

**DECLARATION OF OCCUPANCY AND RESTRICTIVE COVENANT**  
**Basalt River Park**  
**(Category 2 Units)**

THIS DECLARATION OF OCCUPANCY AND RESTRICTIVE COVENANT (the "Declaration"), is made effective the 3<sup>rd</sup> day of May, 2023 by BASALT RIVER PARK, LLC, a Colorado limited liability company ("Declarant"), for the benefit of and enforceable by Declarant and the Town of Basalt, Colorado, a Colorado home-rule municipality (hereinafter referred to as "Town").

RECITALS:

- A. Declarant owns certain property described as Parcel B (the "Property"), according to the Final Plat of: Basalt River Park recorded November 19, 2020 at Reception No. 202022136 in the office of the Clerk and Recorder of Eagle County, Colorado ("Plat") on which Declarant has developed a mixed use building [comprised of 11,500 square feet of commercial/office space, one unrestricted residential unit(s), seven (7) residential units restricted to occupancy by permanent residents and four residential units to be deed restricted pursuant to this Declaration] (the "Building").
- B. Development of the project on the Property was approved pursuant to Town of Basalt, Colorado, Ordinance No. 6, Series of 2020, recorded April 29, 2020 as Reception No. 202006298 of the records of Eagle County, Colorado ("Ordinance No. 6").
- C. Ordinance No. 6, Exhibit C, Condition 4 requires the Declarant to develop and deed restrict four affordable housing residential units for lease at the "Category 2" rate in accordance with the Town of Basalt's Community Housing Guidelines, as the same may be amended and supplemented from time to time (the "Guidelines").
- D. By this Declaration, Declarant intends to deed restrict Units 250, 252, 350 & 352 (the "Deed Restricted Units"), within the Building known as the Basalt River Park Lofts Condominiums, according to the Condominium Map of the Basalt River Park Lofts Condominiums, recorded May 3<sup>rd</sup>, 2023 at Reception No. 202304621 in the office of the Clerk and Recorder of Eagle County, Colorado ("Map") as the affordable housing deed restricted units required by Ordinance No. 6.

NOW THEREFORE, in consideration of the mutual promises and obligations contained herein, the Declarant and Town hereby covenant and agree as follows:

1. Deed Restricted Category 2 Residential Dwelling Units. Declarant hereby states, declares and covenants that the Deed Restricted Units are hereby restricted to use as "Category 2" residential "rental" units subject to the Guidelines. The Deed

Please Return To:  
Town of Basalt  
101 Midland Avenue  
Basalt, CO 81621

Restricted Units shall be "rental" units. Any sale or rental by Declarant of any of the Deed Restricted Units shall be subject to this Declaration and the restrictions of the Guidelines, including appreciation caps and monthly rent limits. The Deed Restricted Units may be owned by Declarant or any other person or entity provided such units are occupied by persons qualifying as Category 2 rental occupants. The Deed Restricted Units shall first be advertised and offered for rent for twenty-one (21) days to full-time employees that work within the Basalt River Park Development, and then in accordance with the Guidelines. For the purpose of this provision, advertising shall mean written notice to all businesses, non-profit entities, or governmental entities located in the Basalt River Park Development of any vacancy. All leases of the Deed Restricted Units must be for a least six (6) consecutive months. The Deed Restricted Units shall not be vacant at any time for more than forty-five (45) consecutive days. Any Deed Restricted Unit vacant for more than forty-five (45) days must be made available for qualified tenants under the Guidelines selected by the Town. The Town's Special Housing Evaluation Committee ("SHEC") may waive the vacancy requirement and other matters in the Guidelines subject to SHEC's jurisdiction.

2. Copies of Leases. As and when required by the Guidelines, a signed and executed copy of any lease of a leased Deed Restricted Unit shall be provided to the Town by the then-owner of such Unit.
3. Binding Declaration. This Declaration shall constitute covenants running with the Deed Restricted Units as a burden thereon for the benefit of, and shall be specifically enforceable by, the Declarant, the Town and their respective successors, as applicable, by any appropriate legal action, including, but not limited to, injunction or abatement.
4. No Indemnity. Nothing herein shall be construed to require the Town to protect or indemnify the Declarant against any losses attributable to the ownership, use or occupancy of the Deed Restricted Units, including (not by way of limitation) non-payment of rent or damage to the premises; nor to require the Town to obtain a qualified tenant for the Declarant in the event that none is found by the Declarant.
5. Breach/Inspection. In the event that the Town has reasonable cause to believe the Declarant is violating the provisions of this Declaration, the Town, by its authorized representative, may inspect the Deed Restricted Units between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Declarant at least 24 hours' advance written notice. Declarant is required to provide the Town with all information reasonably requested by the Town to determine compliance with this Declaration. Failure to do so shall itself constitute a violation of this Declaration.
6. Breach Notice. The Town, in the event a violation of this Declaration is discovered, shall send a notice of violation to the Declarant detailing the nature of the violation and allowing the Declarant fifteen (15) days to cure such violation. Said notice

shall state that the Declarant may request a hearing before the Town within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Declarant shall be considered in violation of this Declaration. Subject to appeal to a court of competent jurisdiction, if a hearing is held before the Town, the decision of the Town based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

7. Remedies. There is hereby reserved to the parties any and all remedies provided by law or equity for breach of this Declaration or any of its terms. In the event the parties resort to litigation with respect to any or all provisions of this Declaration, the prevailing party shall be awarded damages, costs, and reasonable attorneys' fees.
8. Foreclosure of First Deed of Trust and Right of Redemption. If any Property or Unit is sold as a foreclosure sale or otherwise acquired by any person or entity in lieu of foreclosure, the Town, Pitkin County, Aspen/Pitkin County Housing Authority, or Eagle County, shall have the option to enter into an agreement to acquire such Property or Unit within sixty (60) days after the following:
  - A. The issuance of a public trustee's deed to the purchaser, or
  - B. Receipt by the Town of written notice from such person or entity of the acquisition of such Lot or unit in lieu of foreclosure, as applicable, for an option price not to exceed:
    - i. In the event of a foreclosure, the redemption price on the last day of all statutory redemption periods and any additional reasonable costs incurred by the holder during the option period which are directly related to the foreclosure, or
    - ii. In the event of a transfer in lieu of foreclosure, the amount paid, or the amount of debt forgiven, by the transferee plus the reasonable costs incurred by the transferee with respect to its acquisition of such Property or Unit.
9. Notices. Any notice, consent or approval which is required to be given hereunder shall be given by mailing the same certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of change of address has been given to the other parties to this Declaration. Said notices, consents and approvals shall be to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:  
Basalt River Park, LLC

c/o Timothy Belinski  
701 East Valley Road, Ste. 207  
Basalt, CO 81621

To the Town:  
Town Manager  
Town of Basalt  
101 Midland Avenue  
Basalt, CO 81621

10. Recitals/Exhibits. All Recitals at the beginning of this Declaration and any Exhibits attached hereto are incorporated herein and by this reference made a part hereof.
11. Severability. Whenever possible, each provision of this Declaration and any other related documents (such as the Guidelines) shall be interpreted in such a manner as to be valid under applicable law; but if any provision of this Declaration or related document shall be invalid or prohibited under applicable law, such invalid or prohibited provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Declaration or related document.
12. Choice of Law. This Declaration and each and every related document is to be governed and construed in accordance with the laws of the State of Colorado.
13. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.
14. Section Headings. Paragraph and section headings within this Declaration are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
15. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Declaration shall be valid against any party hereto except on the basis of a written instrument executed by the party against whom waiver is claimed.
16. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
17. Modifications. Any modifications of this Declaration shall be effective only when made by a writing signed by both parties and recorded with the Clerk and Recorder of Eagle County, Colorado. Notwithstanding the foregoing, the parties agree to amend this Declaration where necessary to effectuate the purpose and intent of this Declaration, and where such amendment does not materially impair the Declarant's rights under this Declaration.

18. Declarant and Successors. The term "Declarant" shall mean any person or persons who shall acquire an ownership interest in the Deed Restricted Units; it being understood that each such person or persons shall be deemed a "Declarant" hereunder only during the period of his, her, their or its ownership interest in the Deed Restricted Units and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the date first set forth above.

*~ Signature Pages Follow ~*

DECLARANT:

Basalt River Park, LLC  
a Colorado limited liability company  
By: BRP Manager, LLC,  
a Colorado limited liability company,  
its Manager

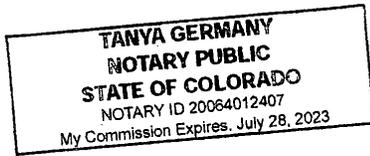
By:   
Timothy Belinski, Manager

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF Eagle )

This instrument was acknowledged before me this 2 day of May,  
2023, by Timothy Belinski, Manager of BRP Manager, LLC, a Colorado limited liability  
company, the Manager of Basalt River Park, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

  
Notary Public



TOWN OF BASALT

By:   
William G. Kane, Mayor

ATTEST:

By:   
Pamela K. Schilling, Town Clerk