the owner's purchase price, plus the cost of Permitted Capital Improvements, plus an increase of five percent (5%) 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. The full amount of any grant 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 CHA 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 CHA 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 CHA 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.

3.7 Prior to Owner entering into a sales contract for the sale of his Unit to a prospective buyer, such potential buyer shall be qualified by the CHA 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 CHA, prior to purchase. An Owner shall neither enter into a sales contract for the sale of his 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 a Unit subject to this Agreement shall be submitted to the CHA for its 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 CHA and shall use due diligence and make all reasonable efforts to accomplish the sale of the Unit. In the event the CHA finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, the CHA 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 CHA 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 the 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 ten (10) months per calendar year without the express written approval of the CHA. Where the provisions of this **subsection 4.2** apply, the CHA may require the Owner to rent the Unit in accordance with the provisions of **Section 5**, below.

4.3 If an Owner of a 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 CHA 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 CHA 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 CHA. The leave of absence shall be for one (1) year and may, at the discretion of the CHA, 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 The Owner may not, except with prior written approval of the CHA, and subject to the CHA's conditions of approval, rent the Unit. Prior to occupancy, any tenant must be approved by the CHA in accordance with the income, occupancy and all other qualifications established by the CHA in the Guidelines. The CHA 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 CHA prior to occupancy by any tenant. The maximum rental amount under any such lease approved by the CHA 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 CHA 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 CHA 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 CHA has reasonable cause to believe the Owner is violating the provisions of this Agreement, the CHA, by its authorized representative, may inspect a 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 CHA 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 before the CHA 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 CHA, it shall be conducted in accordance with the hearing procedures set out in **Section 7**, below, and the decision of the CHA 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 CHA 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 CHA'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 CHA 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 the CHA Board of Directors (hereinafter referred to as Board under the following procedures).

7.2 Filing a Grievance.

a. Any grievance must be presented in writing to the CHA. 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 CHA Board of Directors shall be scheduled for the next scheduled Board meeting. The matter may be continued at the discretion of the Board. 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 CHA 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 CHA 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 Board 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 Board 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 Board and may be regulated by the Board as it deems necessary for a fair hearing.

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

SECTION 8 REMEDIES

8.1 This Agreement shall constitute covenants running with the real property, described in **Exhibit A**, as a burden thereon, for the benefit of, and shall be specifically enforceable by the CHA, 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 Town or CHA resorts to litigation with respect to any or all provisions of this Agreement, the Town or CHA 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 any 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 CHA 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 CHA, 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 FORECLOSURE

9.1 Except as may otherwise be specifically provided in a written, recorded Option to Purchase between a lender, the CHA and a borrower, the form of which is attached hereto and incorporated herein by this reference as **Exhibit C**, any purchaser acquiring any rights in a Unit by virtue of foreclosure of a lien shall be deemed to be a Non-Qualified Transferee subject to the provisions of **subsection 3.8** of this Agreement. In the event of a foreclosure, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations and restrictions contained in this Agreement except upon the terms and conditions specified in that certain Option to Purchase, as referenced above. The Declarant expressly consents and agrees to the terms of that certain Option to Purchase, including, without limitation, the release provisions of paragraph d. The covenants, conditions, limitations and restrictions contained in this Agreement shall otherwise survive any foreclosure proceeding.

9.2 In the event that the CHA, or any agent of the CHA, exercises the option pursuant to the terms of that certain Option to Purchase, as referenced above, the CHA and/or its agent, may sell the Unit(s) to Qualified Buyers as that term is defined herein, or rent the Unit(s) to qualified tenants who meet the income, occupancy and all other qualifications established by the CHA in its Guidelines until sale to a Qualified Buyer is effected.

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:
SMI, LLLP
Post Office Box 700
Glenwood Springs, CO 81602

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 – **Exhibit D**]

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

10.4 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.

10.5 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.

10.6 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.

10.7 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.

10.8 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.

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

10.10 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.

10.11 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 CHA 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:

SMI, LLLP

By:

Its:

[illegible]

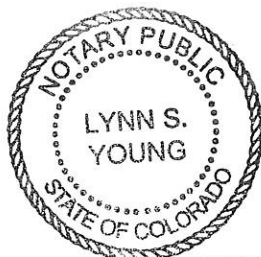
The foregoing instrument was acknowledged before me this day of 12th, 2008, by David Hicks as Manager for SMI, LLLP.



Reception#: 751596
07/02/2008 11:08:45 AM Jean Alberico
13 of 23 Rec Fee:\$116.00 Doc Fee:0.00 GARFIELD COUNTY CO

Witness my hand and official seal.
My commission expires:

Notary Public



My Commission Expires 06/17/2009

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

The foregoing Declaration of Master Deed Restriction and Agreement Concerning the Sale, Occupancy and Resale of Condominium Lot C in Spruce Townhomes, Town of Carbondale, Garfield County, Colorado and its terms are hereby adopted and declared by the Carbondale Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

CARBONDALE HOUSING AUTHORITY

By: [Signature]
Title: President : Mountain Regional Housing Corporation

[illegible]

The above and foregoing document was acknowledged before me this 10 day of April, 2008, by John R. Baker as representative of the Carbondale Housing Authority.

Witness my hand and official seal.

My commission expires: 10.13.09

Notary Public


59 Patricia Fredrickson

PATRICIA FRIEDRICH
Notary Public
State of Colorado

My Commission Expires 10/13/2009

ATTEST:

BOARD OF TRUSTEES OF THE TOWN OF
CARBONDALE, COLORADO

 Title Mayor

[illegible]

The above and foregoing document was acknowledged before me this 10 day of April, 2008, by Mayor Michael Morris as Mayor of the Board of Trustees of the Town of Carbondale, Colorado.

Witness my hand and official seal.

Reception#: 751596
07/02/2008 11:08:45 AM Jean Alberico
15 of 23 Rec Fee:\$116.00 Doc Fee:0.00 GARFIELD COUNTY CO

My commission expires: 10/13/2009
Patricia Friedrich
Notary Public

PATRICIA FRIEDRICH
Notary Public
State of Colorado
My Commission Expires 10/13/2009



Reception#: 751596

07/02/2008 11:08:45 AM Jean Alberico

16 of 23 Rec Fee:\$116.00 Doc Fee:0.00 GARFIELD COUNTY CO

EXHIBIT A
LEGAL DESCRIPTION

Lot C, Spruce Townhomes Subdivision, Carbondale, Colorado, also known as 489 North Eighth Street, Carbondale, Colorado.

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 CHA prior to being added to the Maximum Resale Price as defined herein.

EXHIBIT C OPTION TO PURCHASE

In the event of a foreclosure by the holder (including here and hereinafter assigns of the holder) of the promissory note secured by a first lien deed of trust or mortgage on the property described as Lot C, 489 North Eighth Street, Carbondale, Colorado, of the Spruce Townhomes, according to the Plat thereof, recorded on _____, 200____, (Reception No. _____), in the office of the Clerk and Recorder of Garfield County, Colorado (hereinafter the "Unit"), and subject to the issuance of a public trustee's, sheriff's, or other foreclosure deed to the holder following the expiration of all statutory redemption rights, the Carbondale Housing Authority (the "CHA"), and the Board of Trustees of the Town of Carbondale, Colorado (the "Town") shall have the option to purchase the Unit which shall be exercised in the following manner:

a. **Notice.** The holder shall give such notice to the Town as is required under Colorado law in the foreclosure proceeding. Said notice shall be sent by certified mail, return receipt requested, and addressed, as set forth below, or to such other address as may be directed in writing by the CHA or the Town:

The Town of Carbondale, Colorado
511 Colorado Avenue
Carbondale, CO 81623

b. **Option to Purchase.** The Town and the CHA, as the agent of the Town, shall have thirty (30) days after issuance of the public trustee's, sheriff's or other foreclosure deed in which to exercise this option to purchase by tendering to the grantee of the public trustee's, sheriff's or other foreclosure deed (the "Foreclosure Deed Grantee"), in cash or certified funds, an amount equal to the redemption price which would have been required of the borrower or any person who might be liable upon a deficiency on the last day of the statutory redemption period(s) and any additional reasonable costs incurred by the Foreclosure Deed Grantee during the option period which are directly related to the foreclosure; provided, that exercise of the option by one optionee shall terminate the right of the other to exercise the option.

c. **Title.** Upon receipt of the option price, the Foreclosure Deed Grantee shall deliver to the Town, as designated by the Town, a special warranty deed, conveying the Unit to the Town, as designated. The Foreclosure Deed Grantee shall convey only such title as it received through the public trustee's, sheriff's or other foreclosure deed and will not create or participate in the creation of any additional liens or encumbrances against the Unit following issuance of the public trustee's, sheriff's or other foreclosure deed to the holder. The Foreclosure Deed Grantee shall not be liable for any of the costs of conveyance to the Town or its agent.

d. **Release.** In the event that the Foreclosure Deed Grantee is issued a public trustee's, sheriff's or other foreclosure, the Town does not exercise the option to purchase, as provided herein, the Town shall cause to be recorded in the records of the Clerk and Recorder of Garfield County a full and complete release of the Unit from the



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Declaration of Master Deed Restriction and Agreement affecting the Unit which appear in said records as Reception No. _____. Such release shall be placed of record within fourteen (14) days after expiration of the option and a certified copy of the release shall be mailed to the Foreclosure Deed Grantee upon its recordation.

e. **Perpetuities Savings Clause.** If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this option to purchase 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.

f. **Successors and Assigns.** 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 hereto.

g. **Modifications.** The parties hereto agree that any modification to this Option to Purchase shall be effective only when made by a writing signed by the parties and recorded with the Clerk and Recorder of Garfield County, Colorado; provided, however, no modification affecting the rights of the Town shall be effective without the prior written consent of the Town.

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

HOLDER OF FIRST DEED OF TRUST/MORTGAGE:_____

BY: _____
(Authorized Officer) (Date)

TITLE: _____

MAILING ADDRESS: _____

[illegible]

The above and foregoing document was acknowledged before me this ____ day of _____, 2008, by _____.

Witness my hand and official seal.

My commission expires:

Notary Public

THE CARBONDALE HOUSING AUTHORITY:

BY: _____
(Authorized Officer) (Date)

TITLE: _____

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The above and foregoing document was acknowledged before me this _____ day
of _____, 2008, by _____.

Witness my hand and official seal.

My commission expires:

Notary Public

EXHIBIT D

MEMORANDUM OF ACCEPTANCE OF
MASTER DEED RESTRICTION AND AGREEMENT
CONCERNING SALE, OCCUPANCY AND RESALE
FOR LOT C, 489 NORTH EIGHTH STREET, SPRUCE TOWNHOMES,
TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

RECITALS:

_____, the Unit Owner (herein referred to as "Buyer"), has simultaneous with execution of this Memorandum purchased a residential unit described as:

Lot C, Spruce Townhomes, 489 North Eighth Street, Carbondale, Colorado, according to the Condominium Plat Map thereof recorded as Reception No. _____ and the Condominium Declaration thereof recorded as Reception No. _____ of the Garfield County records.

As a condition of the sale transaction, the Buyer acknowledges and agrees to the terms, conditions and restrictions found in that certain instrument entitled "Master Deed Restriction and Agreement concerning the Sale, Occupancy and Resale of Lot C, Spruce Townhomes, recorded on _____, as Reception No. _____ of the records of Garfield County, Colorado (hereinafter "Master Deed Restriction and Agreement").

NOW, THEREFORE, as required by the Master Deed Restriction and Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Buyer agrees and acknowledges as follows:

1. The undersigned has carefully read the entire Master Deed Restriction and Agreement Concerning the Sale, Occupancy and Resale of Lot C, Spruce Townhomes, has had the opportunity to consult with legal and financial counsel concerning it, fully understands it and agrees to comply with all covenants, restrictions and requirements thereof.

2. The Master Deed Restriction and Agreement as described above is modified as follows:

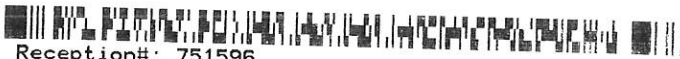
a. The Buyer's purchase price for **paragraph 3.3.2.** is \$_____.

b. Notice to the Buyer, pursuant to **paragraph 10.10.1**, should be sent to:

3. This Memorandum shall be placed of record in the real estate records of Garfield County, Colorado.

Dated: _____

BUYER:



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STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me _____, 2_____, 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, COLORADO

By: _____
_____, Town Manager

ATTEST:

_____, Town Clerk