

RESTRICTIVE COVENANT IMPOSING OCCUPANCY RESTRICTIONS AT 6 WEST APARTMENTS FOR THE BENEFIT OF EAGLE COUNTY HOUSING AND DEVELOPMENT AUTHORITY

THIS RESTRICTIVE COVENANT IMPOSING OCCUPANCY RESTRICTIONS AT 6 WEST APARTMENTS FOR THE BENEFIT OF EAGLE COUNTY HOUSING AND DEVELOPMENT AUTHORITY (the "Covenant") is made and entered into this 2/27/18, by 6 West Apartments LLC, a Colorado limited liability company (together with its successors and assigns "**Declarant**"), and the Eagle County Housing and Development Authority (the "**ECHDA**").

RECITALS:

A. The property which is the subject of this Covenant is all of that certain real property located in the County of Eagle, State of Colorado, consisting of a residential planned unit development known as 6 West Apartments Planned Unit Development, legally described on Exhibit A attached hereto and incorporated herein (the "**Property**"). The Declarant is the sole owner in fee simple of the Property, which has been platted as a planned unit development consisting of 120 apartments (each a "**Unit**"), pursuant to the Final Plat for 6 West Apartments Planned Unit Development, recorded on MARCH 1, 2018 under Reception No. 201803207 in the real property records of Eagle County, Colorado; and

B. There is a demonstrated need for affordable housing for residents of the County and this Covenant providing for resident-occupied housing, as defined herein, supports the health, safety and welfare of the citizens of the County; and

C. The Declarant agreed to this Covenant as part of its application for approval of an amendment to the VIA Planned Unit Development (VIA PUD was renamed to 6 West Apartments PUD"), approved by Eagle County by Resolution No. 2018- 002 dated January 2, 2018, *nunc pro tunc* to the 19th day of October 2017, as a means by which housing can be provided for persons residing in Eagle County.

NOW, THEREFORE, in consideration of the foregoing, and for value received, the receipt and sufficiency of which is hereby acknowledged, the parties hereby represent, covenant, and agree as follows:

1. Definitions:

- 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:

Eagle County, CO

Regina O'Brien

Pgs: 8

FEES: \$0.00

DOC: \$0.00

201803210

03/01/2018

09:42:51 AM

1
ECHDA18-003

- 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 sub lease 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 Declarant’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 Declarant 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 Declarant 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 Declarant 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. **“Restricted Unit”** a unit that is rented to an Eligible Household pursuant to the terms of this Covenant.
2. **Occupancy Restriction.** At least 70% of the Units must be either rented to Eligible Households, or be unoccupied and reserved for renting to Eligible Households. Not more than 30% of the Units may be rented at any one time to Households that are not Eligible Households. If part of the Property is rented before all of the Units are completed, the 70% restriction will be based only on the number of Units that are completed and rented or available for rent. At such time as all 120 Units are completed and rented or available for rent, at least 84 Units must either be rented to Eligible Households or be vacant and reserved for renting to Eligible Households. 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. The Declarant or its Property Manager must submit an Annual Certification to the ECHDA with respect to each calendar year within 60 days after the end of the

calendar year. The Declarant or its Property Manager shall make the Declarant's records with respect to the use and occupancy of the Units available to the ECHDA or its authorized agent for inspection and copying upon request for audit to confirm compliance with this Covenant.

3. Seniority of Covenant. Any interest in, lien upon or obligation recorded of record against the Property acquired by any person or entity shall be subject and subordinate to the covenants and restrictions set forth in this Covenant.
4. Covenant Runs with the Land. This Covenant and the terms, conditions and other provisions hereof shall be covenants that run with and bind the Property and shall be binding on the Declarant and its successors and assigns. Each and every lease and each and every contract, deed or other instrument hereafter executed conveying the Property or any portion thereof shall expressly provide that such lease or conveyance is subject to this Covenant; provided, however, that the covenants, conditions and restrictions contained herein shall survive and be effective as to lessees and successors and/or assigns of all or any portion of the Property, regardless of whether such lease, contract, deed or other instrument hereafter executed leasing or conveying the Property or any portion thereof provides that such lease or conveyance is subject to this Covenant.
5. Enforcement. This Covenant is enforceable by the ECHDA and the Eagle County Board of County Commissioners, and their respective successors and assigns, as applicable, or their designee, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction. The remedies provided herein are cumulative and not exclusive, of all other remedies provided by law.
6. 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 Declarant: 6 West Apartments LLC
 c/o Stephen S. Spessard
 1677 Buffehr Creek Road
 Vail, CO 81657
 sspessard@gorecreekpartners.com

With copy to:

Brandt Marott
Brandt@M6Affiliated.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
atty@eaglecounty.us

7. Disputes. If any action is brought in a court of law by either party to this Covenant concerning the enforcement, interpretation or construction of this Restrictive Covenant, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action. The exclusive forum for any dispute arising from or relating to this Covenant shall be the Eagle County District Court.
8. Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a 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 to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Covenant or such documents.
9. Choice of Law. This Covenant and each and every related document are to be governed and construed in accordance with the laws of the State of Colorado.
10. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the respective successors and assigns of the Declarant and the ECHDA.
11. Section Headings. Paragraph or section headings within this Covenant are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
12. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against the Declarant and the ECHDA except on the basis of a written instrument executed by both the Declarant and the ECHDA. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.
13. Gender and Number. Whenever the context so required 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.
14. Further Actions. The Declarant and the ECHDA, 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 Covenant or any covenant or document relating hereto or entered into in connection herewith.

15. Modifications. The Declarant and the ECHDA agree that any modifications of this Covenant shall be effective only when made by writings signed by the Declarant and the ECHDA and recorded with the Clerk and Recorder of Eagle County, Colorado.
16. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Covenant 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.
17. Assignment. 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.
18. Entire Agreement. This Covenant constitutes the entire agreement and understanding between the parties relating to the subject matter of this Covenant, and supersedes any prior agreement or understanding relating thereto.
19. Recording. This Covenant shall be recorded in the real property records of Eagle County, Colorado.

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

Declarant:

6 West Apartments LLC

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

By:



Stephen S. Spessard, its manager

Wyoming
 STATE OF ~~COLORADO~~)
 Teton)ss.
 COUNTY OF ~~EAGLE~~)

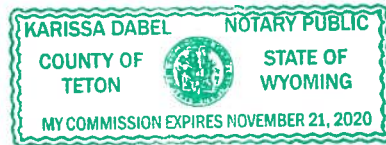
The foregoing instrument was acknowledged before me this 22 day of February, 2018, by Stephen S. Spessard, as a manager of West Edwards Apartments LLC, a Colorado limited liability company, which is the Managing Member of 6 West Apartments LLC, a Colorado limited liability company, on behalf of 6 West Apartments LLC.

Witness my hand and official seal.

My commission expires: November 21, 2020



Karissa Dabel
 Notary Public



Attest:
 My: [Signature]
 Clerk: Kecokovuk

EAGLE COUNTY HOUSING AND DEVELOPMENT AUTHORITY

By: [Signature: Cathy Chandler-Servey]
 Its: CHA

STATE OF COLORADO)
) SS.
 COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me by _____, as _____ of the Eagle County Housing and Development Authority, Inc. this _____ day of _____, 2018.

My commission expires: _____

 Notary Public

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.