

**SMUGGLER PARK SUBDIVISION
RESALE AGREEMENT**

THIS AGREEMENT made and entered into this _____ day of _____ 20__ by and between _____ (hereinafter referred to as "Owner"), and the County of Pitkin, State of Colorado and through its designee, ASPEN/PITKIN COUNTY HOUSING AUTHORITY (hereinafter called "Housing Authority") a duly constituted multi-jurisdictional housing authority established pursuant to the FOURTH AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT by and between the City of Aspen, Colorado (the "City") and Pitkin County, Colorado (the "County"), dated December 20, 2007 and recorded at Reception No. 545387 on January 2, 2008 of the records of the Pitkin County Clerk and Recorders Office.

WITNESSETH

WHEREAS, the Owner has purchased that real property located at _____, Aspen, Colorado (hereinafter the "Property"), more specifically described as follows:

Lot _____, First Amended Plat, SMUGGLER PARK SUBDIVISION, according to the Plat thereof recorded in the office of the County Clerk and Recorder of Pitkin County, Colorado on May 14, 1987 in Plat Book 19 at Page 61 as Reception No. 288794; Plat recorded January 7, 1993 in Plat Book 30 at Page 20 as Reception No. 352684; the Third Amended Plat, Smuggler Park Subdivision, according to the Plat thereof recorded in the office of the County Clerk and Recorder of Pitkin County, Colorado on October 26, 2000 in Plat Book 54, Page 71 and on January 2, 2001 in Plat Book 55, Page 54 as Reception No. 450166, County of Pitkin, State of Colorado.

WHEREAS, the Owner acknowledges that the Property is subject to certain resale restrictions as contained in the Amendment to Precise Plan and Subdivision Agreement for Smuggler Mobile Home Park recorded in Book 535 at Page 975 of the records of Pitkin County, Colorado, which restrictions are for the purpose of addressing the housing needs of the area;

WHEREAS, this document supercedes any previous deed restriction agreement for occupancy and resale associated with this unit; and

WHEREAS, the parties hereto desire to insure that, upon resale, the Property is again made available to satisfy the need for employee housing in the City of Aspen and in Pitkin County.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10) and other good and valuable consideration, the parties agree as follows:

1. **Sale of Property.** At any time the Owner intends to sell the Property, the Owner shall notify the Housing Authority in writing of his/her intention to do so. The Housing Authority shall qualify prospective purchasers per paragraph 2 of this agreement. The Seller (Owner) is not required to sell the property through the Housing Authority. If Seller does not sell the Property through the Housing Authority, Seller shall pay a fee of one-quarter percent (1/4%) of the total sales price at the time of closing to the Housing Authority. If the Seller lists the Property with the Housing Authority, one percent (1%) of the listing price shall be paid to the Housing Authority at the time of

the listing with an additional amount to be paid by Seller at the time of closing, for a total equal to two percent (2%) of the total sale price

2. Qualified Purchasers. The following restrictions shall apply in determining whether a purchaser is qualified to purchase said Property:

- a. The Property shall be offered for sale to persons actually employed within the City of Aspen or Pitkin County, or other individuals deemed qualified by the Aspen/Pitkin County Housing Authority, including but not limited to, qualified retirees and pensioners. Any individual or individuals who purchase said Property must agree, as a condition of sale and, in fact, must personally occupy the Property as a primary residence during the period of ownership.
- b. Should there be no qualified purchasers as stated in a. above after a period of four (4) months from the date the Property is first listed for sale, the Property may then be offered for sale to any resident of Pitkin County. The purchaser or purchasers must agree as a condition of sale and, in fact, must personally occupy such Property as a primary place of residence during the period of ownership, and their occupancy must be approved by Smuggler Homeowners' Association.

3. Exempt Transfers. The following transfers of any interest in the Property, unless adopted to avoid the provisions of this Agreement, shall be exempt from its provisions:

- a. a transfer by operation of law of a deceased person's interest to the surviving joint tenant;
- b. a transfer of an interest by will or inheritance;
- c. a transfer by genuine gift without any consideration thereof;
- d. a transfer of an interest to a trustee for the benefit of the Owner or the Owner's spouse or issue;
- e. a transfer by operation of law of an interest of an Owner to any other co-owner (or co-owners) where such co-owner (or co-owners) hold title on the date of such transfer as tenant-in-common or as a joint tenant;
- f. a transfer of an interest by Treasurer's deed pursuant to a sale for delinquent taxes; or by a Sheriff's or Public or Private Trustee's deed pursuant to a judgment execution or foreclosure sale, but only for debts constituting a purchase money mortgage.

Anything above to the contrary notwithstanding, in the event that the Property shall be transferred in any manner described in paragraphs a through f above, the transferee, his grantees or successors in interest, shall be bound by the terms and conditions of this Agreement in the same manner and degree as if no exempt transfer had occurred.

4. Burden of Agreement. In the event that any Property burdened hereunder be sold and conveyed without compliance herewith, such sale shall be wholly null and void and shall confer no title whatsoever upon the intended purchaser. Each and every conveyance of the Property shall, for all purposes, be deemed to include and incorporate by reference in such instrument of conveyance, even without reference hereto, the covenants contained herein.

5. Change in Residency. The Owner agrees that, in the event he ceases to utilize the Property as his sole and exclusive place of residence when in Aspen, Colorado he will offer the same for sale pursuant to the provisions of this Agreement. The Owner shall be deemed to have ceased to utilize the Property as his sole and exclusive place of residence when in Aspen, Colorado, by failing to personally reside in the Property for more than six (6) months per year without such justification as is acceptable to the Board of Directors of the Smuggler Homeowners' Association. It is recognized that no Property may be leased for any period of time without the written permission of the Smuggler Homeowners' Association.
6. Wrongful Interest. In the event any person with an ownership interest acquires such interest without intending to use the same as his sole and exclusive place of residence, then all other persons with an ownership interest shall simultaneously offer the same for sale pursuant to the provisions of this Agreement, and the Property shall become available for purchase pursuant to the provisions of Paragraphs 1 through 4 above.
7. Notices. Any notice that is required to be given hereunder shall be given by mailing the same, certified mail, to any address provided herein or given as the current mailing address of the party.
8. Covenants to Run with Land. The provisions of this Agreement shall be covenants running with the land, be binding upon the Owner and the City, his or its heirs, successors and assigns (and enforceable by any of them) and shall run for the period of the life of the survivor of the members of the present City Council, plus twenty-one (21) years.
9. Definition of Owner and Housing Authority. The term "Owner" as used herein shall refer to any and all persons (without regard to number or gender) or entities having an ownership interest in the condominium Property that is the subject of this Agreement. The term "Housing Authority" shall mean and include the City Council of the City of Aspen and/or such person or entity now or hereafter designated by the City Council to administer the terms of this Agreement on behalf of the City.
10. Obligations at Closing. At the time of any sale of the Property pursuant to the terms of this Agreement, the Owner shall provide (at his cost) title insurance (or other evidence of title); and any taxes, assessments, utility bills, etc., shall be pro rated to the date of closing. Each party to the transaction shall assume his customary closing costs.
11. Remedies Upon Breach. There is hereby reserved to the party's hereto any and all remedies provided by law for breach of this Agreement or any of its terms and the prevailing party in any litigation shall be entitled to an award of its reasonable attorney's fees.
12. Acknowledgment of Understanding. The Owner acknowledges that he has read and fully understands and accepts the terms and conditions of this Agreement limiting the resale and rental of the Property; and further acknowledges that he is relying upon no oral representations qualifying or limiting the terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the date and year above first written.

OWNER:

STATE OF COLORADO)
)
) ss.
COUNTY OF PITKIN)

The foregoing document was acknowledged and sworn to before me this _____ day of _____
20____ by _____.

My commission expires: _____: Witness my hand and official seal.

Notary Public

ACCEPTANCE BY THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY

_____, Executive Director
530 East Main, Suite 001, Aspen, Colorado 81611

STATE OF COLORADO)
)
) ss.
COUNTY OF PITKIN)

The foregoing document was acknowledged and sworn to before me this _____ day of _____
20____ by _____, Executive Director, Aspen/Pitkin County Housing Authority.

Witness my hand and official seal.

Notary Public