

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 27 day of November, 2018 (the "Effective Date"), by and between the Town of Vail, a Colorado home rule municipality with an address of 75 South Frontage Road, Vail, CO 81657 (the "Town"), 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 23 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:

"*Bona Fide Business*" means a business that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business.

"Principal Place of Residence" means the dwelling in which one's habitation is fixed and to which a person, whenever he or she is absent, has a present intention of returning after an absence therefrom. In determining what is a principal place of residence, the Town and Owner shall consider the criteria set forth in C.R.S. § 31-10-201(3), as amended.

"Qualified Household" means one Qualified Resident or a group of persons that contains at least one Qualified Resident (who must sign the lease as a tenant). A Qualified Household may have occupants that are not Qualified Residents (and who may also sign the Town Unit lease as tenants) as long as at least one occupant who has signed the lease is a Qualified Resident. The Town shall always be a Qualified Household, so that the Town may lease any Town Unit at any time.

"Qualified Resident" means a natural person who occupies a Town Unit as his or her Principal Place of Residence and works an average of 30 hours or more per week at one or more *Bona Fide Businesses* in Eagle County, Colorado and derives 75% of

his or her total annual gross income from employment at such business. For example, if a person worked 60 hours per week for one half of the year as such a business in Eagle County, Colorado, and worked elsewhere for the other half of the year, such person would constitute a Qualified Resident.

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

"Town Units" means the Units that are subject to this Deed Restriction. The Town Units are not fixed, specific Units, but may float, as long as, once the Development is complete, the total number of Town Units subject to this Deed Restriction is equal at all times to 23 (14 one-bedroom, 6 two-bedroom and 3 three-bedroom).

"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, the Town, Owner and any subsequent owner of the Property. This Deed Restriction shall bind Owner and all occupants of the Town Units. Each and every occupant of a Town 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 Town 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. 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 cannot be terminated, extinguished, or otherwise affected by a foreclosure of the mortgage, deed of trust, or other lien.

3. Occupancy and Use.

a. Subject to the Rental Guidelines, each Town Unit shall be occupied at all times by a Qualified Household.

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

4. Town Unit Lease. No Town Unit shall be leased or occupied without a lease. Each Town Unit shall have only one lease at any one time. When leasing Town Units, Owner shall not discriminate between Town employees, employees of businesses in the Town, and other tenants with respect to the rent charged, the amount of the security deposit required, or any other material lease terms. Each Town Unit lease shall include

a clear reference to this Deed Restriction and 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 Qualified Household, or taking any other legal action against a Qualified Household based upon any tenant's breach of the terms of the lease; provided that if a tenant of a Town Unit misrepresents his or her status as a Qualified Resident, Owner shall terminate the lease in addition to any other available remedies.

6. Inspection. In a non-emergency situation, if the Town or Owner has reasonable cause to believe that an occupant of a Town Unit is violating any provision of this Deed Restriction, the Town or Owner may inspect the Town 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 Town Unit. Nothing herein shall preclude the Town or Owner from accessing a Town 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 Town 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 Town Units in the prior calendar year and the evidence submitted by such tenants to establish that they were Qualified Residents and/or Qualified Households;

b. A copy of the lease form currently used for the Town Units; and

c. Copies (which may be electronic) of all application information submitted by Qualified Residents actually occupying Town Units.

8. Right to Redeem. Under C.R.S. § 38-38-305, Town, 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 will remain in full force and event, and will not be extinguished or invalidated by, the foreclosure of any mortgage, deed of trust, or other lien that is recorded after this Deed Restriction, or that is subordinated to this Deed Restriction, 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 Town Unit, or if the Town notifies Owner in writing that there is a violation of this Deed Restriction by an occupant of a Town 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 Town. Notice may be given by posting on the front door of the applicable Town 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 Town Unit occupant.

b. If the Town discovers a violation of this Deed Restriction by Owner, the Town 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 Town. 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 Town 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 Town 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 Town 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 of this Deed Restriction (after expiration of any cure period), Owner shall be subject to a penalty of \$100 per violation as determined by the Town 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 Town 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 Town 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 Town 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 the Town or a court of competent jurisdiction finds that Owner was not in violation of this Deed Restriction, Owner shall not be liable for such payment.

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

12. Miscellaneous.

a. Modification. This Deed Restriction may only be modified by subsequent written agreement of the Parties.

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 Town's consent.

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 Town shall never be in a joint venture with Owner, and the Town shall never be liable or responsible for any debt or obligation of Owner.

g. No Indemnity. Nothing herein shall be construed to require the Town to protect or indemnify Owner against any losses attributable to the rental of a Town Unit, nor to require the Town to locate a Qualified Resident for any Town Unit.

h. Governmental Immunity. The Town 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 Town or its officers, attorneys or employees.

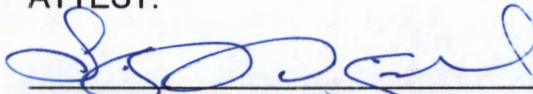
IN WITNESS WHEREOF, the Parties have executed this Deed Restriction as of the Effective Date.

TOWN OF VAIL, COLORADO



Greg Clifton, Town Manager

ATTEST:




Patty McKenny, Town Clerk
Tammy Nagel



OWNER

6 West Apartments LLC

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

By: 

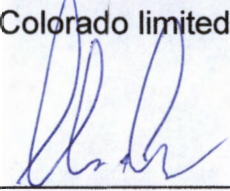
Stephen S. Spessard, its
manager

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

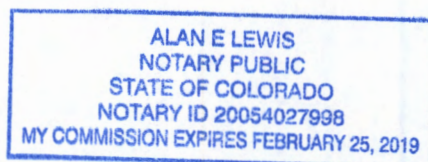
The foregoing instrument was subscribed, sworn to, and acknowledged before me this 27th day of NOVEMBER, 2018, by Stephen S. Spessard, the manager of West Edwards Apartments LLC, a Colorado limited liability company, as the Managing Member of 6 West Apartments LLC, a Colorado limited liability company.

My commission expires: 2/25/19

(S E A L)



Notary Public



CONSENT AND SUBORDINATION

FirstBank, a Colorado state banking corporation, is the beneficiary under the Deed of Trust and Security Agreement dated May 4, 2018, which was recorded in the real estate records of Eagle County, Colorado on May 11, 2018 at Reception Number 8084. FirstBank hereby consents to this Deed Restriction, subordinates the Deed of Trust to the Deed Restriction, and acknowledges and agrees that a foreclosure of the Deed of Trust or any other exercise of the beneficiary's rights under the Deed of Trust will not extinguish or otherwise affect the Deed Restriction, and that the Deed Restriction will remain in full force and effect after a foreclosure of the Deed of Trust.

Date: December 4th, 2018.

FIRSTBANK, a Colorado state banking corporation

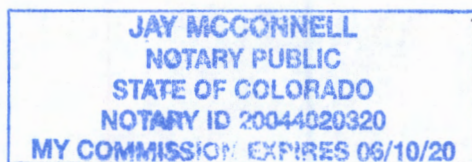
By: Adina D. Dean
Name: Adina D. Dean
Title: Executive Vice President

STATE OF COLORADO)
) ss.
COUNTY OF Eagle)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 6th day of December, 2018, by Adina D. Dean, an Executive Vice President of FirstBank, a Colorado state banking corporation, on behalf of FirstBank.

My commission expires: 6/10/20

(S E A L)



Notary Public

Witness: Rebecca Osborne
~~Notary Public~~
 By: [Signature] Deputy
 Clerk To The Board

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 Town Units pursuant to the Deed Restriction dated _____, 2018.
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 Town Unit. Prior to leasing or renewing a lease for a Town Unit, each tenant must sign an individual acknowledgement of acceptance of the terms of these Rental Guidelines and the Deed Restriction.
4. Qualified Households. Subject to paragraph 8 of these Rental Guidelines, to be eligible for consideration to lease a Town Unit, the occupants must qualify as a Qualified Household.
5. Application. To become a Qualified Resident, 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 Town and will not be returned to the applicant:
 - a. Verification that the applicant is a Qualified Resident, including verification of the applicant's current employment and income (e.g., pay stubs, employer name, address, telephone number, and other appropriate documentation);
 - b. A valid form of identification, such as a driver's license, state-issued identification, passport or military identification;
 - c. A statement from the applicant that the applicant derives at least 75% of the applicant's total annual gross income from employment at one or more *Bona Fide* businesses in Eagle County (beyond obtaining this certification, Owner has no obligation to confirm that an applicant derives at least 75% of his or her total annual gross income from employment in Eagle County);
 - d. Any other documentation that Owner or the Town deems necessary to make a determination of eligibility; and
 - e. 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 Town 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 Town 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. The availability of each Town Unit shall be publicly advertised in the Town at least 10 days prior to the expiration of the then current lease term. In addition, Owner shall provide the Town with written notice of each upcoming vacancy of a Town Unit at least 10 days prior to the end of the then-current lease term.

b. Subject to these Guidelines, at all times, each Town Unit shall be occupied by a Qualified Household.

c. A Town Unit may be vacant during repairs and renovations, but Owner may not disproportionately designate vacant Units as Town Units. For example, because approximately 19% of the Units at the Property are Town Units, if there are 5 vacant Units at the Property at a particular time, only one of the vacant Units may be a Town Unit.

d. The preference for leasing/occupancy for each available Town Unit shall be as follows:

i. The Town or a Qualified Household that includes a Qualified Resident who is employed by the Town; but if Owner makes reasonable efforts to lease the Town Unit to all such Qualified Residents for 7 days and finds no such Qualified Residents, then to

iii. A Qualified Household that includes a Qualified Resident who is employed by a *Bona Fide* Business located within the Town's boundaries; but if Owner makes reasonable efforts to lease the Town Unit to all such Qualified Residents for 7 days and finds no such Qualified Residents, then to

iv. A Qualified Household that includes a Qualified Resident who is not employed within the Town's boundaries.

e. The Town Units shall be leased for 12-month periods commencing between September 1 and October 1 of each year; provided that if a tenant vacates a Town Unit prior to the end of the lease term, Owner shall make reasonable efforts to re-lease the Town Unit with a term ending between the next August 31 and September 30, and if Owner is unable to do so, Owner shall provide written notice to the Town, including a copy of the lease. When a Town Unit has a lease with a term not consistent with this Section, Owner shall, as soon as practicable, switch the Town Unit to another Unit that is available, or that already is leased to a Qualified Household, but is not designated as a Town Unit, while keeping the allocation of Town Units at 14 one-bedroom Units, 6 two-bedroom Units, and 3 three-bedroom Units.

f. The Town, as a Qualified Household, may transfer a Town Unit lease to another Qualified Household at any time.

g. The Town, as a Qualified Household, may sublease a Town Unit to another Qualified Household at any time.

8. Leasing of Town Units to Non-Qualified Households. If there are no eligible Qualified Households available to lease a particular Town Unit, Owner may lease such Town Unit to occupants other than a Qualified Household, but only upon written approval by the Town's Housing Coordinator, after a finding that extraordinary circumstances and hardship exist to justify such arrangement.

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

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

11. Retirement. An individual who occupies a Town Unit as his or her Principal Place of Residence and was a Qualified Resident when the individual moved into the Town 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, for the 5 years immediately prior to retirement, worked an average of 30 hours or more per week at a business in Eagle County that held a valid and current business license, or paid sales taxes, or was otherwise generally recognized as a legitimate business, may continue to occupy the Town Unit under a Town Lease, as extended or renewed.

12. Disability. An individual who occupies a Town Unit as his or her Principal Place of Residence and was a Qualified Resident when the individual moved into the Town 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 Town Unit under a Town Lease, as extended or renewed.