

**THE TOWN OF VAIL**  
**EMPLOYEE HOUSING GUIDELINES**

**10-19-99**

## **I. PURPOSE**

The purpose of the Employee Housing Guidelines (Guidelines) is to set forth the **occupancy requirements, re-sale procedures, and resale price limitations** for the Town of Vail deed restricted for-sale employee housing. Additional information pertaining to Employee Housing Unit deed restrictions can be found in the applicable Master Deed Restriction Agreement (Master Deed Restriction) for the occupancy and resale of certain projects such as Vail Commons. Prior to closing on a employee housing unit, the owner must sign an individual deed restriction which references the Guidelines and the Master Deed Restriction which will be recorded at the closing, and which will run with the property in perpetuity.

## **II. MAXIMUM RESALE PRICE**

An owner may desire to sell a deed-restricted Employee Housing Unit provided that the resale price and prospective purchaser meet the standards of the Guidelines and the Master Deed Restriction. Resale price may not exceed:

- A. The original price plus
- B. An increment equal to 3% per annum of the original purchase price from the date of purchase (prorated at the rate of 0.25% for each whole month of any part of any year) plus
- C. The value of capital improvements (including professional architect's fees) made to the Employee Housing Unit not exceeding 10% of the original purchase price. For every ten years from the date of original purchase and deed restriction, another ten percent of the purchase price may be added to the value of the property for capital improvements plus
- D. The value of any special assessments made by a homeowner's association or by a local government that has been paid by the owner.

Additional details regarding resale value as well as calculation methods are provided in the deed restriction.

## **III. RESALE PROCEDURES**

The deed-restricted unit must be listed for sale with the Town of Vail.

### **A. Listing the Unit with the Town of Vail: Staff Duties**

- 1. An owner of an affordable housing unit desiring to sell should consult with Town staff (Housing Division) and review the individual deed restriction and the Master Deed Restriction covering the unit to determine the maximum sales price permitted and other applicable provisions concerning a sale. Unless otherwise provided in the Master Deed Restriction, the unit must be listed for sale with the Town and the Town

staff or its designee will administer the sale in accordance with the Guidelines in effect at the time of listing. There shall be a minimum listing period of three months before a unit's price can be readjusted. Any termination in the listing may require the payment of administrative and advertising costs. The ½ percent of the sales price required to be deposited with Town staff at time of listing will be forfeited. Costs exceeding the amount of the deposit shall be paid by the owner.

2. The Guidelines are intended to ensure that ALL purchasers and ALL sellers will be treated fairly and impartially. Questions will be answered and help provided to any potential purchasers or sellers equally in accordance with the current Guidelines. Listings, sales contracts, extensions to contracts and closing documents will be prepared and all actions necessary to consummate the sale shall be undertaken.
3. In pursuit of the above, the staff will be acting on behalf of the Town. It should be clearly understood by and between all parties to a sales transaction that the staff members are not acting as licensed brokers to the transaction, but as representatives of the Town and its interests. They shall nevertheless attempt to help both parties consummate a fair and equitable sale in accordance with the then current Guidelines.
4. All purchasers and sellers are advised to consult legal counsel regarding examination of title and all contracts, agreements and title documents. The retention of such counsel, licensed real estate brokers, or such related services, shall be at purchaser's or seller's own expense. The fees paid to the Town are to be paid regardless of any actions or services that the purchaser or seller may undertake or acquire.

**B. Advertising the Sale: Bid Periods**

1. After a unit is listed for sale with the Town, the Town will arrange to advertise the unit for sale in two consecutive Friday editions of the Vail Daily and the Vail Trail. When a unit is first listed, there is an initial two-week bid period during which the unit will be advertised with two open house dates when the unit may be viewed by interested parties. The initial two-week bid period ends on the Friday after the second week of advertising. If no bids are received during the initial bid period, there will follow consecutive one-week bid periods, ending on Friday, until the unit is sold.
2. If more than one bid is received during any bid period, the bids shall be prioritized according to the criteria of the then current Guidelines. If more than one bid is in top priority, a lottery will be held and the winner will be notified. If the winner of the lottery does not proceed to contract within

five business days after notification, the next in line will be notified and so on, until the unit is under contract for purchase. Back-up contracts in the priority order set forth in the lottery will be accepted.

Prospective purchasers must be pre-qualified by a lender prior to submitting a bid for affordable housing. Names of authorized lenders are available from the Town. Town staff will be available to assist interested parties with the purchase procedures and to answer any questions about the process.

**C. Sales and Other Fees:**

1. Unless otherwise set forth in the Master Deed Restriction covering the unit, at the closing of the sale, the seller will pay the Town a sales fee equal to two (2) percent of the sales price. The Town may instruct the title company to pay said fees to the Town out of the funds held for the seller at the closing. Unless otherwise specified in the Master Deed Restriction, a one-half percent (1/2%) fee is paid by the Seller at the time of listing, which is applied to the total sales fee payable at closing. In the event that the seller fails to perform under the listing contract, rejects all offers at maximum price in cash or cash-equivalent terms, or should withdraw the listing after advertising has commenced, that portion of the fee will not be refunded. In the event that the seller withdraws for failure of any bids to be received at maximum price or with acceptable terms, the advertising and administrative costs incurred by the Town shall be deducted from the fee, with the balance credited to the owner's sales fee when the property is sold.
2. Conventional-type financing provisions (i.e. FNMA) are those which provide, among other things, for the removal of the Master Deed Restriction on the unit upon foreclosure of the mortgage if the Town does not exercise its option to purchase the unit within a specified time following foreclosure. Unless otherwise set forth in the Deed Restriction covering the unit, upon the initial sale, resale or refinancing of units where conventional-type financing provisions are used (the use of which shall be at the sole discretion of the Town) there may be a fee charged by the Town. The fee shall be paid by the mortgagor; shall be based on the amount of the mortgage; shall be paid for each mortgage transaction; and shall be deposited in the Town mortgage reserve fund account. If the fee is paid on a unit and the unit is subsequently refinanced, the fee shall only apply to that amount of the refinanced mortgage greater than the initial mortgage upon which the fee was initially collected. The amount and adequacy of the fee and the mortgage reserve fund shall be reviewed annually as part of the review of the Guidelines.

**D. Deed Restriction:**

The purchaser must execute, in a form satisfactory to the Town and for recording with the Eagle County Clerk concurrent with the closing of the sale, a document acknowledging the purchaser's agreement to be bound by (1) the recorded Master Deed Restriction covering the sale unit and (2) the then-current Guidelines.

**IV. RESALE LOTTERY CRITERIA**

A. There are six basic eligibility requirements which must be met prior to an individual submitting a bid to purchase an employee-housing unit.

1. The applicant must intend to use the unit as his/her primary residence and maintain it as his/her primary residence in the future.
2. The applicant must be currently employed at a business located within Eagle County which holds a business license with the appropriate jurisdiction (Town of Vail, Town of Avon, etc.), must be employed an average of 30 hours each week on an annual basis, and must maintain this level of employment for as long as he or she owns the unit.
3. The applicant must demonstrate that at least 75% of his/her income and earnings are earned by working at a licensed Eagle County business.
4. Neither the applicant nor any member of the applicant's immediate family (including, but not limited to, spouse and children under 18 years of age) may own residential real estate in Eagle County at the time of application, except where that real estate is deed restricted as a Town of Vail employee housing unit with a resale appreciation cap. A current residence may not be deeded to a corporation or other entity in order to qualify the applicant for a Town of Vail deed restricted unit.
5. The applicant must be prequalified with a mortgage lender.
6. For all Town of Vail deed restricted three bedroom units, the applicant must have a household size of 3 or more persons. For the purposes of determining household size, applicants may include all persons related to the applicant by blood, marriage, or adoption. If the applicant plans to include dependents, they must be continuously listed on federal income tax forms and reside in the household at least six months and one day out of every 12 month period of time. A pregnancy may be counted towards the

family size requirement as long as a note from an Eagle County doctor is provided.

B. Once basic eligibility has been met, the qualified person(s) submitting the highest bid price (not to exceed the maximum bid price) during a bidding period shall have the first right to negotiate purchase of the unit. If two or more qualified bids are submitted at the highest bid price, they shall receive preference and be prioritized for selection as the top bidder based on the highest score using the criteria listed below. Each year of residency and employment in Eagle County will count as one point in determining the total score. Additional points will be determined as follows:

1. All current years of employment in Vail shall be weighted at 3:1 over years of employment in Eagle County.
2. All current years of residency in Vail shall be weighted at 3:1 over years of residence in Eagle County.
3. All years of residency and/or employment prior to a leave from Eagle County shall be given points at a 1:1 ratio regardless of location of residency or employment within Eagle County.

C. Notes:

1. The physical place of residence and employment is what counts, not the mailing address.
2. Employment physically located on Vail Mountain shall be considered inside the Town of Vail.
3. Employment requiring work to be completed at locations “on-site” throughout Eagle County (e.g., construction sites) shall be considered outside the Town of Vail.
4. Seasonal work and part time work shall be counted on a pro-rata basis. Seasonal work and part time work alone may not be adequate to meet the 30 hours/week average *annual* requirement. This type of work *may* need to augment other employment to meet the minimum eligibility.
5. For the purposes of determining the standing of each applicant, each year of residency (or employment) reflects one point. For the portion of time in excess of a complete year, the Town will round to the next highest number if the time exceeds six months and one day. If the time is less than six months, the Town will round down.

6. If two individuals are applying jointly, the years of employment and/or residency shall not be combined. The single individual with the longest record of employment and/or residency shall use his or her record for the purposes of determining longevity.
  7. Persons who own residences located in Vail or Eagle County at the time of the application deadline are not eligible.
  8. All claims will be verified by Town of Vail staff. Claims of residence or employment that do not check out or are un-verifiable will not be counted in determining your longevity.
  9. If there is a sole applicant in the top tier of the lottery, the scheduled lottery will not be conducted and the unit will be awarded to the top tier applicant. A drawing to establish the reserve list will be held in the Community Development office during regular business hours and shall be witnessed by the Town Clerk.
  10. The application and any accompanying documentation shall become the property of the Town of Vail and will not be returned to the applicant.
- D. For all resales of existing Town of Vail deed restricted units, a permanent reserve lottery list will be used. The reserve list will be created using the exact same criteria outlined above.
1. The first person on the list will be offered the unit available for resale. If that person chooses not to take the unit, they will be dropped to the end of the list and the next person will have the option to purchase the available unit and so on, until a buyer is found.
  2. The list will be updated by an annual lottery.
  3. Separate reserve lists will be created for two bedroom and three bedroom units.

**V. OCCUPANCY REQUIREMENTS**

Once an Employee Housing Unit has been purchased, it must continue to be occupied in a manner that is consistent with the goals and policies of the Town of Vail Housing Program. The purchased Employee Housing Unit must be owner occupied by:

An employee, working in Eagle County who works an average of thirty hours per week on an annual basis.

A retired individual, sixty years or older, who has worked a minimum of five years in

Eagle County for an average of thirty hours per week on an annual basis.

Notes:

- A. A leave of absence may be granted for one year, subject to clear and convincing evidence which shows a reason for leaving and a commitment to return to the Vail/Eagle County area may be approved by the Town. Said evidence shall be in written form presented to the Town for review and recommendations 30 days prior to leaving. The Leave of Absence shall be for one year and may, at the discretion of the Town, be extended for one year, but in no event shall it exceed two years. The unit must be rented during said year or years to residents who comply with occupancy requirements. Rental periods shall be not less than 30 days. After verification and qualification of tenant(s), a copy of the executed lease shall be furnished to the Town.
- B. If the Employee Housing Unit is listed for sale and the owner must relocate to another area, the unit may, upon approval of the Town, be rented prior to completion of the sale to persons who comply with the occupancy requirements. A letter must be sent to the Town of Vail Housing staff requesting permission to rent the unit until sold. A lease of not less than (6) months must be provided to the tenants with a sixty (60) day move out clause upon notification that the unit is sold.
- C. Occupants may request waivers to the provisions of this section by providing a written request to the Town of Vail Housing staff, which will then be forwarded to the Town Council for their consideration.
- D. Co-signers may be allowed but shall not occupy the unit unless the occupancy requirements of this section are met.

**VI. ANNUAL VERIFICATION REQUIRED; PENALTIES FOR VIOLATION**

- A. No later than February 1st of each year, the owner of the restricted employee housing unit shall submit two copies of a sworn affidavit on a form to be obtained from the Community Development Department, to the Town of Vail Housing Authority and the Town of Vail Community Development Department verifying that the dwelling unit continues to be owner occupied in accordance with Section V of the Guidelines, that the occupant has worked thirty hours per week for the previous year, and where the occupant has worked.
- B. If the Town determines that there has been a violation of the occupancy standards, the owner of the restricted employee-housing unit shall be found to be in noncompliance. Penalties the Town may assess against the owner include eliminating resale gain and/or penalties found in the Town of Vail Municipal Code Title 1, Chapter 4. Any misrepresentation by an applicant in submittal

material shall disqualify the applicant from purchasing an Employee Housing Unit.

## **VII. SUBMITTAL REQUIREMENTS**

In conjunction with completing an application to purchase an Employee Housing Unit, the applicant shall provide, upon request by the Town, the following documentation as proof of residency and employment:

- A. Federal Income Tax return forms. Applicant must provide the last four (4) years of Federal Income Tax Returns, an audited financial statement, or acceptable documentation to the Town.
- B. Verification of current employment in Vail or Eagle County (i.e., wage stubs, employer name, address and phone number or other appropriate documentation as requested by the Town).
- C. Landlord verification (proof of residency, physical address).
- D. Valid Colorado Driver's License (address, issue date).
- E. Prequalification for a loan from a bank or mortgage company.
- F. Deposits for down payment shall be verified by the holder of such funds.
- G. Any co-ownership interests other than joint tenancy or tenancy-in-common must be approved by the Town.
- H. Signed authorization from the applicant allowing the Town of Vail to discuss details with applicant's employer.
- I. Any documentation which the Town deems necessary to make a determination.

## **VIII. FORECLOSURE**

In the event of a foreclosure or of acceptance of a deed in lieu of foreclosure by the holder (including here and hereinafter assigns of the holder) of the promissory note secured by a first deed of trust on a deed restricted dwelling unit (hereinafter "the Property"), and subject to the issuance of a public trustee's deed to the holder following the expiration of all statutory redemption rights, the Town of Vail (the "Town") shall have the option to purchase the Property which shall be exercised in the following manner:

a. Notice.

The holder shall give such notice to the Town as is required by law in the foreclosure proceeding.

Said notice shall be sent by certified mail, return receipt requested, and addressed as follows:

Housing Division  
Town of Vail  
75 S. Frontage Road  
Vail, CO 81675

b. Option to Purchase.

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 exercise this option 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 during the option period which are directly related to the foreclosure.

c. Title.

Upon receipt of the option price, the holder shall deliver to the Town a special warranty deed, conveying the property to the Town. The holder shall convey only such title as it received through the public trustee's deed and will not create or participate in the creation of any additional liens or encumbrances against the Property following issuance of the public trustee's deed to the holder. The holder shall not be liable for any of the costs of conveyance to the Town or its designee.

d. Release.

In the event that the holder is issued a public trustee's deed and the Town does not exercise the option to purchase, as provided herein, the Town shall cause to be recorded in the records of the Clerk and Recorder of Eagle County a full and complete release of the \_\_\_\_\_ describe covenants \_\_\_\_\_ affecting the Property which appear in said records in Book \_\_\_\_\_ at Page \_\_\_\_\_. Such release shall be placed of record within 14 days after demand therefor by the holder following expiration of the option and a certified copy of the release shall be mailed to the holder upon its recordation.

e. Perpetuities Savings Clause.

If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or

options created by this Option to Purchase shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) 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 Town Council of the Town of Vail, Vail, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

f. Successors and Assigns.

Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties hereto.

g. Modifications.

The parties hereto agree that any modification to this option to purchase shall be effective only when made by writing signed by both parties and recorded with the Clerk and Recorder of Eagle County, Colorado.

**IX.** For additional information, contact the Housing Division of the Town of Vail Department of Community Development.