

**DEED RESTRICTION
CARBONDALE MARKETPLACE
TOWN OF CARBONDALE, COLORADO**

**DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE
OCCUPANCY OF CERTAIN UNITS AT PARCEL 1, BUILDINGS A and B
CARBONDALE MARKETPLACE, TOWN OF CARBONDALE, GARFIELD COUNTY,
COLORADO**

THIS DECLARATION OF DEED RESTRICTION, AND AGREEMENT CONCERNING THE OCCUPANCY OF CERTAIN UNITS LOCATED AT Parcel 1 Carbondale Marketplace TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO (“Agreement”) is made and executed this 21st day of September 2020, (the “Effective Date”), by MSP DEVELOPMENT GROUP 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 real property described as follows (the “Property”):

A PARCEL OF LAND IN THE TOWN OF CARBONDALE, COUNTY OF GARFIELD, STATE OF COLORADO to wit:

SEE ATTACHED “EXHIBIT A”

WHEREAS, pursuant to the Improvements Agreement for Carbondale Marketplace recorded on 1-14-20, Reception No. 930572, records of Garfield County, Colorado, Owner agreed to permanently restrict seven (7) total units within two buildings on the Property, 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”);

B. WHEREAS, Owner, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the Improvements Agreement by restricting Units on the Property (“Restricted Units”) as hereinafter described.

Building A: Category 2 – Unit A103
Category 1 – Unit A203

Category 3 – Unit A303

Building B: Category 2 – Unit B106
Category 1 – Unit B101
Category 3 – Unit B203
Category 2 – Unit B204

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.

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 who do not exceed eighty percent (80%) of the AMI and who satisfy all other qualifications for occupying community housing set forth in the Guidelines, the Restricted Units may be offered to Qualified Tenants in accordance with the other HUD AMI categories established by the Guidelines and who satisfy all other qualifications for occupying community housing set forth in the Guidelines. In such event, the monthly rental rate for the Restricted Units shall remain the same as if the Restricted Units were rented to Qualified Tenants earning no more than 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" 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.



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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 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. 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.

C. 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 the 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, to the extent allowed by applicable laws, 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 or develop 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 emailing (provided the message is delivered and not returned undeliverable) 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:

MSP DEVELOPMENT LLC
20 Sunset Drive Unit 1 Basalt CO 81621

With a copy to:

Eric J. Gross Attorney P.C.
320 Main Street Suite 200
Carbondale CO 81623
ejg@roaringforklaw.com

To Town:

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

Email: jharrington @ carbon date co.net

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. *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.

K. *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.

L. *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.

M. *Attorney's Fees.* In the event any of the parties resort 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, from the non-prevailing party.



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

OWNER:

MSP DEVELOPMENT GROUP LLC a Colorado limited liability company

Briston Peterson, Manager

STATE OF COLORADO)
) ss.
COUNTY OF Eagle)

The foregoing instrument was acknowledged before me this 21 day of September, 2020, by Briston Peterson as Manager of MSP DEVELOPMENT GROUP LLC a Colorado limited liability company.

WITNESS my hand and official seal.
My commission expires: 4-14-2024

Notary Public





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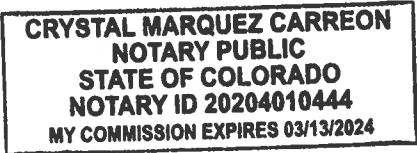
ACCEPTANCE BY THE GARFIELD COUNTY HOUSING AUTHORITY AND THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO

The foregoing DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE OCCUPANCY, AND LEASE OF CERTAIN UNITS LOCATED AT PARCEL 1 CARBONDALE MARKETPLACE, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO and its terms are hereby adopted and declared by the Garfield County Housing Authority and the Board of Trustees of the Town of Carbondale, Colorado.

GARFIELD COUNTY HOUSING AUTHORITY

By: *Cheryl Strouse*
 Cheryl Strouse, Interim Executive Director
 Garfield County Housing Authority

STATE OF COLORADO)
) ss.
 COUNTY OF Garfield)



The above and foregoing document was acknowledged before me by Cheryl Strouse as Interim Executive Director of the Garfield County Housing Authority this 29th day of December, 2020.

Witness my hand and official seal.
 My commission expires: 03/13/2024

Crystal Marquez Carreon
 Notary Public

