

**DEED RESTRICTION AGREEMENT
FOR THE OCCUPANCY AND TRANSFER
OF CHAMONIX VAIL RESIDENTIAL DWELLING UNITS**

THIS DEED RESTRICTION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 201_ (the "Effective Date") by and between the Town of Vail, Colorado, a Colorado home rule municipality with an address of 75 South Frontage Road, Vail, Colorado 81657 (the "Town"), and _____, an individual with an address of _____, Vail, Colorado 81657 ("Buyer") (each individually a "Party" and collectively the "Parties").

WHEREAS, the Town owns the real property described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property") and has developed the Property as part of the Chamonix employee housing project;

WHEREAS, the Town is selling the Property to Buyer, and desires to restrict the occupancy, use and resale of the Property.

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. Property. The following real property is hereby burdened with the covenants and restrictions specified in this Agreement: _____, Vail, Colorado 81657, as more specifically described in **Exhibit A**.

2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

a. *Guidelines* means the current version of the Chamonix Vail Employee Housing Guidelines adopted by the Town.

b. *Maximum Resale Price* means the Purchase Price paid by the last Qualified Buyer plus: an increase of 1.5% per annum of such Purchase Price (prorated at the rate of 1/12 for each whole month) from the date of Owner's purchase of the Property to the date of the Owner's execution of the listing contract, such percentage increase to not be compounded annually; and the value of Permitted Capital Improvements.

c. *Non-Qualified Owner* means any person who acquires an ownership interest in the Property who is not a Qualified Owner.

d. *Owner* means any person who acquires an ownership interest in the Property, including without limitation Qualified Owners, Non-Qualified Owners and Inheriting Owners.

e. *Permitted Capital Improvements* means those improvements to the Property performed by the current Owner as described in the Guidelines, which shall

qualify for inclusion within the calculation of Maximum Resale Price if the Owner furnishes the Town with the following information:

- i. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;
- ii. Affidavit verifying the receipts are valid and correct receipts tendered at the time of purchase; and
- iii. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town for the Permitted Capital Improvements.

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 there from. In determining what is a Principal Place of Residence, the Town 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, and motor vehicle registration.

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

h. *Qualified Buyer* means the Town or a person who, upon purchase of the Property, will be a Qualified Owner.

i. *Qualified Owner* means an Owner who is an individual 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. For example, if an individual worked 60 hours per week for one half of the year at such a business in Eagle County, Colorado, and worked elsewhere for the other half of the year, such person would constitute a Qualified Owner. A *Qualified Owner* also includes an individual who was a Qualified Owner when the individual purchased the Property, but then retires while owning the Property, and is 60 years of age or older at the time of retirement, and who, for the 5 years immediately prior to retirement, worked an average of 30 hours or more per week at 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.

j. *Qualified Tenant* means an individual 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. For example, if an individual worked 60 hours per week for one half of the year at such a business in Eagle County, Colorado, and worked elsewhere for the other half of the year, such person would constitute a Qualified Tenant.

k. *Transfer* means any sale, conveyance, assignment or transfer, voluntary or involuntary, of any interest in the Property, including without limitation a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest and an interest evidenced by any contract by which possession of the Property is transferred and an Owner retains title; provided that the lease of a room or rooms within the Property to a Qualified Tenant in accordance with this Agreement shall not constitute a Transfer.

3. Occupancy Restrictions.

a. The Property shall be continuously occupied by at least one Qualified Owner as his or her principal place of residence.

b. The Qualified Owner may lease a room or rooms in the Property to one or more Qualified Tenants, provided that the Qualified Owner still occupies the Property as his or her principal place of residence.

c. No business activity shall occur on or in the Property, other than as permitted within the zone district applicable to the Property.

d. If a Qualified Owner ceases to occupy the Property as his or her principal place of residence, the Property shall be transferred pursuant to Section 4 hereof. An Owner shall be deemed to have changed his or her domicile by: becoming a resident elsewhere; accepting permanent employment outside of Eagle County, Colorado; or residing in the Property for fewer than 9 months per calendar year.

e. If at any time a Qualified Owner also owns any interest alone or in conjunction with others in any developed residential property or dwelling unit located in Eagle County, Colorado, the Qualified Owner shall immediately list said other property or unit for sale to sell the Qualified Owner's interest in such property at a sales price comparable to like units or properties in the area in which the property or dwelling unit is located. If said other property or unit(s) has not been sold by the Qualified Owner within 120 days of its listing, the Qualified Owner shall immediately contact the Town to Transfer the Property pursuant to Section 4 hereof. It is understood and agreed that, in the case of a Qualified Owner whose business is the construction and sale of residential properties or the purchase and sale of such properties, the properties which constitute inventory in the business shall not constitute other developed residential property or dwelling unit as those terms are used in this Section.

f. No later than February 1st of each year, the Owner shall submit one copy of a sworn affidavit, on a form provided by the Town, verifying that the Property is occupied in accordance with this Agreement and the Guidelines.

4. Transfer.

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

b. The Owner shall first notify the Town that the Owner wishes to Transfer the Property. The Town shall have the first option to purchase the Property.

c. Should the Town determine not to purchase the Property, the Town shall list the Property for sale in accordance with the Guidelines, and shall thereafter select a Qualified Buyer pursuant to the Guidelines.

d. The Property shall be transferred only to the Town 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 Town in consultation with the Owner and the Qualified Buyer.

e. Prior to or at closing, the Owner shall pay the Town a nonrefundable listing fee equal to 2% of the Maximum Resale Price. The Town may instruct the title company to pay said fees to the Town out of the funds held for the Owner at the closing.

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

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

a. If for any reason the Property is transferred to a Non-Qualified Owner, the Non-Qualified Owner shall immediately contact the Town to Transfer the Property pursuant to Section 4 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 Property; rent any part of the Property; engage in any business activity in the Property; or Transfer the Property except in accordance with this Agreement.

d. The Town shall have the right and option to purchase the Property, exercisable within a period of 15 days after receipt of notice pursuant to Subsection a. hereof, and if the Town exercises its right and option, the Town shall purchase the Property from the Non-Qualified Owner for a price equal to 95% of the Maximum Resale Price, or the appraised market value, whichever is less.

6. Transfer by Devise or Inheritance.

a. If a Transfer occurs by devise or inheritance due to death of an Owner, the personal representative of the Owner's estate or the person inheriting the Property (the "Inheriting Owner") shall provide written notice to the Town within 30 days of the date of death.

b. If the Inheriting Owner is a Qualified Owner, he or she shall provide the Town with documentation proving his or her status as such, and the Town may determine if the Inheriting Owner is in fact a Qualified Owner. If the Inheriting Owner fails to provide the required documentation, he or she shall be deemed a Non-Qualified Owner. If the Inheriting Owner is a Qualified Owner, he or she shall succeed to the Qualified Owner's interest and obligations under this Agreement.

c. If the Inheriting Owner is a Non-Qualified Owner, the Inheriting Owner shall contact the Town to Transfer the Property pursuant to Section 4 hereof.

7. Rental. Nothing in this Section shall preclude a Qualified Owner from sharing occupancy of the Property with other Qualified Tenants on a rental basis, provided that the Qualified Owner continues to comply with this Agreement. Leases of less than 30 days or more than 6 months are prohibited, provided that a Qualified Tenant may renew a 6-month lease without limitation.

8. Breach.

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

b. If the Town has reasonable cause to believe that an Owner, Qualified Buyer or Qualified Tenant is violating this Agreement, the Town may inspect the Property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner or Inheriting Owner with 24 hours written notice. This Agreement shall constitute permission to enter the Property during such times upon such notice.

c. If the Town discovers a violation of this Agreement, the Town shall notify the Owner, Qualified Buyer or Qualified Tenant of the violation and allow 15 days to cure.

9. Remedies.

a. Any Transfer in violation of this Agreement 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 Agreement, even if the Transfer documents fail to reference this Agreement.

b. The Town may pursue all available remedies for violations of this Agreement, including without limitation specific performance or a mandatory injunction requiring a Transfer of the Property, with the costs of such Transfer to be paid out of the proceeds of the sale.

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

d. Any violation of this Agreement shall cause the Maximum Resale Price to freeze and remain fixed until the date such violation is fully cured.

e. 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.

10. Foreclosure.

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

b. An Owner shall immediately notify the Town, in writing, of any notice of foreclosure under the first deed of trust or any other subordinate security interest in the Property, 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 Property.

c. Within 60 days after receipt of any notice described herein, the Town may (but shall not be obligated to) proceed to make any payment required to avoid foreclosure. Upon making any such payment, the Town shall place a lien on the Property in the amount paid to cure the default and avoid foreclosure, including all fees and costs resulting from such foreclosure.

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

e. The Town shall have 30 days after issuance of the public trustee's deed or the acceptance of a deed in lieu of foreclosure by the holder in which to purchase by tendering to the holder, in cash or certified funds, an amount equal to the redemption price which would have been required of the borrower or any person who might be liable upon a deficiency on the last day of the statutory redemption period(s) and any additional reasonable costs incurred by the holder related to the foreclosure.

11. Miscellaneous.

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

b. Integration. This Agreement and any attached exhibits constitute the entire agreement between Buyer and the Town, superseding all prior oral or written communications.

c. Binding Effect. This Agreement 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 Agreement 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 Agreement 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. Assignment. There shall be no transfer or assignment of any of the rights or obligations of Buyer under this Agreement without the prior written approval of the Town.

g. Third Parties. There are no intended third-party beneficiaries to this Agreement.

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

i. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

j. Recording. This Agreement shall be recorded with the Eagle County Clerk and Recorder. The benefits and obligations of the Parties under this Agreement shall run with the land, and shall be binding on any subsequent holder of an interest in the Property.

k. Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement 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 Vail Town Council, their now living descendants, if any, and the survivor of them, plus 21 years.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF VAIL, COLORADO

Dave Chapin, Mayor

ATTEST:

Patty McKenny, Town Clerk

BUYER

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 201__, by _____, as the owner of the Property located at _____ Vail, Colorado 81657.

Witness my hand and official seal.

Notary Public

(S E A L)

My commission expires:

**EXHIBIT A
LEGAL DESCRIPTION**