

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO IMPLEMENTING THE MOUNTAIN VILLAGE YOUR EQUITY SUPPORT (YES) DEED RESTICTION PURCHASE PROGRAM

RESOLUTION 2021-0617-08

WHEREAS, the Town of Mountain Village Comprehensive Plan encourages the Town of Mountain Village (the “Town”) to achieve a diverse range of housing densities, styles and types, including rental and for sale, to serve all segments of the populations; and

WHEREAS, the Town of Mountain Village Comprehensive Plan provides the Town should achieve such housing goals through the adoption and implementation of deed restrictions; and

WHEREAS, the Town of Mountain Village Community Housing Plan provides the Town should seek to add deed restricted units to the Town’s housing inventory; and

WHEREAS, there is in excess of two million dollars (\$2,000,000) in the Community Housing Fund for the purchase of deed restriction units the Mountain Village Deed Restriction Program; and

WHEREAS, the Mountain Village Town Council desires to implement the Mountain Village Deed Restriction Program, set parameters for such program and authorize the Mayor, Town Manager and Town Attorney, respectively to execute deed restrictions on behalf of the Town; and

WHEREAS, the Mountain Village Town Council hereby finds, determines and declares that this Resolution will promote the health, safety and general welfare of the Mountain Village community.

NOW THEREFORE, BE IT RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO:

Section 1. The Town Council hereby delegates to the Town Manager, Housing Director, Finance Director and the Town Attorney (the “Evaluation Committee”) the authority to evaluate offers to sell and negotiate the purchase of deed restrictions subject to the conditions set forth herein.

Section 2. The Town Council hereby delegates to the Mayor, Town Manager and Town Attorney the authority to execute purchase and sale agreements, deed restrictions, documents, instruments, papers and other forms necessary for the purchase of deed restrictions.

Section 3. The purchase of deed restrictions shall be made subject to the following requirements:

- a.** The Town may purchase deed restrictions on residential property from anyone, including businesses, provided deed restricted property is occupied by a Qualified Resident.
- b.** A Qualified Resident is defined as:
1. A natural person who is employed an average of at least 1560 hours per year within the boundaries of the Telluride R-1 School District and who must maintain the work requirement until retirement age of sixty (60) years of age; or
 2. A natural person not meeting the employment requirement set forth in subsection (1) but meeting all other criteria, but is more than sixty (60) years of age and has been an employee in the Telluride R-1 School District for a period of at least 5 years immediately prior to retirement; or
 3. A natural person who is handicapped or disabled and who has been a resident within the boundaries of the Telluride R-1 School District for at least 12 months immediately prior to the date hereof; or
 4. A natural person who does not meet the qualifications set forth in subsections (1)-(3), but can establish to the satisfaction of the Town that such natural person (i) is employed an average of 1,560 hours per year and (ii) has been a resident within the boundaries of the Telluride R-1 School District for at least 12 months immediately prior to the date hereof.
- c.** Deed restrictions may be purchased on homes from owners who are Qualified Residents and whose primary residents is the home on which the deed restriction shall be placed.
- d.** The Town may purchase a deed restriction to be placed on any residential property regardless of price or location within the Town of Mountain Village.
- e.** All deed restricted property shall be exempt from Real Estate Transfer Assessments
- f.** The maximum purchase price for any deed restriction shall not exceed two hundred thousand dollars (\$200,000.00); provided, however, a seller of a deed restriction may petition Town Council for a higher purchase price. The purchase price shall range from fifteen percent (15%) to twenty percent (20%) of the purchase price or appraised value of the home.
- g.** Deed restrictions sellers shall notify their lender and appraiser and title company of their intent to place a deed restriction on the property to be acquired.
- h.** Deed restriction sellers, to the extent they are acquiring the property, must contribute at least three percent (3%) of their own funds towards the purchase price of the property to be acquired, which funds do not include any third party down payment assistance funding.

- i.** The Evaluation Committee shall consider applications for the purchase of deed restrictions on a first come, first serve basis, which will be queued by complete applications. A complete application requires a fully executed purchase and sale agreement.

Section 4. Staff has provided, and Town Council has reviewed and hereby approves, in substantially the form of the Deed Restriction, Deed Restriction Purchase Agreement, Subordination Agreement and Deed Restriction Application, all attached hereto and incorporated herein as Exhibits A, B, C and D, respectively.

Section 5. The Town Council may, by motion, modify the criteria set forth herein.

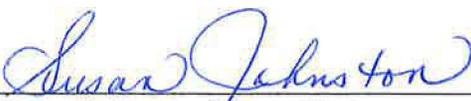
[SIGNATURE PAGE FOLLOWS]

ADOPTED AND APPROVED by the Town Council at a regular meeting held the 17th day of June 2021.

TOWN OF MOUNTAIN VILLAGE TOWN COUNCIL

By: 
Laila Benitez, Mayor

ATTEST

By: 
Susan Johnston, Town Clerk

Approved as to Form:


Paul Wisor, Town Attorney

Exhibit A
(Deed Restriction)

DEED RESTRICTION
AGREEMENT

THIS DEED RESTRICTION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2020 (the "Effective Date") by and between the Town of Mountain Village, Colorado, a Colorado home rule municipality with an address of 455 Mountain Village Blvd Suite A, Mountain Village, Colorado 81435 (the "Town"), and _____, an individual with an address of _____ ("Owner") (each a "Party" and collectively the "Parties").

WHEREAS, Owner is purchasing the real property located at _____, Mountain Village, Colorado 81658 (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:

1. **Property.** The following real property is hereby burdened with the covenants and restrictions specified in this Agreement:_____.

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:

1. A natural person who is employed an average of at least 1560 hours per year within the boundaries of the Telluride R-1 School District and who must maintain the work requirement until retirement age of sixty (60) years of age;
or

2. A natural person not meeting the employment requirement set forth in (2)(d)(1) but meeting all other criteria, but is more than sixty (60) years of age

and has been an employee in the Telluride R-1 School District for a period of at least 5 years immediately prior to retirement; or

3. A natural person who is handicapped or disabled and who has been a resident within the boundaries of the Telluride R-1 School District for at least 12 months immediately prior to the date hereof; or
4. A natural person who does not meet the qualifications set forth in Section 2(d)(1)-(3), but can establish to the satisfaction of the Town that such natural person (i) is employed an average of 1,560 hours per year and (ii) has been a resident within the boundaries of the Telluride R-1 School District for at least 12 months immediately prior to the date hereof.

3. **Occupancy Restrictions.**

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

b. Owner may rent the Property as long as the Property is continuously occupied by a Qualified Household.

c. A Qualified Resident may lease a room or rooms in the Property to one or more persons, provided that the Qualified Resident still occupies the Property as his or her principal place of residence.

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 Housing Authority 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. **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 San Miguel 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 San Miguel 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 Mountain Village Town Council, their now living descendants, if any, and the survivor of them, plus 21 years.

1. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

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

**TOWN OF MOUNTAIN VILLAGE,
COLORADO**

Kim Montgomery, Town Manager

ATTEST:

Susan Johnston, Town Clerk

OWNER

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

The foregoing instrument was subscribed, sworn to and acknowledged before me this_
_____ day of _____, 2020, by _____.

Witness my hand and official seal.

Notary Public

(S E A L)

My commission expires:

Exhibit B
(Deed Restriction Purchase Agreement)

DEED RESTRICTION PURCHASE AGREEMENT

THIS DEED RESTRICTION PURCHASE AGREEMENT (the "Agreement") is entered into this ___ day of _____, 2021 (the "Effective Date") by and between the Town of Mountain Village, Colorado, a Colorado home rule municipality with an address of 455 Mountain Village Blvd, Ste. A, Colorado 81435 (the "Town"), and _____, individuals with and address of _____ (collectively, "Purchaser") (each individually, a "Party" and collectively the "Parties").

WHEREAS, Purchaser is purchasing the real property and the improvements situated thereon, located at _____, Mountain Village, Colorado 81435 (the "Property"); and

WHEREAS, in exchange for compensation as set forth herein, Purchaser 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 set forth in the Deed Restriction Agreement executed contemporaneously herewith (the "Deed Restriction"); and

WHEREAS, the Deed Restriction is of value to the Town, and the Town is willing to compensate Purchaser for the value of the Deed Restriction.

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. Conveyance. Purchaser agrees to convey, sell, transfer and assign to the Town, and the Town agrees to purchase from Purchaser, the Deed Restriction, on the terms and conditions of this Agreement.
2. Purchase Price. The purchase price for the Deed Restriction shall be \$_____ (the "Purchase Price"), delivered to Purchaser at closing in funds which comply with all applicable Colorado laws, which include electronic transfer funds, certified check and cashier's check, at the Town's option.
3. Purchaser Contribution. As a condition of the Town acquiring the Deed Restriction, Purchase agrees it will contribute three percent (3%) or more of Purchaser funds towards the purchase price of the Property, which funds to not include any third party down payment assistance funding.
4. Closing. The closing will occur at a mutually agreeable location, at a date agreed upon by the Parties within 14 days of the Effective Date.
5. Notice and Consent. Purchaser certifies that Purchaser has notified every person or entity holding a lien or other encumbrance on the Property as well as every person or entity Purchaser reasonably believes will hold a lien or encumbrance on the Property of the proposed purchase of the Deed Restriction by the Town, and if necessary, obtained each of their consent to the recording of the Deed Restriction against the Property. Should Purchaser not provide such notice or obtain such consent, and Purchaser's failure to do so causes the Deed Restriction

to become unenforceable, invalid or void for any reason, Purchaser shall reimburse the entire Purchase Price to the Town within 30 days of receipt of written notice from the Town.

6. Purchaser's Representations and Warranties. Purchaser hereby represents and warrants that the following statements are now, and will be as of the closing date, true and correct, to the best of Purchaser's knowledge, and Purchaser shall give the Town prompt written notice if any of the representations or warranties made by Purchaser in this Agreement are no longer true or correct in any material manner:

a. There is no action, suit or proceeding pending, or to the best of Purchaser's knowledge threatened, against or otherwise affecting Purchaser or the Property in any court of law or equity, or before any governmental authority, in which an adverse decision might materially impair Purchaser's ability to perform its obligations under this Agreement.

b. There is no pending or threatened condemnation or similar proceeding affecting the Property.

7. Town's Remedies. In the case of any breach of this Agreement by Purchaser, the Town may terminate this Agreement by written notice to Purchaser, and the Town shall have all remedies available at law or equity for such breach. In addition to all other remedies, in the case of a breach of this Agreement by Purchaser, the Town shall have the right to recover the entire Purchase Price from Purchaser, in addition to all costs and fees, including attorney fees, incurred by the Town.

8. Miscellaneous.

a. Entire Agreement. This Agreement contains the entire agreement of the Parties. There are no other agreements, oral or written, and this Agreement can be amended only by written agreement signed by the Parties.

b. 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.

c. 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.

d. 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 San Miguel County, Colorado.

e. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

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

PURCHASER

Name: _____

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of _____, 20__, by _____.

Witness my hand and official seal.

Notary Public

(S E A L)

My Commission Expires: _____

Exhibit C
(Subordination Agreement)

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20__ (the "Effective Date") by and between the Town of Mountain Village, Colorado, a Colorado home rule municipality with an address of 455 Mountain Village Blvd Suite A, Mountain Village, CO 81435 (the "Town"), and _____, a financial institution with an address of _____, _____, Colorado _____ ("Lender") (each a "Party" and collectively the "Parties").

WHEREAS, the Deed Restriction Agreement dated _____ 20__, recorded on __, 20__ under Reception No. _____ in the records of the Clerk and Recorder of San Miguel County, Colorado, as amended (the "Deed Restriction") burdens the real property more particularly described as _____ ("Property");

WHEREAS, the owner of the Property has requested Lender to issue a loan secured by a deed of trust encumbering the Property; and

WHEREAS, Lender is willing to subordinate the loan to the Deed Restriction under the terms of this Agreement.

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. Subordination. Lender unconditionally subordinates its lien under the deed of trust on the Property issued by Lender on _____, 20__ (the "Deed of Trust") to the Deed Restriction. Lender agrees that its lien on and all other rights and interests in the title to the Property resulting from the Deed of Trust will remain subordinate to all rights and interests in the title to the Property resulting from the Deed Restriction, regardless of any renewal, extension or further modification of the Deed of Trust.

2. Notice. If Lender accepts a deed in lieu of foreclosure of the Deed of Trust, Lender shall give the Town written notice within 20 days after the deed is recorded with the Clerk and Recorder of San Miguel County, Colorado.

3. 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 the Parties, superseding all prior oral or written communications.

c. 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.

d. 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 San Miguel County, Colorado.

e. 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.

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

g. 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.

h. 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.

i. Recording. This Agreement shall be recorded with the San Miguel County Clerk and Recorder.

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

**TOWN OF MOUNTAIN VILLAGE,
COLORADO**

Kim Montgomery, Town Manager

ATTEST:

Susan Johnston, Town Clerk

Exhibit D
(Deed Restriction Application)



Mountain Village Deed Restriction Program Application

455 Mountain Village Blvd., Ste A.
Mountain Village, Colorado 81435

Finance Department
970.738.8000

Date: _____

Your name: _____

Provide name(s) as title to property will be or is held

Your current mailing address: _____

Your e-mail: _____

Your phone: _____

Amount of money requested: \$ _____

Avon property address to be deed restricted: _____

Property Type: Single Family Condo Townhouse Duplex

Number of bedrooms/bathrooms: _____ Bedrooms _____ Bathrooms

Number of unit parking spaces;
total property parking spaces: _____

Are you under contract? _____

Contract or list price: _____

Closing date or
date decision is needed: _____

Is there a Home Owner's Association? Yes, there is an HOA No, there is no HOA

Is there any pending or upcoming
special assessments (SA's)? Pending SA Upcoming SA No SA

Is there a right of first refusal?
The Town cannot place a deed restriction on property with right of first refusal

Name of Lender: _____

Name of Real Estate Agent: _____

Name of Title Company: _____

Name of Eagle County Employer: _____

Have you notified your Lender, Title
Company and Appraiser of your intent to
place a Deed Restriction on the Property? _____

Is there additional property information
You wish to share? (optional): _____