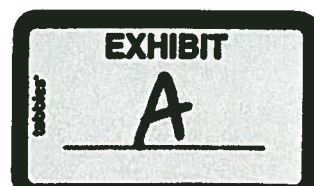


**MILLER RANCH HOUSING GUIDELINES**

October 26, 2010



## **I. PURPOSE**

The Miller Ranch Housing Guidelines (the "Miller Ranch Guidelines") set forth the occupancy requirements, resale procedures, and resale price limitations for the Miller Ranch, deed-restricted housing. Additional information pertaining to Miller Ranch, deed-restricted housing can be found in the Deed Restriction Agreement for the Occupancy and Resale of Miller Ranch Housing (the "Miller Ranch Deed Restriction"), the Eagle County Local-Resident Housing Guidelines (the "Housing Guidelines"), and the Eagle County Local-Resident Housing Guidelines: Administrative Procedures (the "Administrative Procedures") (collectively the "Eagle County Guidelines"). In the event of conflict, the Miller Ranch Deed Restriction controls over the Miller Ranch Guidelines, which both control over the Eagle County Guidelines.

**THESE MILLER RANCH GUIDELINES HEREBY VACATE AND SUPERSEDE ALL PRIOR VERSIONS OF THE MILLER RANCH HOUSING GUIDELINES AND EXHIBITS AND ARE EFFECTIVE UPON ADOPTION.**

## **II. DEFINITIONS**

- A.** "Owner" is a person or persons who is/are a Qualified Buyer who acquires an ownership interest in the Miller Ranch unit in compliance with the terms and provisions of the Miller Ranch Deed Restriction and the Miller Ranch Guidelines.
- B.** "Property" is the real property described in Exhibit "A" of the Miller Ranch Deed Restriction and all dwellings, appurtenances, improvements, and fixtures associated therewith.
- C.** "Qualified Buyers" are natural persons meeting the requirements as determined by the Program Administrator and as set forth in the Eagle County Guidelines, as amended from time to time.
- D.** "Unit" is any of the units that comprise the Property including but not limited to condominiums, townhomes, duplexes, and single-family homes. "Unit" shall not include the community center and day care facility that may be located on the Property.
- E.** "Program Administrator" is the administrator of the Miller Ranch Guidelines. The Program Administrator shall be the Eagle County Housing and Development Authority or the designee.

## **III. MAXIMUM RESALE PRICE**

An Owner may sell a Unit provided that the resale price and Qualified Buyers meet the standards set forth in the Miller Ranch Deed Restriction and the Miller Ranch Guidelines. To the extent the Miller Ranch Deed Restriction and the Miller Ranch Guidelines are silent, the Eagle County Guidelines shall control. The resale price may not exceed the following:

- A.** The Owner's purchase price for the Property, excluding all costs related to financing the Property at the time of closing or during the life of ownership, any interest paid mortgages secured by the Property (including "points" paid at the time of initial financing or refinance), plus the percentage increase for each year (compounded annually) of the average wage for Eagle County as determined by the Colorado Department of Labor and Employment.
1. In the event that an Owner owns the Property or a Unit for only a portion of any year the percentage increase shall be prorated quarterly from the date of purchase and the Owner shall be given credit through the quarter in which the sale occurs.
  2. If the percentage increase in the average wage for Eagle County as determined by the Colorado Department of Labor and Employment is greater than six percent (6%) in a given year the percentage increase that an Owner may claim for purposes of determining the Maximum Sales Price shall be six percent (6%) for that year.
  3. If the percentage increase in the average wage for Eagle County as determined by the Colorado Department of Labor and Employment is less than three percent (3%) in a given year then the percentage increase that an Owner may claim for purposes of determining Maximum Sales Price shall be three percent (3%) for that year.
  4. There may be a delay in the publication of statistics from the Colorado Department of Labor and Employment. Therefore the calculation of Maximum Sales Price shall be based upon the most current available data. If data for the year of sale is not available then the Owner shall rely on the most current data available for purposes of calculating the Maximum Sales Price.
- B.** Permitted Capital Improvements shall be approved by the Program Administrator and calculated in accordance with the Eagle County Guidelines, except as expressly provided herein and in the Miller Ranch Deed Restriction.
1. The Owner may also add as a Permitted Capital Improvement, the cost of permanent improvements constructed or installed as a result of a capital improvement as applied to individual units required or imposed by any governmental agency, or required by special assessment by a Condominium or Townhome Association for such permanent improvements for the proportionate amount of the expense, provided that written certification and documentation from such agency or association is provided to the Program Administrator. Association assessments for

regular maintenance items or replacement of existing items will not be included.

- C. In addition to the items identified in sub-paragraphs (A) and (B) of this Section III hereof an Owner may add the actual sales costs as indicated in Section IV below, not to exceed two (2%) percent of the Maximum Sales Price as calculated above.
- D. Sample Miller Ranch Maximum Sales Price calculations are attached in Exhibit "A".

#### **IV. SELLING MILLER RANCH UNITS**

##### **A. Listing and Sales of Miller Ranch Units**

1. Owner shall execute a standard listing contract on forms approved by the Program Administrator providing for 180-day listing period or other such listing period approved by the Program Administrator.
2. Owner shall cooperate with the Program Administrator to review the deed restrictions recorded against the unit and Permitted Capital Improvements in order to determine the maximum resale price permitted and other applicable provisions concerning a sale. The Program Administrator determines the maximum resale price.
3. Unless otherwise set forth in the Miller Ranch Deed Restriction covering the Unit, at the closing of the sale, the seller will pay the Program Administrator an administrative sales fee equal to two (2%) percent of the actual sales price. The seller shall instruct the title company to pay said fees to the Program Administrator out of the funds held for the seller at closing. 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 of two percent (2%) 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 withdraws the listing after advertising has commenced, that portion of the fee will not be refunded. Additionally, if the cost to sell a unit exceeds the fee, the Program Administrator may ask the owner to directly incur those costs.

Unless otherwise provided in the Miller Ranch Deed Restriction, the Program Administrator will administer the sale in accordance with the most recent Eagle County Guidelines.

##### **B. Closing Costs and Adjustments to the Maximum Resale Price**

Owners shall not permit any Qualified Buyers to assume any of the Owner's customary closing costs, including the fees set forth herein, nor accept any other consideration that would increase the purchase price above the Maximum Resale Price.

1. The Miller Ranch Guidelines are intended to ensure that all sellers and all buyers are treated fairly and impartially. The Program Administrator will provide unbiased explanation and information to any potential sellers or buyers in accordance with the current Miller Ranch Guidelines. The Program Administrator will execute listing contracts, sales contracts, contract extensions and amendments, and closing documents and will take all reasonably required actions to complete the sale.
2. The Program Administrator acts as a transaction administrator on behalf of both the buyer and the seller. A transaction administrator assists the buyer and seller throughout a real estate transaction by performing terms of the listing agreement, fully informing the parties, presenting all offers and assisting the parties with any contracts, including the closing of the transaction without being an agent or advocate for any of the parties. A transaction administrator must use reasonable skill and care in the performance of any listing agreement, and must make the same disclosures as agents about all adverse material facts actually known by the transaction administrator concerning a property or a buyer's financial ability to perform the terms of a transaction and if a residential property, whether the buyer intends to occupy the property.
3. **Sellers and buyers are advised to consult legal and tax 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 (excluding all sales fees), shall be at the seller's or buyer's own expense and shall not be included in the Maximum Resale Price. The administrative fees paid to the Program Administrator are to be paid regardless of any actions or services that the sellers or buyers may undertake or acquire.**

#### **C. Deed Restriction**

The buyer must execute, in a form satisfactory to the Program Administrator and for recording with the Eagle County Clerk and Recorder concurrent with the closing of the sale, a document acknowledging the buyer's agreement to be bound by (1) the Miller Ranch Deed Restriction, which will run with the property in perpetuity; and (2) these Miller Ranch Guidelines as may be amended from time to time.

**D. Agreement with Town of Vail**

Pursuant to the terms of the Intergovernmental Agreement between Eagle County and the Town of Vail, attached hereto as Exhibit "B", it is agreed that County will make an effort to place Qualified Buyers who are employed within the Town of Vail in one-half of the units on the Property. Specifically, upon resale the units will be rotated such that the first unit that becomes available for sale shall be a County unit, the second a Town unit, the third a County unit and continuing in such a rotating pattern. When a Town unit becomes available in the rotation, the Program Administrator shall assign a preference of five points for applicants who are employed within the Town of Vail and who apply for a Town unit in addition to other points an applicant may otherwise receive under the Eagle County Guidelines. The Town units shall then be sold to the highest-ranking Qualified Buyer whether employed within the County or the Town.

**V. PURCHASING MILLER RANCH UNITS**

**A. Eligibility**

Households interested in purchasing a Miller Ranch unit must be verified as Qualified Buyers by the Program Administrator by meeting the requirements set forth in the Eagle County Guidelines.

**B. Application Process**

Applicants must follow the Eagle County Guidelines application process as described in the Eagle County Guidelines.

**C. Trust Ownership**

The Eagle County Guidelines govern sale of a Miller Ranch unit involving Trust Ownership.

**D. Selection Criteria**

Once basic eligibility has been met, the Program Administrator will rank Qualified Buyers in appropriate unit-type categories according the criteria listed in the Eagle County Guidelines and as provided herein.

**VI. OCCUPANCY REQUIREMENTS**

**A. Maintaining Occupancy**

The Eagle County Guidelines govern the occupancy requirements for the Property.

**B. Re-Certification of Miller Ranch Housing**

The Eagle County Guidelines govern the re-certification requirements for the Property.

**C. Leave of Absence**

The Eagle County Guidelines govern the leave of absence requirements for the Property.

**VII. MODIFICATION**

The Guidelines may be modified by the Eagle County Housing and Development Authority, in consultation with the Board of County Commissioners of Eagle County, after hearing on the record.

**VIII. GRIEVANCE PROCEDURES**

The Eagle County Guidelines govern grievance procedures related to the Property.

**IX. ADDITIONAL INFORMATION**

For additional information, contact The Valley Home Store or the Housing and Development Department of Eagle County.

# EXHIBIT "A"

## SAMPLE CALCULATION OF MAXIMUM SALES PRICE

A Miller Ranch home is purchased on August 3, 2004 for \$100,000. The seller wishes to sell in July 2009. To determine the maximum resale price:

1. Verify the published numbers concerning the average weekly wage increase percentage as prepared by the Colorado Department of Labor and Employment in Eagle County for each year in question.
2. Determine Base Price as defined in the Miller Ranch Deed Restriction and Miller Ranch Guidelines.
3. Review approved Permitted Capital Improvements upon the time of sale based on the Miller Ranch Deed Restriction and Miller Ranch Guidelines.
4. Additional sales costs not to exceed 2% may be added onto the maximum resale price.

The calculation for this example may appear similar to the following, except as provided for in the Miller Ranch Deed Restriction or most current Miller Ranch Guidelines:

Eagle County	Wage Increase in %	Months / year	Quarters	Purchase Price	Appreciation	Maximum Sale Price
2004	3.271 %	5	2	\$100,000	\$1,363	\$101,363
2005	5.769 %	12	4	\$101,363	\$5,848	\$107,211
2006	6.000 %	12	4	\$107,211	\$6,433	\$113,643
2007	4.256 %	12	4	\$113,643	\$4,837	\$118,480
2008	3.187 %	12	4	\$118,480	\$3,776	\$122,256
2009	3.000 %	7	2	\$122,256	\$2,139	\$124,395

Steps:		
1 + 2	Base Price + Appreciation (above)	\$124,395
3	Approved Capital Improvements	+ \$10,000
		\$134,395
4	2% Sales fee	+ \$2,688
	<b>Maximum Resale Price</b>	<b>\$137,083*</b>

**\* MAXIMUM RESALE PRICE NOT GUARANTEED. UNIT MAY DECLINE IN VALUE AND MAY RESULT IN A NET LOSS TO THE HOMEOWNER. PAST PERFORMANCE OF HOME PRICES IS NOT AN INDICATOR OF FUTURE PERFORMANCE.**



# **EXHIBIT “B”**

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF EAGLE,  
STATE OF COLORADO AND THE TOWN OF VAIL, STATE OF COLORADO  
CONCERNING MILLER RANCH HOUSING**

C03-69-10

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE COUNTY OF EAGLE, STATE OF COLORADO  
AND  
THE TOWN OF VAIL, STATE OF COLORADO  
CONCERNING MILLER RANCH HOUSING**

**THIS INTERGOVERNMENTAL AGREEMENT** is made and entered into this 19<sup>th</sup> day of February, 2003, by and between the County of Eagle, State of Colorado, a body corporate and politic, by and through its Board of County Commissioners (hereinafter the "County"), and the Town of Vail, State of Colorado, a municipal corporation, by and through its Town Council (hereinafter the "Town").

**RECITALS**

The parties recite and declare as follows:

1. By Intergovernmental Agreement dated October 25, 1999, ("IGA") the Town and the County agreed to work together to develop employee housing on what is now known as Tract D, Berry Creek/ Miller Ranch Planned Unit Development, Eagle County, Colorado (the "Property"); and
2. In that IGA the Town agreed to participate in the development of employee housing on the Property and to pay fifty percent (50%) of the costs associated with the development and construction of employee housing on the Property. Pursuant to the terms of that IGA the Town and the County were each entitled to designate the rules for sale or rental of 50% of the Units.
3. The Town and the County now desire to redefine their relationship and enter into this new agreement the terms of which shall control their relationship with respect to employee housing to be developed on the Property.
4. County is presently the owner of the Property which is to be developed by Berry Creek Limited Liability Company pursuant to the terms of a Development Agreement dated March 12, 2002 ("Development Agreement") and the terms of a Land Lease and Option Agreement ("Option Agreement") dated August 20, 2002. It is anticipated that Berry Creek Limited Liability Company will construct 282 units consisting of mill lofts, row houses, duplexes and single family homes on the Property in three phases. Berry Creek Limited Liability Company will then sell the units to qualified buyers pursuant to the terms of a deed restriction and corresponding guidelines.
5. Each party has the authority to enter into and execute this Agreement.

**NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the County and the Town agree as follows:**

- 1. The IGA dated October 25, 1999 between Eagle County and Town of Vail is hereby terminated and the terms of that IGA shall no longer control or govern the relationship between the parties concerning the Property.**
- 2. County shall pay to Town \$1,000,000 within two weeks of appropriation of the funds and adoption of a supplemental budget by the Board of County Commissioners. Such payment shall represent full and final payment to Town by County. Town hereby waives its right to receive any other monies from County in association with the Property or sale of the units. Such waiver includes any funds which might have been, are now or in the future may be due to Town under that certain Development Agreement dated March 12, 2002 between County and Berry Creek Limited Liability Company and under the terms of the Land Lease and Option Agreement dated August 20, 2002, between County and Berry Creek Limited Liability Company.**
- 3. Town hereby waives its right to receive any sums from the development as set forth in paragraph 2 hereof and the Town shall not be required to contribute to the development or pay any portion of the development costs associated with the Property unless otherwise set forth in a subsequent agreement between the parties.**
- 4. Eagle County shall, without interference from Town, implement and administer its Deed Restriction Agreement for the Occupancy and Resale of Miller Ranch Housing ("Master Deed Restriction") and the Miller Ranch Housing Guidelines ("Guidelines") on all units constructed on the Property. Such Master Deed Restriction and Guidelines may be amended from time to time as necessary to obtain Fannie Mae approval and as permitted in those documents. Eagle County shall provide copies of formally adopted Restrictions and Guidelines to Town.**
- 5. Eagle County will make best efforts to place Qualified Buyers who are employed within the Town in one-half of the units on the Property pursuant to the terms of this Agreement and as set forth in this paragraph 5. Specifically, upon resale the units will be rotated such that the first unit that becomes available for sale will be a County unit, the second unit which becomes available for sale shall be a Town unit, the third a County unit and continuing in such a rotating pattern. When a Town unit becomes available in the rotation, the County shall utilize its preference and lottery process which is based upon longevity and employment within Eagle County. Eagle County shall assign a preference of five points for applicants who are employed within the Town of Vail and who apply for a Town unit in addition to other points an applicant may otherwise receive under the Guidelines. The Town unit shall then be sold to the highest ranking employee whether employed within the County or the Town. The five point preference for Town employees shall not be applied to the lottery process for County units.**

**During the initial sales process, units are released for sale by Berry Creek Limited**

Liability Company in groups. Thus it is agreed that the rotation of individual units set forth above shall not apply to initial sale, but rather to resale of individual units. It is understood by the parties that at the time of entering into this Agreement that Berry Creek Limited Liability Company has conducted its first lottery with respect to the first release of Miller Ranch units. Berry Creek Limited Liability Company conducted that lottery with the goal of preserving the fifty/fifty split of units. It is understood and agreed that Berry Creek Limited Liability Company will continue to conduct the initial sales process by applying the lottery criteria set forth in the Guidelines with a goal, but not a guarantee, of placing applicants employed within the Town in one-half of the units.

6. County agrees that Ten of the Town of Vail units shall be reserved for the Eagle River Water and Sanitation District ("District") and its employees. The District or its employees shall be entitled to purchase from the initial sales as follows: one row house, one mill loft and one ½ duplex in Phase I; one row house, one mill loft and one ½ duplex in Phase II; and one mill loft, one row house, one ½ duplex and one single family home in Phase III. The specific units allocated to the Eagle River Water and Sanitation District in each phase shall be the last of such unit type offered for sale in each phase. District shall not be allocated the last of such unit type in each phase if such unit type has been previously purchased in that phase by a qualified District employee through the lottery process. Upon purchase of the foregoing ten units by District or its employees the same shall be known as the "District Units". In the event the District or its employees do not elect to purchase the foregoing units during the initial sales process, such units shall become part of the pool of units available to qualified buyers and shall not be considered District Units.

7. The District Units may be purchased by employees of the District or the District with a goal of housing its employees. District units may also be sold to other qualified buyers. County has no objection to the Eagle River Water and Sanitation District being offered an opportunity to purchase a District Unit in compliance with the Master Deed Restriction and Guidelines before sale to another qualified buyer. If the District elects not to exercise its right to purchase, and there is no qualified District employee to purchase, such unit shall become part of the pool of units available to all other qualified buyers on a rotating basis and the unit shall no longer be considered a District Unit. In the event of ownership by the District, the District shall rent to qualified buyers and it is the strong goal to have all units owned by qualified buyers.

To ensure the successful performance of the terms of paragraphs 6 and 7 hereof, it shall be the sole obligation of the Town to arrange for the preparation of an option to purchase to secure the District's rights and obligations hereunder which may be recorded against the District Units and shall be accepted and approved by the District. The same shall contain the terms and conditions as set forth herein and shall be subject to review and approval by County prior to recording.

8. The sale and resale of all Units shall comply with the Master Deed Restriction and Guidelines affecting the Property. Third parties may not impose more restrictive or different

requirements.

9. The County and the Town hereby respectively designate the following individuals to receive any notice required under this Agreement which shall be sent by fax and regular or certified mail, postage prepaid as follows:

**COUNTY:** Eagle County Attorney  
P. O. Box 850  
Eagle, CO 81631  
(970) 328-8685  
(970)328-8699 (fax)

**TOWN:** Town Attorney  
Town of Vail  
75 South Frontage Road West  
Vail, CO 81657  
(970)479-2107  
(970)479-2157(fax)

10. No modification or waiver of this Agreement or of any covenant, condition or provision herein contained shall be valid unless in writing and duly executed by all of the parties hereto.

11. This written agreement embodies the whole agreement between the parties hereto, and there are no inducements, promises, terms, conditions, or obligations made or entered into by any of the parties hereto other than those contained herein.

12. This Agreement shall be binding upon the parties hereto, their respective successors or assigns, and may not be assigned.

13. All agreements and covenants herein are severable, and in the event that any of them shall be held invalid by a court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.

14. The Town has represented to the County and the County has represented to the Town that each possesses the legal ability to enter into this Agreement. In the event a court of competent jurisdiction determines that either of the parties hereto did not possess the legal ability to enter into this Agreement, this Agreement shall be considered null and void as of the date of such court determination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.



COUNTY OF EAGLE, STATE OF COLORADO, By and Through Its BOARD OF COUNTY COMMISSIONERS

ATTEST:

*Teak L. Simonton*  
*By Earlene Koch, Deputy*  
Teak L. Simonton, Clerk to the Board of County Commissioners

*Michael L. Gallagher*  
Michael L. Gallagher,  
Chairman

TOWN OF VAIL, STATE OF COLORADO, By and Through Its TOWN COUNCIL

ATTEST:

*Lizbeth Donaldson*  
Clerk to the Town Council

By: *Pat H. Hagan*  
Its: *Town Manager*

