

**TOWN OF AVON - RESIDENT OCCUPIED  
DEED RESTRICTION  
NON-PRICE CAPPED**

THIS DEED RESTRICTION PURCHASE AGREEMENT (the "Deed Restriction") is entered into this \_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date") by and between the Town of Avon, Colorado, a Colorado home rule municipality with an address of 100 Mikaela Way, P.O. Box 975, Avon, Colorado 81620 (the "Town"), and \_\_\_\_\_, individuals with an address of \_\_\_\_\_, Avon, Colorado 81657 (collectively "Declarant") (each individually a "Party" and collectively the "Parties").

WHEREAS, Declarant is purchasing the real property and the improvements situated thereon, located at \_\_\_\_\_, Avon, Colorado 81620 and more particularly described in Exhibit A hereto (the "Property"); and

WHEREAS, in exchange for compensation as set forth in a Deed Restriction Purchase Agreement, Owner has agreed to place certain restrictions on the use of the Property for the benefit of the Town by requiring occupancy of the Property by at least one qualified resident, as defined below.

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:

**COVENANTS**

**1. Restriction and Recording.** The Property is hereby burdened with the covenants and restrictions specified in this Deed Restriction. The Town shall record this Deed Restriction against the Property at Declarant's expense.

**2. Definitions.** The following definitions shall apply to terms used in the Deed Restriction:

- a. **Buyer** means a Qualified Owner who purchases the Property from an Owner.
- b. **Eagle County Employee** means an employee working in Eagle County who works an average of at least thirty-two (32) hours per week for at least eight (8) months in each calendar year or earns seventy-five percent (75%) of his or her income and earnings by working in Eagle County; or a retired individual, sixty (60) years or older, who has worked a minimum of five (5) years in Eagle County for an average of at least thirty-two (32) hours per week for at least eight (8) months in each calendar year; or a person who derives income from self-employment whose business is situated in Eagle County; or a person who works for an employer outside Eagle County if that person can demonstrate that such residence is the primary residence for that person.
- c. **Owner** means any person who acquires an ownership interest in the Property, subject to the conditions contained herein, and may include either a Qualified Owner or Non-Qualified Owner, as the context requires.

- i. **Qualified Owner** means a natural person(s) who is an Eagle County Employee as defined in Section 3.12.020 of the Avon Municipal Code, as amended.
- ii. **Non-Qualified Owner** means any person who does not meet the definition of Qualified Owner including persons who originally qualified as a Qualified Owner but whose circumstances change and who no longer meet the definition of Qualified Owner.
  
- d. **Primary Residence** means the occupation and use of a residence as the primary residence, which shall be determined by the Town Manager by taking into account the following circumstances: voter registration in Avon, Colorado (or signing an affidavit stating that the applicant is not registered to vote in any other place); stated address on Colorado driver's license or Colorado identification card; stated address on motor vehicle registration; ownership or use of other residences not situated in Avon, Colorado; stated residence for income and tax purposes; and such other circumstances as well as such processes for verification and investigation deemed appropriate by the Town Manager to determine that the applicant is continuously occupying and using the residence as a primary residence. Primary residence status may be maintained if unforeseen circumstances arise that requires the resident Eagle County Employee to temporarily leave the residence for a period not to exceed nine (9) months with the intent to return, and the residence is leased to another Eagle County Employee(s) after receiving written approval from the Town Manager.
- e. **Second Home** shall mean the status of the Property when used by any person who has a primary residence that is other than the Property.
- f. **Short Term Rental** shall mean the rental or lease of the Property for a period of time that is fewer than thirty (30) days.
- g. **Town** shall include employees of the Town of Avon or subcontractors retained by the Town who are tasked with enforcing Deed Restriction agreements.

### 3. **Ownership and Use of the Property.**

- a. **Notice.** Prior to acquiring the Property, Declarant acknowledges Declarant is required to notify any lender, appraiser and title company engaged by Declarant, or otherwise assisting Declarant, in connection with the acquisition of the Property of Declarant's intent to enter into this Deed Restriction and cause such Deed Restriction to be recorded against the Property.
- b. **Ownership.** Ownership of the Property shall be limited to a Qualified Owner (who may take title with such Qualified Owner's spouse or civil union partner [if the Qualified Owner is a natural person who is an Eagle County Employee]).
- c. **Occupancy and Use.** During the first three (3) years of ownership by the Owner, the Owner shall occupy and use the Property as the Owner's Primary Residence. On and after the third anniversary of the Owner's acquisition of the Property, occupancy and use of the

Property may include, but shall be limited to, (1) the Qualified Owner for their occupancy and use as a Primary Residence or (2) one or more Eagle County Employees for occupancy and use as a Primary Residence. Permitted occupancy and use shall include immediate family members of the Qualified Owner or such Eagle County Employee or Employees and temporary invitees who do not provide compensation for temporary residence at the Property. Any lease of the Property by the Owner shall be to an Eagle County Employee or Employees for use as a Primary Residence for periods of thirty (30) days or longer. Use or lease of the Property as a Second Home or for Short Term Rental is prohibited. Any use or lease of the Property which is not allowed or is prohibited by this Deed Restriction shall constitute a default and shall be subject to the enforcement provisions and remedies contained in this Deed Restriction.

- d. It shall not be deemed a violation of Sections 3(a) or (b) above if:
  - i. The resident Eagle County Employee becomes disabled and is no longer able to work as determined by the Town in its sole exclusive discretion; or
  - ii. The resident Eagle County Employee has lost full-time employment and is actively seeking reemployment, not to exceed ninety (90) days after loss of employment; or
  - iii. The Property is unoccupied and the Owner of the Property is actively seeking to sell or lease the Property to an Eagle County Employee, provided that the period of vacancy of the Property shall not exceed twelve (12) months.
- e. Owner covenants that the Owner shall not permit any occupancy, use or lease of the Property in violation of this Section 3.
- f. Owner covenants that any lease of the Property shall include a reference that such lease is subject to the terms and conditions of this Deed Restriction, including but not limited to restrictions on the use and occupancy of the Property and cooperation on providing required documentation for verification of Eagle County Employee and Primary Residence status.
- g. No later than February 1st of each year, the Owner of the Property shall submit to the Town a certification setting forth evidence establishing that the Property's occupancy and use complies with this Deed Restriction on a form provided by the Town, which form shall be sent to the address of record of the Owner according to the Eagle County Assessor's Office.

**4. Re-Sale Controls.** The Property may not be sold or otherwise transferred to any person other than a Qualified Owner in accordance with the procedures for prior verification contained in this Section 4.

- a. Owner shall deliver to the Town a written notice of intent to sell the Property which notice shall include the name(s) of the Buyer(s) and all information required to determine whether the Buyer(s) meets the definition of Qualified Owner.

- b. Buyer(s) shall submit an administrative fee in the amount of TWO HUNDRED AND FIFTY DOLLARS (\$250.00) to the Town to pay for the cost of reviewing and rendering a determination as to whether a prospective Buyer(s) meets the definition of a Qualified Owner. The administrative fee may be increased by the Town Council over time by an amount equal to annual increases in the Consumer Price Index for All Urban Consumers for the Denver-Aurora-Lakewood, Colo., metropolitan area as defined by the United States Bureau of Labor Statistics (or such other Consumer Price Index as may be adopted by the United States Bureau of Labor Statistics for Colorado) to cover the Town's costs associated with processing the application.
- c. Once the Town has received complete information concerning the prospective Buyers(s) and has received the administrative fee, the Town shall review the information and make a written determination as to whether the Buyer(s) meets the definition of a Qualified Owner within a reasonable time and not to exceed thirty (30) days.
- d. The Town may require the Buyer to reimburse the Town for any additional costs that are incurred in the review and determination of whether a Buyer(s) meets the definition of a Qualified Owner, including but not limited to legal costs, title review costs, and investigation costs if reasonably required by the Town to complete its investigation.
- e. The Owner may sell and convey the Property to the Buyer(s) that is determined in writing by the Town to be a Qualified Owner.
- f. Upon sale and conveyance of the Property by Owner to a Buyer, the Buyer shall be subject to the same occupancy and use requirements set forth in Section 3(c) herein.

**5. Default by Owner.** If the Town has reasonable cause to believe that the occupancy or use of the Property is in violation of any provision of this Deed Restriction, 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 and occupants with at least twenty four (24) hours written notice. Notice to the occupants may be given by posting notice on the door to the Property. This Deed Restriction shall constitute permission to enter the Property during such times upon such notice without further consent. A default by Owner shall include breach of the covenants set forth in this Deed Restriction, including without limitation any of the following:

- a. Transfer or conveyance of the Property to a person or entity that is not a Qualified Owner.
- b. Acceptance of the Property by a person or entity that is not a Qualified Owner.
- c. Transfer or conveyance of the Property to a person who is a Qualified Owner prior to obtaining certification from the Town that such person is a Qualified Owner.
- d. Any ownership, use or occupancy of the Property in violation of Section 3 above, including, without limitation, any lease of the Property to a person or entity that is not an Eagle County Employee.
- e. Failure to submit an annual certification of occupancy and use as described in Section 3.f above.

- f. Failure to make payments and comply with the terms of any deed of trust placed on the Property.
- g. Any action by the Owner to encumber the Property in a manner that conflicts with the terms of this Deed Restriction or renders compliance with the terms of this Deed Restriction impossible or impractical.
- h. Permitting the use of the Property as a Short Term Rental or Second Home.

**6. Notice and Cure.** In the event a violation of this Deed Restriction is discovered, the Town shall send a written notice of default to the Owner detailing the nature of the default and providing sixty-five (65) days for the Owner to cure such default. Notwithstanding the foregoing or any other term of this Deed Restriction, a default for lease or use of the Property as a Short Term Rental or a Second Home shall be cured by the Owner immediately. The notice shall state that the Owner may request an appeal of the violation finding in writing within ten (10) days of such notice, in which event the Town shall administratively review the finding and, if the violation finding is upheld, the Owner may request in writing within ten (10) days of such administrative decision a hearing before the Avon Town Council. A decision of the Avon Town Council may only be judicially appealed in the District Court of Eagle County pursuant to C.R.C.P. 106.

If no administrative or Town Council appeal is timely requested in writing and the violation is not cured within sixty-five (65) days of mailing the notice of default, the Owner shall be deemed to be in violation of this Deed Restriction. If an administrative or Town Council appeal is requested, the decision of the Avon Town Council (or administrative decision if such decision is not timely appealed to the Town Council) shall be final for the purpose of determining if a violation has occurred and, if such violation is not cured within sixty-five (65) days of such final determination, the Owner shall be deemed to be violation of this Deed Restriction. If a decision of the Avon Town Council is judicially appealed, an order of the Court confirming the violation shall be final for the purpose of determining if a violation has occurred and, if such violation is not cured within sixty-five (65) days of such final determination, the Owner shall be deemed to be violation of this Deed Restriction.

In the event of any lease to a person who is not an Eagle County Employee or use of the Property as a Short Term Rental or Second Home, any amounts collected or receipt of other things of value by the Owner or assigns under such leases shall be paid to the Town as a material requirement of curing the notice of default.

**7. Remedies.** In the event of violation, non-performance, default or breach of any term of this Deed Restriction by the Owner, Town shall have the right to enforce Owner's obligations herein by an action for any equitable remedy, including injunction or specific performance, as well as pursue an action to recover damages. In addition, any amount due and owing to the Town shall bear interest at the rate of one and one half percent (1.5%) per month (eighteen percent [18%] per annum, compounded annually) until paid in full. The Town shall be entitled to recover any costs related to enforcement of this Deed Restriction, including but not limited to attorney's fees, court filing costs and county recording costs. In addition to any other remedy provided by law or equity, the Town may attach a lien for any amount due to the Town upon the Property and enforce the lien in the manner and according to the procedures set forth in Colorado Revised Statutes, Section 31-

20-105, and the Owner expressly waives any objection to the attachment of a lien for amounts due to the Town. In the event of a transfer or conveyance of the Property which violates the terms of this Deed Restrictions and constitutes a violation of this Deed Restriction, both the grantor and grantee shall be jointly and severally liable for any damages and costs due under this Deed Restriction.

**8. Liquidated Damages.** The parties acknowledge and agree that in the event of a violation of this Deed Restriction by the Owner, the determination of actual monetary damages would be difficult to ascertain. Therefore, the Town and Owner hereby agree that liquidated damages shall be calculated and applied in the amount of THREE HUNDRED DOLLARS (\$300.00) per day for each day that the Owner is in violation of this Deed Restriction after having failed to timely cure the violation of this Deed Restriction. Liquidated damages shall be in addition to the Town's ability to recover costs as stated in Section 7 above. Liquidated damages shall be in addition to the Town's right to seek equitable remedies of injunction and/or specific performance. In the event of any lease or use of the Property as a Second Home or Short Term Rental, any amounts collected or receipt of other things of value by the Owner or assigns under such leases shall be paid to the Town as liquated damages as demanded by the Town (in lieu of the \$300 daily liquidated damages), including such amounts collected or received by Owner prior to receipt of a Notice of Default and prior expiration of a sixty-five (65) day period to cure, and such amounts shall be in addition to the right of the Town to recover costs and seek equitable remedies.

**9. Release of Deed Restriction in Event of Foreclosure or Deed in Lieu.**

- 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 five (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 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 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 Deed Restriction (but subject to Section 9.f below), in the event of a foreclosure, acceptance of a deed-in-lieu of foreclosure, or assignment, this Deed Restriction shall remain in full force and effect, including without limitation Section 4 hereof, restricting Transfer of the Property.
- e. The Town shall have thirty (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 bid price or the redemption price paid by the holder, interest in the amount of eight (8) percent per annum from the

date of the issuance of the public trustee's deed or the recording of a deed in lieu of foreclosure through the date of the Town's purchase.

- f. Notwithstanding Section 9.d above, in the event that the Property is encumbered by a mortgage or deed of trust insured by the U.S. Department of Housing and Urban Development ("HUD") and representing a purchase money first priority mortgage or deed of trust, this Deed Restriction shall automatically and permanently terminate upon foreclosure of such mortgage or deed of trust, upon acceptance of a deed in lieu of foreclosure of such mortgage or deed of trust, or upon assignment of such mortgage or deed of trust to HUD.

**10. Option to Purchase.** In the event of default by the Owner which is not cured, or upon receipt of a notice of foreclosure or other notice of default provided by the holder of a deed of trust, lien or other encumbrance as provided in Section 9 above (whichever is earlier), the Town shall have the option to purchase ("**Option to Purchase**") the Property in accordance with the procedures and terms set forth as follows:

- a. The Town shall have an Option to Purchase for sixty-five (65) days ("**Option Period**").
- b. The Town shall have right of entry onto and into the Property during the Option Period to inspect the Property.
- c. The Town shall have the right to purchase the Property for the amount due to the holders of any deeds of trust, liens or other encumbrances up to the maximum amount defined in Section 5.g. above (together with interest, fees and costs expressly chargeable under deed of trust, lien or other encumbrance instrument), which amounts shall be paid in order of priority of the holders of such deeds of trusts, liens or other encumbrances provided that this Deed Restriction shall remain in effect and burden the Property after acquisition by the Town and upon re-conveyance to a subsequent Qualified Owner.
- d. The Town shall have the right to assign the Town's right to purchase the Property to any Qualified Owner provided that this Deed Restriction shall remain in effect and burden the Property.
- e. Upon payment by Town or assigns, Owner shall convey title to the Property by a special warranty deed in accordance with Colorado Revised Statute §38-30-115 and shall include the words, "and warrant title against all persons claiming under me."
- f. Normal and customary closing costs shall be shared equally between the Owner and Town or Town's assigns. The Town or assigns shall be responsible, at its cost, for any and all title insurance fees, document fees, and recording fees of the deed. Taxes shall be prorated based upon taxes for the calendar year immediately preceding closing.
- g. If the Town or assigns do not exercise the Option to Purchase during the Option Period, then the holder of a deed of trust shall nonetheless remain subject to this Deed Restriction as provided in Section 9.d above, subject, however, to Section 9.f above. In the event that Town's Option to Purchase arises from a default by Owner and not a notice of foreclosure

or notice of default submitted by the holder of a deed of trust to the Town, then the Town may unilaterally extend the Option Period until such time as Town, or assigns, exercise the Option to Purchase or the Owner cures any and all defaults.

**11. Tax Sale.** In the event of a tax sale this Deed Restriction shall remain in full force and effect, shall run with and burden the land, and shall constitute a condition of the subdivision and land use approval which shall survive and sale of the Property through a tax lien sale process.

**12. General Provisions.**

- a. **Severability.** If any term, provision, covenant or condition of this Deed Restriction is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Deed Restriction shall continue and remain in full force and effect.
- b. **Counting Days.** If the final day of any notice, default or other event falls on a Saturday, Sunday, legal holiday recognized by the State of Colorado or day upon which the Avon Town Hall is closed for any reason, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, legal holiday or day that the Avon Town Hall is closed.
- c. **Waiver.** No waiver of one or more of the terms or provisions of this Deed Restriction shall be effective unless provided in writing. No waiver of any term or provision of this Deed Restriction in any instance shall constitute a waiver of such provision in any other instance. The Town Council may provide a waiver along with any conditions of the waiver with regard to any of the terms and provisions in this Deed Restriction where unusual or unforeseen circumstances exist and the Owner is diligently seeking to cure a default and such waiver, with conditions if any, supports the purpose and intention of this Deed Restriction.
- d. **Amendment.** This Deed Restriction may only be amended in writing by the mutual agreement of the Owner and the Town and recorded with the Clerk and Recorder's Office of Eagle County, Colorado.
- e. **Recording.** The Owner shall record this Deed Restriction in the Property Records of Eagle County, Colorado and the original executed and record documents must be returned to the Town.
- f. **Assignment.** The Town may assign this Deed Restriction and all rights and obligations, without consent of the Owner, to any other public entity, non-profit corporation or other entity which is organized and exists for the purpose to provide and promote affordable housing for full time residents.
- g. **No Third-Party Beneficiaries.** Nothing contained in this Deed Restriction is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party.
- h. **Choice of Law.** This Deed Restriction shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any legal action arising from this Deed Restriction shall be in Eagle County, Colorado.

- i. **Successors.** Except as otherwise provided herein, the provisions and covenanted contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties. The covenants shall be a burden upon and run with the Property for the benefit of the Town or the Town's 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.
- j. **Section Headings.** Paragraph or section headings within this Deed Restriction are inserted solely for convenience of reference and are not intended to and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
- k. **Gender and Number.** Whenever the context so requires in this Deed Restriction, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
- l. **Notice.** Any notice, consent or approval, which is required to be given hereunder, shall be given by either depositing in the U.S. Mail with first class postage pre-paid; mailing by certified mail with return receipt requested; sending by overnight delivery with a nationally recognized courier service that delivers to the physical address of the Property; or, by hand-delivering to the intended recipient. Notices shall be provided to the Town of Avon at P.O. Box 975, 100 Mikaela Way, Avon, CO 81620. Notices shall be provided to Owner at the address provided by the Eagle County Assessor's office.

*[signature page follows]*



**TOWN OF AVON, COLORADO:**

By: \_\_\_\_\_  
Eric Heil, Town Manager

Attest: \_\_\_\_\_  
Brenda Torres, Town Clerk

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EAGLE     )

Subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Eric Heil, as Town Manager, and Brenda Torres, as Town Clerk of the Town of Avon, a Colorado home rule municipal corporation.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**Exhibit A**

[Insert Property Legal Description]