

ORDINANCE NO. 2020-18

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, ADOPTING AMENDED DEED RESTRICTIONS FOR AFFORDABLE HOUSING UNITS TO ALLOW FOR RESALE OF UNITS DIRECTLY TO 3RD PARTY PURCHASERS WHO ARE QUALIFIED EMPLOYEES

WHEREAS, the Town of Mountain Village (“Town”) has adopted affordable housing restrictions as set forth in Town Ordinance 2006-7; and

WHEREAS, in addition to setting forth the use and occupancy restrictions for affordable housing units (AHUs), Ordinance 2006-7 requires, among other things, that a deed restriction be recorded against each AHU or lot to apply the restrictions of Ordinance 2006-7 and ensure compliance with the restrictions contained therein; and,

WHEREAS, Ordinance 2006-7 also states that the individual deed restrictions for AHUs cannot be amended without the consent of the Owner and the Town Council or its designee; and

WHEREAS, the affordable housing deed restrictions currently in place for AHUs require that upon sale of an AHU, the AHU must first be re-conveyed to the Town, which then sells the AHUs to another qualified purchaser; and

WHEREAS, the Town believes that requiring re-conveyance to the Town is creating delays and inefficiencies of the transfer of necessary housing for Town employees and therefore wishes to amend the AHU deed restrictions to allow for owners of an AHU to sell their unit directly to a qualified purchaser in the event the owner desires to sell the Unit or otherwise ceases to be a qualified employee as that term is defined in Ordinance 2006-7.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO AS FOLLOWS:

1. Recitals. The foregoing recitals are incorporated by reference as findings and determinations of the Town Council.

2. Amendment to Deed Restrictions. The Town Council hereby approves the amendment of the Town’s affordable housing deed restrictions substantially in the form attached hereto as Exhibit 1 and Exhibit 2 to allow for the resale of an AHU by an owner directly to a qualified purchaser.

3. Public Hearing. A public hearing on this Ordinance was held on the 10th day of December 2020 via virtual Zoom meeting.

INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 19th day of November 2020.

TOWN OF MOUNTAIN VILLAGE

**TOWN OF MOUNTAIN VILLAGE,
COLORADO, A HOME-RULE
MUNICIPALITY**

By: 
Laila Benitez, Mayor

ATTEST:


Susan Johnston, Town Clerk

Approved as To Form:


Paul Wisor, Town Attorney

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 10th day of December 2020

**TOWN OF MOUNTAIN VILLAGE
TOWN OF MOUNTAIN VILLAGE,
COLORADO, A HOME-RULE
MUNICIPALITY**

By: 
Laila Benitez, Mayor

ATTEST:


Susan Johnston, Town Clerk

Approved as To Form:


Paul Wisor, Town Attorney

I, Susan Johnston, the duly qualified and acting Town Clerk of the Town of Mountain Village, Colorado ("Town") do hereby certify that:

1. The attached copy of Ordinance No.2020-18 ("Ordinance") is a true, correct and complete copy thereof.
2. The Ordinance was introduced, read by title, approved on first reading with minor amendments and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held via virtual Zoom meeting, on November 19, 2020, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor	X			
Dan Caton, Mayor Pro-Tem	X			
Martinique Davis Prohaska	X			
Peter Duprey	X			
Patrick Berry	X			
Natalie Binder	X			
Jack Gilbride	X			

3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on November 26, 2020 in accordance with Section 5.2b of the Town of Mountain Village Home Rule Charter.

4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held via virtual Zoom meeting, on December 10, 2020. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor	X			
Dan Caton, Mayor Pro-Tem	X			
Martinique Davis Prohaska	X			
Peter Duprey	X			
Patrick Berry	X			
Natalie Binder	X			
Jack Gilbride	X			

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this 10th day of December 2020.



Susan Johnston
 Susan Johnston, Town Clerk

(SEAL)

EXHIBIT 1

**TOWN OF MOUNTAIN VILLAGE FIRST AMENDED AND RESTATED WEIGHTED
LOTTERY HOUSING PURCHASE PROGRAM DEED RESTRICTION**

(For [AHU Unit Description])

THIS FIRST AMENDED AND RESTATED WEIGHTED LOTTERY HOUSING PURCHASE PROGRAM DEED RESTRICTION (the “**Amended Deed Restriction**”) is made and entered into effective as of December 10, 2020 (the “**Effective Date**”) and hereby amends, deletes, and supersedes in its entirety that certain Town of Mountain Village Weighted Lottery Housing Purchase Program Deed Restriction dated _____ and recorded _____ at the Office of San Miguel County Clerk and Recorder (the “**Official Records**”) at Reception Number _____ (the “**Original Deed Restriction**”) involving [AHU Unit Description] with a legal description attached as Exhibit “A” (the “**Unit**”)

RECITALS

WHEREAS, The Town of Mountain Village, a home rule municipality and political subdivision of the state of Colorado (the “**Town**”) currently owns the Unit.

WHEREAS, the Unit is subject to applicable Town of Mountain Village Ordinance No. 2006-07, as such ordinance may be amended from time-to-time (the “**Ordinance**”) restricting the ownership and occupancy of the Unit to Employees, as that term is defined in the Ordinance (“**Qualified Employees**”), and their spouses or Domestic Partners and children or other dependents while residing with the Qualified Employee. Nothing in this deed restriction amends or terminates the Ordinance or deed restriction of the Unit pursuant to the Ordinance.

WHEREAS pursuant to the Town’s Weighted Lottery Housing Purchase Program, the Town, through a weighted lottery, allows a Qualified Employee the opportunity to purchase the Unit. Ownership of the Unit is further restricted to the Qualified Employee so long as he or she maintains employment which is principally located within the Town.

WHEREAS, the Original Deed Restriction requires the re-conveyance to the Town in the event the owner ceases to be a Qualified Employee. The Town desires to eliminate this requirement and allow an owner of the Unit to sell the Unit directly to a Qualified Employee;

NOW, THEREFORE, in consideration of the mutual agreements and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged and accepted, the Town (for itself and all successors and assigns) hereby places the following restrictions on the Unit:

- I. Ownership of Unit. Ownership of the Unit, and its use and occupancy shall be undertaken subject to the following:
 1. Ownership of the Unit shall be restricted to only one individual and their one spouse/significant other, if applicable, where at least one individual on title to property, with at least a fifty percent (50%) interest, is at all times principally employed by a business principally located and with an active business license

within the Town (“Principal Business”) and shall be known as the “**Qualified Employee.**”

2. In the event the Qualified Employee ceases to be employed by Principal Business for any reason whatsoever, including termination with or without cause; resignation, dismissal, retirement, death, sale of the Principal Business, or any other reason, the owner(s) of the Unit shall be required to sell the Unit pursuant to Section II herein within six (6) months of the Town’s determination, in its reasonable discretion, that the owner ceases to be a Qualified Employee.

II. Sale of Unit to a Qualified Employee. In the event the owner of the Unit fails to maintain status as a Qualified Employee or desires to sell the Unit for any reason, the Unit shall be offered for sale pursuant to the provisions of this section.

- A. Such Owner shall first consult with the Town prior to offering the Unit for sale to review the requirements of this Agreement and the Ordinance.
- B. Such owner shall submit a written Notice of Intent to sell and request for maximum resale price calculation at least 15 days prior to offering the Unit for sale. The method for determining the Maximum Resale Price shall be as set forth in the Ordinance.
- C. Resale of the Unit shall only be to a Qualified Employee. Prior to and as a condition of closing of the sale of the Unit, the owner must obtain written certification from the Town that the potential buyer is a Qualified Employee.
- D. Prior to, and as a condition of closing, the prospective purchaser shall be required to sign an acknowledgement of Deed Restriction for Persons Interested in Purchasing an Affordable Housing Unit.
- E. Closing date for the transaction shall be no later than 6 months after the date the current owner ceases to be a Qualified Employee as determined by the Town in its reasonable discretion.

III. Town Option to Purchase. Pursuant to Section II.5 of the Ordinance, incorporated herein is **Exhibit B**, Town of Mountain Village Affordable Housing Deed Restriction Option to Purchase (the “Option”). The Option shall provide procedures whereby the Town of Mountain Village may acquire the Property in the event of a foreclosure.

IV. The forgoing restrictions on use and occupancy of the Unit constitute covenants that run 50 years from the Effective Date with an option to be extended by the Town for another 50 years, and both-burden and benefit title to the Unit. Such covenants shall be binding on any owner, as well as its respective heirs, personal representatives, assigns, lessees, licensees and any transferees. These restrictions and covenants shall be administered by the Town Council, or its designee, and shall be enforceable by any appropriate legal or equitable action (including, but not limited to, specific performance, injunction, abatement or eviction of non-complying owners, users or occupants, or such other remedies and penalties as may be provided by Colorado law and/or the Town ordinances).

- a. The foregoing restriction shall not be removed for any reason, including but not limited to foreclosure on the Unit by any lender or holder of a mortgage or deed of trust regardless of any provision to the contrary in the Ordinance or otherwise.

IN WITNESS WHEREOF, the Town has executed and delivered this Employee Housing Deed Restriction as of the Effective Date.

Town of Mountain Village, a-home rule municipality and political subdivision of the state of Colorado

By. _____
Laila Benitez, Mayor

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

The foregoing Town of Mountain Village First Amended Weighted Lottery Housing Purchase Program Deed Restriction was acknowledged before me this _____ day of _____ Laila Benitez, Mayor of the Town of Mountain Village.

My commission expires: _____

Notary Public

Witness my hand and official seal.

I/We, _____ and _____ hereby acknowledge and consent to the terms of this First Weighted Lottery Employee Housing Purchase Program Deed Restriction on this _____ day of _____ 2020:

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

The foregoing First Amended Employee Housing Purchase Program Deed Restriction was acknowledged before me this _____ day of _____

My commission expires: _____

Notary Public

Witness my hand and official seal.

Exhibit "A"

Unit Legal Description

Exhibit "B"

Town Option to Purchase

EXHIBIT 2

TOWN OF MOUNTAIN VILLAGE FIRST AMENDED AND RESTATED EMPLOYEE HOUSING PURCHASE PROGRAM DEED RESTRICTION

(For [AHU description])

THIS FIRST AMENDED EMPLOYEE HOUSING PURCHASE PROGRAM DEED RESTRICTION (the “**Amended Deed Restriction**”) is made and entered into effective as of _____, 2020 (the “**Effective Date**”) and hereby amends, deletes, and supersedes in its entirety that certain Town of Mountain Village Employee Housing Purchase Program Deed Restriction dated _____ and recorded _____ at the Office of San Miguel County Clerk and Recorder (the “**Official Records**”) at Reception Number _____ (the “**Original Deed Restriction**”) involving ___ [AHU unit] _____ with a legal description attached as Exhibit “A” (the “**Unit**”)

RECITALS

WHEREAS, The Town of Mountain Village, a home rule municipality and political subdivision of the state of Colorado (the “**Town**”) currently owns the Unit.

WHEREAS, the Unit is subject to applicable Town of Mountain Village Ordinance No. 2006-07, as such ordinance may be amended from time-to-time (the “**Ordinance**”) restricting the ownership and occupancy of the Unit to Employees, as that term is defined in the Ordinance, and their spouses or Domestic Partners and children or other dependents while residing with the Employee. Nothing in this deed restriction amends or terminates the Ordinance or deed restriction of the Unit pursuant to the Ordinance.

WHEREAS pursuant to the Town’s Employee Housing Purchase Program, the Unit is further restricted to ownership by only persons currently employed by the Town of Mountain Village (“**Town Employee**”);

WHEREAS, the Original Deed Restriction requires the re-conveyance to the Town in the event the owner is no longer a Town Employee. The Town desires to eliminate this requirement and allow an owner of the Unit to sell the Unit directly to a qualified Town Employee;

NOW, THEREFORE, in consideration of the mutual agreements and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged and accepted, the Town (for itself and all successors and assigns) hereby places the following restrictions on the Unit:

V. Ownership of Unit. Ownership of the Unit, and its use and occupancy shall be undertaken subject to the following:

3. Ownership of the Unit shall be restricted to only one individual and their one spouse/significant other, if applicable, where at least one individual on title to property, with at least a fifty percent (50%) interest, is a current employee of the Town of Mountain Village and shall be known as the “**Qualified Employee.**” The use and occupancy of the Unit is hereby limited exclusively to a Qualified Employee

and their spouses or Domestic Partners and children or other dependents while residing with the Qualified Employee.

4. In the event the Qualified Employee ceases to be employed by the Town for any reason whatsoever, including termination with or without cause; resignation, dismissal, retirement, death or any other reason, the owner(s) of the Unit shall be required to sell the Unit pursuant to Section II herein within six (6) months of the final date of employment by the Town as determined by the Town's Human Resources Department.

VI. Sale of Unit to a Qualified Employee. In the event the owner of the Unit fails to maintain status as a Qualified Employee or desires to sell the Unit for any reason, the Unit shall be offered for sale pursuant to the provisions of this section.

F. Such Owner shall first consult with the Town prior to offering the Unit for sale to review the requirements of this Agreement and the Ordinance.

G. Such owner shall submit a written Notice of Intent to sell and request for maximum resale price calculation at least 15 days prior to offering the unit for sale. The method for determining the Maximum Resale Price shall be as set forth in the Ordinance.

H. Resale of the Unit shall be to a Qualified Town Employee as determined by the Town's Human Resources Department. Prior to and as a condition of closing of the sale of the Unit, the owner must obtain written certification from the Town and the Housing Authority that the potential buyer is a Qualified Employee.

I. Prior to, and as a condition of closing, the prospective purchaser shall be required to sign an acknowledgement of Deed Restriction for Persons Interested in Purchasing an Affordable Housing Unit.

J. Closing date for the transaction shall be no later than 6 months after the final date of employment by the Town as determined by the Town's Human Resources Department.

VII. Town Option to Purchase. Pursuant to Section II.5 of the Ordinance, incorporated herein is **Exhibit B**, Town of Mountain Village Affordable Housing Deed Restriction Option to Purchase (the "Option"). The Option shall provide procedures whereby the Town of Mountain Village may acquire the Property in the event of a foreclosure.

VIII. The forgoing restrictions on use and occupancy of the Unit constitute covenants that run 50 years from the Effective Date with an option to be extended by the Town for another 50 years, and both-burden and benefit title to the Unit. Such covenants shall be binding on any owner, as well as its respective heirs, personal representatives, assigns, lessees, licensees and any transferees. These restrictions and covenants shall be administered by the Town Council, or its designee, and shall be enforceable by any appropriate legal or equitable action (including, but not limited to, specific performance, injunction, abatement or eviction of non-complying owners, users or

Exhibit "A"

Unit Legal Description

Exhibit "B"

Town Option to Purchase