

**RESOLUTION NO. 16
SERIES OF 2019**

**A RESOLUTION APPROVING A MUTUAL RELEASE OF RESTRICTIVE COVENANT
BETWEEN THE TOWN OF VAIL AND SUZANNE J. DUGAN; AND SETTING FORTH
DETAILS IN REGARD THERETO.**

WHEREAS, the Town of Vail (the "Town"), in the County of Eagle and State of Colorado is a home rule municipal corporation duly organized and existing under the laws of the State of Colorado and the Town Charter (the "Charter");

WHEREAS, the members of the Town Council of the Town (the "Council") have been duly elected and qualified;

WHEREAS, Suzanne J. Dugan is the owner of that certain property ("the Property") located within the Town of Vail, Eagle County, Colorado, with a physical address of 2642 Kinnikinnick Court, Vail, Colorado 81657;

WHEREAS, a Restrictive Covenant ("Restrictive Covenant") was recorded against the Property for the sole purpose of creating an employee housing unit within the Town of Vail as provided in Chapter 12-13, Vail Town Code;

WHEREAS, said Restrictive Covenant was recorded against the Property in the records of the Clerk and Recorder of Eagle County, Colorado on November 18, 1996, Reception No. 607579;

WHEREAS, The Town is the beneficiary of said Restrictive Covenant; and

WHEREAS, at the public meeting held on April 2, 2019, pursuant to the terms of the Settlement Agreement, October 18, 1996, Reception No. 607578 (**Exhibit B**) and the Type II Employee Housing Unit Restrictive Covenant, November 18, 1996, Reception No. 607579, wish to mutually release the Restrictive Covenant and terminate the Restrictive Covenant recorded against the Property in the office of the Clerk and Recorder of Eagle County, Colorado at Reception No. 607579, dated November 18, 1996 and hereby releases Releasee from all duties and obligations of said Restrictive Covenant.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Vail, Colorado:

Section 1. The Council hereby approves the Mutual Release of Restrictive Covenant upon verification that the EHU use has been terminated and has been merged into the Primary Unit, and is no longer capable of being separately leased and authorizes the Town Manager to execute the Mutual Release of Restrictive Covenant Agreement on

behalf of the Town in substantially the same form as attached hereto as **Exhibit A** and in a form approved by the Town Attorney.

Section 2. This Resolution shall take effect immediately upon the recording of the Mutual Release of Restrictive Covenant Agreement a form approved by the Town.

INTRODUCED, READ, APPROVED AND ADOPTED this 2nd of April, 2019.

Dave Chapin, Mayor

ATTEST:

Tammy Nagel, Town Clerk

EXHIBIT A

MUTUAL RELEASE OF RESTRICTIVE COVENANT

THIS RELEASE is made and entered into this 2nd day of April, 2019, by and between Suzanne J. Dugan, hereinafter referred to as "RELEASEE" and the Town of Vail, a Colorado Municipal Corporation, hereinafter referred to as "RELEASOR".

WHEREAS, Releasee is the owner of that certain property ("the Property") located within the Town of Vail, Eagle County, Colorado, with a physical address of 2642 Kinnikinnick Court, Vail, Colorado 81657;

WHEREAS, a restrictive covenant ("Restrictive Covenant") was recorded against the Property for the sole purpose of creating an employee housing unit within the Town of Vail as provided in Chapter 12-13, Vail Town Code;

WHEREAS, said Restrictive Covenant was recorded against the Property in the records of the Clerk and Recorder of Eagle County, Colorado on November 18, 1996 at Reception No. 607579;

WHEREAS, Releasor is the beneficiary of said Restrictive Covenant; and

WHEREAS, at the public meeting held on April 2, 2019, pursuant to the terms of the Settlement Agreement, October 18, 1996, Reception No. 607578 and the Type II Employee Housing Unit Restrictive Covenant, November 18, 1996, Reception No. 607579 the Town Council of the Town of Vail, Colorado ("Town Council") approved the release of the Restrictive Covenant located at 2642 Kinnikinnick Court, Vail, Colorado 81657.

NOW THEREFORE, in consideration of the mutual terms and provisions herein below set forth, and other good and valuable consideration, the receipt and adequacy of which is hereby confessed and acknowledged to, the parties agree:

1. The Town Council upon verification that the EHU use has been terminated and has been merged into the Primary Unit, and is no longer capable of being separately leased approved the release of the Restrictive Covenant on April 2, 2019.
2. Releasor hereby terminates the Restrictive Covenant recorded against the Property in the office of the Clerk and Recorder of Eagle County, Colorado at Reception No. 607579 and dated November 19, 1996 and hereby releases Releasee from all duties and obligations of said Restrictive Covenant.
3. Upon execution of the Release, Releasee shall be free to sell, devise, gift, lease, or otherwise dispose of the Property at will, at any time, and to any buyer or tenant with no further restrictions imposed by Releasor.
4. Upon execution of the Release, Releasee shall be free to reside in and use the Property with no further restrictions imposed by the Releasor.
5. This Release shall be permanent and shall run with the land and shall not be waived, abandoned, amended, or terminated and shall inure to the benefit and be binding upon the parties, their respective grantees, successors, or assigns.

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EXHIBIT B

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SETTLEMENT AGREEMENT

THIS AGREEMENT is entered on the 18th day of OCTOBER, 1996, between the Town of Vail, Colorado, 75 S. Frontage Road, Vail, Colorado, hereinafter referred to as "Town", and Sue Dugan, 2642 Kinnickinnick Court, Vail, Colorado.

WHEREAS, it was brought to the attention of the Town of Vail Community Development Department that there was a third dwelling unit located at 2642 Kinnickinnick Court/Lot 5, Block 2, Vail Intermountain Subdivision.

WHEREAS, a review the records of Eagle County and the Town of Vail disclose that the property has never been zoned to allow for more than two dwelling units on it.

WHEREAS, under the present zone district. Primary-Secondary, it is possible to receive approval for a Conditional Use Permit to authorize the continued use of the third dwelling unit, which is an apartment, as a Type II employee housing unit.

WHEREAS, it is clear that this third dwelling unit has been used appropriately in the past as an employee housing unit.

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WHEREAS, by entering into this Agreement Sue Dugan does not have an affirmative duty to rent the Type II employee housing unit.

WHEREAS, the Town fully supports the continuation of this third dwelling unit as an employee housing unit which will continue to fulfill a goal of the Town to provide housing for as many employees as possible within the Town of Vail.

WHEREAS, the parties agree that this Conditional Use Application will be presented to the Planning and Environmental Commission pursuant to the Vail Municipal Code.

NOW, THEREFORE, in exchange of the mutual promises contained herein it is agreed as follows:

1. The Town and Sue Dugan will enter into the deed restriction which is attached as Exhibit "A".
2. The Town of Vail, through its Community Development Department, will process an application for a Conditional Use Permit which will be presented by Town staff on behalf of Sue Dugan to the Planning and Environmental Commission and which Conditional Use Permit application will be supported for an affirmative vote by the Planning and Environmental Commission by Town staff and all fees generally required for such application shall be waived.



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3. If at any time Sue Dugan wishes to remove the third dwelling unit and abandon its use as an employee housing unit, such abandonment can be accomplished by removing the presently located kitchen related facilities, which means stove, microwave oven or other heated cooking surface, and advising the Town that such conditional use is being abandoned. In such event, the attached deed restriction will no longer be of any force or effect and will be removed as a restriction on the property.

4. The Town and Sue Dugan do hereby mutually, fully, unequivocally, and unconditionally release one another, their heirs, assigns, successors, officers, directors and employees from any and all causes of action pertaining to or arising from the facts and circumstances that gave rise to the entering of this Agreement.

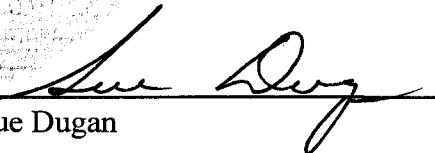
IN WITNESS WHEREOF, this Agreement is executed the day and year first written above.

TOWN OF VAIL

By: 
Robert W. McLaurin, Town Manager

Attest:


Holly McCutcheon, Town Clerk

By: 
Sue Dugan

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TYPE II EMPLOYEE HOUSING UNIT

RESTRICTIVE COVENANT

WHEREAS, Sue Dugan is the owner of certain property (the "Owner") described as: Lot 5, Block 2, Intermountain Subdivision, 2642 Kinnickinnick Court, Vail, Colorado (the "Property"); and

WHEREAS, the Owner wishes to place certain restrictions on the use of a unit or apartment located on the Property for the benefit of the Owner and the Town of Vail, Colorado (the "Town").

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NOW, THEREFORE, the Owner does hereby impose, establish, acknowledge, declare for the benefit of all persons who may hereinafter purchase, or lease, or hold the subject land the following restrictions, covenants, and conditions, all of which shall be deemed to run with the land and inure to the benefit and be binding upon the Owner, its respective grantees, successors, and assigns.

1. The Employee Unit, containing 450 square feet, is hereby restricted as Type II Employee Housing Unit (EHU).
2. The Type II EHU shall be leased to tenants who are full-time employees who work in Eagle County. An EHU shall not be leased for a period less than thirty consecutive days.
3. A Type II EHU may not be sold, transferred, or conveyed separately from any two family dwelling it may be a part of.
4. The Type II EHU shall not be divided into any form of timeshares, interval ownership, or fractional fee ownership as those terms as defined in the Municipal Code of the Town of Vail.
5. The owner of each EHU shall rent the unit at a monthly rental rate consistent with market rates prevalent for similar properties in the Town of Vail. The Owner agrees to provide verification of compliance upon reasonable request to the Town of Vail, of the terms and conditions of the current lease no more frequently than once a year.
6. The provisions of these restrictive covenants may be enforced by the Owner or the Town.



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7. The Town of Vail agrees to execute a termination of this covenant within 30 days of notification and verification that the EHU use has been terminated and has been merged into the Primary Unit, and is no longer capable of being separately leased.
8. The conditions, restrictions, stipulations and agreements contained herein shall not be waived, abandoned, terminated, or amended except by the written consent of both the Town of Vail and the Owner of the Property.

TOWN OF VAIL, a Colorado Municipal Corporation

By: *Robert W. McLaurin*
Robert W. McLaurin, Town Manager

Sue Dugan
Sue Dugan, Owner

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STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 20th day of October, 1996 by Robert W. McLaurin as Town Manager of the Town of Vail, a Colorado Municipal Corporation.

Witness my hand and official seal.
My commission expires on:
Robert P. McCutcheon
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 15th day of April, 1996 by Sue Dugan, Owner.

Witness my hand and official seal.

My commission expires on: 3/1/97
[Signature]
Notary Public
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TOWN OF VAIL
OFFICE OF THE TOWN CLERK
12 FRONTAGE ROAD
COLORADO 81657