

DEED RESTRICTION
FOR THE OCCUPANCY OF SOLAR VAIL APARTMENT HOMES

THIS DEED RESTRICTION FOR THE OCCUPANCY OF SOLAR VAIL APARTMENT HOMES (the "Deed Restriction") is made and entered into this ____ day of _____, 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 Sonnenalp Properties, Inc., a Colorado corporation with an address of 20 Vail Road, Vail, CO 81657 ("Master Lessee") (each a "Party" and collectively the "Parties").

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

WHEREAS, in exchange for a contribution from the Town, Master Lessee is developing the Property for deed-restricted rental employee housing (the "Development").

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:

"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 Master Lessee 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 Unit lease as a tenant). A Qualified Household may have occupants that are not Qualified Residents (and who may also sign the Unit lease as tenants) as long as at least one occupant who has signed the lease is a Qualified Resident.

"Qualified Resident" means a natural person who occupies a Unit as his or her principal place of residence and works an average of 30 hours or more per week at a business in Eagle County, Colorado that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business. For example, if a person worked 60 hours per week for one half of the year at 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.

"Unit" means each of the residential dwelling units constructed on the Property.

2. Binding Effect. This Deed Restriction shall constitute a covenant running with the Property as a burden thereon, for the benefit of, and enforceable by the Town and the Master Lessee. This Deed Restriction shall bind the Master Lessee and all occupants of the Units. Each and every occupant of a 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 Unit. Each and every conveyance of the Property or a portion thereof, or interest therein, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Deed Restriction, even without reference to this Deed Restriction in any document of conveyance.

3. Occupancy and Use.

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

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

4. Unit Lease. No Unit shall be leased or occupied without a Unit lease. Each Unit shall have only one Unit lease at any one time. Each 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 the Master Lessee from terminating the lease of a Qualified Household, or taking any other legal action against the Qualified Household based upon any tenant's breach of the terms of the lease; provided that if a tenant misrepresents his or her status as a Qualified Resident, Master Lessee shall terminate the Unit lease in addition to any other available remedies.

6. Inspection. In a non-emergency situation, if the Town or Master Lessee has reasonable cause to believe that an occupant of a Unit is violating any provision of this Deed Restriction, the Town or Master Lessee may inspect the 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 to tenant may be given by posting on the front door of the applicable Unit. Nothing herein shall preclude the Town or Master Lessee from accessing a 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, Master Lessee shall submit a written statement to the Town including the following information and stating that such information is true and correct to the best of Master Lessee's knowledge and belief:

a. A list of tenants who occupied the 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 Units; and

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

8. Violations.

a. If Master Lessee discovers a violation of this Deed Restriction by an occupant, or if the Town notifies Master Lessee in writing that there is a violation of this Deed Restriction by an occupant, Master Lessee 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 Master Lessee and the Town. Notice may be given by posting on the front door of the applicable 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 Unit occupant.

b. If the Town discovers a violation of this Deed Restriction by Master Lessee, the Town shall send a notice of the violation to Master Lessee, detailing the nature of the violation and allowing Master Lessee 30 days from the date the notice is given 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 Master Lessee.

9. Remedies.

a. The Town and Master Lessee 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 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 Unit in violation of this Deed Restriction. All remedies shall be cumulative.

b. In addition to any other available remedies, if Master Lessee is found to be in violation this Deed Restriction (after expiration of any cure period), Master Lessee

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 Master Lessee. This penalty shall not apply if it is discovered that an occupant provided false information to Master Lessee, Master Lessee reasonably relied on such false information, and the false information caused the violation.

c. If addition to any other available remedies, if an occupant of a 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 the Master Lessee, including reasonable attorney fees, shall be paid promptly by Master Lessee; provided that, if the Town or a court of competent jurisdiction finds that Master Lessee was not in violation of this Deed Restriction, Master Lessee shall not be liable for such payment.

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

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

12. Assignment. Neither this Deed Restriction nor any of the rights or obligations of the Parties hereto shall be assigned by either Party without the written consent of the other.

13. 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.

14. 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.

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

16. No Joint Venture. Notwithstanding any provision hereof, the Town shall never be in a joint venture with the Master Lessee, and the Town shall never be liable or responsible for any debt or obligation of the Master Lessee.

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

18. 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 on the Effective Date.

TOWN OF VAIL, COLORADO

Greg Clifton, Town Manager

ATTEST:

Patty McKenny, Town Clerk

MASTER LESSEE

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this _____ day of _____, 2018, by _____ as _____ of Sonnenalp Properties, Inc.

My commission expires:

(S E A L)

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

Lot 8, Block 2, Vail Potato Patch Subdivision

EXHIBIT B
SOLAR VAIL APARTMENT HOMES RENTAL GUIDELINES

1. Purpose. The purpose of these Rental Guidelines is to set forth the occupancy eligibility requirements for the employee housing rental units (the "Units") located in Solar Vail Apartment Homes, pursuant to the Deed Restriction dated _____.
2. Definitions. All capitalized terms herein shall have the meanings set forth in the Deed Restriction.
3. Administration. In accordance with the Deed Restriction, Master Lessee shall administer these Rental Guidelines, including without limitation making determinations regarding the eligibility of applicants to rent and occupy a Unit. Prior to leasing or renewing a lease for a Unit, each tenant must sign an individual acknowledgement of acceptance of the terms of these Rental Guidelines and the Deed Restriction.
4. Qualified Households. To be eligible for consideration to rent a Unit, the occupants must first be certified as a Qualified Household.
5. Application. To become a Qualified Resident, a person must first provide the following information on an application to be provided by Master Lessee, and applications and all accompanying documentation shall become the property of the Master Lessee and will not be returned to the applicant:
 - a. Verification (e.g., wage stubs, employer name, address, telephone number and other appropriate documentation as requested by Master Lessee) of applicant's current employment with a business in Eagle County that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business;
 - b. Evidence that the applicant has worked, or will work, an average of 30 hours per week or more per year for one or more of such businesses and that such level of employment is expected to be maintained for as long as the applicant lives in the Unit;
 - c. A valid form of identification, such as a driver's license, state-issued identification, passport or military identification.
 - d. Any other documentation that the Master Lessee deems necessary to make a determination of eligibility; and
 - e. A signed statement certifying and acknowledging: that all information submitted in such application is true to applicant's best knowledge; that the applicant understands that he/she may not sublet the Unit; that the applicant authorizes Master Lessee to verify any and all past or present employment and residency information and all other information submitted by an applicant; and that applicant understands that, as

set forth in the Deed Restriction, the Master Lessee reserves the right to review any applications and take any appropriate action regarding such application.

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

a. An applicant's physical place of employment is controlling, not the mailing address of such place.

b. Claims of employment by an applicant that are unable to be verified by Master Lessee will not be utilized in determining an applicant's eligibility.

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 of Restricted Units.

a. At all times, 10 studio apartment Units and 6 one-bedroom apartment Units (collectively, the "Restricted Units") shall be occupied by a Qualified Household that includes at least one Qualified Resident who is employed within the Town's boundaries, but not employed by the Master Lessee.

b. The Restricted Units shall be leased from October 1st of each year through September 30th of the following year. If a tenant vacates the Restricted Unit prior to the end of the lease term, Master Lessee may re-lease the Restricted Unit, but only until the next September 30th. If a Restricted Unit is unleased after October 1st, Master Lessee may modify the commencement date of the lease, but the lease term shall terminate on the next September 30th.

c. The availability of Restricted Units shall be publicly advertised at least 15 days prior to the end of the then-current lease term.

d. If a Restricted Unit remains unleased for 10 days or more, Master Lessee may lease such Restricted Unit to a Qualified Household that includes a Qualified Resident who works for Master Lessee.

8. Leasing of Units to Non-Qualified Households. If there are no eligible Qualified Households available to lease a particular Unit other than a Restricted Unit, Master Lessee may lease such Unit to occupants other than a Qualified Household, but only upon written approval by the Town's Zoning Administrator, after a finding that extraordinary circumstances and hardship exist to justify such arrangement. Such tenancy shall be on a month-to-month basis only, and shall be replaced by a Qualified Household as soon as a Qualified Household becomes available to lease the Unit.

9. Misrepresentation. Any misrepresentation by an applicant in any submittal shall disqualify such applicant from being eligible to lease a 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.