

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PITKIN COUNTY, COLORADO, AUTHORIZING THE COUNTY MANAGER AND COUNTY ATTORNEY TO EXECUTE THE INSTRUMENTS NECESSARY TO COMMIT APPROPRIATED FUNDING IN ORDER TO ADD TO THE PITKIN COUNTY EMPLOYEE DEED RESTRICTED HOUSING PROGRAM INVENTORY.**

**ORDINANCE NO. \_\_\_\_\_-2017**

**RECITALS:**

1. Pursuant to 30-35-301 C.R.S., the Board of County Commissioners (“BOCC”) of Home Rule Counties is authorized to make and publish ordinances for carrying into effect or discharging the powers and duties conferred upon such counties by law and as seems necessary.
2. Pursuant to Section 2.8.1 of the Home Rule Charter (“HRC”), the BOCC is authorized to take official action by Ordinance for certain matters where action is prescribed pursuant to the Colorado Revised Statutes as amended.
3. On May 25, 2005, the BOCC adopted Ordinance No. 023-2005 adopting a revised employee housing impact fee in which all proceeds shall be used for the construction or acquisition of capital assets with a life span of five (5) or more years.
4. After codification in 2006 into the new land use code, the BOCC on November 14, 2007, adopted Ordinance No. 027-2007 amending section 8-30 of the Pitkin County Land Use Code revising the employee housing impact fee for commercial and tourist/lodge accommodation development and land use.
5. On September 23, 2009, the BOCC adopted Ordinance No. 023-2009 amending the road impact fee schedule and annual adjustment along with impact fees for small established commercial business and change of use.
6. In 2017, the BOCC approved a budget that contains \$1,000,000 of housing funds along with \$1,000,000 of funding derived from fees associated with the operations of the Aspen/Pitkin County Airport in order to implement the Employee Home Ownership Deed Restricted Affordable Housing Program for general Pitkin County employees and those working directly for the airport. Future funding towards this program will be appropriated through BOCC actions during the annual budgeting process.
7. The BOCC is in a position to acquire real property in the form of a deed restriction known as the Occupancy and Resale Deed Restriction, Agreement and Covenant (Exhibit A).

8. The purpose of these acquisitions is to enable housing for employees under the County's Deed Restricted Housing Program
9. The approval of property under the Deed Restricted Housing Program must adhere to the Pitkin County Deed Restricted Housing Guidelines.
10. The BOCC recognizes that it is the best interest of the employees of Pitkin County to adopt this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Pitkin County, Colorado that it hereby adopts an Ordinance authorizing the County Manager and County Attorney to execute the instruments necessary to commit appropriated funding in order to add to the Pitkin County employee deed restricted housing program inventory and authorizes the chair or the chair's designee to sign the Ordinance and upon the satisfaction of the County Attorney as to form, execute any other associated documents necessary to complete this matter.

INTRODUCED AND FIRST READ ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017 AND SET FOR SECOND READING AND PUBLIC HEARING ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017.

NOTICE OF PUBLIC HEARING AND TITLE AND SHORT SUMMARY OF THE RESOLUTION PUBLISHED IN THE ASPEN TIMES WEEKLY ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

NOTICE OF PUBLIC HEARING AND THE FULL TEXT OF THE RESOLUTION POSTED ON THE OFFICIAL PITKIN COUNTY WEBSITE ([www.pitkincounty.com](http://www.pitkincounty.com)) ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017.

ADOPTED AFTER FINAL READING AND PUBLIC HEARING ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017.

PUBLISHED BY TITLE AND SHORT SUMMARY, AFTER ADOPTION, IN THE ASPEN TIMES WEEKLY ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

POSTED BY TITLE AND SHORT SUMMARY ON THE OFFICIAL PITKIN COUNTY WEBSITE ([www.pitkincounty.com](http://www.pitkincounty.com)) ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_.

ATTEST:

BOARD OF COUNTY COMMISSIONERS

By \_\_\_\_\_  
Jeanette Jones  
Deputy County Clerk

By: \_\_\_\_\_  
George Newman, Chair

Date: \_\_\_\_\_

APPROVED AS TO FORM:

MANAGER APPROVAL

\_\_\_\_\_  
John Ely, County Attorney

\_\_\_\_\_  
Jon Peacock, County Manager



# Pitkin County

## Employee Deed Restricted Program

### GUIDELINES

Pitkin County is committed to retaining and recruiting dedicated and knowledgeable employees to serve Pitkin County residents and visitors. Housing costs represent a significant challenge to this goal. Pitkin County has created the Deed Restricted Program (DR) as a retention and recruitment tool. The benefit involves the County partnering with an employee to take an ownership interest in a property to make home ownership a possibility for employees that qualify under the following conditions.

<p>A. Eligibility for Benefit</p>	<ul style="list-style-type: none"> <li>• Regular full time employees in good standing.</li> <li>• Employee may only receive this benefit once during their employment with the County.</li> <li>• The benefit is provided on a first come first served basis, and is subject to annual budget appropriations.</li> <li>• The benefit is not offered based on job classification or other factors other than those that follow. In the event two employees purchase a property together only one benefit subject to the limitations in paragraph E shall be provided.</li> </ul>
<p>B. Property Eligibility</p>	<ul style="list-style-type: none"> <li>• Primary residence only.</li> <li>• Property must be located within Pitkin, Eagle or Garfield Counties between Aspen and Carbondale. Eligible homes must be real property and permanently attached to a foundation and conform to all prevailing building code standards.</li> <li>• Property must be free market (no deed restriction).</li> <li>• Employee or their spouse may not own or have an ownership interest in other developed residential property within the <u>Aspen/Pitkin County Housing Authority Ownership Exclusion Zone</u>.</li> <li>• The property shall not be sub-let or rented by the occupant.</li> <li>• All purchases eligible for this benefit must have an appraised value at or above the proposed purchase price at the time of purchase.</li> </ul>
<p>C. Maximum Purchase Price</p>	<p>A maximum purchase price is not specified, but will be limited by paragraphs E, F, G and H.</p>
<p>D. Income Threshold</p>	<p>Based on paragraph G</p>
<p>E. Maximum Amount of Benefit</p>	<p>\$300,000 or 40% of the property purchase price (whichever is less). County investment shall be at least 15% of the purchase price.</p>
<p>F. Compatible Financing</p>	<ul style="list-style-type: none"> <li>• Employee and co-borrower(s) must qualify for a primary mortgage financing through a reputable lending institution.</li> <li>• The Benefit will only be offered in conjunction with a fixed or variable mortgage with a term of 30 years or less.</li> <li>• FHA, Subprime and other non-conforming products cannot be used in conjunction with this benefit.</li> </ul>
<p>G. Debt Ratio</p>	<ul style="list-style-type: none"> <li>• The maximum back-end total ratio for overall debt is 45%.</li> </ul>



# Pitkin County

## Employee Deed Restricted Program

	<ul style="list-style-type: none"> <li>The estimated payments for the first mortgage, property insurance, HOA fees, property taxes, and utilities (based on prior 12 month average) may not exceed front-end housing 35% of the household income.</li> </ul>
H. Ratio of benefit and Loan to Property Value	<ul style="list-style-type: none"> <li>The total value of the benefit and outstanding debt on the property may not exceed purchase price without approval from the County.</li> </ul>
I. Minimum Investment	<ul style="list-style-type: none"> <li>Employee must have a minimum direct investment of 10% of the purchase price from a source acceptable to the primary lender. In no case may the seller or premium pricing of the mortgage interest rate satisfy this minimum requirement.</li> </ul>
J. Use of Benefit	<ul style="list-style-type: none"> <li>Benefit to be applied directly to the investment. Under no circumstances shall the employee directly receive the funds.</li> <li>County contribution based on total transaction costs.</li> </ul>
K. Right of First Refusal	<ul style="list-style-type: none"> <li>A covenant and de minimus note shall be recorded with the deed giving Pitkin County the first right of refusal to purchase the property in the event of default or the employee's decision to sell the property.</li> </ul>
L. Deed Restriction	<p>The County shall have a covenant recorded on the property that defines the occupant's responsibilities to the County during occupancy and upon sale. The covenant shall provide the County a first right of refusal to purchase in the event of default, separation from county employment, or the employee's decision to sell the property. The covenant shall also define the purchase price calculation for the County to purchase the employee's share of the property. If an employee separates service from the County, the employee shall have 90 days to sell the property to the County for an amount set forth in the Deed Restriction. Events that trigger the County's first refusal option include:</p> <ul style="list-style-type: none"> <li>Separation from County employment</li> <li>Employee would like to sell the property</li> <li>Refinances the primary loan*</li> <li>Defaults on the primary loan</li> <li>Employee does not occupy the property as their primary residence</li> <li>Purchases other developed residential property within the <u>Aspen/Pitkin County Housing Authority Ownership Exclusion Zone</u>.</li> <li>The Deed Restricted Program is not a loan and the employee will not be obligated to a monthly payment or repayment schedule beyond what is described above.</li> </ul> <p>If the property is disposed of within the first five (5) years from the day of purchase, the County will exercise its right to purchase the property.</p> <p>*The County will not require sale of the property if the new loan does not exceed the principal balance of the existing primary loan.</p>
M. Resale Value (County Purchases)	<p>If the County exercises its right to purchase the property, the property shall be sold for an amount equal to the lesser of:</p>



# Pitkin County

## Employee Deed Restricted Program

	<ul style="list-style-type: none"> <li>• The Owner's purchase price plus an increase of three percent (3%) of the purchase price per year from the date of purchase (prorated at the rate of .25% percent for each whole month for any part of a year); or</li> <li>• The property's appraised value at time of sale.</li> </ul>
<p>N. Employee Credit for Capital Improvements</p>	<p>The employee may receive a credit for Capital Improvements applied to the property not to exceed 10% of the original purchase price. A credit shall only be provided under the following conditions and definitions:</p> <ul style="list-style-type: none"> <li>• Capital Improvements are made and paid for by the employee pursuant to the requirements of any governmental body, agency or Homeowner's Association, and approved in writing by Pitkin County through its County Manager or designee.</li> <li>• Eligible Capital Improvements are only those improvements outlined in the <u>Homeownership Capital Improvements Policy</u>, published on an annual basis by the County Manager.</li> <li>• To qualify for a Capital Improvement, the Owner must submit to the County in advance a request for approval of any proposed Capital Improvement, as outlined in the Homeownership Capital Improvements Policy, and obtain that approval;             <ul style="list-style-type: none"> <li>○ Capital Improvements shall be validated by production of original receipts for costs (actual cost) with no allocation for Owner's "sweat equity"; no Capital Improvements shall be added to calculation without proof of receipts, affidavit as to validity of receipts, and building permit from the applicable governing body's Building Department.</li> </ul> </li> <li>• Less the cost of any repairs or replacements necessary to restore the Property, defined as Excessive Damage, to a reasonably adequate level of repair and habitability. For purposes of this section, repairs and replacement required by ordinary wear and tear shall not be deducted from the sales price otherwise computed hereunder.</li> </ul>
<p>O. Excessive Damage Assessment</p>	<ul style="list-style-type: none"> <li>• The County shall have the right to inspect the Property to determine whether the Owner has complied fully with the maintenance obligations set forth in S to confirm that the Eligible Capital Improvements have been completed in a workmanlike manner and the reasonable value thereof. If, after such an inspection, the County determines in its judgment that the Owner has not fully complied with this obligation, the County shall determine in its judgment the cost to complete such repairs, replacements, and other work necessary to restore the Property to a good, safe and habitable condition in all respects, and to bring it into full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Property. This amount shall be called the Excessive Damage Assessment, and it shall be included in the calculation of the Resale Price Limit.</li> </ul>
<p>P. Employee Obligations</p>	<ul style="list-style-type: none"> <li>• The Owner shall maintain the Property in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with</li> </ul>



## Pitkin County Employee Deed Restricted Program

	<p>jurisdiction over matters concerning the condition of the Property. The Owner shall suffer no mechanics' liens to be recorded against the Property.</p> <ul style="list-style-type: none"><li>• The benefit recipient shall be responsible for all costs associated with maintaining and improving the property.</li></ul>
Q. Exceptions	<ul style="list-style-type: none"><li>• Exceptions to the guidelines governing eligibility or disposition of Pitkin County's Deed Restricted Program may be considered by Pitkin County with County Manager approval.</li></ul>

PITKIN COUNTY  
OCCUPANCY AND RESALE DEED RESTRICTION,  
AGREEMENT, AND COVENANT

THIS OCCUPANCY AND RESALE DEED RESTRICTION, AGREEMENT, AND COVENANT (the "Agreement") is made and imposed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ ("Owner"), for the benefit of and enforcement by the BOARD OF COUNTY COMMISSIONERS OF PITKIN COUNTY ("PITKIN COUNTY"), for and in consideration of the conveyance of the subject property to Owner.

W I T N E S E T H:

WHEREAS, Owner has purchased and owns as a result of that certain warranty deed executed on the date hereof, a residential dwelling ("Dwelling") located on the real property more specifically described in Exhibit "A" attached hereto and incorporated herein. For purposes of this Agreement, the dwelling, the real property and all appurtenances, improvements and fixtures associated therewith shall hereinafter be referred to as the "Property", and

WHEREAS, Owner agrees to restrict the acquisition of the Property to Pitkin County or its designees. In addition, the Owner agrees that this Agreement shall constitute a resale agreement setting forth the maximum sale price for which the Property may be sold ("Maximum Sale Price"), the amount of appreciation and the terms and provisions controlling the resale of the Property should Owner desire to sell the Property at any time after the date of this Agreement.

NOW THEREFORE, for value received as described above, the receipt and sufficiency of which is hereby acknowledged, Owner hereby represents, restricts, covenants and agrees as follows:

OWNERSHIP, OCCUPANCY AND RESALE RESTRICTION, AGREEMENT AND COVENANT

1. One of the parties constituting Owner is a full-time employee of Pitkin County and understands that the acquisition of the Property is expressly contingent on the continued status of employment with Pitkin County. Owner agrees to only sell, transact, convey or otherwise dispose of its interest in the Property to Pitkin County or its designee and only in accordance with this Agreement.
2. Owner shall remain current with all payment obligations relating to the Property. Such obligations include but are not limited to: promissory notes, deeds of trust, assessments, property taxes, charges for work, materials and services benefiting the Property or any other obligation that might cause a lien to attach to the Property or the initiation of foreclosure or other proceedings that would affect title to the Property. In addition to

the above mentioned obligations, Owner shall maintain hazard and flood insurance, if the Property is located within designated 100-year floodplain, on the Property and the improvements on the Property sufficient to afford replacement of the improvements on the Property in the event of any accident or loss. It shall be a breach of this Agreement for Owner to default in payments or other obligations related to the Property or to fail to maintain replacement value hazard insurance for the Property. Owner hereby agrees to notify Pitkin County, in writing, of any notification received from any lender or other creditor of past due payments or obligations or any alleged default in payment or other obligations due to any party related to the Property. Owner shall also notify Pitkin County of all loans and loan applications effecting or using the Property as collateral. Pitkin County must approve the terms of the loan terms prior to the disbursement of any such loan funds.

Upon such notification from Owner, Pitkin County may offer loan counseling and distressed loan services to Owner, if any of these services are available, or may require Owner to sell the Property to Pitkin County to avoid the commencement of any foreclosure or other proceeding against the Property. If demanded by Pitkin County, Owner shall immediately execute and deliver a general warranty deed in a form acceptable to Pitkin County conveying the Property to Pitkin County, or its designee, in exchange for the payment to Owner of the purchase price computed under the formula set forth in this agreement.

3. This Agreement, in its entirety, shall constitute covenants running with the Property, as a burden thereon for the benefit of, and shall be specifically enforceable by, the Owner and Pitkin County, and their respective successors and assigns, as applicable, by any appropriate legal action including but not limited to injunction, reversion, or eviction of non-complying owners and/or occupants.

#### RESALE PRICE

4. In the event that the Property is sold pursuant to this Agreement, the Property shall be sold for no amount greater than the purchase price of the current Owner:

Plus an increase of three percent (3%) of the Owner's purchase price per year from the date of purchase prorated at the rate of .25% for each whole month for any part of a year.

Plus, the employee may receive a credit for the cost of Capital Improvements applied to the property not to exceed ten percent (10%) of

Owners original purchase price. A credit shall only be provided under the following conditions and definitions:

Capital Improvements means capital improvements made and paid for by Owner pursuant to the requirements of any governmental body, applicable building, fire and zoning codes, or Homeowner's Association, and only if specifically approved in advance in writing by Pitkin County through its County Manager or designee.

Eligible Capital Improvements are only those improvements outlined in the Homeownership Capital Improvements Policy, published on an annual basis by the County Manager.

To qualify for a Capital Improvement, the Owner must submit to the County in advance a request for approval of any proposed Capital Improvement, as outlined in the Homeownership Capital Improvements Policy, and obtain that approval;

Less the cost of any repairs or replacements necessary to restore the Property to a reasonably adequate level of repair and habitability. For purposes of this section, repairs and replacement required by ordinary wear and tear shall not be deducted from the sales price otherwise computed hereunder.

5. All disputes between Owner and administrative staff of Pitkin County shall be decided by the County Manager of Pitkin County, and any decision of the County Manager may be appealed to the Board of County Commissioners within ten (10) days of any decision by the County Manager.
6. Owner shall be responsible for the payment of the Owner's customary closing costs and prorations.
7. In the event that the Pitkin County employee shall predecease his or her spouse, or partner in ownership of the property and to the extent any liens filed against the Property are held in good standing, Owner's surviving joint tenant shall, within one hundred eighty (180) days, unless a longer period of time is permitted as set forth below, execute and deliver a general warranty deed conveying the Property to Pitkin County or its designee, in exchange for the payment to or for the benefit of the grantor of a purchase price computed under the formula set forth in this Agreement. The time period for executing and delivering a warranty deed shall be extended by Pitkin County for a reasonable period of time upon a showing of hardship or until such time as the surviving joint tenant is able to qualify for and procure substantially similar housing accommodations.

## PITKIN COUNTY EMPLOYMENT

8. Owner agrees that, in the event Owner, or any one individual owner, ceases to be a full-time employee of Pitkin County for any reason, including termination, death, disability, or other separation event, and to the extent any liens filed against the Property are held in good standing, Owner, or owner's legal representative, will within not more than one hundred eighty (180) days of such event execute a general warranty deed in a form acceptable to Pitkin County conveying the Property to Pitkin County, or its designee, in exchange for the payment to the Owner of the purchase price computed under the formula set forth in this Agreement.
9. If at any time the Owner of the property also owns an interest in any other developed residential property or dwelling unit(s) within Pitkin County, Owner agrees to immediately list said other property or unit for sale at a sales price comparable to like units or properties in the area in which the property or dwelling unit(s) are located, until sold. In the event said other property or unit has not been sold by Owner within one hundred eighty (180) days of its listing, and to the extent any liens filed against the Property are held in good standing, then Owner will within not more than one hundred eighty (180) days execute a general warranty deed conveying the Property to Pitkin County, or its designee, in exchange for the payment to the Owner of a purchase price computed under the formula set forth in this Agreement.

## BREACH

10. In the event that Pitkin County has reasonable cause to believe the Owner is violating the provisions of this Agreement, Pitkin County by its authorized representative, may inspect the Property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours' prior written or oral notice. Compliance with the terms of this Agreement is recognized as a condition of continued employment with Pitkin County.
11. Pitkin County, in the event a violation is discovered, shall send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing within fifteen (15) days to determine the merits of the allegation.

## REMEDIES

12. There is hereby reserved to the parties hereto any and all remedies provided by law or equity for breach of this Agreement or any of its terms. In the event the parties resort to litigation with respect to any or all

provisions of this Agreement, the substantially prevailing party shall be entitled to recover damages and costs, including reasonable attorney's fees.

13. In the event the Property is sold and/or conveyed without compliance herewith, such sale and/or conveyance shall be wholly null and void and shall convey no title whatsoever upon the purported buyer. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference, the covenants herein contained, even without reference therein to this Agreement.
14. In the event that the Owner fails to cure any breach, Pitkin County may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of the Property by Owner. The costs of such sale shall be taxed against the proceeds of the sale with the balance being paid to the Owner.
15. In the event of a breach of any of the terms or conditions contained herein by Owner, his heirs, successors or assigns, the original purchase price of the property as set forth in Section 6(a) of this Agreement shall, upon the date of such breach, automatically cease to increase as set out in paragraph 6 of this Agreement, and shall remain fixed until the date of cure of said breach.

#### GENERAL PROVISIONS

16. Notices. Any notice, consent or approval which is required to be given hereunder shall be given by e mail to the following addresses and by either sending it by regular US mail. Date of notice shall be determined to be date of email. Notice may also be accomplished by posted on the property of the Owner and hand delivery to the place of business of Pitkin county mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any e mail address provided or to any subsequent address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

**To Owner:**

\_\_\_\_\_  
\_\_\_\_\_

**To Pitkin County:** Insert email addresses

Pitkin County Manager  
530 E. Main Street, 3<sup>rd</sup> Floor  
Aspen, CO 81611

**Copy to:** email address  
Pitkin County Attorney  
530 E. Main Street, Ste. 302  
Aspen, CO 81611

17. Exhibits. All exhibits attached hereto, if any, are incorporated herein and by this reference made a part hereof.
18. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under applicable law; but, if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.
19. Choice of Law. This Agreement and each and every related document are to be governed and construed in accordance with the laws of the State of Colorado.
20. Successors. The provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.
21. Section Headings. Any paragraph or section heading within this Agreement is inserted solely for convenience of reference, and is not intended to, and shall not, govern, limit or aid in the construction of any terms or provisions contained herein.
22. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.
23. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
24. Personal Liability. Owner agrees that he shall be personally liable for any of the transactions contemplated herein.
25. Further Actions. The parties to this Agreement agree to execute such further documents and take such further actions as may be reasonably

