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Janice K. Vos Caudill, Pitkin County, CO

***MASTER DEED RESTRICTION AGREEMENT  
FOR THE OCCUPANCY AND RESALE  
OF 625 MAIN STREET AFFORDABLE HOUSING UNITS***

**THIS MASTER DEED RESTRICTION AGREEMENT FOR THE OCCUPANCY AND RESALE OF 625 MAIN STREET AFFORDABLE HOUSING UNITS** (the "Agreement") is made and entered into this 29<sup>th</sup> day of November 2012, by 625 MAIN ASPEN, LLC, a Colorado limited liability company (hereinafter referred to as "Declarant"), for the benefit of the parties and enforceable by the ASPEN/PITKIN COUNTY HOUSING AUTHORITY (hereinafter referred to as "APCHA"), a duly constituted multi-jurisdictional Housing Authority established pursuant to the ***FOURTH AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT*** by and between the City of Aspen, Colorado (the "City") and Pitkin County, Colorado (the "County"), dated December 20, 2007 and recorded at Reception No. 545387 on January 2, 2008, of the records of the Pitkin County Clerk and Recorder's Office, and the City Council for the City of Aspen (the "City Council").

**WITNESSETH:**

**WHEREAS**, Declarant owns the real property described in Exhibit "A" attached hereto and incorporated herein. For purposes of this Agreement, the real property and all dwellings, appurtenances, improvements and fixtures associated therewith shall hereinafter be referred to as the "Property"; and

**WHEREAS**, as a condition of the approval granted by the City Council of Aspen, Colorado for subdivision approval of the Property, the Declarant is required to enter into this Agreement; and

**WHEREAS**, Declarant agrees to restrict the acquisition or transfer of the Property to "Qualified Buyers," as that term is defined in this Agreement, who fall within the **Category 4** income range established and adopted by the APCHA from time to time in its Employee Housing Guidelines. In addition, the Declarant agrees that this Agreement shall constitute a resale agreement setting forth the maximum resale price for which the Property may be sold ("Maximum Resale Price") and the terms and provisions controlling the resale of the Property. Finally, by this Agreement, Declarant restricts the Property against use and occupancy inconsistent with this Agreement.

**WHEREAS**, "Qualified Buyers" are natural persons meeting the income, residency and all other qualifications set forth in the Aspen/Pitkin County Housing Authority Employee Housing Guidelines (hereinafter the "Employee Housing Guidelines"), or its substitute, as adopted by the APCHA, or its successor, and in effect at the time of the closing of the sale to the Qualified Buyer, and who must represent and agree pursuant to this Agreement to occupy the Property as their sole place of residence, not to engage in any business activity on the Property, other than that permitted in that zone district or by applicable ordinance, not to sell or otherwise transfer the Property for use in a trade or business; and to continue meeting the employment, residency and other requirements as stated in this Agreement, and as stated in the Guidelines as they are amended from time to time.

**WHEREAS**, an "Owner" is a person or persons who is/are a Qualified Buyer who acquires an ownership interest in the Property or Unit in compliance with the terms and provisions of this Agreement, or any other person or legal entity owning an interest in the Property or Unit; it being understood that such person, persons or entity shall be deemed an "Owner" hereunder only during the period of his, her, their or its ownership interest in the Property and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

**WHEREAS**, this document supercedes any previous deed restriction agreement for occupancy and resale associated with this unit.

**WHEREAS**, "Unit" are Units 202 and 203, 625 East Main Street, Aspen, Colorado 81611.

**NOW, THEREFORE**, for value received, the receipt and sufficiency of which are hereby acknowledged, Owner hereby represents, covenants and agrees as follows:

### **USE AND OCCUPANCY**

1. The use and occupancy of the Property shall henceforth be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers and their families, and the other requirements of this Agreement and the Aspen/Pitkin County Housing Authority Employee Housing Guidelines referred to above.

### **REQUIREMENTS**

2. An Owner, in connection with the purchase of this Property or Unit, must: a) occupy any Unit within this Property as his or her sole place of residence during the time that such unit is owned; b) not own, directly or indirectly through a legal entity, any interest alone or in conjunction with others, in any developed property or dwelling units in accordance with the limitations established by the Guidelines as amended from time to time; c) not engage in any business activity on or in such Unit, other than permitted in that zone district or by applicable ordinance; d) sell or otherwise transfer such Unit only in accordance with this Agreement and the Employee Housing Guidelines; e) not sell or otherwise transfer such Unit for use in a trade or business; f) not encumber the property with debt in any form which exceeds, at any time, the Maximum Resale Price of the Property as determined in accordance with Paragraph 9 and 10 of this Agreement; g) not permit any use or occupancy of such Unit except in compliance with this Agreement; h) continue to meet the residence and employment requirements of a Qualified Buyer established by the APCA Guidelines and as they are amended from time to time; and i) continue to meet the other requirements of the applicable APCA Guidelines as they are amended from time to time, and this Agreement. Recertification of employment, residency and the ownership of other property shall be required as stipulated in the APCA Guidelines.

### **DEFAULT ON LOAN**

3.
  - a. It shall be a breach of this Agreement for Owner to default in payments or other obligations due or to be performed under a promissory note secured by a first deed of trust encumbering the Property or a Unit or to breach any of Owner's duties or obligations under said deed 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 Homeowners' Association for general or special assessments. Owner must notify the APCA, in writing, of any such default, including 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 first 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 calendar days of Owner's notification from lender, or its assigns, or any other creditor specified herein, of said default or past due payments or breach.
  - b. Upon notification of a default as provided above, the APCA may offer loan counseling or distressed loan services to the Owner, if any of these services are available, and are entitled to require the Owner to sell the Property or a Unit to avoid the commencement of any foreclosure proceeding against the Property or a Unit.
  - c. Upon receipt of notice as provided in paragraphs 3a and b, the APCA shall have the right, in its sole discretion, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to APCA for past due payments made by the APCA together with interest thereon at the rate specified in the promissory note secured by the first deed of trust, plus one percent (1%), and all actual expenses of the APCA incurred in curing the default. The Owner shall be required by APCA to execute a promissory note secured by deed of trust encumbering the Property in favor of the APCA for the amounts expended by the APCA as specified herein, including future advances made for such purposes. The Owner may cure the default and satisfy its obligation to the APCA

under this subparagraph at any time prior to execution of a contract for sale, upon such reasonable terms as specified by the APCHA. Otherwise, Owner's indebtedness to the APCHA shall be satisfied from the Owner's proceeds at closing.

- d. In addition, upon receipt of notice as provided in Paragraphs 3a and 3b, the APCHA shall have the option, exercisable in the APCHA's sole discretion, to purchase the Owner's Lot and Improvements for ninety-five percent (95%) of the Maximum Resale Price. If the APCHA desires to exercise said option, it shall give written notice thereof to the Owner within sixty (60) days following the APCHA's receipt of the notice as provided in Paragraphs 3a and 3b. In the event the APCHA timely exercises said option, the closing of the purchase of the Lot and Improvements shall occur within sixty (60) days following the date of the APCHA's notice to the Owner of the exercise of said option.

#### **DEFAULT ON CONDOMINIUM ASSESSMENTS**

4. It shall be a violation of the Agreement for the Declarant, the Association, or a Qualified Buyer to default in the payment of general or special assessments to the Homeowner's Association, and such person shall be subject to enforcement as provided herein. In addition, upon sale of a unit as to which the payment of such obligations is in default, the assessments shall be paid at closing.

#### **ENFORCEMENT**

5. In the event that the APCHA determines that sale of the Property or a Unit is necessary as a result of breach of this Agreement, Owner shall immediately execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission with the APCHA, providing for a 30-day listing period. At that time, the Owner shall deposit with the APCHA an amount equal to one percent (1%) of the estimated value of the Unit. If a sales contract has not been executed within the initial 30-day period, Owner shall extend the listing period for an additional 180 days, provided such extension does not conflict with the statutory rights of any secured creditors. The APCHA shall promptly advertise the Property for sale by competitive bid to Qualified Buyers. At the time of closing, the Owner shall pay to the APCHA an additional fee as stated in the *Aspen/Pitkin County Employee Housing Guidelines*. In the event of a listing of the Property pursuant to this Paragraph 5, the APCHA is entitled to require the Owner to accept the highest of any qualified bids that is equal to the lesser of (i) an amount that at least satisfies the Owner's financial or other obligations due under the promissory note secured by a first deed of trust and any deed of trust in favor of the APCHA, as described herein, or (ii) the Maximum Resale Price (as hereinafter defined), and to sell the Property to such qualified bidder. The listing and sale of the Property or Unit shall be subject to such listing, sales and other fees and expenses as may be imposed by the APCHA from time to time as set forth in the Employee Housing Guidelines.

#### **AGREEMENT RUNS WITH THE LAND**

6. This Agreement shall constitute covenants running with the Property, as a burden thereon, for the benefit of, and shall be specifically enforceable by the APCHA, the City Council for the City (the "City Council"), 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.

#### **VOLUNTARY SALE**

7. In the event that an Owner desires to voluntarily sell the Property or Unit, the Owner shall execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission with the APCHA providing for a 180-day listing period, or such other time period as required by the APCHA Employee Housing Guidelines in effect at time of listing. The APCHA shall promptly advertise the Property or Unit for sale by competitive bid to Qualified Buyers. The listing and sale of the Property or Unit shall be subject to such listing, sales and other

fees and expenses as may be imposed by the APCHA from time to time as set forth in the Employee Housing Guidelines.

#### APCHA'S RIGHT TO ACQUISITION

8. Notwithstanding any provision herein to the contrary, the APCHA shall have the right, in its sole discretion, (i) to acquire any Property or Unit for the purpose of resale thereof to a Qualified Buyer; (ii) following its acquisition of any Property or Unit, to repair, replace, redevelop, remove and maintain such Property or Unit prior to resale to a Qualified Buyer; and/or (iii) amend this Deed Restriction Agreement following the acquisition.

#### MAXIMUM RESALE PRICE

9. In no event shall the Property or a Unit be sold for an amount ("Maximum Resale Price") in excess of the lesser of:
- a. \$<sup>1</sup>, plus an increase of three percent (3%) of such price per year from the date of purchase to the date of Owner's notice of intent to sell (prorated at the rate of .25 percent for each whole month for any part of a year); or
  - b. an amount (based upon the Consumer Price Index, All Items, U.S. City Average, Urban Wage Earners and Clerical Workers (Revised), published by the U.S. Department of Labor, Bureau of Labor Statistics) calculated as follows: the Owner's purchase price divided by the Consumer Price Index published at the time of Owner's purchase stated on the Settlement Statement, multiplied by the Consumer Price Index current at the date of intent to sell. In no event shall the multiplier be less than one (1). For purposes of this Agreement, "date of intent to sell" shall be the date of execution of a listing contract when required by this agreement, or if a listing contract is not otherwise necessary, the date shall be determined to be the date upon which a requirement for the Owner to sell is first applicable.

**NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE APCHA OR THE CITY THAT ON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.**

10. a. Subject to the limitations of this Section, for the purpose of determining the Maximum Resale Price in accordance with this Section, the Owner may add to the amount specified in Paragraph 9 above, the cost of Permitted Capital Improvements, as set forth in Exhibit "B" attached hereto or otherwise allowed by the Employee Housing Guidelines and as they are amended from time to time, in a total amount not to exceed \$<sup>2</sup>, which is ten percent (10%) of the listed purchase price set forth in paragraph 9a above. In calculating such amount, only those Permitted Capital Improvements identified in Exhibit "B" hereto or otherwise allowed by the Employee Housing Guidelines from time to time shall qualify for inclusion. All such Permitted Capital Improvements installed or constructed over the life of the unit shall qualify, and will be depreciated based on the Depreciation Schedule used by APCHA at the time of listing.
- b. Permitted Capital Improvements shall not include any changes or additions to the Property made by the Owner during construction or thereafter, except in accordance with Paragraph 9a above. Permitted Capital Improvements shall not be included in the APCHA's listed purchase price, even if made or installed during original construction.

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<sup>1</sup> To be established by a separate Memorandum of Acceptance when sold to a Qualified Buyer.

<sup>2</sup> To be established by a separate Memorandum of Acceptance when sold to a Qualified Buyer.

- c. In order to qualify as Permitted Capital Improvements, the Owner must furnish to the APCA the following information with respect to the improvements that the Owner seeks to include in the calculation of Maximum Resale Price:
- (1) Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;
  - (2) Owner's affidavit verifying that the receipts are valid and correct receipts tendered at the time of purchase; and
  - (3) True and correct copies of any building permit or certificate of occupancy required to be issued by the Aspen/Pitkin County Building Department with respect to the Permitted Capital Improvements.

All capital improvements will be depreciated. Certain capital improvements will not be counted towards the 10% cap. Each capital improvement will depreciate according to the depreciation schedule stated in an approved handbook. The current source is the *Marshall Swift Residential Handbook*. Any capital improvements associated with health and safety, energy efficiency, water conservation, and green building products will be exempt from the 10% capital improvement cap; however, such capital improvements shall be depreciated according to the depreciation schedule stated in an approved handbook.

- d. For the purpose of determining the Maximum Resale Price in accordance with this Section, the Owner may also add to the amounts specified in Paragraphs 9 and 10a, the cost of any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency, provided that written certification is provided to the APCA of both the applicable requirement and the information required by Paragraph 10c, (1) – (3).
- e. In order to obtain maximum resale price, Owner must ensure that the unit meets APCA's generally applicable minimum standards for a seller of a deed-restricted unit to receive full value as determined by APCA in its discretion. This shall include requirements to clean the home, ensure that all fixtures are in working condition, and to repair damage to the unit beyond normal wear and tear and as stated in the *Minimum Standards for Seller to Receive Full Value at Resale*, Exhibit "C". If the Seller does not meet this requirement, APCA may require that Seller escrow at closing a reasonable amount to achieve compliance by APCA, or reduce the maximum resale price accordingly.

#### **GRIEVANCES**

11. All disputes between the Owner and the administrative staff of the APCA shall be heard in accordance with the grievance procedures set forth in the Employee Housing Guidelines.

#### **CLOSING COSTS**

12. Owner shall not permit any prospective buyer to assume any or all of the Owner's customary closing costs (including, but not limited to, title insurance, sales fee, pro ration of taxes, homeowners dues, etc., as are customary in Aspen and Pitkin County) nor 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 buyer.

#### **MULTIPLE QUALIFIED BIDS**

13. In the event that one qualified bid is received equal to the Maximum Resale Price herein established, the Property shall be sold to such bidder at the Maximum Resale Price; and in the event Owner receives two or more such bids equal to the Maximum Resale Price, the Qualified Buyer shall be selected according to the priority for Sale Units set forth in the Employee Housing Guidelines; and, in the event that more than one such qualified bidder is of equal priority pursuant to the Employee Housing Guidelines, the Qualified Buyer

shall be selected by lottery among the qualified bidders of the highest priority, whereupon the Property or Unit shall be sold to the winner of such lottery at the Maximum Resale Price. If the terms of the proposed purchase contract, other than price, as initially presented to the Owner, are unacceptable to the Owner, there shall be a mandatory negotiation period of three (3) business days to allow the Owner and potential buyer to reach an agreement regarding said terms, including but not limited to, the closing date and financing contingencies. If, after the negotiation period is over, the Owner and buyer have not reached an agreement, the next bidder's offer will then be presented to the Owner for consideration and a three (3) business day negotiating period will begin again. The Owner may reject any and all bids; however, the Owner is subject to the provisions in the Employee Housing Guidelines pertaining to the listing fee. Bids in excess of the Maximum Resale Price shall be rejected. If all bids are below the Maximum Resale Price, the Owner may accept the highest qualified bid. If all bids are below the Maximum Resale Price and two or more bids are for the same price, the Qualified Buyer shall be selected by lottery from among the highest qualified bidders.

#### **NON-QUALIFIED TRANSFEREES**

14. In the event that title to the Property or a Unit vests by descent in, or is otherwise acquired by, any individual and/or entity who is not a Qualified Buyer as that term is defined herein (hereinafter "Non-Qualified Transferee(s)"), the Property or Unit shall immediately be listed for sale as provided in Paragraph 7 above (including the payment of the specified fee to the APCHA), and 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, shall be accepted; if all bids are below ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Property or Unit shall continue to be listed for sale until a bid in accordance with this section is made, which bid must be accepted. The cost of the appraisal shall be paid by the Non-Qualified Transferee(s).
  - a. Non-Qualified Transferee(s) shall join in any sale, conveyance or transfer of the Property or Unit to a Qualified Buyer and shall execute any and all documents necessary to do so; and
  - b. Non-Qualified Transferee(s) agree not to: (1) occupy the Property or Unit; (2) rent all or any part of the Property or Unit, except in strict compliance with Paragraph 15 hereof; (3) engage in any other business activity on or in the Property or Unit; (4) sell or otherwise transfer the Property or Unit except in accordance with this Agreement and the Employee Housing Guidelines; or (5) sell or otherwise transfer the Property or Unit for use in a trade or business.
  - c. The APCHA, the City, the County, or their respective successors, as applicable, shall have the right and option to purchase the Property or Unit, exercisable within a period of fifteen (15) calendar days after receipt of any sales offer submitted to the APCHA by a Non-Qualified Transferee(s), and in the event of exercising their right and option, shall purchase the Property or Unit from the Non-Qualified Transferee(s) for a price of ninety-five percent (95%) of the Maximum Resale Price, or the appraised market value, whichever is less. The offer to purchase shall be made by the Non-Qualified Transferee within fifteen (15) days of acquisition of the Property or Unit.
  - d. Where the provisions of this Paragraph 14 apply, the APCHA may require the Owner to rent the Property or Unit in accordance with the provisions of Paragraph 18, below.

#### **OWNER RESIDENCE, EMPLOYMENT AND CONTINUING COMPLIANCE**

15. The Property and all Units shall be and is/are to be utilized only as the sole and exclusive place of residence of an Owner.
16. In the event an Owner changes place of residence or ceases to utilize the Property or Unit as his sole and exclusive place of residence, ceases to be a full-time employee in accordance with the APCHA Guidelines as they are amended from time to time, or otherwise ceases to be in compliance as a Qualified Buyer with the

APCHA Guidelines as they are amended from time to time, or this Agreement, the Property or Unit MUST be offered for sale pursuant to the provisions of Paragraph 6 of this Agreement. An Owner shall be deemed to have changed his or her place of residence by becoming a resident elsewhere or accepting employment outside Pitkin County, or residing on the Property or Unit for fewer than nine (9) months per calendar year without the express written approval of the APCHA, or by ceasing to be a full-time employee as required by the Employee Housing Guidelines as amended from time to time. Where the provisions of this Paragraph 16 apply, the APCHA may require the Owner to rent the Property or Unit in accordance with the provisions of Paragraph 18, below pending a sale of the property.

17. If at any time the Owner of the Property or Unit at any time also owns directly or indirectly through a legal entity any interest alone or in conjunction with others in any developed residential property or dwelling unit(s) located in Eagle, Garfield, Gunnison or Pitkin Counties, within the Roaring Fork Valley as defined in the Employee Housing Guidelines as they are amended from time to time, the Owner agrees to immediately list said other property or unit for sale and to sell his or her interest in such property at fair market value to like units or properties in the area in which the property or dwelling unit(s) are located. In the event said other property or unit has not been sold by Owner within one hundred eighty (180) days of its listing for any reason, then Owner hereby agrees to immediately list this Property or Unit for sale pursuant to the provisions of Paragraph 6 of this Agreement. Should the Owner not receive a full-priced bid, then said Owner must accept the first reasonable offer for said unit as deemed appropriate by the APCHA.

#### **RENTAL**

18. Owner may not, except with prior written approval of the APCHA, and subject to APCHA's conditions of approval, rent the Property or Unit for any period of time. Prior to occupancy, each tenant must be approved by the Homeowner's Association, if applicable, and the APCHA in accordance with the income, occupancy and all other qualifications established by the APCHA in its Employee Housing Guidelines. The APCHA shall not approve any rental if such rental is being made by Owner to utilize the Property or 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 APCHA prior to occupancy by each tenant. Any such lease approved by the APCHA shall show the length of the lease and the monthly rent. The monthly rent cannot exceed the Owner's costs, which include the monthly expenses for the cost of principal and interest payments, taxes, property insurance, condominium or homeowners assessments, utilities remaining in Owner's name, plus an additional amount as stated in the Employee Housing Guidelines and as they are amended from time to time, and a reasonable (refundable) security deposit.

The requirements of this paragraph shall not preclude the Owner from sharing occupancy of the Property or Unit with non-Owners on a rental basis provided Owner continues to meet the obligations contained in this Agreement, including Paragraph 15.

19. IN NO EVENT SHALL THE OWNER CREATE AN ADDITIONAL DWELLING UNIT, AS DEFINED IN THE PITKIN COUNTY OR CITY OF ASPEN LAND USE CODES, IN OR ON THE PROPERTY.
20. NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE THE APCHA TO PROTECT OR INDEMNIFY THE OWNER AGAINST ANY LOSSES ATTRIBUTABLE TO THE RENTAL, INCLUDING (NOT BY WAY OF LIMITATION) NON-PAYMENT OF RENT OR DAMAGE TO THE PREMISES; NOR TO REQUIRE THE APCHA TO OBTAIN A QUALIFIED TENANT FOR THE OWNER IN THE EVENT THAT NONE IS FOUND BY THE OWNER.

#### **COMPLIANCE REVIEW AND REMEDIES FOR BREACH**

21. All existing and potential Owners shall promptly provide to the APCHA all such information as the APCHA deems reasonably necessary at any time to verify compliance with this Agreement. The APCHA shall maintain the confidentiality of any financial data provided by any existing or potential Owner, except for such

disclosures as are necessary with respect to any litigation, enforcement or other legal proceedings. In the event that APCA has reasonable cause to believe the Owner is violating the provisions of this Agreement, the APCA, by its authorized representative, may inspect the Property or Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours' written notice.

22. The APCA, through its employees or agents, in the event a violation or potential violation of this Agreement is discovered, shall send a notice of violation to the Owner describing 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 before the APCA Board of Directors within fifteen (15) days to dispute the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the violation shall be considered final and the Owner shall immediately list the Property for sale in accordance with this Agreement. The failure to request a hearing shall constitute the failure to exhaust administrative remedies for the purpose of judicial review. If a hearing is held before the APCA Board, (i) the decision of the APCA Board based on the record of such hearing shall be final for the purpose of determining if a violation has occurred, and (ii) the APCA Board shall have absolute discretion to determine the appropriate action to be taken to either remedy the violation or require the Owner to list the Property for sale in accordance with this Agreement. For the purpose of determining the maximum resale price of the Unit, appreciation shall terminate from the date of the first notice of violation until the violation is cured or until the Unit is sold, whichever is applicable
23. There is hereby reserved to the parties' hereto any and all remedies provided by law for breach of this Agreement or any of its terms. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall awarded damages and costs, including reasonable attorneys' fees.
24. In the event the Property or Unit is sold and/or conveyed without compliance herewith, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of the Property or Unit, for all purposes, shall be deemed to include and incorporate by this reference, the covenants herein contained, even without reference therein to this Agreement. The Owner shall be liable for all APCA's costs and reasonable attorneys' fees incurred in setting aside any such transaction.
25. In the event that the Owner fails to cure any breach, the APCA 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 the Property or Unit by Owner as specified in Paragraphs 3, 14, 16, and 17. The costs of such sale, including reasonable attorneys' fees, shall be taxed against the proceeds of the sale with the balance being paid to the Owner.
26. 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 APCA's initial listed purchase price of the Property or Unit as set forth in Paragraph 9a of this Agreement shall, upon the date of such breach as determined by the APCA, automatically cease to increase as set out in Paragraph 9 of this Agreement, and shall remain fixed until the date of cure of said breach.

#### **FORECLOSURE**

27. a. If any Property or Unit is sold as a foreclosure sale or otherwise acquired by any person or entity in lieu of foreclosure, the APCA and the Board, as the designee of the APCA, shall have the option to acquire such Property or Unit within thirty (30) days after (i) the issuance of a public trustee's deed to the purchaser, or (ii) receipt by the APCA of written notice from such person or entity of the acquisition of such Lot in lieu of foreclosure, as applicable, for an option price not to exceed (a) in the event of a foreclosure, the redemption price on the last day of all statutory redemption periods and any additional reasonable costs incurred by the holder during the option period which are directly related to the foreclosure or (b) in the event of a transfer in lieu of



foreclosure, the amount paid, or the amount of debt forgiven, by the transferee plus the reasonable costs incurred by the transferee with respect to its acquisition of such Property or Unit. Notwithstanding any provision herein to the contrary, except for persons or entities having a valid lien on a Property or Unit, only Qualified Buyers may acquire an interest in a Property or Unit at a foreclosure sale or in lieu of foreclosure. If any person or entity having a lien on a Property or Unit is not a Qualified Buyer and acquires an interest in such Property or Unit in a foreclosure sale or in lieu of foreclosure, the provisions of Paragraph 14 shall apply. It is the APCA's intent that the terms and provisions of this Agreement shall remain in full force and effect with respect to the Property and all Units until modified, amended or terminated in accordance with paragraph 38 hereof.

- b. In the event that APCA or the Board, as the designee of the APCA, exercise the option described above, the APCA and/or its designee, may sell the Property or Unit to Qualified Buyers as that term is defined herein, or rent the Property or Unit to qualified tenants who meet the income, occupancy and all other qualifications, established by the APCA in its Employee Housing Guidelines until a sale to a Qualified Buyer is effected.
- c. Notwithstanding the foregoing, in the event of foreclosure by the holder of the first deed of trust on such Property or Unit, if the holder of such deed of trust is the grantee under the public trustee's deed and APCA does not exercise its option to purchase as provided in paragraph 27, then APCA agrees to release the Property or Unit from the requirements of this Deed Restriction.

#### GENERAL PROVISIONS

28. Notices. Any notice, 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 herein 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 APCA: Aspen/Pitkin County Housing Authority  
530 East Main, Lower Level, Aspen, Colorado 81611

To Declarant: 625 Main Aspen, LLC  
1482 East Valley Rd., Suite 463, Montecito, CA 93108

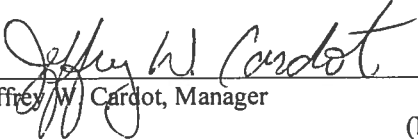
To Owner: To be completed by a separate Memorandum of Acceptance when sold to a Qualified Buyer

29. Exhibits. All exhibits attached hereto (Exhibits "A", "B" and "C") are incorporated herein and by this reference made a part hereof.
30. Severability. Whenever possible, each provision of this Agreement 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 such document.
31. Choice of Law. This Agreement and each and every related document are to be governed and construed in accordance with the laws of the State of Colorado.

32. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.
33. 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.
34. 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 to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition, provided that such waiver is in writing.
35. 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.
36. Personal Liability. The Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.
37. Further Actions. The parties to this Agreement 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.
38. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of Pitkin County, Colorado. Notwithstanding the foregoing, the APCHA reserves the right to amend this Agreement unilaterally where deemed necessary to effectuate the purpose and intent of this Agreement, and where such unilateral action does not materially impair the Owner's rights under this Agreement.
39. Mortgagee Right to Cure. Nothing herein shall be deemed to impair any right of a mortgagee of a Unit from curing any default by an Owner of his or her financial obligations with respect to such Unit.

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

DECLARANT: 625 MAIN ASPEN, LLC

  
By: Jeffrey W. Cardot, Manager

(Notary on following page)

**ACKNOWLEDGMENT**

State of California  
County of Santa Barbara )

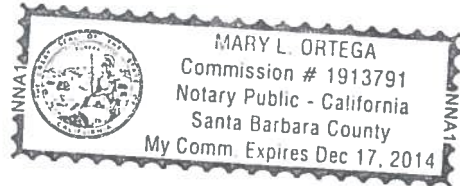
On Nov. 29, 2012 before me, Mary L. Ortega, Notary Public  
(insert name and title of the officer)

personally appeared Jeffrey W. Cardot,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Mary L. Ortega*



(Seal)

STATE OF )  
 )  
COUNTY OF ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by Jeffrey W. Cardot, Manager, of 625 Main Aspen, LLC..

Witness my hand and official seal;

My commission expires:  / /

*See attached*

\_\_\_\_\_  
Notary Public

ACCEPTANCE BY THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY

The foregoing Deed Restriction Agreement for the Occupancy and Resale of 625 Main Street Affordable Housing Units of the Aspen/Pitkin County Housing Authority and its terms are hereby adopted and declared by the Aspen/Pitkin County Housing Authority.

THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY

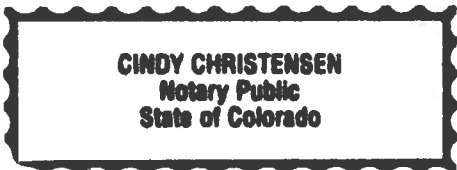
By:   
Tom McCabe, Executive Director

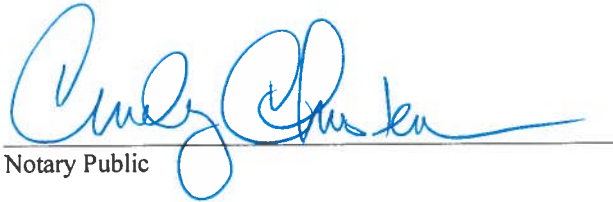
STATE OF COLORADO )  
 )  
COUNTY OF PITKIN ) ss.

The foregoing instrument was acknowledged before me this 12 day of December, 2012, by Tom McCabe, as Executive Director of the Aspen/Pitkin County Housing Authority.

Witness my hand and official seal;

My commission expires: 7 22 2016



  
\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

**Legal Description**

Units 202 and 203, 625 Main Street Condominiums, according to the Condominium Declaration for 625 Main Street and the 625 Main Street Condominium Map to be recorded in the real property records of the County of Pitkin, State of Colorado with regard to the following described real property:

Lots E, F, G and the Easterly 10 feet of Lot D, Block 98, City and Townsite of Aspen, and

Lots 5, 6, 7 and the Easterly 10 feet of Lot 4, Block 29, East Aspen Additional Townsite,

County of Pitkin, State of Colorado

**Unit Description**

| Address           | Unit Type | Category | Sales Price  |
|-------------------|-----------|----------|--------------|
| 625 E. Main, #202 | 3-Bedroom | 4        | \$305,000.00 |
| 625 E. Main, #203 | 3-Bedroom | 4        | \$305,000.00 |

Initial sales can be chosen by the Declarant; owners must be in the top priority as stated in the Aspen/Pitkin County Employee Housing Guidelines. All subsequent sales will be sold through APCHA's lottery system. A separate Memorandum of Acceptance will be signed and recorded for each qualified owner at the time of sale. The Memorandum of Acceptance will include the recording information for the Condominium Declaration and the Condominium Plat Map.

## EXHIBIT "B"

### Permitted Capital Improvements

1. The term "Permitted Capital Improvement" 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, replacement 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/finished storage space;
  - f. Improvements to finish unfinished space.
  - g. Landscaping;
  - h. The cost of adding decks and balconies, and any extension thereto; and/or
  - i. Improvements associated with health and safety, energy efficiency, water conservation, and green building products.
  
2. Permitted Capital Improvements as used in this Agreement shall **NOT** include the following:
  - a. Jacuzzis, saunas, steam showers and other similar items;
  - b. Upgrades or addition of decorative items, including lights, window coverings and other similar items;
  - c. Upgrades of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of a unit and/or improvements required to repair and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, and other similar items, unless replacement is energy efficient or for safety and health reasons.
  
3. All Permitted Capital Improvement items and costs shall be approved by the APCHA staff prior to being added to the Maximum Resale Price as defined herein. In order to get credit for an improvement where a building permit is required, the improvement will not be counted unless a Letter of Completion was obtained by the Building Department.
  
4. The Permitted Capital Improvements shown hereon shall be subject to such additions, deletions and modifications as may be set forth in the Employee Housing Guidelines from time to time; provided that if any improvement is made at a time when it would be deemed a Permitted Capital Improvement hereunder or under the Employee Housing Guidelines, such improvement shall be deemed a Permitted Capital Improvement at all times notwithstanding any modification of the Employee Housing Guidelines.

## EXHIBIT "C"

### MINIMUM STANDARDS FOR SELLER TO RECEIVE FULL VALUE AT RESALE

- Clean unit
- Carpets steam-cleaned two or three days prior to closing
- Major scratches, holes, burned marks repaired in hardwood floors, linoleum, tile, counter tops etc.
- No broken windows
- All screens in windows (if screens were originally provided)
- All doors will be in working order with no holes
- All locks on doors will work
- All keys will be provided; e.g., door, mail box, garage
- All mechanical systems shall be in working order
- Walls paint ready
- Normal wear and tear on carpet; if carpet has holes, stains, etc., the carpet and padding shall be replaced or escrow funds at current market value per square foot for a comparable product shall be held at the time of closing to be used by the new buyer
- No leaks from plumbing fixtures
- No roof leaks
- Any safety hazard remedied prior to closing
- Satisfaction of radon issue if found at time of inspection
- All light fixtures shall be in working order

#### DEFINITIONS:

##### Clean Unit:

All rooms will be cleaned as stated below:

- **Kitchen:**
  - Range – Inner and outer services will be cleaned.
  - Range hood and Exhaust Fan
  - Refrigerator and Freezer – Inner and outer surfaces of refrigerator and freezer will be clean. Freezer will be defrosted.
  - Cabinets and Countertops – Exterior and interior surfaces of cabinets and drawers will be clean. Door and drawer handles, if provided, shall be clean and in place.
  - Sink and Garbage Disposal – Sink and plumbing fixtures will be clean. If garbage disposal provided, this must be in working order.
  - Dishwasher – If provided, must be in working order and inner and outer surfaces shall be clean.
- **Blinds, Windows, Screens:**
  - Mini-blinds, Venetian Blinds, Vertical Blinds, Pull Shades – Will be clean.
  - Windows – All window surfaces, inside of the window glass, shall be clean.
  - Screens – Screens will be clean and in place with no holes or tears.
- **Closets:** Closets, including floors, walls, hanger rod, shelves and doors, shall be clean.
- **Light Fixtures:** Light fixtures will be clean and shall have functioning bulbs/florescent tubes.

- **Bathrooms:**
  - Bathtub, Shower Walls, Sinks – Bathtubs, shower walls and sinks shall be clean.
  - Toilet and Water Closet – Water closets, toilet bowls and toilet seats will be clean. If the toilet seat is broken or peeling, the seat shall be replaced.
  - Tile – All tile and grout will be clean.
  - Mirrors and Medicine Cabinets – Mirrors and medicine cabinets shall be cleaned inside and out.
  - Shelves and/or Other Cabinetry – All other shelving or cabinetry shall be cleaned inside and out.
- **Walls, Ceilings, Painted Doors and Baseboards:** Painted surfaces must be cleaned with care to ensure the surface is clean without damaging the paint.
- **Floors:** Floor cleaning includes sweeping and mopping and could include stripping, waxing and buffing. Types of floor surfaces include wood, wood parquet tiles, linoleum, asphalt tile, vinyl tile, mosaic tile, concrete and carpet. If carpet, all carpets shall be cleaned at least two days prior to closing.
- **Interior Storage/Utility Rooms:** Storage/utility rooms shall be cleaned. Properly cleaned storage/utility rooms will be free from odors, removable stains, grease marks or accumulations.

**Safety Hazard:** Any item that provides a safety hazard shall be fixed. This would include, but is not limited to, exposed electrical wiring, satisfaction of any radon issue found, ventilation for gas hot water system, etc.

**Walls Paint-Ready:** All holes shall be patched; all posters, pictures, etc., shall be removed from all walls; all nails, tacks, tape, etc., shall be removed from all walls; and all walls shall be clean and ready for the new buyer to paint. If wallpaper has been placed on the wall and in good condition, the wallpaper can remain; if the wallpaper is peeling off, the wallpaper must be removed.

**Windows:** If a window is broken, including the locking mechanism, the window shall be replaced.