



Memorandum

To: Vail Town Council

From: George Ruther, Housing Director
Matt Mire, Town Attorney

Date: May 19, 2020

Subject: Resolution No. 19, Series of 2020, a resolution approving an amended ground lease between the Town of Vail, Vail Local Housing Authority, and Middle Creek Village, LLC.

SUMMARY

The purpose of this memorandum is to provide a summary of Resolution No. 19, Series of 2020 which amends the ground lease for the Middle Creek at Vail Apartments and authorizes the Town Manager to execute the agreements and take any additional actions necessary to effectuate the ground lease on behalf of the Town.

The Vail Town Council, Vail Local Housing Authority, and Coughlin & Company mutually wish to amend certain agreements as they pertain to the public/private partnership facilitating the continued operation of the Middle Creek at Vail Apartments. The catalysts for amending the agreements are that the parties wish to:

- Refinance the debt on the development,
- Amend the leasehold area of the ground lease agreement,
- Establish an easement for vehicular ingress and egress to adjacent town-owned land,
- Terminate the irrelevant development agreement, and
- Eliminate obsolete and non-pertinent language.

In doing so, however, certain provisions of the agreement remain unchanged. The unchanged provisions include:

- The agreements remain a tri-party agreement between the Vail Town Council, the Vail Local Housing Authority and Coughlin & Company,
- 100% of the property is deed-restricted for employee housing,
- Ground lease agreement still expires on March 1, 2056,
- The Town maintains ownership of the land, and

- The Vail Local Housing Authority continues to receive a lease payment of \$1.00 per year, plus ½ of a percent of gross collected revenues from operations per month.

1. ACTION REQUESTED

The Vail Town Council is being asked to approve Resolution No. 19, Series of 2020, as read. If approved, the town staff will take the steps necessary to complete the amendment process for the various agreements.

The Vail Local Housing Authority will review for approval a similar resolution at their next regularly scheduled meeting on Tuesday, May 26.

A copy of Resolution No. 19, Series of 2020 has been attached for reference.

RESOLUTION NO. 19

Series of 2020

A RESOLUTION APPROVING AN AMENDED GROUND LEASE BETWEEN THE TOWN OF VAIL, THE VAIL LOCAL HOUSING AUTHORITY AND MIDDLE CREEK VILLAGE, LLC

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

WHEREAS, the Vail Local Housing Authority (the "VLHA") is a local housing authority formed pursuant to the Colorado Housing Authorities law, C.R.S. § 29-4-201, *et seq.*, and certified in March 1991 as local governmental entity number 46-19-048 by the Colorado Division of Local Government;

WHEREAS, on January 15, 2002, the VLHA, as special agent for the Town, and Coughlin & Company, Inc., a Colorado corporation ("Coughlin"), as initial lessee, entered into a Land Lease Agreement (the "Original Lease") for the purpose of granting Coughlin a leasehold estate in the Property upon which to design, develop, build, own and operate a multi-family rental housing development (the "Improvements");

WHEREAS, construction of the Improvements was completed on or about January 31, 2005;

WHEREAS, the parties wish to replace the Original Lease with an amended lease (the "Ground Lease").

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO THAT:

Section 1. The Town Council hereby approves the Ground Lease in substantially the same form as attached hereto as **Exhibit A**, and in a form approved by the Town attorney, and authorizes the Town Manager to execute the Ground Lease on behalf of the Town. The Town Manger is hereby further authorized to take any additional action necessary to effectuate the execution of the Ground Lease on behalf of the Town.

Section 2. This Resolution shall take effect immediately upon its passage.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Vail held this 19th day of May 2020.

Dave Chapin, Town Mayor

ATTEST:

Tammy Nagel, Town Clerk

GROUND LEASE

This GROUND LEASE (the "Lease") is entered into as of _____, 2020 (the Effective Date") by and among the Town of Vail, a Colorado home rule municipality (the "Town"), the Vail Local Housing Authority, a Colorado statutory housing authority (the "VLHA"), and MIDDLE CREEK VILLAGE, LLC, a Colorado limited liability company ("Lessee") (each a "Party" and collectively the "Parties").

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

WHEREAS, the VLHA is a local housing authority formed pursuant to the Colorado Housing Authorities law, C.R.S. § 29-4-201, *et seq.*, and certified in March 1991 as local governmental entity number 46-19-048 by the Colorado Division of Local Government;

WHEREAS, on January 15, 2002, the VLHA, as special agent for the Town, and Coughlin & Company, Inc., a Colorado corporation, as initial lessee, entered into a Land Lease Agreement (the "Original Lease") for the purpose of granting Lessee a leasehold estate in the Property upon which to design, develop, build, own and operate a multi-family rental housing development (the "Improvements");

WHEREAS, construction of the Improvements was completed on or about January 31, 2005;

WHEREAS, with the consent of the Town and the VLHA, Coughlin & Company, Inc. assigned the Lease to Lessee; and

WHEREAS, the Parties wish to replace the Original Lease with this Lease.

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:

1. Lease. The Town, in consideration of the rents, covenants, agreements, and conditions herein set forth which Lessee hereby agrees shall be paid, kept, and performed, does hereby lease unto Lessee, and Lessee does hereby lease from the Town, the Property, together with all of the Town's rights, interests, estates, and appurtenances thereto.

2. Term, Holding Over, Surrender.

a. *Term*. This Lease shall take effect on the Effective Date and shall terminate on March 1, 2056 (the "Term"). The Parties recognize that this Lease extends the Original Lease term.

b. *Holding Over*. If Lessee, with the consent of the VLHA and the Town, remains on the Property after the Term, such holding over in itself shall not constitute a renewal or extension of this Lease, but shall be a tenancy from month-to-month. Nothing herein contained shall be deemed to give Lessee the right to hold over, and Lessee covenants that on the last day of the Term, Lessee will peaceably leave and quietly surrender the Property.

c. *Surrender.* On the last day of the term of this Lease or upon any termination of this Lease, Lessee shall surrender the Property, with the Improvements then located thereon, into the possession and use of the Town, without fraud or delay and in good order, condition, and repair, free and clear of all occupancies, liens and encumbrances, without any payment or allowance whatever by the Town for any buildings or improvements erected or maintained on the Property at the time of the surrender, or for the contents thereof or appurtenances thereto.

3. Rent and Security Deposit.

a. *Base Rent.* Based Rent of \$1.00 per year is due upon the Effective Date and each year upon the anniversary of the Effective Date.

b. *Additional Rent.* An amount equal to ½% of gross collected revenues received during the prior month shall be paid no later than the 10th day of the following month, each month during the Term. Within a reasonable time after the VLHA's written request, Lessee shall provide reports and records to the VLHA to demonstrate that Lessee is paying the appropriate amount of Additional Rent.

c. *Delivery.* All rental payments shall be made to the VLHA.

d. *Security Deposit.* Lessee's security deposit under the Original Lease of \$340,000 has been returned to Lessee. There shall be no security deposit associated with this Lease.

4. Permitted Uses. Lessee shall use and enjoy the Property to operate the Improvements, which shall at all times comply with the deed restriction attached hereto as **Exhibit B** and incorporated herein (the "Deed Restriction"), and applicable law, including without limitation the Vail Town Code, as amended. Lessee will not do, or permit to be done, anything on the Property which is contrary to any legal or insurable requirement or which constitutes a nuisance.

5. Taxation. The Parties acknowledge their intent that the Property is to be exempt from *ad valorem* property taxes pursuant to C.R.S. § 29-4-227. Lessee may, at its sole cost and expense, contest the validity or amount of any taxes imposed against the Property. To the extent any property taxes are imposed against the Improvements, Lessee shall be solely responsible for the timely payment of such taxes. In the event that the Town sells the Property to a for-profit entity, causing the Property to no longer be exempt from *ad valorem* property taxes, and this Lease remains in effect at such sale, then the new for-profit owner shall be responsible for all *ad valorem* property taxes until the expiration of the Term.

6. Net Lease. This Lease shall be a net lease, and throughout the Term, all payments and other obligations or liabilities of any kind regarding the Property shall be solely the responsibility of Lessee, and not the responsibility of the Town. Lessee shall pay all charges for gas, electricity, water, sewer, telephone and other communication services, and all other utilities and similar services rendered or supplied to the Property, including snow removal.

7. Existing Conditions. As of the Effective Date, Lessee has inspected the physical condition of the Property and receives the Property in "as is" condition, with all faults. The Town makes no representations or warranties with respect to the condition of the Property or its fitness or

availability for any particular use, and the Town shall not be liable to Lessee for any latent or patent defect on the Property.

8. Hazardous Materials.

a. *No Warranty.* Though the Town has no actual knowledge of the presence of any hazardous materials or other adverse environmental conditions on the Property, the Town makes no warranty regarding such materials or conditions.

b. *Lessee's Responsibility.* Lessee shall keep and maintain the Property and the Improvements in compliance with, and shall not cause or permit the Property to be in violation of, any federal, state, or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions ("Hazardous Materials Laws") on, under, about, or affecting the Property or the Improvements. Lessee shall not use, generate, manufacture, store, or dispose of on, under or about the Property or the Improvements or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, asbestos, lead-based paints, toxic substances, or related materials, including without limitation any substances defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, or toxic substances under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials").

9. Improvements.

a. *Ownership.* During the Term, all Improvements shall be solely the property of Lessee. Upon termination of this Lease, Lessee shall surrender to the Town, free and clear of all debt and other encumbrances, the Improvements and all other improvements, inclusions, fixtures, equipment and other appurtenances on the Property in good condition and repair.

b. *Maintenance and Repairs.* Lessee agrees to maintain the Property throughout the Term of this Lease, at Lessee's own expense, in good working order, in a clean and safe manner. Such maintenance shall include all work necessary to maintain the Property in a first-class condition consistent with similar projects in the Town, including both interior and exterior repairs. Lessee shall, at its own expense, provide all janitorial, landscaping, trash removal, snow removal and other services required for the proper maintenance of the Property.

c. *Failure to Maintain.* Should Lessee fail to perform the required maintenance or repairs after 30 days written notice from the Town, the Town may, but has no obligation to, perform such maintenance or repairs and invoice Lessee for the costs of such maintenance, plus 8% interest. Lessee shall pay such invoice within 30 days of receipt thereof, and Lessee's failure to do so shall constitute a Lessee Default.

d. *Modification.* Lessee shall have the right to modify the Improvements without the consent of the Town or the VLHA so long as such modifications are in full compliance with all regulations affecting the Property, including without limitation the Vail Town Code.

e. *Signage.* Lessee may place and maintain on, in or about the Improvements, both outdoors and indoors, such appropriate signs advertising the Improvements as Lessee may desire,

in compliance with the Town's sign code. Upon termination of the Lease, if requested by the Town or the VLHA, Lessee shall remove all such signs.

f. *Property Management.* Throughout the Term of this Lease, Lessee shall provide for professional management of the ongoing use and operation of the Improvements, either through an independent third party or an affiliate or agent of Lessee (the "Property Manager").

g. *Mechanics' Liens.* Lessee shall keep the Improvements free from any mechanic's liens arising out of any work performed, materials furnished, or obligations incurred by or at the direction of Lessee.

10. Insurance.

a. *Coverages.* Lessee shall maintain the following insurance throughout the Term:

i. Commercial general liability insurance, including contractual liability, with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage, naming the Town as an additional insured.

ii. Fire and extended coverage insurance covering the Improvements for injury or damage by the elements, or through any other cause, in an amount not less than the full actual replacement cost of the Improvements, common areas, and appurtenances, and sufficient to prevent the Town, the VLHA or Lessee from becoming a co-insurer of any partial loss.

b. *Form.* The policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Lessee. Lessee shall be solely responsible for any deductible losses under any policy.

c. *Certificates.* Upon request, Lessee shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Lease.

11. Indemnification. Lessee agrees to indemnify, defend, and hold the Town and the VLHA and their officers, insurers, volunteers, representative, agents, employees, heirs and assigns harmless from and against any and all claims, liability, damages, losses, expenses and demands, including reasonable attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Lease or Lessee's use of the Property; provided however, that Lessee shall not indemnify, defend or hold the Town harmless for the Town's negligence or the VLHA's negligence.

12. Restoration. Should any Improvements be wholly or partially destroyed or damaged by fire or other casualty, Lessee shall promptly repair, replace, restore, and reconstruct the same, all in compliance with the provisions of this Lease.

13. Condemnation.

a. *Full Taking*. Should the entire Property be taken by eminent domain, condemnation or similar proceedings or conveyed in avoidance or settlement of eminent domain, condemnation, or other similar proceedings, then Lessee's right of possession under this Lease shall terminate as of the date of taking possession by the condemnor, and the award therefor will be distributed as follows: first, to the payment of all reasonable fees and expenses incurred in collecting the award; and next, the balance of the award shall be equitably apportioned between the Town and Lessee based on the then respective fair market values of the Town's interest in the Property and Lessee's interest in the Property. All rent shall be prorated through the date of termination.

b. *Partial Taking*. Should a portion of the Property be taken by eminent domain, condemnation or similar proceedings, this Lease shall continue in effect as to the remainder of the Property unless, in Lessee's reasonable judgment, the taking makes it economically unsound to use the remainder, whereupon this Lease shall terminate as of the date of taking of possession by the condemnor in the same manner as if the whole of the Property had been taken, and the award therefor shall be distributed as provided in subsection (a) hereof. If this Lease is not terminated, all rent shall be equitably adjusted based on the portion of the Property taken. If this Lease is terminated, all rent shall be prorated through the date of termination.

c. *Temporary Taking*. If any portion of the Property is taken for temporary use or occupancy, the Term shall not be reduced or affected. Except to the extent Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. If Lessee continues to perform its obligations under this Lease throughout the term of the temporary taking, Lessee shall be entitled to the full award for a temporary taking.

d. *Condemnation/Casualty Payments; Restoration after Destruction or Condemnation*. During such time as Financing is in effect, all condemnation or casualty proceeds regarding the leasehold estate of the Lessee shall be applied as required by its Lenders. The payment shall not be less than the total award minus the value of the remainder interest in the Property considered as unimproved. In the event of a partial taking, the Lessee is permitted to rebuild and restore the Improvements unless a Lender consents to distribution of the proceeds. In that event, the proceeds must be applied first toward reduction of the Financing. This Lease does not prohibit a Lender from participating in adjustment of losses and settlement. Notwithstanding any other provision to the contrary hereunder, in the event of a casualty or condemnation, this Lease shall not be terminated and the insurance proceeds or condemnation award may be retained by Lessee and applied to the Financing as repayment of indebtedness or to restore the Improvements; provided, however, that in the event of a full casualty or taking. The Town or VLHA may be entitled to the portion of any casualty proceeds or condemnation award which represents the unimproved value of the Property.

14. Assignment. Lessee may assign its rights under this Lease if the new tenant assumes in writing all covenants and obligations of Lessee under this Lease, including without limitation all obligations of Lessee under the Deed Restriction. Lessee shall thereupon be released and discharged from all obligations under this Lease, but such obligations shall be binding upon the new tenant. Notwithstanding the foregoing, Lessee may not assign its rights hereunder if Lessee is in default of this Lease.

15. Subleasing.

a. *Term.* Lessee may freely execute subleases in compliance with this Lease, the Deed Restriction and applicable law, provided that the term of each such sublease (including all renewal and extension rights) shall not extend past the expiration date of the Term.

b. *Form.* Each sublease shall specifically provide that the sublessee's rights are subject to the Town's rights under this Lease and the Deed Restriction, and shall provide that upon a termination of this Lease or of Lessee's right to possession of the Property such sublease, at the Town's option, shall continue in effect as a lease directly between the Town and the sublessee thereunder, provided that the sublessee attorns to the Town, the Town shall not be responsible for the return or repayment of any security or other deposits made by such sublessee with Lessee unless Lessee has turned the same over to the Town, and the Town shall not be liable or responsible for the cure or remedy of any breach, violation, or default on the part of Lessee under subleases occurring prior to termination of this Lease or of Lessee's right to possession of the Property. Lessee shall give a copy of each sublease to the Town upon request.

16. Quiet Enjoyment. The Town covenants that Lessee, on paying the Rent and performing and observing the obligations of this Lease, shall peaceably and quietly have, hold, occupy, use, and enjoy the Property during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease, the Deed Restriction and applicable law. Notwithstanding the foregoing, the Town shall have access to the Property at all times following reasonable prior notice to Lessee to inspect the Property, provided that the Town shall use reasonable efforts not to disturb Lessee's use of the Property or the occupants of the Improvements.

17. Lessee Default and Remedies.

a. *Events of Default.* Each of the following is a Lessee default of this Lease:

i. If Lessee fails to perform any of its obligations under this Lease or the Deed Restriction and Lessee fails to commence and take such steps as are necessary to remedy the same within 30 days after Lessee is given a written notice specifying the same; provided, however, that if the violation is a violation of this Lease and not a violation of the Deed Restriction, and the nature of the violation is such that it cannot reasonably be remedied within 30 days, and Lessee provides evidence to the Town that the violation cannot reasonably be remedied within 30 days, then the violation shall be remedied as soon as reasonably practicable, but in any case, within 180 days of the original notice of violation.

ii. If an involuntary petition is filed against Lessee under a bankruptcy or insolvency law or under the reorganization provisions of any law, or when a receiver of Lessee, or of

all or substantially all of the property of Lessee, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within 120 days after the happening of such event.

iii. If Lessee makes an assignment of its property for the benefit of creditors or files a voluntary petition under a bankruptcy or insolvency law, or seeks relief under any other law for the benefit of debtors.

b. *Remedies.* If a Lessee default occurs, the Town may, without waiving any other rights hereunder or available to the Town at law or in equity (the Town's rights being cumulative), terminate this Lease, in which event this Lease and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through, or under Lessee shall automatically terminate upon the effective date of such notice; and the Town, its agents or representatives, may, without further demand or notice, reenter and take possession of the Property and remove all persons and property from the Property with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for existing breaches hereof. In addition to the specific remedies set forth herein, the Town 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.

18. Town Default and Remedies.

a. *Event of Default.* The following is a Town default of this Lease: if the Town fails to perform any of its covenants or obligations under this Lease and fails to commence and take such steps as are necessary to remedy the same within 30 days after written notice is given specifying the same; provided, however, that if the nature of the violation is such that it cannot reasonably be remedied within 30 days, and the Town provides evidence to Lessee that the violation cannot reasonably be remedied within 30 days, then the violation shall be remedied as soon as reasonably practicable, but in any case, within 180 days of the original notice of violation.

b. *Remedies.* If a Town default occurs, Lessee may terminate this Lease. In addition to the specific remedy set forth herein, Lessee 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, provided that the remedy of specific performance shall not be available against the Town.

19. VLHA's Right to Cure. Notwithstanding any other provision to the contrary hereunder, the VLHA shall have the absolute and continuing right, in the event of any failure by Lessee to timely perform any obligation under this Lease, to make such payment or perform such obligation in the place of Lessee and, as a result, seek and secure from Lessee reimbursement for all costs and expenses incurred by the VLHA, including attorney fees and other costs incurred by the VLHA.

20. Lender Provisions.

a. *Leasehold.* Lessee may, at any time, without the Town's consent or joinder, encumber its interest in this Lease and the leasehold estate hereby created with one or more deeds of trust, mortgages, or other lien instruments to secure any borrowings or obligations of Lessee.

No lien of Lessee upon its interest in this Lease and the leasehold estate hereby created shall encumber or affect in any way the interest of the Town in the Property.

b. *No Merger.* In no event shall the leasehold interest, estate, or rights of Lessee hereunder, or of the holder of any mortgage upon the Lease, merge with any interest, estate, or rights of the Town in or to the Property, it being understood that such leasehold interest, estate, and rights of Lessee hereunder, and of the holder of any mortgage upon this Lease, shall be deemed to be separate and distinct from the Town's interest, estate, and rights in or to the Property, notwithstanding that any such interests, estates, or rights shall at any time or times be held by or vested in the same person, corporation, or other entity.

c. *Financing.* During the Term, Lessee may freely enter into any Financing without any further required consent by the Town or the VLHA, provided that Lessee provides the Town and the VLHA prompt notice of each Financing, together with contact information for notices to the lender responsible for such Financing (each a "Lender"), and a complete copy of each leasehold mortgage (including all documents and instruments comprising of the leasehold mortgage) and all amendments, extensions, modifications and consolidations thereof. For purposes of this Section, Financing means debt financing that was incurred by Lessee to construct and equip the Improvements, together with debt that has been or may be incurred in connection with refinancing such debt.

d. *No Liability.* No Lender shall have personal liability under this Lease unless such Lender takes title to the Improvements. A default under any Financing agreement by a Lender shall not constitute a default under this Lease.

e. *Foreclosure.* Any Lender shall have the right to foreclose on its Financing without consent of the Town or the VLHA, and may acquire the Lease in its own name or in the name of an assignee or nominee upon foreclosure, provided that such foreclosure does not affect the Town's fee interest in the Property.

f. *Subordination.* Any mortgage on the Property by the Town shall be subordinate to the leasehold estate of the Lessee under the Lease. Lessee is prohibited from subordinating its leasehold estate to a subsequent mortgage of the fee obtained by the Town.

g. *Changes to Lease.* During such time as any Financing is in effect, this Lease shall not be amended or modified without the consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

h. *Surrender.* The Town shall not accept a voluntary surrender or termination of the Lease by Lessee.

i. *Estoppel Certificate.* Upon written request from Lender, but not more than once per year, the Town shall provide an estoppel certificate to Lender in the form attached hereto as **Exhibit C** and incorporated herein by this reference.

j. *Rights Upon Lessee Default.* The Town shall provide written notice to Lender of a Lessee default that would allow the Town to terminate the Lease, and, prior to terminating the Lease, the Town shall provide Lender a reasonable time and opportunity for a Lender to cure the

default, including, in the case of a default that can be cured by Lender only by obtaining possession, a sufficient period of time for Lender to obtain possession. If this Lease is terminated upon a Lessee default, and Lender has foreclosed on its leasehold interest and taken title to the Improvements, the Town shall negotiate with Lender in good faith to secure a new lease of the Property with terms substantially similar to the terms of this Lease.

21. Notices. Any notice under this Lease shall be in writing and may be given by United States Mail, postage prepaid, addressed as set forth herein; or hand-delivery. Notice shall be effective three days after mailing or immediately upon hand-delivery. The addresses of the Parties shall, unless changed in writing, be as follows:

The Town: Town Manager, Town of Vail
75 South Frontage Road
Vail, CO 81657

VLHA: Vail Housing Authority
75 South Frontage Road
Vail, CO 81657

Lessee: Middle Creek Village, LLC
140 East 19th Avenue, Suite 700
Denver, CO 80203-1035
Attn: Mr. Michael P. Coughlin

With a copy to: J. William Callison
Faegre Drinker
1144 15th Street, Suite 3400
Denver, CO 80202

22. Miscellaneous.

a. *Modification*. This Lease may only be modified by subsequent written agreement of the Parties.

b. *Integration*. This Lease and any attached exhibits constitute the entire agreement between the Parties, superseding all prior oral or written communications.

c. *Binding Effect*. This Lease 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 Lease 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 Lease 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.

f. *Third Parties*. There are no intended third-party beneficiaries to this Lease.

g. *No Joint Venture.* Notwithstanding any provision hereof, neither the Town nor the VLHA shall ever be a joint venture in any private entity or activity which participates in this Lease, and neither the Town nor the VLHA shall ever be liable or responsible for any debt or obligation of any participant in this Lease.

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 Lease, 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.

i. *Contingency; No Debt.* Pursuant to Article X, § 20 of the Colorado Constitution, any financial obligations of the Town under this Lease are specifically contingent upon annual appropriation of funds sufficient to perform such obligations. This Lease shall never constitute a debt or obligation of the Town within any statutory or constitutional provision.

j. *Force Majeure.* No Party shall be in breach of this Lease if such Party's failure to perform any of the duties under this Lease is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government, or pandemics.

WHEREFORE, the Parties have executed this Lease on the Effective Date.

TOWN OF VAIL, COLORADO

Dave Chapin, Mayor

ATTEST:

Tammy Nagel, Town Clerk

VAIL LOCAL HOUSING AUTHORITY

Chair

ATTEST:

Secretary

MIDDLE CREEK VILLAGE, LLC, a Colorado limited liability company

By: _____, its manager

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____.
2020, by _____ as Manager of Middle Creek Village, LLC.

My commission expires:

WITNESS my hand and official seal.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

Lot 1, MIDDLE CREEK SUBDIVISION, according to the Plat recorded _____,
under Reception No. _____, County of Eagle, State of Colorado.

EXHIBIT B

**MASTER DEED RESTRICTION
FOR THE OCCUPANCY OF UNITS AT MIDDLE CREEK VILLAGE**

THIS MASTER DEED RESTRICTION AGREEMENT FOR THE OCCUPANCY OF UNITS AT MIDDLE CREEK VILLAGE (the "Agreement") is made and entered into this ____ day of _____, 2020, by and among the Town of Vail, Colorado, a Colorado home rule municipality (the "Town"), the Vail Local Housing Authority, a Colorado statutory housing authority (the "VLHA"), and Middle Creek Village, LLC, a Colorado limited liability company ("Lessee") (each a "Party" and collectively the "Parties").

WHEREAS, the Town owns the Property more particularly described in **Exhibit 1**, attached hereto and incorporated herein by this reference;

WHEREAS, pursuant to the Ground Lease dated _____, 2020, the Town has leased the Property to Lessee for the purpose of operating a multi-family rental housing development on the Property (the "Project");

WHEREAS, the Parties have agreed that the use and occupancy of the dwelling units in the Project will be restricted as provided in this Agreement;

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby declare, covenant and 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, the VLHA and Lessee may consider, without limitation: location of business pursuits; employment and income sources; residence for tax purposes; residence of parents, spouse and children, if any; location of personal property; motor vehicle registration; and voter registration.

"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) a natural person who 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, and earns at least 75% of their income from such business; or (b) a retired natural person, 60 years or older, who previously worked 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 a minimum of 5 years prior to retirement, and during such 5-year period, earned at least 75% of their income from such business.

"Rental Guidelines" means the guidelines attached hereto as **Exhibit 2** and incorporated herein by this reference, as amended.

"Unit" means each of the residential dwelling units 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 VLHA, and shall bind 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. The Parties acknowledge and agree that this Deed Restriction replaces the Deed Restriction Agreement recorded with the Eagle County Clerk and Recorder on January 18, 2002 at No. 783204.

3. Occupancy.

a. A Qualified Resident shall occupy each Unit as their principal place of residence, and Lessee shall not permit any use or occupancy of a Unit except in compliance with this Agreement. If other occupants of the Unit are not Qualified Residents, the Unit need not be their principal place of residence.

b. Each Unit shall be occupied by a Qualified Household, provided that one Unit may be used by the Property Manager, which Unit shall be exempt from the requirement that the Unit be occupied by a Qualified Household.

c. Nothing in this Agreement shall prohibit Lessee from leasing any Unit to a business entity that subleases the Unit to a Qualified Household.

d. Residents (other than the Property Manager, if a resident) shall not engage in any substantial business activity on or in a Unit.

e. In the rental and occupancy of the Units, Lessee shall not discriminate on the basis of age, race, creed, color, sex, sexual orientation, disability, religion, national origin, marital status or affiliation or otherwise violate Federal, state and local fair housing laws.

f. When a Unit becomes vacant, Lessee shall promptly make it available and actively market the Unit for lease to another Qualified Household in accordance with the Rental Guidelines.

g. In a non-emergency situation, if the Town, the VLHA or Lessee has reasonable cause to believe that an occupant of a Unit is violating any provision of this Deed Restriction, the Town, the VLHA or 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, the VLHA or Lessee from accessing a Unit in an emergency situation where there is an imminent threat to person(s) or property.

4. Unit Leases.

a. 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.

b. Nothing herein shall prevent the 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 their status as a Qualified Resident, Lessee shall terminate the Unit lease in addition to any other available remedies.

5. Violations.

a. If Lessee discovers a violation of this Deed Restriction by an occupant, or if the Town or the VLHA notifies Lessee in writing that there is a violation of this Deed Restriction by an occupant, 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 Lessee, the Town and the VLHA. 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 or the VLHA discovers a violation of this Deed Restriction by Lessee, the Town shall send a notice of the violation to Lessee, detailing the nature of the violation and allowing Lessee 30 days from the date the notice is given to cure said violation to the reasonable satisfaction of the Town and the VLHA. 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 Lessee.

6. Remedies.

a. The Town, the VLHA and 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 Lessee is found to be in violation this Deed Restriction (after expiration of any cure period), 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 Lessee. This penalty shall not apply if it is discovered that an occupant provided false information to Lessee, Lessee 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 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. 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 or the VLHA of any activity taken in response to any violation of this Deed Restriction by the Lessee, including reasonable attorney fees, shall be paid promptly by Lessee; provided that, if a court of competent jurisdiction finds that Lessee was not in violation of this Deed Restriction, Lessee shall not be liable for such payment.

7. Notices. Any notice under this Lease shall be in writing and may be given by United States Mail, postage prepaid, addressed as set forth herein; or hand-delivery. Notice shall be effective three days after mailing or immediately upon hand-delivery. The addresses of the Parties shall, unless changed in writing, be as follows:

The Town:	Town Manager, Town of Vail 75 South Frontage Road Vail, CO 81657
VLHA:	Vail Local Housing Authority 75 South Frontage Road Vail, CO 81657
Lessee:	Middle Creek Village, LLC 140 East 19th Avenue, Suite 700 Denver, CO 80203-1035 Attn: Mr. Michael P. Coughlin
With a copy to:	J. William Callison Faegre Drinker 1144 15 th Street, Suite 3400 Denver, CO 80202
If to a Unit tenant:	To the Unit address.

8. Miscellaneous.

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

b. *Integration.* This Lease and any attached exhibits constitute the entire agreement between the Parties, superseding all prior oral or written communications.

c. *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.

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 Eagle County, Colorado.

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

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

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

i. *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.

j. *Contingency; No Debt.* Pursuant to Article X, § 20 of the Colorado Constitution, any financial obligations of the Town under this Lease are specifically contingent upon annual appropriation of funds sufficient to perform such obligations. This Lease shall never constitute a debt or obligation of the Town within any statutory or constitutional provision.

k. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government, or pandemics.

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

TOWN OF VAIL, COLORADO

Dave Chapin, Mayor

ATTEST:

Tammy Nagel, Town Clerk

VAIL LOCAL HOUSING AUTHORITY

Chair

ATTEST:

Secretary

MIDDLE CREEK VILLAGE, LLC, a
Colorado limited liability company

By: _____, its manager

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ as Manager of Middle Creek Village, LLC.

My commission expires:

WITNESS my hand and official seal.

Notary Public

EXHIBIT 1

LEGAL DESCRIPTION

Lot 1, MIDDLE CREEK SUBDIVISION, according to the Plat recorded _____,
under Reception No. _____, County of Eagle, State of Colorado.

EXHIBIT 2

MIDDLE CREEK VILLAGE EMPLOYEE HOUSING RENTAL GUIDELINES

1. Purpose. The purpose of these Rental Guidelines (the "Guidelines") is to set forth the occupancy eligibility requirements for the employee housing rental units (the "Units") located in Middle Creek Village 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, Lessee shall administer these Guidelines, including without limitation making determinations regarding the eligibility of applicants to rent and occupy a Unit as a Qualified Resident as set forth herein. Prior to leasing or renewing a lease for a Unit, the occupant must sign an individual acknowledgement of acceptance of the terms of these Guidelines and the Deed Restriction.
4. Qualified Households and Residents. Except as otherwise provided herein or in the Deed Restriction, to be eligible for consideration to rent a Unit, the occupants must first be certified as a Qualified Household. Notwithstanding anything herein to the contrary, Lessee shall not be obligated to rent any Unit to a tenant that does not meet Lessee's rental guidelines, which rental guidelines shall be subject to review and approval by the Town and the VLHA, in their reasonable discretion.
5. Application. To become a Qualified Resident, a person must first provide the following information on an application to be provided by Lessee, and applications and all accompanying documentation shall become the property of the 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 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 Restricted Unit;
 - c. A valid form of identification, such as a driver's license, state-issued identification, passport or military identification.
 - d. Any other documentation which the 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 Restricted Unit; that the applicant authorizes 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 Lessee

reserves the right to review any applications and take any appropriate action regarding such application.

6. Lease Term. The Units shall be leased to Qualified Households for initial lease terms that are not less than 6 months in duration.

7. Interpretation. In evaluating a potential application to lease a Restricted Unit, the 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 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.

8. Leasing of Units to Non-Qualified Households.

a. If there are no eligible Qualified Households available to rent a particular Unit, Lessee may rent such Unit to occupants other than a Qualified Household. However, at Lessee shall thereafter use commercially reasonable efforts to lease the Unit to a Qualified Household.

b. In no event may Lessee lease a Restricted Unit to a Qualified Resident who will not occupy the Restricted Unit as their principal place of residence, unless first expressly approved in writing by the Town after making findings that extraordinary circumstances and hardship exist to justify such arrangement. Such tenancy shall be on a month-to-month basis only.

c. As set forth in the Deed Restriction, one Unit may be occupied by the Property Manager without the Property Manager being certified as a Qualified Household or Qualified Resident.

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 and the VLHA may inspect any documents submitted with any application for Qualified Resident status at any time during normal business hours, upon reasonable notice. In addition, upon inspection, if the Town or the VLHA reasonably determines that additional documents are necessary to verify Qualified Resident or Qualified Household status, the Town or the VLHA may request additional documents. Notwithstanding the foregoing, Lessee shall not be required to retain any documents submitted by applicants who do not sign leases with Lessee.

EXHIBIT C

ESTOPPEL CERTIFICATE

July __, 2020

PROPERTY NAME: Middle Creek Village

PROPERTY ADDRESS: 145 N. Frontage Road W, Vail, Colorado 81657 (the "Property")

GROUND LEASE DATE: July __, 2020

GROUND LESSOR: Town of Vail, a Colorado home rule municipality (the "Town")

GROUND LESSEE: Middle Creek Village, LLC, a Colorado limited liability company ("Lessee")

The Town acknowledges that (a) CBRE Multifamily Capital, Inc., a Delaware corporation (together with its successors and assigns, "Lender") has agreed, subject to the satisfaction of certain terms and conditions, to make a loan (the "Loan") to Lessee, which Loan is or will be secured by a lien on Lessee's leasehold interest in the Property (the "Leasehold Estate"), and (b) Lender is requiring this Estoppel Certificate (the "Certificate") as a condition to its making the Loan. Accordingly, the Town hereby certifies, confirms, covenants and agrees to Lender and its transferees, successors and assigns, as follows:

1. A true, complete and correct copy of the ground lease between the Town, the Vail Local Housing Authority (the "VLHA") and Lessee with respect to the Property is attached hereto as Schedule I (the "Lease"). The Lease has not been modified, changed, altered, assigned, supplemented or amended in any respect. The Lease is not in default and is valid and in full force and effect on the date hereof. The Lease represents the entire agreement between the Town, the VLHA and Lessee with respect to the Property.

2. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease.

3. The Town hereby consents to the Loan secured by a lien as to the Leasehold Estate, and to the encumbrance of a security lien against the Leasehold Estate as security for repayment of the Loan, it being expressly understood and agreed that Lender intends to assign the Loan to Fannie Mae, and that Fannie Mae, its successors and assigns, may specifically rely on the provisions of this Certificate.

4. All rent and other charges due under the Lease through the date hereof has been fully paid by Lessee.

5. Lessee has no option or right of first refusal to purchase the Property or any part thereof.

6. Lessee owns all improvements located on the Property.

7. The Town has not and shall not subject its interest in the Property or the Lease to any mortgage, deed of trust or other lien. The Town has not assigned, mortgaged, conveyed, transferred, encumbered, hypothecated or granted to any party any interest in the Lease other than to Lessee, or granted to any party any right or option to purchase any interest of the Town in the Lease.

8. The Town shall give notice of any alleged non-performance on the part of Lessee to Lender simultaneously with the default notice delivered to Lessee; and the Town agrees that Lender shall have a separate, consecutive reasonable cure period of no less than 30 days following Lessee's cure period, during which Lender may, but need not, cure any non-performance by Lessee.

9. If the Town initiates any litigation or other dispute resolution proceeding affecting the Lease, then the Town shall notify Lender, and Lender will have the right to participate in such proceeding.

10. Lender may foreclose on the Leasehold Estate without the consent of the Town, provided that Lender shall use commercially reasonable efforts to provide the Town at least 30 days' prior written notice of Lender's intent to commence a foreclosure proceeding. The Leasehold Estate may be sold, assigned, or transferred without the Town's consent (a) pursuant to any foreclosure proceedings or a transfer by deed (or other instrument of conveyance) in lieu of any such foreclosure to Lender, its affiliate or a third person, or (b) thereafter, by such Lender or its affiliate to a third party.

11. Lender, simply by virtue of its lien on the Leasehold Estate or by taking any action to cure any default by Lessee, shall not be deemed to have assumed any of the obligations or liabilities of Lessee under the Lease or to be a mortgagee in possession, unless Lender elects in writing to become a mortgagee in possession. Notwithstanding the foregoing, if Lender takes title to the Leasehold Estate, Lender shall be responsible for the performance of Lessee's obligations under the Lease.

12. In the event of any casualty or condemnation affecting the Property, Lender shall be entitled to any insurance proceeds or condemnation awards to which Lessee is entitled pursuant to the applicable court order (which in the case of a condemnation, shall be subject only to any condemnation award to which the Town is entitled for any fee interest in the Property considered as unimproved).

13. While the Loan encumbers the Leasehold Estate, no surrender (voluntary or otherwise), termination or cancellation of the Lease shall be effective until after such time as Lender is afforded the opportunity to exercise Lessee's cure rights under the Lease.

14. Lender will rely on the covenants and agreements made by the Town herein in connection with Lender's agreement to make the Loan, and the Town agrees that Lender may so rely on such representations and agreements.

IN WITNESS WHEREOF, the undersigned has signed and delivered this Certificate on the _____ day of _____, 2020.

TOWN OF VAIL, COLORADO

Scott Robson, Town Manager

ATTEST:

Tammy Nagel, Town Clerk

SCHEDULE I TO GROUND LESSOR ESTOPPEL CERTIFICATE

(Copy of Lease)