

DEED RESTRICTION AGREEMENT
(Type __ EHU)

THIS DEED RESTRICTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20__ (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 _____ with an address of _____, Vail, Colorado 81657 (collectively "Owner") (each a "Party" and collectively the "Parties").

WHEREAS, Owner owns the real property described as _____, Vail, Colorado 81657 (the "Property"); and

WHEREAS, upon recordation of this Agreement, the Property will constitute a Type IV employee housing unit ("EHU") pursuant to Chapter 13 of Title 12 of the Vail Town Code (the "Code").

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 Property is hereby burdened with the covenants and restrictions specified in this Agreement. The provisions of this Agreement shall supersede any conflicting provisions of Code § 12-13-3.

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

a. *Person* means a natural person, and excludes any type of entity.

b. *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. To determine a person's Principal Place of Residence, the criteria set forth in C.R.S. § 31-10-201(3) shall apply.

c. *Qualified Household* means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants that are not Qualified Residents as long as at least one occupant is a Qualified Resident.

d. *Qualified Resident* means a natural person 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, and earns at least 75% of their income from such business. A Qualified Resident also includes an individual who: is retired; was 60 years of age or older at the time of retirement; 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 held a valid and current business license, or paid sales taxes, or was otherwise generally recognized as a legitimate business; and earned at least 75% of their income from such business during such 5-year period. To determine that a person is a Qualified Resident, the

Guidelines set forth in **Exhibit A**, attached hereto and incorporated herein by this reference, shall apply.

3. Occupancy Restrictions.

a. At least one Qualified Resident shall continuously occupy the Property as his or her principal place of residence.

b. Owner shall not rent the Property to any person or persons for a term shorter than 30 days.

c. A Qualified Resident may lease a room or rooms in the Property to one or more persons, provided that the Qualified Resident still continuously occupies the Property as his or her principal place of residence. The term of all leases shall be no less than 30 days in duration and no greater than 12 months in duration, provided that unlimited renewals to Qualified Households are permitted.

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

4. Annual Verification. No later than February 1st of each year, beginning in the year following the first year of occupancy of the Property, Owner shall submit a written statement to the Town including the following information and stating that such information is true and correct to the best of Owner's knowledge and belief:

a. Evidence to establish that the Property was occupied by a Qualified Household during all of the prior calendar year;

b. If applicable, a copy of the lease form currently used for the Property; and

c. If applicable, a list of tenants who occupied the Property in the prior calendar year and the evidence submitted by each tenant to establish that they were a Qualified Resident, as set forth in the Qualification Guidelines.

5. Consensual Lien; Right to Redeem. For the purpose of securing Owner's performance under this Agreement and creating in favor of the Town a right to redeem in accordance with Part 3 of Article 38 of Title 38, C.R.S., as amended, Owner hereby grants to Town a consensual lien on the Property. Such lien shall not have a lien amount.

6. Town's Option. Owner shall first notify the Town if Owner wishes to sell the Property. The Town shall have the first option to purchase the Property.

7. Breach.

a. It is a breach of this Agreement for Owner 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. Owner shall notify the Town, in writing, of any notification received from any lender of past due payments or defaults in payments or other obligations within 5 days of receipt.

b. If the Town has reasonable cause to believe Owner 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 Owner with 24 hours written notice. This Agreement shall constitute Owner's permission to enter the Property during such times upon such notice.

c. If Owner is more than one individual, each shall be jointly and severally liable for compliance with this Agreement and any breach of this Agreement.

8. Remedies.

a. The Town shall have any and all remedies provided by law and in equity for a violation of this Deed Restriction, including without limitation: (i) damages; (ii) specific performance; and (iii) injunctions, including without limitation an injunction requiring eviction of the occupant(s) and an injunction to prohibit the occupancy of the Property in violation of this Deed Restriction. All remedies shall be cumulative.

b. The cost to the Town of any activity taken in response to any violation of this Deed Restriction, including reasonable attorney fees, shall be paid promptly by Owner.

9. Foreclosure.

a. 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.

b. Owner shall give immediate notice to the Town: 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 may 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. 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.

10. Consensual Lien; Right to Redeem. Under C.R.S. § 38-38-305, Town, as the holder of the deed restriction established by this Agreement, is considered as a lienor, but without any lien amount, with a right to redeem upon the foreclosure of a superior lien, in accordance with Article 38 of Title 38, C.R.S., as amended.

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 Owner and the Town, superseding all prior oral or written communications.

c. *Runs with the Land.* The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on any subsequent holder of any ownership interest in the Property.

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. *Agreement Binding; Assignment.* This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties.

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.

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.

EXHIBIT A GUIDELINES

1. Purpose. The purpose of these Guidelines is to set forth the occupancy requirements for the Property pursuant to the Deed Restriction Agreement.
2. Definitions. All capitalized terms herein shall have the meanings set forth in the Deed Restriction Agreement.
3. Application. To become a Qualified Resident, a person must provide the following information:
 - a. Verification (e.g., wage stubs, employer name, address, telephone number and other appropriate documentation) of the person's current employment with 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;
 - b. Evidence that the applicant has worked, or will work, an average of 30 hours per week or more per year and earns at least 75% of their income from one or more of such businesses;
 - c. Evidence that the applicant is an individual who is retired, was 60 years of age or older at the time of retirement, and for the 5 years immediately prior to retirement, worked an average of 30 hours or more per week at such a business and earned at least 75% of their income from such a business;
 - d. A valid form of identification, such as a driver's license, state-issued identification, passport or military identification; and
 - e. A signed statement certifying and acknowledging that all information submitted in such application is true to applicant's best knowledge and authorizing verification of all information submitted.