

**DEED RESTRICTION
THOMPSON PARK SUBDIVISION, PHASE 2
TOWN OF CARBONDALE, COLORADO**

**DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE
SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON
PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY,
COLORADO**

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO (“Agreement”) is made and executed this __ day of _____, 2017, (the “Effective Date”), by Cerise Park, LLC, a Delaware limited liability company and/or its assigns (the “Declarant”), 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”).

R E C I T A L S

WHEREAS, the Declarant is the owner of 100% of the real property described in the Thompson Park Subdivision Phase 2 Plat, recorded in the Garfield County real property records at Reception No. _____ (“Property”); and

WHEREAS, the Property was annexed into the Town pursuant to Town of Carbondale Ordinance No. 2 (Series 2012), Reception No. 816052;

WHEREAS, the Declarant and the Town entered into an Annexation and Development Agreement (“Annexation Agreement”), Reception No. 816055, setting forth additional terms and conditions regarding the annexation of the Property to the Town; and

WHEREAS, Section 10 of the Annexation Agreement requires that 20% of the units or lots developed on the Property be deed-restricted to be affordable to purchasers earning not more than 80% of the Garfield County area median income (“AMI”); and

WHEREAS, as indicated on the plat, the Property is subdivided into 16 lots; and

WHEREAS, Declarant, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Annexation Agreement’s affordable housing requirements by restricting the use of Lots 1, 2, and 3 of the Property (“Restricted Lots”) 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, the Declarant 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. "Date of Intent to Sell" shall mean the date of execution of a listing contract, or if a listing contract is not used, the date shall be the date when a Restricted Lot is first offered for sale by an Owner or the Declarant, as applicable.

3. "Guidelines" shall mean the Town's Community Housing Guidelines as amended from time to time and in effect at the time of sale of a Restricted Lot; provided, however, that as to Declarant, the terms of the Annexation Agreement shall control.

4. "Initial Sale Price" shall mean any sale price that is within the range established by the Guidelines for Qualified Buyers, and, in any event, that will not exceed thirty percent (30%) of household income for housing costs, including principal, interest, taxes, insurance and Homeowner Association fees, established by the AMI closest in time to the Date of Intent to Sell for the initial sale of a Restricted Lot.

5. "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.

6. "Qualified Buyer" or "Qualified Buyers" 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.

7. "Owner," as used herein shall mean the Qualified Buyer(s) who acquire(s) an ownership interest in a Restricted Lot 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.

8. “Permitted Capital Improvements” is defined on **Exhibit A** attached hereto and incorporated herein by this reference.

9. “Required Improvements” shall mean any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency.

SECTION 2 **DECLARATION**

A. For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares that the Restricted Lots 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 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 Lot, 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 purchase a Restricted Lot shall be Qualified Buyers, as such term is defined in this Agreement. No modification or amendment to this Agreement may be effectuated without the consent of the Beneficiaries.

B. Declarant hereby restricts the acquisition or transfer of a Restricted Lot to Qualified Buyers. Qualified Buyers may not sell or otherwise transfer a Restricted Lot in violation of this Agreement or the Guidelines.

C. By the acceptance of any deed conveying a Restricted Lot, 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 a Restricted Lot to a grantee, such grantee shall execute a Memorandum of Acceptance evidencing grantee’s acknowledgement and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement. A form of such Memorandum of Acceptance is attached hereto as **Exhibit B**.

SECTION 3 **USE AND OCCUPANCY OF THE RESTRICTED LOTS**

A. Except as otherwise provided herein, the use and occupancy of the Restricted Lots is limited exclusively to housing for Qualified Buyers owning the Restricted Lots and their families. Each Restricted Lot shall be utilized as an Owner’s sole and exclusive place of residence.

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

C. In the event an Owner ceases to utilize a Restricted Lot as his or her sole and exclusive place of residence, the Restricted Lot shall be offered for sale pursuant to the provisions of **Section 4(H)** of this Agreement. The Owner shall be deemed to have ceased utilizing the Restricted Lot as his or her sole and exclusive place of residence by becoming a resident elsewhere, either within or outside the Area of Eligibility, by residing on the Restricted Lot for fewer than nine (9) months per calendar year without the express written approval of the GCHA, or as otherwise provided in the Guidelines. Where the provisions of this **Section 3(C)** apply, the GCHA may require the Owner to rent the Restricted Lot in accordance with the provisions of **Section 5**, below.

D. If an Owner of the Restricted Lot must leave the Area of Eligibility for a limited period of time and desires to rent the Restricted Lot 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 Restricted Lot 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 4

SALE OF RESTRICTED LOTS; MAXIMUM RESALE PRICE

A. Declarant shall not sell or otherwise transfer a Restricted Lot except to a Qualified Buyer and such sale or transfer must comply with the provisions of this Section 4. Additionally, Declarant shall:

1. Deliver a written notice of its intent to sell a Restricted Lot (the "Notice of Sale") to the Town and GCHA prior to offering the Restricted Lot for sale; and
2. Prior to and as a condition of closing of the sale of a Restricted Lot, obtain written certification from the Town and GCHA that a potential buyer is a Qualified Buyer; and

3. Not sell or otherwise transfer a Restricted Lot for more than the Initial Sale Price.

B. In the event that an Owner subsequently desires to sell a Restricted Lot, 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 the Restricted Lot 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. To be able to offer the Restricted Lot for sale at the Maximum Resale Price, the Restricted Lot must be reasonably clean, all fixtures must be in working condition, and any damage to the Restricted Lot beyond normal wear and tear must be repaired by the Owner. 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.

C. In no event shall a Restricted Lot be sold by an Owner 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 Restricted Lot paid by the Owner selling the Restricted Lot 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 and/or Required Improvements. In determining the improvement costs, 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. Notwithstanding the foregoing, 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 and Required Improvements (except as limited in Paragraph C of this Section 4). 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 Restricted Lot which the Qualified Buyer is not obligated to repay shall not be included for the purpose of determining the Maximum Resale Price or Initial Sale 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.

D. 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 the Maximum Resale Price:

1. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;

2. An affidavit of the Owner verifying the receipts tendered are valid and correct; and
3. 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 in this Agreement or the exhibits hereto, the total cost of Permitted Capital Improvements shall not exceed ten percent (10%) of the Maximum Resale Price.

E. For the purposes of determining the Maximum Resale Price in accordance with Paragraph C of this Section 4, the Owner may also add the cost of Required Improvements, provided that written certification is provided to the Town or GCHA of both the applicable requirement and the information required in Paragraph D of this Section 4.

F. Neither the Declarant nor any other Owner shall permit any prospective Qualified Buyer to assume any or all of a seller's customary closing costs or to 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 Qualified Buyer.

G. Prior to an Owner's entering into a contract for the sale of a Restricted Lot to a prospective buyer, such potential buyer shall be qualified by the Town or GCHA as a Qualified Buyer 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 not enter into a sales contract for the sale of a Restricted Lot 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 **Section 4(C)**. The Declarant or an Owner may reject any and all offers; provided, however, offers in excess of the Initial Sale Price or Maximum Resale Price, as applicable, must be rejected. Prior to closing, all sales contracts for the sale of a Restricted Lot subject to this Agreement shall be submitted to the Town or GCHA for review and approval of the contract for consistency with this Agreement.

H. In the event that title to a Restricted Lot vests in individuals or entities who are not Qualified Buyers as that term is defined in this Agreement (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 a Restricted Lot, the Restricted Lot 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 **Section 4(B)** 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 Restricted Lot 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 Restricted Lot without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the Restricted Lot 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 Restricted Lot. 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. The Non-Qualified Transferee(s) bear the risk of any loss associated with the sale of a Restricted Lot pursuant to this Section 4(H).

1. All Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of a Restricted Lot to Qualified Buyer(s) and shall execute any and all documents necessary to effect such conveyance.
2. Non-Qualified Transferee(s) shall not: (1) occupy the Restricted Lot; (2) rent all or any part of the Restricted Lot, except in strict compliance with Section 5 of this Agreement; (3) engage in any business activity on the Restricted Lot; (4) sell, convey, or otherwise transfer the Restricted Lot except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Restricted Lot for use in a trade or business.
3. Where the provisions of this Section 4(H) apply, the Town or GCHA may require the Non-Qualified Transferee(s) to rent the Restricted Lot as provided in Section 5.
4. Until a sale to a Qualified Buyer is effected, Non-Qualifying Transferee(s) shall comply with all obligations of Owners set forth in this Agreement.
5. The vesting of title to a Restricted Lot in Non-Qualified Transferee(s) shall have no effect on the continued applicability and enforceability of this Agreement and shall in no way constitute a waiver of the covenants, conditions, restrictions, privileges, rights, and other provisions set forth in this Agreement.

SECTION 5 **RENTAL OF A RESTRICTED LOT**

A. An Owner may not, except with prior written approval of the GCHA, and subject to the GCHA's conditions of approval, rent a Restricted Lot. 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 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 Restricted Lot with non-owners on a rental basis, provided Owner continues to meet the obligations contained in this Agreement, including **Section 3**.

B. Nothing herein shall be construed to require the Declarant, 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 6
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 Lot 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 7
GRIEVANCE PROCEDURES

A. 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).

B. Filing a Grievance.

1. 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.
2. 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.
3. 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.
4. The complainant may be represented by an attorney at his or her own expense.

C. Conduct of the Hearing.

1. 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.
2. 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.
3. 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.
4. 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**

A. This Agreement shall constitute covenants running with the Restricted Lot, 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.

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 Restricted Lot, 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.

D. 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 a Restricted Lot by an Owner, or as specified in **Section 4(H)**. The costs of such sale shall be offset against the proceeds of the sale with the balance being paid to the Owner.

E. In the event of a breach of any of the terms or conditions contained herein by the Owner, his or her heirs, successors or assigns, the Owner's purchase price of the Restricted Lot as referred to in **Section 4** 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 4** of this Agreement, and shall remain fixed until the date of cure of said breach.

SECTION 9 **DEFAULT/FORECLOSURE**

A. A Qualified Buyer may only finance his or her initial purchase of a Restricted Lot with a loan from an Institutional Lender in an amount which does not exceed 97% of the purchase and which is secured by a First Deed of Trust. For the purpose of this limitation and as the terms are used in this Agreement, "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 Restricted Lot to secure a loan used to purchase the Restricted Lot. An 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 Restricted Lot, 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.

B. The Town is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect 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 a Restricted Lot.

C. 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 a Restricted Lot, 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 Thompson Park 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.

D. Upon notification of a default as provided in **Section 9(C)**, 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 a Restricted Lot in order to avoid the commencement of foreclosure proceedings. If the Town requires sale of a Restricted Lot, 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 a Restricted 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 4** of this Agreement.

E. Upon receipt of any notice of default by Owner, whether the notice described in **Section 9(C)**, 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 Restricted Lot. Otherwise, Owner's indebtedness to the Town shall be satisfied from the Owner's proceeds at closing upon sale of the Restricted Lot. The provisions of this **Section 9(E)** are not subject to the provisions of **Section 9(A)** limiting the amount of secured indebtedness.

F. 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 Restricted Lot for 95% of the Maximum Resale Price on the date of the NED, less the amount of any debt secured by the Restricted Lot (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 Restricted

Lot, 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 Restricted Lot 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 Restricted Lot 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 Restricted Lot 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 Restricted Lot, 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 Restricted Lot shall terminate. Such termination shall not, however, operate to extinguish the Town's option to purchase the Restricted Lot in the event that any subsequent NED is filed.

G. 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 Restricted Lot 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 Restricted Lot or any transfer thereafter, provided, however, that if and when the Restricted Lot 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 Restricted Lot 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 and Recorder of Garfield County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in the Restricted Lot 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 4(H)** 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**

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 Declarant:
c/o Garfield & Hecht, P.C.
420 7th Street, Suite 100
Glenwood Springs, Colorado 81601

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

To Owner: as set forth in each recorded Memorandum of Acceptance for each Restricted Lot

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. 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.

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.

DECLARANT:

Cerise Park, LLC

a Delaware limited liability company

Frieda K. Wallison, Manager
Cerise Park, LLC

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by Frieda K. Wallison, Manager of Cerise Park, LLC.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A
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, non-decorative 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 in the Agreement.

EXHIBIT B

MEMORANDUM OF ACCEPTANCE

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE OF CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO

RECITALS:

WHEREAS, _____ (“Owner”) has, simultaneously with the execution of this Memorandum, purchased certain real property legally described as: _____, according to the Final Plat thereof recorded _____ (date), as Reception No. _____ (“Property”), in the office of the Clerk and Recorder of Garfield County, Colorado; and

WHEREAS, as a condition of Owner’s purchase of the Property, Owner 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 CERTAIN LOTS WITHIN THE THOMPSON PARK SUBDIVISION, PHASE 2, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO** recorded on _____ as Reception Number _____ in the Office of the Clerk and Recorder of Garfield County, Colorado (“Agreement”); and

NOW, THEREFORE, as required by the 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 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 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 for any Permitted Capital Improvements and/or Required Improvements, as those terms are defined in the Agreement, to be included in the Maximum Resale Price.

2. The Agreement as described above is modified as follows

a. For the purposes of Section 4 of the Agreement, Owner’s purchase price for the Property is \$ _____.

b. For the purposes of Section 10(A) of the Agreement, Owner’s address is as follows:

3. Upon execution, this Memorandum shall be recorded in the Office of the Clerk & Recorder of Garfield County, Colorado.

IN WITNESS WHEREOF, the Owner executes this instrument on the day and year written below.

OWNER

Name: Dated: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The above and foregoing document was acknowledged before me this ____ day of _____, 20__, by _____.

Witness my hand and official seal.
My commission expires:

Notary Public

OWNER:

Name: Dated: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The above and foregoing document was acknowledged before me this ____ day of _____, 20__, by _____.

Witness my hand and official seal.
My commission expires:

Notary Public