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## Memorandum

To: Vail Town Council

From: George Ruther, Director of Community Development

Date: November 1, 2016

Subject: Chamonix Neighborhood - Worksession to Discuss Deed Restriction and Lottery Process

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### I. Purpose

The purpose of this worksession is to begin discussions regarding the deed restriction and lottery process for the Chamonix Neighborhood in West Vail. As this is a worksession, no formal action of the Vail Town Council is being requested at this time. Based upon information and feedback received at this time, the town staff will return to the Vail Town Council at a future public hearing to request a final decision on the deed restriction terms and the lottery selection process. The objectives of this worksession discussion are:

- Present proposed resident housing deed restriction terms for the new residential homes to be developed on the Chamonix Neighborhood property
- Present a lottery selection process for the new residential homes to be developed on the Chamonix Neighborhood property.
- Share the next steps in the process for determining the deed restriction terms and the lottery process to be used in the selection of the future home owners at the Chamonix Neighborhood.

The Chamonix Neighborhood development helps the Vail Town Council achieves it adopted goal of “*growing a thriving and balanced community*”.

### II. Deed Restriction

In general terms a deed restriction is a restriction on the deed to a real property that places a restriction on the owner's use of the property. In most cases, the deed restriction runs in perpetuity with the land, and therefore, transfers with changes in ownership over time. Due to its restrictive nature, a deed restriction can affect the value of the property. It can be a form of interest in real estate without maintaining fee title interest in the property.

Over the years, the Town of Vail has drafted many different forms of deed restrictions for the purposes of advancing the Town's housing policies and programs. The type of residential unit to be restricted largely determines the form of deed restriction that is recorded. For instance, the Town has a different form of deed restriction for residential homes which are owner occupied than residential homes that may be leased or otherwise made available for long term rental. Regardless of the form of the deed restriction, however, all of the deed restrictions exist for the sole purpose of restricting occupancy of the residential property to residences of the Town of Vail.

In 2010, the Town of Vail constructed the Arosa Duplex at 2657 Arosa Drive. Upon sale of the new homes to the future owners the Town recorded a deed restriction on the real property. The basic terms of the deed restriction include the following:

- Must meet the definition of "qualified buyer", which includes working an average of 30 hours per week on an annual basis, or if retired, the individual has worked a minimum of five years in Eagle County for that same 30 hours per week on average annually.
- The property/unit is to be utilized only as the exclusive and permanent place of residence of the owner
- owner may not rent the property or unit for any period of time unless a shared occupancy where the owner remains in the unit as permanent and exclusive resident
- owner may not engage in business on the property other than what is allowed by zoning regulations
- maximum resale price is purchase price plus 3% per year appreciation
- maximum resale price may also include up to 10% of initial purchase price for permitted capital improvements for every 10-year period of time
- in the event of foreclosure, the town has an option to purchase the property/unit

A copy of the Arosa Duplex Deed Restriction has been attached for reference.

The Arosa Duplex Deed Restriction is an example of a form of deed restriction that the Town may choose to use for the future development of residential homes on the Chamonix Neighborhood property. The Arosa Duplex is most similar in ownership structure, product type and use as what has been contemplated at the Chamonix Neighborhood. In doing so, however, there are several options the Vail Town Council may want to consider and should discuss prior to making a final decision on the form of deed restriction to be used for the Chamonix Neighborhood.

Options for consideration include:

- adjusting the maximum resale price ( i.e. the appreciation cap) depending upon the level of financial subsidy provided
- amending the definition of "qualified buyer" to include residents that may work remotely
- strengthening the terms regarding rental opportunities to ensure short term occupancy is not permitted (i.e. VRBO, AirBnB, etc.)
- allowing for residency-only occupancy

- adjusting the maximum resale price depending upon the location of employment
- amending the resale opportunities to ensure the more highly subsidized homes are resold to owners in a similar AMI bracket

### III. Lottery Process

The Town of Vail has historically relied upon a weighted lottery process. In short, the weighted process provides preference to potential homebuyers that demonstrate compliance with certain weighting factors when selling town-developed, for sale, deed restricted homes with the community. Vail Commons, North Trail Townhomes, Red Sandstone Townhomes and the Arosa Duplex are all relevant examples of the this process.

The Town's current lottery for the purchase of deed restricted employee housing includes the following criteria for basic eligibility:

- Applicant intends to use property/unit as primary residence
- Applicant may not own a current residence in Vail or Eagle County at the time of the application deadline
- Applicant is currently working 30 or more hours per week on an annual basis at a licensed business within Eagle County, and must maintain this level of employment for as long a unit is owned by the applicant
- Applicant must demonstrate that 75% of his/her income is earned from working at a licensed Eagle County business
- Must be prequalified with a mortgage lender
- The lottery applicant or applicant's immediate family may **not** have full or partial ownership in any other residential property or dwelling unit located in Eagle County; a current residence may not be deeded to a corporation or other entity in order to qualify for a deed restricted unit
- For a three bedroom unit, the lottery applicant must have a household size of three or more

Once basic eligibility is met, there is preference given to be prioritized for selection as a top bidder based on the highest score using the criteria listed below.

- Each year of residency and employment in Eagle County will count as one point in determining the total score
- Current years of employment in Vail will be weighted at 3:1 over years of employment in Eagle County
- Current years of residency in Vail shall be weighted at 3:1 over years of residence in Eagle County
- Years of residency and/or employment prior to a leave from Eagle County are given points at a 1:1 ratio regardless of location of residency or employment within Eagle County
- Seasonal work and part time work is counted on a pro-rata basis and may not be adequate to meet the 30 hours per week average annual requirement

- If two individuals are applying jointly, the years of employment and/or residency are not combined; the single individual with the longest record of employment/residency shall use his/her record for purposes of determining longevity

The Town's current lottery process has its advantages and disadvantages. A review of the weighting factors reveals that it places the greatest importance and preference on duration of residency in the Town of Vail and location of employment. It could be argued that the weighting factors focus on providing homes for the local workforce with less emphasis on factors that contribute to maintaining and sustaining community. Regardless of the advantages and disadvantages, prior to making a final determination on the lottery process to be used for the selection of home buyers in the Chamonix Neighborhood, the Vail Town Council may want to consider, and should discuss, the lottery process to be used for the Chamonix Neighborhood.

Options for consideration include:

- A separate lottery process be conducted for the Chamonix Neighborhood development
- Weighting factors that contribute maintaining and sustaining community
- The importance and relevance of a weighted process that provides preference
- The eligibility to own a three bedroom homes regardless of household size
- The ability to participate in the lottery if you already own real estate

#### IV. Action Requested

As this is a worksession, no formal action of the Vail Town Council is being requested at this time. Based upon information and feedback received, the town staff will return to the Vail Town Council at a future public hearing to allow for public comment and input to request a final decision on the deed restriction terms and the lottery selection process. In doing so, the staff recommends that the Vail Local Housing Authority considers the options and issues around the deed restriction and lottery process for the Chamonix Neighborhood and forwards its recommendation to the Vail Town Council for consideration.