



DEED RESTRICTION

FOR THE OCCUPANCY OF 6 WEST APARTMENT HOMES

THIS DEED RESTRICTION FOR THE OCCUPANCY OF 6 WEST APARTMENT HOMES (the "Deed Restriction") is made and entered into this 1/9/2019 (the "Effective Date"), by and between the Eagle County Housing and Development Authority, (the "ECHDA"), and 6 West Apartments LLC, a Colorado limited liability company with an address of 1677 Buffehr Creek Road, Vail, Colorado 81657 ("Owner") (each a "Party" and collectively the "Parties").

WHEREAS, Owner is the owner of certain real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Owner is developing the Property for rental housing (the "Development"); and

WHEREAS, Owner has agreed to restrict 13 of the residential dwelling units being constructed in the Development as set forth in this Deed Restriction.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Defined Terms.** For purposes of this Deed Restriction, the following terms shall have the following meanings:

a. **"Eligible Households"** means Households that (i) will use the Unit as their Primary Residence, (ii) meet the employment qualification criteria below in subsection 1.a.i., and (iii) comply with the real estate ownership limitation below in subsection 1.a.ii. Each of the criteria are further defined below:

i. **Employment Qualification:**

1. At least one member of the Household must meet one or more of the following criteria:

a. Has earned a living primarily in Eagle County by having worked an average of at least thirty (30) hours per week on an annual basis at a business with an office or job site physically located in Eagle County (multiple jobs in Eagle County may be combined to reach 30 hours per week); or

b. Has been hired for a job in Eagle County on a permanent basis to work at least thirty (30) hours per week; or

c. Households that make their home in Eagle County but work for an employer or employers that are located outside of Eagle County (i.e. telecommuters) may be considered eligible if all other eligibility requirements are met and the Household can prove Eagle County

residency for at least 1 year before application submission; or

d. Is over the age of sixty (60) and had earned a living primarily in Eagle County prior to his or her retirement; or

e. Is a disabled person who had been a full-time employee in Eagle County (subject to the retirement exception) for a minimum of two years immediately prior to his or her disability or has been granted an exception to the minimum of 30 hours per week in order to continue with a federal or state benefit program, if the person works the maximum number of hours per week the program will allow; or

f. Cumulatively, earned at least 75% of the Household's Gross Household Income in Eagle County.

ii. Limits on owning other real estate:

1. No member of an Eligible Household, including, but not limited to, spouses and children under 18 years of age, may own residential real estate anywhere during the period of time a Unit is rented to such Eligible Household.

2. During the period of time a Unit is rented to an Eligible Household, no Household member shall own any interest alone or in conjunction with others, in any other residential real estate.

3. Real estate that is owned by a prospective Eligible Household may not be deeded to a corporation or other person or entity except at fair market value nor may real estate be deeded to a corporation or other legal entity in which any Household member has any financial interest in order to meet the requirements set forth in this subsection 1.a.ii.

b. **"Qualified Employer"** means an individual or entity that regularly conducts business in Eagle County. Qualified Employers may master lease units and sublease to employees who are members of Eligible Households. Qualified Employers may not impose additional restrictions to Units in the Property without written consent of the ECHDA and the Owner's property manager for the subject Property and the Units (the "Property Manager").

c. **"Gross Household Income"** means the total amount of income a Household earns in one year from all sources before taxes.

d. **"Household"** means all individuals who will occupy a Unit regardless of legal status or relation to the person named as the tenant on the lease for the Unit.

e. **"Annual Certification"** means an annual certification under oath by the Owner or its Property Manager to the ECHDA stating, for each month of the calendar year, the number of Units rented to Eligible Households in that month, the number of Units rented to someone other than an Eligible Household in that month, and the number of Units that were not rented in that month.

f. **"Primary Residence"**: a Unit is the Primary Residence of a Household as long as one or more members of the Household lives in the Unit for at least 9 out of any 12 months. The

Owner or its Property Manager will require the tenant of each Unit occupied by an Eligible Household to certify in the lease that the Unit qualifies as the Household's Primary Residence. Determination of Eagle County residency status shall be based on criteria including but not limited to 1) copy of deed or property tax statement, or 2) utility statements from service providers, or 3) other documentation that the Owner or its Property Manager deems reasonably necessary to make a determination, such as voter registration information, place of automobile registration, driver's license address and income tax returns.

g. **"Rental Guidelines"** means the guidelines attached as Exhibit B hereto and incorporated herein by this reference, as amended.

h. **"County Units"** means the Units that are subject to this Deed Restriction. The County Units are not fixed, specific Units, but may float, as long as, once the Development is complete, the total number of County Units subject to this Deed Restriction is equal at all times to 13.

i. **"Units"** means all of the residential dwelling units constructed on the Property.

2. **Binding Effect.** This Deed Restriction shall be recorded in the office of the Eagle County Clerk and Recorder, and shall constitute a covenant and an equitable servitude running with the Property as a burden thereon, for the benefit of, and enforceable by, Eagle County (the "County"), the ECHDA and their respective successors or assigns or their designee, Owner, and any subsequent owner of the Property, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction. This Deed Restriction shall bind Owner and all occupants of the County Units. Each and every occupant of a County Unit shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein that are applicable to such occupant during such occupant's respective period of occupancy of a County Unit. Each and every conveyance of the Property or a portion thereof, or interest therein, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Deed Restriction, even without reference to this Deed Restriction in any document of conveyance.

3. **Occupancy and Use.**

a. Subject to the Rental Guidelines, each County Unit shall be occupied at all times by an Eligible Household. A Unit that is rented for a term of less than 30 consecutive days will not qualify as being rented to an Eligible Household. A Unit that is master leased to a Qualified Employer for sublease to its employees who are members of Eligible Households will qualify as a Unit that is rented to an Eligible Household.

b. No business activity shall occur on or in a County Unit, other than as permitted within the zoning district applicable to the Property.

4. **County Unit Lease.** No County Unit shall be leased or occupied without a lease. Each County Unit shall have only one lease at any one time. When leasing County Units, Owner shall not discriminate between County employees, employees of businesses in the County, and other tenants with respect to the rent charged, the amount of the security deposit required, or any other material lease terms. Each County Unit lease shall expressly provide that such lease is subject to this Deed Restriction and shall contain a brief summary of this Deed Restriction, including the remedies upon a violation or breach of the terms of this Deed Restriction, and shall incorporate the terms and conditions of this Deed Restriction.

5. **Right To Terminate Lease.** Nothing herein shall prevent Owner from terminating the lease of a Eligible Household, or taking any other legal action against a Eligible Household based upon any tenant's breach of the terms of the lease; provided that if a tenant of a County Unit misrepresents his or her Household's status as an Eligible Household, Owner shall terminate the lease in addition to any other available remedies.

6. **Inspection.** In a non-emergency situation, if the ECHDA or Owner has reasonable cause to believe that an occupant of a County Unit is violating any provision of this Deed Restriction, the ECHDA or Owner may inspect the County Unit between the hours of 8:00 am and 5:00 pm, Monday through Friday, after providing the occupant with no less than 24 hours written notice, which notice may be given by posting on the front door of the applicable County Unit. Nothing herein shall preclude the ECHDA or Owner from accessing a County Unit in an emergency situation where there is an imminent threat to person(s) or property.

7. **Annual Verification.** No later than February 1st of each year, beginning in the year following the first year of occupancy of the Property, Owner shall submit a written statement to the ECHDA including the following information and certifying that such information is true and correct to the best of Owner's knowledge and belief:

- a. A list of tenants who occupied the County Units in the prior calendar year and the evidence submitted by such tenants to establish that their Households were Eligible Households;
- b. A copy of the lease form currently used for the County Units; and
- c. Copies (which may be electronic) of all application information submitted by Eligible Households occupying County Units.

Owner or its Property Manager shall make Owner's records with respect to the use and occupancy of the County Units available to the ECHDA or its authorized agent for inspection upon request for audit to confirm compliance with this Deed Restriction.

8. **Right to Redeem.** Under C.R.S. § 38-38-305, ECHDA, as the holder of this Deed Restriction, is considered as a lienor, but without any lien amount, with a right to redeem upon the foreclosure of a superior lien, in accordance with Article 38 of Title 38, C.R.S., as amended.

9. **Superior to Liens.** This Deed Restriction is superior to each mortgage, deed of trust, and any other lien recorded against all or part of the Property, and by recording a mortgage, deed of trust, or other lien against all or any part of the Property, the lienor acknowledges and agrees that its mortgage, deed of trust, or other lien is subordinate to this Deed Restriction, and that this Deed Restriction shall remain in full force and effect and cannot be terminated, extinguished, or otherwise affected by a foreclosure of any mortgage, deed of trust, or other lien or any conveyance of the Property in lieu of any such a foreclosure.

10. **Violations.**

- a. If Owner discovers a violation of this Deed Restriction by an occupant of a County Unit, or if the ECHDA notifies Owner in writing that there is a violation of this Deed Restriction by an occupant of a County Unit, Owner shall send a notice of violation to the occupant detailing the nature of the violation and allowing the occupant 10 days from the date of the notice to cure said violation to the reasonable satisfaction of Owner and the ECHDA. Notice may be given by posting on the front door of the applicable County Unit or by other lawful means. If the violation is not

cured within such time, the violation shall be considered a violation of this Deed Restriction by the County Unit occupant.

b. If the ECHDA or its designee discovers a violation of this Deed Restriction by Owner, the ECHDA or its designee shall send a notice of the violation to Owner, detailing the nature of the violation and allowing Owner 30 days to cure said violation to the reasonable satisfaction of the ECHDA. If a forcible entry and detainer is necessary to resolve the violation, the forcible entry and detainer shall be commenced within such 30-day period and diligently prosecuted to completion. If the violation is not cured within such time, the violation shall be considered a violation of this Deed Restriction by Owner.

11. Remedies.

a. The ECHDA, the County, and their respective successors and assigns, as applicable, or their designee, shall have any and all remedies provided by law and in equity for a violation of this Deed Restriction, including without limitation: (i) damages, including but not limited to damages resulting from the leasing of a County Unit in violation of this Deed Restriction; (ii) specific performance; and (iii) injunction, including but not limited to an injunction requiring eviction of the occupant(s) and an injunction to prohibit the occupancy of a County Unit in violation of this Deed Restriction. All remedies shall be cumulative.

b. In addition to any other available remedies, if Owner is found to be in violation this Deed Restriction (after expiration of any cure period), Owner shall be subject to a penalty of \$100 per violation as determined by the ECHDA in each instance. Each occurrence is hereby deemed to be a separate violation of this Deed Restriction, and the penalty may be imposed for each and every day during any portion of which a violation is found to have been committed, continued or permitted by Owner. This penalty shall not apply if it is discovered that an occupant provided false information to Owner, Owner reasonably relied on such false information, and the false information caused the violation.

c. In addition to any other available remedies, if an occupant of a County Unit is found to be in violation of this Deed Restriction (after expiration of any cure period), the occupant shall be subject to a penalty of \$100 per violation as determined by the ECHDA or its designee in each instance. Each occurrence is hereby deemed to be a separate violation of this Deed Restriction, and the penalty may be imposed for each and every day during any portion of which a violation is found to have been committed or continued by an occupant.

d. The cost to the ECHDA of any activity taken in response to any violation of this Deed Restriction by Owner, including reasonable attorney fees, shall be paid promptly by Owner; provided that, if a court of competent jurisdiction finds that Owner was not in violation of this Deed Restriction, Owner shall not be liable for such payment.

12. Term. This Deed Restriction shall commence on the Effective Date and run in perpetuity.

13. Notices. Any notice, consent, or approval that 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 parties indicated below as long as prior written notice of the change of address has been given to the all parties as indicated.

Said notices, consents and approvals shall be sent to the following addresses unless

otherwise notified in writing:

To Owner: 6 West Apartments LLC
c/o Stephen S. Spessard
1677 Buffehr Creek Road
Vail, CO 81657
sspessard@gorecreekpartners.com

To ECHDA: Eagle County Housing and Development Authority
Post Office Box 850
Eagle, CO 81631

With copy to:

Eagle County Attorney
Post Office Box 850
Eagle, CO 81631
attorneys@eaglecounty.us

14. Miscellaneous.

a. Modification. This Deed Restriction may only be modified by a subsequent written agreement of the Parties that is recorded with the Clerk and Recorder of Eagle County, Colorado.

b. Assignment. Neither this Deed Restriction nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other, but Owner may convey the Property without the ECHDA's consent. Notwithstanding the foregoing, the ECHDA may in its sole discretion assign the benefits and delegate the responsibilities hereunder to a public agency or authority organized or operated in whole or in part to provide housing programs in Eagle County.

c. Severability. If any provision of this Deed Restriction is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

d. Governing Law and Venue. This Deed Restriction shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Eagle County, Colorado.

e. Third Parties. There are no intended third-party beneficiaries to this Deed Restriction.

f. No Joint Venture. Notwithstanding any provision hereof, the ECHDA shall never be in a joint venture with Owner, and the ECHDA shall never be liable or responsible for any debt or obligation of Owner.

g. No Indemnity. Nothing herein shall be construed to require the ECHDA to protect or indemnify Owner against any losses attributable to the rental of a County Unit, nor to require the ECHDA or the County to locate an Eligible Household for any County Unit.

h. Governmental Immunity. The ECHDA, the County and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Deed Restriction, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the County or its officers, attorneys or employees.

i. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Deed Restriction shall be unlawful or void for violation of: (a) the rule against perpetuities or some similar 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 then-current duly elected and seated Eagle County Commissioners, and the then-current Eagle County employees, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

j. Recording. This Deed Restriction shall be recorded in the real property records of Eagle County, Colorado.

IN WITNESS WHEREOF, the Parties have executed this Deed Restriction as of the Effective Date.

EAGLE COUNTY HOUSING AND DEVELOPMENT AUTHORITY

DocuSigned by:
[Signature]
CA4AC128F8AA47A...

ATTEST:

DocuSigned by:
Kathy Chandler-Henry
86A861FFEBB4403...

OWNER

6 West Apartments LLC

By: West Edwards Apartments LLC, a Colorado limited liability company, its Managing Member

By: *[Signature]*
Stephen S. Spessard, its Manager

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 14th day of December, 2018, by Stephen S. Spessard, the manager of West Edwards Apartments LLC, a Colorado limited liability company, as the Managing Member of 6 West Apartments LLC, a Colorado limited liability company.

My commission expires: 3-26-21

(SEAL)
Notary Public

MICHELLE M RYMER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19964020588
MY COMMISSION EXPIRES 03/26/21

[Signature]

EXHIBIT A

LEGAL DESCRIPTION

Lot 1, Final Plat of the 6 West Apartments Subdivision, Eagle County, Colorado, recorded in the records of the Eagle County Clerk and Recorder at Reception Number 201803207.

EXHIBIT B

6 WEST APARTMENT HOMES RENTAL GUIDELINES

1. **Purpose.** The purpose of these Rental Guidelines is to set forth the occupancy eligibility requirements for the County Units pursuant to the Deed Restriction dated 01/09 / 2019.
2. **Definitions.** All capitalized terms herein shall have the meanings set forth in the Deed Restriction.
3. **Administration.** In accordance with the Deed Restriction, Owner shall administer these Rental Guidelines, including, without limitation, making determinations regarding the eligibility of applicants to rent and occupy each County Unit. Prior to leasing or renewing a lease for a County Unit, each tenant must sign an individual acknowledgement of acceptance of the terms of these Rental Guidelines and the Deed Restriction.
4. **Eligible Households.** Subject to paragraph 8 of these Rental Guidelines, to be eligible for consideration to lease a County Unit, the occupants must qualify as an Eligible Household.
5. **Application.** To become an Eligible Household an individual must first provide the following information on an application to be provided by Owner, and all applications and accompanying documentation shall become the property of Owner and the ECHDA and will not be returned to the applicant:
 - a. Verification that the applicant is a Eligible Household , including verification of the applicant's current employment and income (e.g., pay stubs, employer name, address, telephone number, and other appropriate documentation) OR verification that the applicant derives at least 75% of the applicant's total annual gross income from employment at one or more employers in Eagle County
 - b. A valid form of identification, such as a driver's license, state-issued identification, passport or military identification;
 - c. Any other documentation that Owner or the ECHDA deems necessary to make a determination of eligibility; and
 - d. A statement signed by the applicant certifying, acknowledging, and agreeing: that all information submitted in such application is true; that the applicant has read the Deed Restriction and these Guidelines and agrees to comply with them; that the applicant understands that he or she may not sublet the County Unit; that the applicant authorizes Owner to verify any and all past or present employment and residency information and all other information submitted by an applicant; and that the applicant understands that, as set forth in the Deed Restriction, Owner reserves the right to review any applications and take any appropriate action regarding such application.

6. Interpretation. In evaluating an application to lease a County Unit, Owner shall be guided by the following:

- a. An applicant's physical place of employment is controlling, not the mailing address;
- b. Claims of employment by an applicant that are unable to be verified by Owner will not be utilized in determining an applicant's eligibility; and
- c. Seasonal work and part-time work alone may not be adequate to meet the minimum 30 hours per week average annual requirement, but may augment other employment to meet the minimum eligibility requirements.

7. Occupancy.

- a. Owner shall provide the ECHDA with written notice of each upcoming vacancy of a County Unit at least 10 days prior to the end of the then-current lease term.
- b. Subject to these Guidelines, at all times, each County Unit shall be occupied by an Eligible Household.
- c. A County Unit may be vacant during repairs and renovations, but Owner may not disproportionately designate vacant Units as County Units. For example, because approximately 10% of the Units at the Property are County Units, if there are 5 vacant Units at the Property at a particular time, only one of the vacant Units may be a County Unit.
- d. The preference for leasing/occupancy for each available County Unit shall be as follows:
 - i. The County or an Eligible Household that includes a member who is employed by the County; but if Owner makes reasonable efforts to lease the County Unit to all such Qualified Residents for 7 days and finds no such Qualified Residents, then to
 - ii. An Eligible Household that includes a member who is employed by a business located within the County's boundaries.
- e. The County Units shall be leased for 12-month periods.
- f. If the ECHDA or the County is the lessee, as an Eligible Household, either may transfer a County Unit lease to another Eligible Household at any time.
- g. If the ECHDA or the County is the lessee, as an Eligible Household, either may sublease a County Unit to another Eligible Household at any time.

8. Misrepresentation. Any misrepresentation by an applicant in any submittal shall disqualify such applicant from being eligible to lease a County Unit, and shall be grounds for eviction if such misrepresentation is revealed after such applicant's occupancy.

9. Inspection of Documents. The ECHDA or its designee may inspect any documents submitted with any application for Eligible Household status pursuant to Section 5 hereof, at any time during normal business hours, upon reasonable notice. In addition, upon inspection, if the ECHDA reasonably determines that additional documents are necessary to verify Eligible Household status, the ECHDA may request additional documents.

10. Retirement. An individual who occupies a County Unit as his or her Primary Residence and was an Eligible Household when the individual moved into the County Unit, but then retires during the term of his or her lease, and is 60 years of age or older at the time of retirement, and who, worked an average of 30 hours or more per week at a business located in Eagle County that paid sales taxes, or was otherwise generally recognized as a legitimate business, may continue to occupy the County Unit under a County Lease, as extended or renewed.

11. Disability. An individual who occupies a County Unit as his or her Primary Residence and was an Eligible Household when the individual moved into the County Unit, but then becomes disabled during the term of his or her lease and the disability prevents the individual from working an average of 30 hours or more per week may continue to occupy the County Unit under a County Lease, as extended or renewed.