

DECLARATION OF OCCUPANCY AND RESTRICTIVE COVENANT
Basalt River Park
(Resident Occupied Units)

THIS DECLARATION OF OCCUPANCY AND RESTRICTIVE COVENANT (the "Declaration"), is made effective the 3rd 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 real 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 (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 at Reception No. 202006298 of the records of Eagle County, Colorado ("Ordinance No. 6").

C. Ordinance No. 6, Exhibit C, Condition 5 requires the Declarant to develop and deed restrict all market rate residential units, with the exception of the third floor unit, in the Building to occupancy by persons for whom the units are occupied as their "principal" or "primary" residence, home or place of abode as defined by Section 31-10-201(3), Colorado Revised Statutes ("Primary Residence").

D. By this Declaration, Declarant intends to deed restrict Units 270, 272, 274, 276, 370, 372, 374, & 376 (the "RO Units"), within the Building known as the Basalt River Park Lofts Condominiums, according to the Condominium Map of Basalt River Park Lofts Condominiums, recorded May 3rd, 2023 at Reception No. 202304621 in the office of the Clerk and Recorder of Eagle County, Colorado ("Map") as the Primary Residence 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 RO Units. Declarant hereby states, declares and covenants that the RO Units are hereby restricted to occupancy only by persons for whom the RO Units are their "Primary Residence." The RO Units may be "rental" units or "for-sale" units, in the Declarant's sole discretion. Any sale by Declarant of any RO Unit shall be subject to this Declaration and the restrictions hereof and in Section 31-10-201(3), Colorado Revised Statutes. The RO Units may be owned by Declarant or any other person or entity provided such units are occupied by persons for whom such units are their Primary Residence.

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

2. Copies of Leases. As and when required by the Town of Basalt (which shall be not more frequently than once per year), a signed and executed copy of any lease of a leased RO 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 RO 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 RO 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 RO 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 at 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:

- (i) the issuance of a public trustee's deed to the purchaser, or

(ii) 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:

(a) in the event of a foreclosure, the redemption price on the last day of all statutory redemption periods and any additional reasonable costs incurred by the holder during the option period which are directly related to the foreclosure, or

(b) in the event of a transfer in lieu of foreclosure, the amount paid or the amount of debt forgiven, by the transferee plus the reasonable costs incurred by the transferee with respect to its acquisition of such Property or Unit.

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 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.

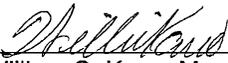
17. Modifications. Any modifications of this Declaration shall be effective only when made by a writing signed by both parties and recorded with the Clerk and Recorder of Eagle County, Colorado. Notwithstanding the foregoing, the parties agree to amend this Declaration where necessary to effectuate the 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 RO 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 RO 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.

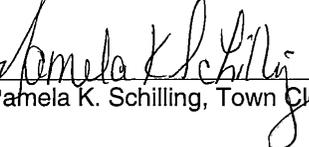
IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first set forth above.

~ Signature Pages Follow ~

TOWN OF BASALT

By: 
William G. Kane, Mayor

ATTEST:

By: 
Pamela K. Schilling, Town Clerk