

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

THIS AMENDED AND RESTATED AFFORDABLE HOUSING DEED RESTRICTION (the “Deed Restriction”) is made this _____ day of _____, 2024 (the “Effective Date”), by MEADOWLARK 644, LLC, a Colorado limited liability company and/or its assigns (the “Declarant”), for the benefit of and enforceable by the Town of Mountain Village County Housing Authority, a duly constituted housing authority established pursuant to Colorado law (“MVHA”).

RECITALS

WHEREAS, Declarant owns certain real property in the Town of Mountain Village (the “Town”), San Miguel County, Colorado known as Lot 644, according to the plat recorded at Reception No. 261214 (“Lot 644”), and is in the process of developing Lot 644 as an affordable housing project commonly known as Meadowlark at Mountain Village; and

WHEREAS, prior to conveying Lot 644 to Declarant, MVHA recorded against Lot 644 that certain Affordable Housing Deed Restriction, Residential Dwelling Units, Lot 644, Mountain Village, in the San Miguel County real property records on August 29, 2023, at Reception No. 482106 (the “Prior Restriction”); and

WHEREAS, Declarant, with the consent and approval of MVHA, desires to amend, restate, supersede, and replace, in its entirety, the Prior Restriction with this Deed Restriction; and

WHEREAS, Declarant desires to restrict the occupancy, use, and resale of each Unit constructed on Lot 644 pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the Recitals as set forth above and for value received, the receipt and sufficiency of which is hereby acknowledged, the Declarant does hereby declare and covenant as follows:

COVENANTS

1. Effect of Deed Restriction. Upon recordation hereof, the Prior Restriction shall be superseded in its entirety by this Deed Restriction, and the Prior Restriction shall be of no further force or effect. Upon recordation of a plat or map creating a Unit, each Unit described and depicted thereon shall be burdened with the covenants and restrictions specified in this Deed Restriction. Any plat or condominium map of Lot 644 shall state that the Units created thereby are subject to this Deed Restriction.

2. Deed Restriction. Each Unit constructed on Lot 644 shall be subject to Chapter 16.02 of the Mountain Village Municipal Code (the “Code”), also known as the 2006 Affordable Housing Restriction, as well as the Guidelines adopted by the MVHA (defined below), except as otherwise modified herein. In the event of a conflict between Chapter 16.02 of the Code or the Guidelines and this Deed Restriction, the recorded version of this Deed Restriction shall control. This Deed Restriction constitutes a covenant that runs with the title to each Unit as a burden thereon and shall be binding on each Owner and its heirs, successors, representatives, assigns, lessees, licensees and any transferee, in perpetuity, subject to Section 10(k) below.

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

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

B. *Guidelines* means the current version of the Mountain Village Housing Authority Operating Document adopted by the MVHA, as amended and renamed from time to time.

C. *Maximum Resale Price* means the Purchase Price of a Unit paid by the last Qualified Buyer of the Unit plus (i) an annual increase of 4% of such Purchase Price each year until the Unit is Transferred to a subsequent Qualified Buyer, with such increase prorated through the date execution of a purchase contract for the Unit; and (ii) the value of Allowable Home Improvements to a Unit, as determined by the MVHA.

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

E. *Owner* means any person or entity who acquires an ownership interest in a Unit, including, without limitation, Qualified Owners and Non-Qualified Owners.

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

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

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

I. *Qualified Owner* means an Owner who is

i. a person who does not already own a Unit on Lot 644 and that works an average of thirty-two (32) hours or more per week at a business or other organization with a physical

presence within the Telluride R-1 School District boundary in San Miguel County, Colorado; or

ii. a person who does not already own a Unit on Lot 644 and that holds a valid and current business license within the Telluride R-1 School District boundary and pays sales taxes or is otherwise generally recognized as conducting an ongoing business within the Telluride R-1 School District; or

iii. a trust or corporate entity where at least one settlor, beneficiary, or owner, as applicable, is a person who otherwise qualifies as a Qualified Owner; or

iv. a business with a physical presence within the Telluride R-1 School District boundary that holds a valid and current business license within the Telluride R-1 School District boundary and pays sales taxes or is otherwise generally recognized as an ongoing business within the Telluride R-1 School District. A Qualified Owner that is a business may only own one Unit unless otherwise approved by MVHA; or

v. a governmental or quasi-governmental entity including, but not limited to, a county, municipality, school district, or special district, located within the Telluride R-1 School District; or

vi. a person who was a Qualified Owner when the person purchased a Unit, but then retires while owning the Unit and is sixty (60) years of age or older at the time of retirement, and who, for the five (5) years immediately prior to retirement, worked an average of thirty-two (32) hours or more per week at a business within the Telluride R-1 School District that held a valid and current business license and paid sales taxes or was otherwise generally recognized as conducting an ongoing business within the Telluride R-1 School District.

By way of example only, if a person worked sixty-four (64) hours per week for one half of the year at a business within the Telluride R-1 School District and worked elsewhere for the other half of the year, such person would constitute a Qualified Owner. A *Qualified Owner* does not include a person who works remotely for a business that does not have a physical presence in the Telluride R-1 School District. In the event that two (2) or more people become joint Owners of the same Unit, only one (1) must be a Qualified Owner, and the Qualified Owner must reside in the Unit as provided in Section 4.

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

K. *Transfer* shall refer to and include any conveyance of ownership or title to any portion of or interest in a Unit as evidenced by any deed or instrument or writing wherein or whereby title to such portion of or interest in the Unit is granted or conveyed, subject to the exclusions provided herein. Conveyance of “ownership” for the purposes of this Deed Restriction

includes the transfer to another person or entity of more than fifty percent (50%) of the ownership interest in a corporate entity when said corporate entity owns any portion of or interest in a Unit.

Notwithstanding the foregoing, “transfer” excludes the following and Section 5 shall not apply, provided that the recipient or grantee is a Qualified Buyer:

- i. the conveyance of all or a portion of or interest in a Unit without consideration, including gifts and charitable donation conveyances involving governmental entities;
- ii. the conveyance to a Qualified Owner’s spouse, partner in a civil union, parent, sibling, or legally recognized child;
- iii. conveyance to a trust or other corporate entity for estate planning purposes where the grantor(s) are the sole settlors, beneficiaries, or owners of the trust or entity, as applicable;
- iv. any transfer of title or change of interest in real property by reason of death, will, decree, distribution, divorce, termination of joint tenancy, or other operation of law;
- v. the lease of a Unit or room(s) within a Unit to a Qualified Tenant in accordance with this Deed Restriction.

L. *Unit* means a physical portion of a building constructed on Lot 644 which constitutes a dwelling designated for separate ownership and habitation and the boundaries of which are described in or determined from a condominium map, plat, or other similar instrument.

4. Occupancy Restrictions.

A. A Qualified Owner who is a person shall continuously occupy their Unit as their Principal Place of Residence, provided that a Qualified Owner may lease one or more rooms in the Unit to a Qualified Tenant while the Qualified Owner continues to occupy the Unit as their Principal Place of Residence and provided that such lease is for a term of thirteen (13) months or more. A Qualified Owner’s immediate family members are permitted to occupy a Unit along with the Qualified Owner.

B. When a Qualified Owner is a trust or corporate entity described in Section 3(I)(iii), the individual settlor, beneficiary, or owner who qualifies as a Qualified Owner shall continuously occupy their Unit as their Principal Place of Residence, provided that the Qualified Owner may lease one or more rooms in the Unit to a Qualified Tenant while the individual continues to occupy the Unit as their Principal Place of Residence and such lease is for a term of thirteen (13) months or more. The individual Qualified Owner’s immediate family members are permitted to occupy a Unit along with the individual Qualified Owner.

C. A Qualified Owner that is a business or governmental entity may lease a Unit or part thereof to one (1) or more Qualified Tenants as the Qualified Tenant(s)’ Principal Place of Residence, provided that such lease is for a term of thirteen (13) months or more.

D. No business activity shall occur on or in a Unit, other than as permitted within the zone district applicable to the Unit. No Unit shall be used as a short term accommodation as that

term is defined in Section 17.8.1 of the Town of Mountain Village Municipal Code, as may be amended or recodified from time to time.

E. If a Qualified Owner as described in subsections a and b, above, or a Qualified Tenant as described in subsection c, above, ceases to occupy a Unit as their Principal Place of Residence, the Unit shall be transferred pursuant to Section 5. An Owner shall be deemed to have changed their Principal Place of Residence by becoming a resident elsewhere or accepting permanent employment outside of the Telluride R-1 School District.

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

5. Transfer.

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

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

C. The MVHA shall have a right of first offer to acquire a Unit the Transfer of which is subject to this Section 5. Upon receipt of notice that the Owner wishes to Transfer a Unit, the MVHA may send a written offer to the Owner stating a specific price not to exceed the Maximum Resale Price and all Terms and Conditions of the proposed Transfer. If the Owner desires to accept said offer, the Owner shall, within ten (10) days’ from receipt thereof, send its acceptance in writing to the MVHA. Should the MVHA determine not to make an offer, or should the Owner reject the MVHA’s offer, the MVHA shall offer the Unit for sale in accordance with the Guidelines, as amended from time to time.

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

E. Prior to or at closing, the Owner shall pay the MVHA a nonrefundable administrative fee equal to \$1,000 (the “Administrative Fee”) or as set forth in the annually adopted MVHA fee schedule, whichever is greater. The Administrative Fee shall increase on January 1 of each calendar year by the greater of 3% or CPI for the Denver/Boulder area. The MVHA may instruct the title company to pay said fee to the MVHA out of the funds held for the Owner at the closing. No such fee shall be due from Declarant or if the MVHA is the seller.

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

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

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

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

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

D. Each Unit is conveyed in fee simple defeasible subject to the condition that any subsequent Transfer shall be to a Qualified Owner. The MVHA shall have the right of reentry if a Unit is transferred to a Non-Qualified Owner. If the MVHA exercises its right of reentry, the MVHA shall purchase the Unit at the Maximum Resale Price. Otherwise, the Owner shall cooperate with the MVHA to offer the Unit for sale in accordance with the Guidelines, as amended from time to time.

7. Breach.

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

B. If the MVHA has reasonable cause to believe that an Owner, Qualified Buyer, or Qualified Tenant is violating this Deed Restriction, the MVHA may inspect the Unit after providing the Owner with twenty-four (24) hours' written notice. This Deed Restriction shall constitute permission to enter the Unit during such times upon such notice.

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

8. Remedies.

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

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

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

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

E. In addition to the specific remedies set forth herein, the MVHA shall have all other remedies available at law or equity, including, but not limited to, those set forth in the Town Municipal Code and ordinances, and the exercise of one remedy shall not preclude the exercise of any other remedy.

9. Foreclosure.

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

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

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

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

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

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

10. Miscellaneous.

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

B. Interpretation. Questions regarding the interpretation of this Deed Restriction shall be resolved by the MVHA, subject to judicial review. MVHA shall have sole responsibility and authority for enforcement of this Deed Restriction in accordance with its terms.

C. Binding Effect. This Deed Restriction shall run with the land and be binding upon and inure to the benefit of the Declarant and its heirs, successors, and assigns, including all future Owners.

D. Severability. If any provision of this Deed Restriction is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

E. Governing Law and Venue. This Deed Restriction shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in San Miguel County, Colorado.

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

G. Third Parties. There are no intended third-party beneficiaries to this Deed Restriction other than MVHA.

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

I. Notice. Any notice under this Deed Restriction shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first-class United States Mail to MVHA at its then-current address or to an Owner at the address on file with MVHA.

K. Recording. This Deed Restriction shall be recorded with the San Miguel County Clerk and Recorder. The benefits and obligations of this Deed Restriction shall run with the land and shall be binding on any subsequent holder of an interest in a Unit.

K. Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Deed Restriction are held to be unlawful or void for violation of: the rule against perpetuities or some analogous statutory provision; the rule restricting restraints on alienation; or any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated members of the Mountain Village Town Council, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

IN WITNESS WHEREOF, the Declarant has executed this Deed Restriction as of the Effective Date.

MEADOWLARK 644, LLC, a Colorado limited liability company

By: _____
Name:
Title:

