

**A RESOLUTION OF THE TOWN OF MOUNTAIN VILLAGE HOUSING AUTHORITY
ADOPTING AN AFFORDABLE HOUSING DEED RESTRICTION FOR LOT 644**

RESOLUTION NO. 2023-0316-05

WHEREAS, the Town of Mountain Village Housing Authority (the "Housing Authority") owns certain real property in the Town of Mountain Village (the "Town"), San Miguel County, Colorado known as Lot 644, Mountain Village, according to the plat recorded as Reception No. 261214 ("Lot 644"); and

WHEREAS, the Housing Authority is developing Lot 644 as an employee housing project and, therefore, desires to restrict use and occupancy of each unit therein pursuant to Chapter 16.02 of the Mountain Village Municipal Code; and

WHEREAS, at the duly noticed meeting of March 16, 2023 of the Housing Authority, after public discussion, the Housing Authority voted to adopt a deed restriction for Lot 644 as follows.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Mountain Village, Colorado, that:

Section 1. Recitals. The above recitals are hereby incorporated as findings of the Housing Authority in support of the enactment of this Resolution.

Section 2. Adoption of Deed Restriction. The Housing Authority hereby adopts the deed restriction for Lot 644 attached hereto as Exhibit A.

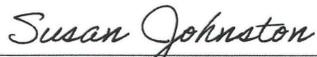
Section 3. Effective Date. This Resolution shall be in full force and effect upon its passage and adoption.

ADOPTED AND APPROVED by the Town of Mountain Village Housing Authority at a regular public meeting held on March 16, 2023.

TOWN OF MOUNTAIN VILLAGE
HOUSING AUTHORITY

By: 
Laila Benitez, President

ATTEST:


Susan Johnston, Housing Authority Clerk

APPROVED AS TO FORM:


Andrea Bryan, Assistant Town Attorney

Exhibit A

[DEED RESTRICTION]

**AFFORDABLE HOUSING DEED RESTRICTION
RESIDENTIAL DWELLING UNITS, LOT 644, MOUNTAIN VILLAGE**

THIS AFFORDABLE DEED RESTRICTION (the "Deed Restriction") is entered into this _____ day of _____, 202__ (the "Effective Date") by and between TOWN OF MOUNTAIN VILLAGE HOUSING AUTHORITY, a Colorado corporate body organized under C.R.S. §§ 29-4-201, *et seq.*, with an address of 455 Mountain Village Blvd., Unit A, Mountain Village, Colorado 81435 (the "MVHA"), and _____, with an address of _____ ("Buyer") (each individually a "Party" and collectively the "Parties").

WHEREAS, the MVHA owns certain real property in the Town of Mountain Village (the "Town"), San Miguel County, Colorado known as Lot 644, according to the plat recorded at Reception No. 261214, and has developed Lot 644 as an affordable housing project commonly known as Meadowlark at Mountain Village;

WHEREAS, the MVHA is selling Unit ___ on Lot 644 as more particularly described on Exhibit A hereto (the "Property") to Buyer and desires to restrict the occupancy, use and resale of the Property pursuant to the terms and conditions herein.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

COVENANTS

1. Property. The Property is hereby burdened with the covenants and restrictions specified in this Deed Restriction, which the Buyer shall record against the Property at its expense.

2. Deed Restriction. The Parties agree that the Property shall be subject to Chapter 16.02 of the Mountain Village Municipal Code (the "Code"), also known as the 2006 Affordable Housing Restriction, as well as the Guidelines adopted by the MVHA (defined below), except as otherwise modified herein. In the event of a conflict between Chapter 16.02 of the Code or the Guidelines and this Deed Restriction, the recorded version of this Deed Restriction shall control. This Deed Restriction constitutes a covenant that runs with the title to the Property as a burden thereon and shall be binding on the Owner, and its heirs, successors, representatives, assigns, lessees, licensees and any transferee, in perpetuity, subject to Section 3(j) below.

3. Definitions. All terms in this Deed Restriction shall have the same meanings as those used in Chapter 16.02 of the Code, unless otherwise indicated below.

a. *Allowable Home Improvements* mean those improvements to the Property performed by the current Owner that may qualify for inclusion in the calculation of the Maximum Resale Price, as determined by the MVHA in accordance with the Guidelines and in its sole discretion, provided that the improvements are approved by the MVHA in writing prior to construction. The value of Allowable Home Improvements shall be determined at the time the improvements were completed. *See* Guidelines for how Allowable Home Improvements may qualify for inclusion in the Maximum Resale Price.

b. *Guidelines* means the current version of the Housing Guidelines adopted by the MVHA, as amended from time to time.

c. *Maximum Resale Price* means the Purchase Price paid by the last Qualified Buyer plus: an annual increase of 4% of such Purchase Price over the Purchase Price for the prior year, prorated through the date of closing; and the value of Allowable Home Improvements, as determined by the MVHA.

d. *Non-Qualified Owner* means any person or entity who acquires an ownership interest in the Property who is not a Qualified Owner.

e. *Owner* means any person or entity who acquires an ownership interest in the Property, including without limitation Qualified Owners and Non-Qualified Owners.

f. *Principal Place of Residence* means the home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence there from. In determining what is a Principal Place of Residence, the MVHA shall consider the following: business pursuits; employment; income sources; residence for income or other tax purposes; age; marital status; residence of parents, spouse and children if any; location of personal and real property; voter registration; and motor vehicle registration.

g. *Purchase Price* means all consideration paid by a Qualified Buyer for the Property but excludes: any proration amounts, taxes, costs and expenses of obtaining financing; costs of furnishings or personal property; lenders' fees; title insurance fees; closing costs; inspection fees; and real estate purchase or sales commission(s).

h. *Qualified Buyer* means a person or entity who, upon purchase of the Property, will be a Qualified Owner. To become a Qualified Buyer, a person or entity must submit an application to the MVHA, on a form provided by the MVHA, along with an application fee, as established by the Guidelines.

i. *Qualified Owner* means an Owner who is either (i) an individual who works an average of thirty-two (32) hours or more per week at a business with a physical presence within the Telluride R-1 School District boundary in San Miguel County, Colorado that holds a valid and current business license within the Telluride R-1 School District boundary, pays sales taxes or is otherwise generally recognized as a legitimate business, and who does not already own a Unit on Lot 644, or (ii) a business with a physical presence within the Telluride R-1 School District boundary that holds a valid and current business license within the Telluride R-1 School District boundary, pays sales taxes or is otherwise generally recognized as a legitimate business. For example, if an individual worked sixty-four (64) hours per week for one half of the year at such a business within the Telluride R-1 School District and worked elsewhere for the other half of the year, such person would constitute a Qualified Owner. In the event that two (2) or more individuals become joint Owners of the same Property, only one (1) must be a Qualified Owner. A *Qualified Owner* also includes an individual who was a Qualified Owner when the individual purchased the Property, but then retires while owning the Property and is sixty (60) years of age or older at the time of retirement, and who, for the five (5) years immediately prior to retirement, worked an average of thirty-two (32) hours or more per week at a business within the Telluride R-1 School District that holds a valid and current business license, pays sales taxes or is otherwise generally

recognized as a legitimate business. A *Qualified Owner* does not include an individual who works remotely for a business outside the Telluride R-1 School District. A Qualified Owner shall only own one Meadowlark unit as their Primary Residence; however, at the discretion of the Town Manager, a Qualified Owner who is a business may own more than one Meadowlark Unit.

j. *Qualified Tenant* means an individual who works an average of thirty-two (32) hours or more per week at a business within the Telluride R-1 School District that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business. For example, if an individual worked sixty-four (64) hours per week for one half of the year at such a business within the Telluride R-1 School District and worked elsewhere for the other half of the year, such person would constitute a Qualified Tenant.

k. *Transfer* means any conveyance of the ownership of a title to real property and that which is evidenced by any deed or instrument or writing wherein or whereby title to real property situated in the city is granted or conveyed. *Transfer* excludes conveyances involving governmental entities, the lease of a room or rooms within the Property to a Qualified Tenant in accordance with this Deed Restriction, the termination of a joint tenancy, or conveyances to a spouse, partner in a civil union, parent, sibling, or legally recognized child of the seller.

4. Occupancy Restrictions.

a. The Property shall be continuously occupied by at least one (1) Qualified Owner or one (1) Qualified Tenant as their Principal Place of Residence.

b. The Qualified Owner may lease the Property, or part thereof, to one (1) or more Qualified Tenants, provided that such lease is for a term of thirteen (13) months or more.

c. No business activity shall occur on or in the Property, other than as permitted within the zone district applicable to the Property.

d. If a Qualified Owner or a Qualified Tenant ceases to occupy the Property as their Principal Place of Residence, the Property shall be transferred pursuant to Section 5. An Owner shall be deemed to have changed their Principal Place of Residence by becoming a resident elsewhere or accepting permanent employment outside of the Telluride R-1 School District.

e. A Qualified Owner must verify compliance with this Deed Restriction upon purchase of the Property. A Qualified Tenant must verify compliance with this Deed Restriction upon entering into a lease for the Property and thereafter bi-annually.

5. Transfer.

a. Every Transfer shall be made in accordance with this Section.

b. The Owner shall first notify the MVHA that the Owner wishes to Transfer the Property. The MVHA shall determine the Maximum Resale Price and other applicable provisions concerning the sale (“Terms and Conditions”).

c. The MVHA shall have a right of first offer to acquire the Property. Upon receipt of notice that the Owner wishes to Transfer the Property, the MVHA may send a written offer to the

Owner stating a specific price not to exceed the Maximum Resale Price and all Terms and Conditions of the proposed Transfer. If the Owner desires to accept said offer, the Owner shall, within ten (10) days' from receipt thereof, send its acceptance in writing to the MVHA. Should the MVHA determine not to make an offer, or should the Owner reject the MVHA's offer, the MVHA shall list the Property for sale in accordance with the Guidelines, as amended from time to time.

d. The Property shall be transferred only to the MVHA or a Qualified Buyer and shall not be sold for more than the Maximum Resale Price. The date of closing shall be determined by the MVHA in consultation with the Owner and the Qualified Buyer.

e. Prior to or at closing, the Owner shall pay the MVHA a nonrefundable administrative fee equal to 1% of the Maximum Resale Price or as set forth in the Guidelines, whichever is greater. The MVHA may instruct the title company to pay said fee to the MVHA out of the funds held for the Owner at the closing. No such fee shall be due if the MVHA is the seller.

f. At closing, the Qualified Buyer shall execute, in a form satisfactory to the MVHA and for recording with the San Miguel County Clerk and Recorder, a document acknowledging this Deed Restriction and expressly agreeing to be bound by it.

6. Effect of Transfer to a Non-Qualified Owner.

a. If for any reason the Property is transferred to a Non-Qualified Owner, the Non-Qualified Owner shall immediately contact the MVHA to Transfer the Property pursuant to Section 5 hereof.

b. The Non-Qualified Owner shall execute any and all documents necessary for the Transfer.

c. A Non-Qualified Owner shall not: occupy the Property; rent any part of the Property; engage in any business activity in the Property; or Transfer the Property except in accordance with this Deed Restriction.

d. Buyer acknowledges and agrees that the Property is conveyed to Buyer in fee simple defeasible subject to the condition that any subsequent Transfer shall be to a Qualified Owner. The MVHA shall have the right of reentry if the Property is transferred to a Non-Qualified Owner. If the MVHA exercises its right of reentry, the MVHA shall purchase the Property at the Maximum Resale Price. Otherwise, Buyer shall cooperate with the MVHA to list the Property in accordance with the Guidelines, as amended from time to time.

7. Breach.

a. It shall be a breach of this Deed Restriction for an Owner, Qualified Buyer or Qualified Tenant to violate any provision of this Deed Restriction, or to default in payment or other obligations due to be performed under a promissory note secured by a first deed of trust encumbering the Property.

b. If the MVHA has reasonable cause to believe that an Owner, Qualified Buyer or Qualified Tenant is violating this Deed Restriction, the MVHA may inspect the Property after

providing the Owner with twenty-four (24) hours' written notice. This Deed Restriction shall constitute permission to enter the Property during such times upon such notice.

c. If the MVHA discovers a violation of this Deed Restriction, the MVHA shall notify the Owner, Qualified Buyer or Qualified Tenant of the violation and allow fifteen (15) days to cure.

8. Remedies.

a. Any Transfer in violation of this Deed Restriction shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every Transfer, for all purposes, shall be deemed to include and incorporate by this reference the covenants contained in this Deed Restriction, even if the Transfer documents fail to reference this Deed Restriction.

b. This Deed Restriction shall be administered by the MVHA, or its designee, and shall be enforceable by any appropriate legal or equitable action including but not limited to: specific performance; injunction requiring a Transfer of the Property, with the costs of such Transfer to be paid out of the proceeds of the sale; abatement or eviction of non-complying owners, users or occupants; and/or such other remedies and penalties as may be provided by Colorado law or the ordinances of the Town.

c. Upon request by the MVHA, each Owner authorizes the holder of any mortgage or deed of trust against the Property to disclose to the Town if any payments due are delinquent and the duration and amount of such delinquency.

d. Any violation of this Deed Restriction shall cause the Maximum Resale Price to freeze and remain fixed until the date such violation is fully cured, to the satisfaction of the MVHA.

e. In addition to the specific remedies set forth herein, the MVHA shall have all other remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy.

9. Foreclosure.

a. Upon execution of this Deed Restriction, the MVHA may simultaneously require any lender to sign an acknowledgment of this Deed Restriction, on a form provided by the MVHA, but only if the MVHA reasonably determines that any such lender consent is necessary in light of previously-recorded documents.

b. An Owner shall notify the MVHA, in writing, of any notification received from a lender of past due payments or defaults in payments or other obligations within five (5) days of receipt of such notification.

c. An Owner shall immediately notify the MVHA, in writing, of any notice of foreclosure under the first deed of trust or any other subordinate security interest in the Property, or when any payment on any indebtedness encumbering the Property is required to avoid foreclosure of the first deed of trust or other subordinate security interest in the Property.

d. Within sixty (60) days after receipt of any notice described herein, the MVHA may (but shall not be obligated to) proceed to make any payment required to avoid foreclosure. Upon making any such payment, the MVHA shall have a lien on the Property in the amount paid to cure the default and avoid foreclosure, including all fees and costs resulting from such foreclosure, which lien shall be subordinate to the foreclosing lender's interest.

e. Notwithstanding any other provision of this Deed Restriction, in the event of a foreclosure, acceptance of a deed-in-lieu of foreclosure, or assignment, this Deed Restriction shall remain in full force and effect.

f. The MVHA shall have a right of redemption in the event of foreclosure in accordance with C.R.S. §§ 38-38-301, *et seq.*, as now in effect or hereafter amended.

10. Miscellaneous.

a. Modification. This Deed Restriction may only be modified by subsequent written agreement of the Parties. Notwithstanding the foregoing, the MVHA reserves the right to promulgate and amend, from time to time, the Guidelines, so long as such regulations are consistent with this Deed Restriction.

b. Integration. This Deed Restriction and any attached exhibits constitute the entire agreement between Buyer and the MVHA, superseding all prior oral or written communications.

c. Binding Effect. This Deed Restriction shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

d. 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.

e. 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 San Miguel County, Colorado.

f. Assignment. There shall be no transfer or assignment of any of the rights or obligations of Buyer under this Deed Restriction without the prior written approval of the MVHA, except as provided above in Section 3(j).

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

h. No Joint Venture. Notwithstanding any provision hereof, the MVHA shall never be a joint venture in any private entity or activity which participates in this Deed Restriction, and the MVHA shall never be liable or responsible for any debt or obligation of any participant in this Deed Restriction.

i. Notice. Any notice under this Deed Restriction shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first-class United States Mail to the Party at the address set forth on the first page of this Deed Restriction.

Notary Public

(S E A L)

My commission expires: