

San Juan County
DEED RESTRICTION
Lot XX Anvil Mountain Subdivision
San Juan County, Colorado

THIS Deed Restriction is hereby created and effective on the date executed below.

WHEREAS, this Deed Restriction imposes certain use, occupancy and transfer restrictions upon the subject property for the benefit of Owner/Declarant, the Board of County Commissioners of San Juan County, Colorado and its designees or assigns (hereinafter referred to as the "County"); and

WHEREAS, the County owns the real property described as Lot XX Anvil Mountain Subdivision San Juan County, Colorado. For purposes of this Deed Restriction, the real property and all dwellings, appurtenances, improvements and fixtures associated therewith shall hereinafter be referred to as the "Property"; and

WHEREAS, "Qualified Buyers" are natural persons meeting the income, residency and all other qualifications set forth in this Deed Restriction at the time of the closing of the sale to the Qualified Buyer; and

WHEREAS, an "Owner" is a person or entity, who acquires an ownership interest in the Property; and

NOW, THEREFORE, the County hereby creates, declares, represents, restricts and covenants as follows:

1. Duration/Application. This Deed Restriction shall constitute covenants running with the Property, as a burden thereon, for the benefit of the County and its designees or assigns, for a period of thirty (30) years following the first transfer of the Property to a Qualified Buyer. Any and all persons or entities acquiring an interest in the Property shall be bound by the terms of this Deed Restriction.

2. Qualified Buyer. The Property shall not be sold to any purchaser other than a Qualified Buyer. A Qualified Buyer is defined as a natural person or persons, who at the time of their purchase of the Property, have been determined by a qualified agency designated by the County to be earning not more than one hundred percent (100%) of the area median household income. A Qualified Buyer shall also be required to be employed within San Juan County, at Purgatory Resort, or remotely from San Juan County, deriving at least 80% of their income from said employment, and shall reside on the Property as their primary residence. A reasonable accommodation as defined by Americans with Disabilities Act may be requested from San Juan County for the employment requirements.

3. Use of Property. Unless otherwise specifically stated herein, the use and occupancy of the Property shall be limited exclusively to housing of the Qualified Buyer and their families.

4. Subsequent Sale of Property.

a. The permitted resale price of the Property shall be capped and limited to the price initially paid by the Qualified Buyer plus the actual cost of any approved and permitted (when required) capital improvements made to the Property, plus not more than three percent (3%) annual appreciation during the period of the ownership of the Property (Sometimes referred to herein as “Maximum Resale Price”).

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE COUNTY THAT UPON SALE THE OWNER SHALL OBTAIN THE MAXIMUM SALES PRICE.

b. In the event of a prospective sale of the Property, the Owner shall submit to the County a copy of the executed sales contract, evidence to determine improvement costs, and sufficient information to determine that the purchaser is a Qualified Buyer. Said information shall be submitted at least thirty (30) days prior to the proposed closing date. Prior to closing, the Owner shall obtain written approval of the proposed sale price and the proposed purchaser.

c. In order to qualify as capital improvements hereunder, the Owner must furnish to the County the following information with respect to the improvements which the Owner seeks to include in the calculation of Maximum Sales Price:

- i) Original or duplicate receipts to verify the actual costs expended by the Owner for the capital improvements;
- ii) Owner’s affidavit verifying that the receipts are valid and correct receipts tendered at the time of purchase; and
- iii) True and correct copies of any building permit or certificate of occupancy required to be issued by any governmental entity or regulatory authority with respect to the capital improvements.

d. In calculating the actual costs expended by the Owner for the capital improvements, the Owner’s actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amounts shall not include any amount attributable to Owner’s sweat equity or to any appreciation in the value of the improvements.

5. Leasing of the Property. If in the event the Owner is unable to sell the Property to a Qualified Buyer following at least six (6) months of listing the Property with a licensed broker using standard customary sales terms for no more than the Maximum Resale Price, and the Property remains vacant for a period of at least six (6) consecutive months during the listing, then the Owner may lease the Property at an affordable rate based on income level as determined by the Colorado Division of Housing. An eligible tenant cannot earn more than one hundred percent (100%) of the area median income.

6. Non-Complying Ownership. In the event the Property is sold and/or conveyed without compliance herewith, such sale and/or conveyance shall, at the option of the County, be

considered wholly null and void and shall confer 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 reference, the covenants herein contained, even without reference therein to this Deed Restriction. In the event a person or entity acquires title to the Property other than through an approved purchase and sale agreement, such person or entity shall immediately notify the County. The County may, along with any other remedy available, require the Owner to sell the Property consistent with the terms set forth in section 9(b).

7. Enforcement. The County or its designee may take any and all legal action necessary to enforce the terms of this Deed Restriction and shall be entitled to any and all available remedies, including without limitation, expungement of profits, specific performance and injunctive relief. the County shall be awarded its reasonable attorney fees and costs in any action related to this Deed Restriction, included, but not limited to any enforcement action. Any monetary awards to the County pursuant to this Deed Restriction shall be collectable from the Property sale proceeds, as well as by any other legal means.

8. Request for Information. Any Owner or person claiming any ownership interest in the Property shall, within ten (10) days, fully and accurately respond to all requests by the County for information related to the Property and the requirements and restrictions of this Deed Restriction.

9. Default on Property Obligations.

a. It shall be a breach of this Deed Restriction for an Owner to default in payments or other obligations under a promissory note secured by any deed of trust or mortgage encumbering the Property. It shall also be a breach of this Deed Restriction for the Owner to default in the payment of real property taxes or any assessments, dues, or other obligations. The Owner must notify the County, in writing, of any such default and provide a copy of any notification received from a lender, its assigns or loan servicer within five (5) days of receiving such notice. The Owner must also notify the County of any notices received from any governmental entity claiming a violation or non-payment, within five (5) days of receiving such notice

b. Upon notification of a default as provided in subsection (a) above, the County is entitled to require the Owner to sell the Property with ninety (90) days in order to avoid the commencement or completion of foreclosure proceedings. If the County requires sale of the Property, Owner shall, immediately upon request, execute a standard Colorado Real Estate Form listing contract for a ninety (90) day listing period. In the event of a listing of the Property pursuant to this section, the County is entitled to require the Owner to accept a qualified offer for the Maximum Resale Price, determined at the time the Property is listed for sale. If none are received, the Owner shall accept a qualified offer for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner's financial obligations pursuant to the promissory note or notes secured by the first deed of trust and any junior deeds of trust. The listing contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale. The County may purchase the Property at its option.

c. Upon receipt of notice as provided in subsection (a) above, the County shall have the right, but not the obligation, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to the County for any payments made by the County on the Owner's behalf together with interest thereon at the rates specified in the obligation then in default, plus 4% per annum, together with all actual expenses the County incurred in curing the default, including reasonable attorneys' fees. The Owner shall be required by the County to execute a promissory note to be secured by a junior deed of trust encumbering the Property in favor of the County for the amounts expended by the County as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Property. Otherwise, Owner's indebtedness to the County shall be satisfied from the Owner's proceeds at the closing upon sale of the Property.

10. Termination and Expiration. In the event of foreclosure by a holder of a First Deed of Trust, and upon the issuance of a Public Trustee's or Sheriff's Deed, the Deed Restriction shall automatically terminate. Upon expiration of the terms of this Covenant or termination by its terms, and request by Owner, the County shall record a release of this Deed Restriction.

11. Incorporation. During the effective terms, this Deed Restriction shall be specifically incorporated by reference in the Property deed. Failure to do so, however, shall not invalidate or reduce the enforceability of the terms herein.

12. Choice of Law. This Deed Restriction shall be governed and construed in accordance with the laws of the State of Colorado. Jurisdiction and venue for any action arising under this Deed Restriction shall be in San Juan County, Colorado.

13. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Deed Restriction shall be valid except on the basis of a written instrument executed by the County.

14. No Third-Party Beneficiary. The right of enforcement or waiver of any provisions herein is solely that of the County or its designees or assigns.

15. No Liability Including for Delay or Loss of Sale. The County shall not be liable for any actual or alleged damages related to any action undertaken by the County to enforce or determine compliance with this Deed Restriction, including but not limited to claims related to alleged or actual delays or loss of sale. Nothing herein shall be construed as a waiver of governmental immunity by the County.

16. Severability. In the event any provision of this Deed Restriction is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

17. Priority. This Deed Restriction supersedes and fully replaces any prior Deed Restrictions placed upon the Property by the County.

San Juan County, Colorado

Scott Fetchenhier, Chairman Board of County Commissioners

State of Colorado:
County of San Juan:

The foregoing instrument was signed and acknowledged before me this ____ day of _____, 2023 by Scott Fetchenhier, Chairman of the San Juan County Board of County Commissioners. Witness my hand and official seal. My commission expires _____

Notary Public