



**DEED RESTRICTION
FOR THE OCCUPANCY, RENTAL AND TRANSFER
OF THE AROSA DRIVE DUPLEX UNITS**

②

THIS DEED RESTRICTION AGREEMENT ("Deed Restriction") is entered into this 22nd day of June, 2010 by the TOWN OF VAIL, COLORADO.

14/7/10

WHEREAS, the Town of Vail, Colorado (the "Town") owns the real property described in Exhibit A attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, the Town desires to restrict the acquisition or transfer of the Property to Qualified Buyers, as that term is defined in this Deed Restriction.

WHEREAS, the Town further desires for this Deed Restriction to constitute a resale agreement setting forth the maximum sales price for which the property may be sold (Maximum Sales Price), the amount of appreciation and the terms and provisions controlling the resale of the Property should the Town desire to sell its interest in the Property at any time after the date of this Deed Restriction; and

WHEREAS, the own desires to restrict the property from use and occupancy inconsistent with this Deed Restriction.

NOW, THEREFORE, the party to this Deed Restriction does hereby agree to declare and impose the following covenants and restrictions on the property herein specified:

1. Property. The following real property is hereby burdened with the covenants and restrictions specified in this Deed Restriction: 2657 Arosa Drive Units A and B Vail, Colorado 81657, and more specifically described in Exhibit A. The Town shall record this Deed Restriction against the Property at the Town's expense.

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

a. *Non-Qualified Owner* means any person who does not meet the definition of a Qualified Buyer, as it is defined in this Deed Restriction.

b. *Owner* means a person who is a Qualified Buyer and who acquires an ownership interest in the Unit in compliance with the terms and provisions of this Deed Restriction. A person shall only be deemed an Owner during the period of his or her ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

c. *Permitted Capital Improvements* means those improvements to a Unit, as described in Exhibit B, attached hereto and incorporated herein by this reference.

d. *Permanent 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 permanent residence, Town Staff shall take the following circumstances into account: the Owner's 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.

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

f. *Qualified Buyer* means a person meeting the requirements set forth by the Town of Vail Employee Housing Guidelines or its substitute, as adopted by the Town and in effect at the time of the closing of the sale and who must represent and agree to the terms of this Deed Restriction.

g. *Transfer* means any sale, assignment or transfer, voluntary or involuntary, of any interest in a Unit, including but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, and an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title, but not an encumbrance.

h. *Unit* means either Unit A or Unit B located on the Property.

3. Occupancy Restrictions.

a. The Property shall be continuously occupied by an Employee or a Qualified Owner.

b. An Owner, in connection with the purchase of the Unit, shall:

i. Occupy the Unit on the Property as his or her sole and permanent place of residence;

ii. Not engage in any business or activity on or in such Unit, other than as permitted within the zone district applicable to the Unit;

iii. Sell or otherwise transfer such Unit in accordance with this Deed Restriction and the Town of Vail Employee Housing Guidelines;

iv. Not sell or otherwise transfer such Unit for use in a trade or business; and

v. Not permit any use or occupancy of such Unit except in compliance with this Deed Restriction.

c. In the event that an Owner changes domicile or ceases to utilize the Unit as his or her sole and permanent place of residence, the Unit shall be offered for sale pursuant to the provisions of Section 5 hereof. Owner shall be deemed to have changed his or her domicile by becoming a resident elsewhere or accepting permanent employment outside of Eagle County, Colorado or residing in the Unit for fewer than nine (9) months per calendar year without the express approval of the Town.

d. If at any time the Owner of the Unit also owns any interest alone or in conjunction with others in any developed residential property or dwelling unit located in Eagle County, Colorado, Owner shall immediately list said other property or unit for sale and to sell Owner's interest in such property at a sales price comparable to like units or properties in the in the area in which the property or dwelling unit is located. In the event said other property or unit(s) has not been sold by Owner within one hundred twenty (120) days of its listing, Owner shall immediately list the Unit for sale pursuant to the provisions of Section 5 of this Deed Restriction. It is understood and agreed that, in the case of an 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 such an Owner's business shall not constitute other developed residential property or dwelling unit as those terms are used in this Section.

5. Transfers.

a. If an Owner desires to sell the unit, the Owner shall execute a standard listing contract, approved by the Colorado Real Estate Commission with the Town providing for a one hundred eighty (180) day listing period, or such other period of time as required by the Town of Vail Employee Housing Guidelines in effect at the time of the listing. The Owner shall then deposit with the Town an amount equal to one-half percent (0.5%) of the estimated value of the Unit. The Town shall promptly advertise the Unit for sale by competitive bid to Qualified Buyers. At the time of closing, the Owner shall pay the Town an additional one and one half percent (1.5%) of the total sale value of the Unit.

b. If one qualified bid is received equal to the Maximum Sales Price described in Section 7(a) hereof, the Property shall be sold to such bidder at the Maximum Sales Price;

c. If Owner receives two or more such bids equal to the Maximum Sales Price, the Qualified Buyer shall be selected according to the priority for Sale Units set forth in the Town of Vail Employee Housing Guidelines.

d. If all such qualified bidders are of equal priority pursuant to the Town of Vail Employee Guidelines, the Qualified Buyer shall be selected by

lottery among the Qualified Buyers, whereupon the Unit shall be sold to the winner of such lottery at the Maximum Sales Price.

e. If the terms of the proposed purchase contract, other than price, are unacceptable to the Owner, there shall be a mandatory negotiation period of three (3) business days to allow the Owner and potential buyer to reach an agreement regarding said terms, including but not limited to, the closing date and financing contingencies. If, after the negotiation period is over, the Owner and potential buyer have not reached an agreement, the next bidder's offer will then be presented to the Owner for consideration and a three (3) business period negotiating period will begin again.

f. The Owner may reject any and all bids; however, the Owner is subject to the provisions in the Town of Vail Employee Housing Guidelines pertaining to the listing fee.

g. Bids in excess of the Maximum Sales Price shall be rejected.

h. If all bids are below the Maximum Sales Price, Owner may accept the highest qualified bid. If all bids are below the Maximum Sales Price and two or more bids are for the same price, the Qualified Buyer shall be selected by lottery from among the highest qualified bidders.

6. Maximum Sales Price.

a. The Unit shall not be sold for an amount in excess of the Owner's purchase price, plus an increase of three percent (3%) of such price per year from the date of purchase to the date of Owner's Notice of Intent to Sell ("Maximum Sales Price"). Any partial year may be prorated at the rate of one-quarter percent (0.25%) per month.

b. Owner shall not permit any prospective buyer to assume any or all of the Owner's customary closing costs nor accept any other consideration that would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer.

c. For purposes of determining Maximum Sales Price, an Owner may add the value of Permitted Capital Improvements to the amount specified in Section 7(a) hereof.

d. The Maximum Sales Price shall not exceed ten percent (10%) of the initial purchase price of the Unit, except that for every ten (10) year period from the date of the original purchase and Deed Restriction, another ten percent (10%) of the purchase price may be added to the value of the Unit for Permitted Capital Improvements.

e. All Permitted Capital Improvements installed or constructed over the life of the Unit shall qualify for inclusion within the calculation of Maximum Sales 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. Owner's 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 Building Department with respect to the Permitted Capital Improvements.

7. Transfer to a Non-Qualified Owner. If the unit is transferred to a Non-Qualified Owner, the Non-Qualified Owner shall:

a. Immediately list the Unit for sale as described in Section 5 hereof;

b. Accept the highest bid by a Qualified Buyer for not less than ninety-five percent (95%) of the Maximum Sales Price or the appraised market value, whichever is less.

c. If all bids are below ninety-five percent (95%) of the Maximum Sales Price or the appraised market value, the Unit shall continue to be listed for sale until a bid in accordance with this Section is made, which bid must be accepted.

d. The cost of an appraisal conducted under this Section shall be paid by the Non-Qualified Owner.

e. The Non-Qualified Owner shall join in any sale, conveyance or transfer of the Unit to a Qualified Buyer and shall execute any and all documents necessary to do so; and

f. The Non-Qualifying Owner shall not:

i. Occupy the Unit;

ii. Rent all or any part of the Unit, except in strict compliance with Paragraph 10 hereof;

iii. Engage in any business activity on or in the Unit;

iv. Sell or otherwise transfer the Unit except in accordance with this Deed Restriction and the Town of Vail Employee Housing Guidelines;

v. Sell or otherwise transfer the Unit for use in a trade or business.

g. The Town, or its respective successor, as applicable shall have the right and option to purchase the Unit, exercisable within a period of fifteen (15) calendar days after receipt of any sales offer submitted to the Town by a Non-Qualified Owner, and in the event of exercising its right and option, shall purchase the Unit from the Non-Qualified Owner for a price of ninety-five percent (95%) of the Maximum Sales Price, or the appraised market value, whichever is less.

h. Failure of a Non-Qualifying Owner to follow the procedures in this Section shall constitute a default under this Deed Restriction and the Town may exercise any of the remedies set forth in this Deed Restriction.

i. Any Transfer without satisfaction of the conditions of this Deed Restriction is prohibited.

8. Transfer by Devise or Inheritance.

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

b. If the person inheriting the Property (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 Owner's interest and obligations under this Deed Restriction.

d. If the Inheriting Owner is a Non-Qualified Owner, he or she shall provide the Town with a Notice of Intent to Transfer within sixty (60) days of the date of the Owner's death. Thereafter, the Unit shall be listed for sale as provided in Section 5 hereof and the Non-Qualified Owner shall be required to transfer the Property, as described in Section 8 hereof.

9. Rental.

a. Owner shall not, except with prior written consent of the Town and subject to the Town's conditions of approval, rent the Unit for any period of time.

b. Prior to occupancy, any tenant must be approved by the Town.

c. The Town shall not approve any rental if such rental is made by Owner utilize the Unit as an income producing asset, except as provided below.

d. The Town shall not approve any lease of the Unit for a period of thirty (30) days or less or for a period of six (6) months or more, absent clear and convincing evidence that such a term is necessary.

e. A signed copy of the lease shall be provided to the Town prior to occupancy by any tenant.

f. Any lease of the Unit shall be equivalent to the monthly expenses for the cost of principal and interest, taxes, property insurance and utilities for the Unit, plus an additional twenty dollars (\$20.00) and a reasonable and refundable security deposit.

g. Nothing in this Section shall preclude an Owner from sharing occupancy of the Unit with non-owners on a rental basis, provided that Owner continues to meet the obligations contained in this Deed Restriction.

h. Owner shall not create any additional dwelling unit, as defined in the Vail Town Code, in or on the Property.

10. Breach.

a. It shall be a breach of this Deed Restriction for Owner to default in payment or other obligations due to be performed under a promissory note secured by a first deed of trust encumbering the Unit. 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 five (5) days of receipt of such notification.

b. If the Town has reasonable cause to believe the Owner is violating this Deed Restriction, the Town may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with twenty-four (24) hours written notice.

c. If the Town determines that there has been a violation of the occupancy standards, Owner shall be found to be in non-compliance. Penalties the Town may assess against Owner include eliminating resale gain and any other penalties permissible under the Vail Town Code.

11. Notice and Cure. If the Town discovers a violation of this Deed Restriction, the Town shall notify the Owner of the violation and allow the Owner fifteen (15) days to cure. The notice shall state that the Owner may request a hearing before the Town Council within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Deed Restriction. If a hearing is held, the Town Council's decision shall be final.

12. Remedies. There is hereby reserved to the parties hereto any and all remedies provided by law for violation of this Deed Restriction or any of its terms.

a. If the Property is conveyed without compliance with this Deed Restriction, such conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference the covenants contained in this Deed Restriction, even if they fail to reference this Deed Restriction.

b. If the Owner fails to cure a violation of this Deed Restriction, the Town may resort to any and all available legal action, including, but not limited to, specific performance of this Deed Restriction or a mandatory injunction requiring the Transfer of the Property by the Owner, with the costs of such Transfer shall be paid out of the proceeds of the sale with the balance being paid to the Owner.

c. If such request is made by the Town, the Owner irrevocably authorizes the holder of any mortgage or deed of trust against the Property to disclose to the Town if the Owner is delinquent in any payments due to any such mortgage or trust deed holder and the duration and amount of such delinquency at the time such inquiry is made by Town.

d. If Owner or any of Owner's heirs, successor or assigns breaches any of the terms or conditions contained herein, the initial purchase price of the Unit shall automatically cease to increase and shall remain fixed until the date of cure of such breach.

e. If the parties resort to litigation with respect to any provisions within this Deed Restriction, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

13. Foreclosure.

a. In the event of a foreclosure, acceptance of a deed in lieu of foreclosure, or assignment to the United States Secretary of Housing and Urban Development, this Deed Restriction shall remain in full force and effect.

b. The Owner agrees that he or she will give immediate notice to the Town upon the first to occur if:

i. The date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the Property under the first deed of trust or any other of the Property's subordinate security interests; or

ii. The date when Owner becomes twenty-one (21) days late in making a payment on any indebtedness encumbering the Property required to avoid foreclosure of the first deed of trust or other subordinate security interests in the Property.

c. At any time within sixty (60) days after receipt of any notice described herein, the Town may (but shall not be obligated to) proceed to make

any payment required in order 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.

14. General Provisions.

a. Notices. Any notice, consent or approval required by this Deed Restriction shall be given by either: mailing by certified mail, return receipt requested, properly addressed and with postage fully prepaid, to the address provided herein; or hand-delivery to the address provided herein. Notices shall be considered delivered on the date of delivery if hand-delivered or if both hand-delivered and mailed; or three days after the postmark, if mailed only. Notices shall be sent to the parties at the following addresses unless otherwise notified in writing:

To the Owner: _____

To the Town: Housing Coordinator
Town of Vail
75 South Frontage Road
Vail, Colorado 81657

b. Severability. Whenever possible, each provision of this Deed Restriction shall be interpreted so as to be valid under applicable law, but if any provision of this Deed Restriction is declared invalid under applicable law, such provision shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Deed Restriction.

c. Governing Law and Venue. This Deed Restriction shall be governed and construed in accordance with the laws of the State of Colorado, and venue for any legal action arising from this Deed Restriction shall be in Eagle County, Colorado.

d. Successors. The provisions and covenants contained in this Deed Restriction shall inure to and be binding upon the heirs, successors and assigns of the parties. This Deed Restriction shall be a burden upon and run with the Property for the benefit of the beneficiaries, their successors and assigns, who may enforce the covenants and compel compliance therewith through the initiation of judicial proceedings for, but not limited to, specific performance, injunctive relief, reversion, eviction, and damages.

e. Modification. This Deed Restriction may only be modified upon written agreement of the parties.

EXHIBIT A

LEGAL DESCRIPTION FOR THE AROSA DRIVE DUPLEX UNITS

Lot A and Unit A, and Lot B and Unit B, Vail Ridge, A Resubdivision of Lot 8, Block C, Town of Vail, County of Eagle, State of Colorado.

EXHIBIT B

PERMITTED CAPITAL IMPROVEMENTS

1. The term Permitted Capital Improvement as used in the Deed Restriction shall include only the following:

a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacement and/or maintenance;

b. Improvements for energy and water conservation;

c. Improvements for health and safety protection devices,

d. Improvements to add or finish permanent/finished storage space;

e. Improvements to finish unfinished space; and/or

f. Improvements required to replace the following functional items and the associated depreciation schedule shall be used along with an annual maximum price per improvement that will be allowed. The Maximum Annual Price or the actual price paid, whichever is less, will be used to determine the value of the following improvements. The Town's Housing Coordinator shall have the ability to not approve the addition of any of these items if condition of the Improvement has wear and tear beyond what should be expected of the improvement's age.

i. New carpet and carpet pad;

ii. New hardwood, wood laminate, or tile floors and base;

iii. New Energy Star rated appliances (includes: clothes washer and dryer, refrigerator, range, dishwasher, and built-in microwave);

iv. New baseboard, window casing, or interior doors when the entire unit is finished in an identical material and quality; and

v. New counter top in kitchens and bathrooms or bath tub surrounds:

1. 75% of the cost will be included in the Maximum Sales Price if the improvement(s) has been installed within 12 months of listing the unit.

2. 50% of the cost will be included in the Maximum Sales Price if the improvement(s) has been installed in greater than 12 months and less than 36 months of listing the unit.

3. 25% of the cost will be included in the Maximum Sales Price if the improvement(s) has been installed in greater than 36 months and less than 60 months of listing the unit

4. No cost will be included in the Maximum Sales Price if the improvement(s) has been installed in greater than 60 months of listing the unit.

2. Permitted Capital Improvements as used in this Deed Restriction shall NOT include the following:

- a. The cost of adding decks and balconies, and any extension thereto;
- b. Jacuzzis, saunas, steam showers and other similar items;
- c. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, and other similar items; and/or
- d. Upgrades or additions of decorative items, including lights, window coverings and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by the Town staff prior to being added to the Maximum Resale Price as defined herein.

4. The Maximum Annual Price or the actual price paid per Permitted Capital Improvement, whichever is less, per the depreciation calendar listed above, may be added to the Maximum Sales Price of a unit.

Carpet and Pad	\$4.00 per square foot
Hardwood or Wood Laminate	\$7.00 per square foot
Tile Floor and Base	\$10.00 per square foot
Clothes Washer	\$800.00
Clothes Dryer	\$800.00
Refrigerator	\$1,500.00
Range	\$900.00
Dishwasher	\$500.00
Over-the-Range Microwave	\$400.00
Baseboard	\$5.00 per linear foot
Window Casing	\$4.00 per linear foot
Interior Doors	\$200.00 per door
Counter Top	\$50.00 per square foot
Bath Tub Surround	\$5.00 per square foot

5. The Maximum Annual Price includes the cost for materials and installation. No exceptions will be made. Sweat equity shall not be added to the actual expenses incurred.

6. If the Maximum Annual Price is less than the expense actually incurred by an Owner the depreciation schedule will apply to the Maximum Annual Price.

7. The amount for Permitted Capital Improvements shall not exceed 15% of the initial listed purchase price. For every ten-year period, from the date of original purchase and deed restriction, another 15% of the purchase price may be added to the value of the property for Permitted Capital Improvements.

8. The terms of the Master Deed Restriction shall apply to the above Permitted Capital Improvements as well. See Paragraph 7 for specific detail.