

EAGLE COUNTY
LOCAL-RESIDENT HOUSING GUIDELINES

Revised and Finalized
May 16, 2008

TABLE OF CONTENTS

CHAPTER I – NEED, STRATEGIES, PURPOSE SUMMARY, AND DELEGATION OF AUTHORITY TO PROMULGATE RULES AND REGULATIONS	1
SECTION 1-100 Eagle County’s Need for Housing	1
SECTION 1-110 Purpose of the Guidelines	2
SECTION 1-200 Summary of the Guideline Requirements	3
SECTION 1-300 Administrative Procedures	4
CHAPTER II – DEFINITIONS	4
CHAPTER III – REQUIREMENTS FOR AND DEVELOPMENT OF AFFORDABLE HOUSING AND RESIDENT- OCCUPIED HOUSING	7
SECTION 3-100 Inclusionary Housing	7
SECTION 3-101 Resident-Occupied Housing Option	7
SECTION 3-102 Voluntary Transfer Assessment Option	7
SECTION 3-103 Residential Lots	7
SECTION 3-110 Commercial Mitigation	8
SECTION 3-111 Affordable Commercial Space	8
SECTION 3-120 Mixed-Use Developments	8
SECTION 3-130 Alternative Means of Compliance	8
SECTION 3-131 Payment in-lieu	9
SECTION 3-132 Land in-Lieu	10
SECTION 3-133 Affordable Housing Credits	10
SECTION 3-134 Other Proposals	10
SECTION 3-140 Incentives for Meeting or Exceeding the Guidelines	10
SECTION 3-150 Eagle County Interest in Affordable Housing	11
SECTION 3-160 Initial Pricing of Affordable For-Sale Housing	11
SECTION 3-161 Maximum Rental Rates of Affordable Rental Housing	11
SECTION 3-162 Price Adjustments for Structured Parking	11
SECTION 3-163 Pricing of Resident-Occupied Housing	11
SECTION 3-170 Timing of Construction of Local-Resident Housing	12
SECTION 3-180 Location of Local-Resident Housing	12
SECTION 3-200 Housing Plan Required	12
SECTION 3-300 Homeowners and Condominium Associations	13
SECTION 3-310 Divided Ownership of Affordable Rental Housing Limited	13
SECTION 3-400 Unit Quality and Size	13
SECTION 3-500 Storage	14
SECTION 3-600 Unit Design	14
SECTION 3-700 Local-Resident Housing Bedroom Mix and Size	14
SECTION 3-800 Initial Sales and Marketing of Affordable-Housing and Resident-Occupied Units	14
CHAPTER IV – MATERIAL TERMS OF DEED RESTRICTIONS (RESTRICTIVE COVENANTS)	14
SECTION 4-100 Deed Restrictions for Local-Resident Housing	14
SECTION 4-110 Deed Restrictions for Affordable For-Sale Housing	14
SECTION 4-120 Resident-Occupied Housing	15
SECTION 4-130 Affordable Rental Housing	15
SECTION 4-140 Deed Restrictions for Affordable Commercial Space	15
CHAPTER V – OWNING AND RENTING LOCAL-RESIDENT HOUSING	16
SECTION 5-100 Eligibility	16
SECTION 5-110 Employment Qualification	16
SECTION 5-120 Limits on Owning Other Real Estate	17
SECTION 5-130 Income and Assets Limitations	17
SECTION 5-140 Rental of Local-Resident Housing by Qualified Employers for Employees	17
SECTION 5-150 Applying for Local-Resident Housing	18
SECTION 5-160 Maintaining Occupancy	18
SECTION 5-161 Re-Certification	18
SECTION 5-170 Leave of Absence	18
SECTION 5-180 Reselling Affordable Housing	18
SECTION 5-181 Listing Units for Resale	19
SECTION 5-182 Permitted Capital Improvements	19
SECTION 5-183 Sales Fees	19
SECTION 5-184 Closing Costs	19
CHAPTER VI – MISCELLANEOUS PROVISIONS	20
SECTION 6-100 Liberal Construction	20
SECTION 6-200 Severability	20
SECTION 6-300 Modification	20
SECTION 6-400 Grievance Procedures	20
SECTION 6-500 Enforcement	20
SECTION 6-600 Foreclosure	20
SECTION 6-700 Exemption for Lack of Reasonable Relationship or Impracticability	20

CHAPTER I – NEED, STRATEGIES, PURPOSE SUMMARY, AND DELEGATION OF AUTHORITY TO PROMULGATE RULES AND REGULATIONS

SECTION 1-100 Eagle County's Need for Housing

Eagle County faces a substantial County-wide gap in the availability of ownership and rental housing that is affordable for local residents. Households are burdened by high housing payments, and employees are forced to commute long distances. Overcrowding is common. Jobs remain unfilled, negatively impacting business operations, and the vast majority of employers believe that the availability of workforce housing is a critical or major problem in Eagle County.

Housing problems have long been recognized in Eagle County. Eagle County commissioned housing needs assessment studies, completed in 1990, 1999 and 2007, that demonstrated these needs. As detailed more fully in Eagle County's 2007 *Housing Needs Assessment*, the current state of Eagle County's housing need is as follows:

- Approximately 5,300 Households live in homes that are not affordable given their incomes, making it difficult for those Households to pay for other necessities, like food, utilities, transportation, and health care;
- Housing prices are continuing to rise faster than incomes, indicating that housing is becoming progressively less affordable for local wage earners;
- Commuting into Eagle County is on the increase—over 18 percent of employees commute in from homes outside of Eagle County to jobs within Eagle County;
- The relationship between primary and vacation homes is changing, and local wage-earning residents are unable to compete with buyers from outside of Eagle County. The proportion of homes in unincorporated Eagle County occupied by County residents declined from 69 percent in 2000 to 66.5 percent as of 2006. Local residents currently occupy at least 52 percent of the total square footage of the housing stock in Eagle County, but that percentage is declining. This has implications on the demand for and availability of workforce housing.
- As of the 2000 Census, approximately 69 percent of all housing units in Eagle County were occupied by residents and 31 percent were vacant, primarily because of seasonal and recreational use. The Department of Local Affairs estimates that the occupancy rate in 2006 was about 64 percent, indicating a decline of 7 percent in the proportion of units that actually serve as housing.
- Based on residential sales in 2007, the primary-to-secondary home occupancy ratio has continued to decline from 2000 to 2006. In 2007, locals purchased 52 percent of all units sold. Of these, 54 units were deed restricted. Locals purchased only 49 percent of free-market units.
- 3,400 housing units are needed to address current deficiencies that the free market has not and is not expected to address; and
- Over 8,000 additional units will be needed to keep up with the demand for workforce housing by the year 2015.

Homes that are not occupied, but rather function as vacation accommodations, generate demand for workforce housing through their requirements for upkeep and maintenance. Moreover, a shift from primary to secondary residences degrades the local character of a mountain community. As Eagle County's housing imbalance increases, availability of housing for employees becomes even more limited, and the fabric of the entire community is threatened.

Despite the documented demand for workforce housing, private developers have little incentive to provide housing for Households with incomes less than 140 percent of the Area Median

Income (hereinafter “AMI”) because responding to demand for high-end homes is more profitable. With the quality of life, natural beauty, and abundance of recreation opportunities in Eagle County, demand for housing by purchasers of vacation homes will continue to drive prices upward and dominate the market absent a major recession or revision of federal tax policy.

The Eagle County Comprehensive Plan (the “Comprehensive Plan”), adopted December 7, 2005, acknowledged the many negative implications of an imbalance between the amount of housing needed to sustain Eagle County’s workforce and the supply of housing that employees can afford. Eagle County’s labor shortages and forced commuting to homes outside of Eagle County materially degrade quality of service, the economy, the natural environment, traffic, and the character of local communities.

The Comprehensive Plan delineates two primary goals regarding housing:

1. *Housing is available and affordable for no less than 70 percent of Eagle County’s workforce.*
2. *Housing needs are clearly identified, and housing types are appropriately balanced to meet all community needs, appropriately located to reduce long distance commutes, and appropriately managed to assure long term affordability for Eagle County’s workforce.*

The Comprehensive Plan contains 16 policies for housing with 88 specific strategies recommended to implement them. The strategies seek to divide the responsibility for housing calling upon Eagle County’s municipalities, private developers, non-profit organizations, financial institutions, and employers to work with Eagle County Government to achieve goals. For example, Policy N of the Comprehensive Plan provides that development should share responsibility for fulfilling Eagle County’s workforce housing needs. Associated strategies include:

- *Mandate that attainable workforce housing be considered part of the required infrastructure for all new development applications.*
- *Continue to utilize Inclusionary Housing and Employee Housing Linkage as defined in the Local-Resident Housing Guidelines in the review of development applications.*

SECTION 1-110 Purpose of the Guidelines

The purpose of the revised Guidelines¹ is to implement specific strategies of the Comprehensive Plan calling for private development to share in the responsibility for keeping up with the demand for workforce housing in the future as part of all new residential and commercial growth.

The Guidelines are intended to promote sustainable communities in Eagle County through the creation of affordable, permanent-resident housing stock. They call for the provision of workforce housing for Households earning the equivalent of 140 percent AMI or lower—Households that have little or no opportunity to purchase free-market housing without significant subsidy. They also provide options for providing housing priced for local residents with incomes greater than 140 percent AMI since free-market housing opportunities for these Households are also limited in terms of unit type and location. They complement other County programs, noted above, to address the economic spectrum of Households in Eagle County that cannot afford housing. The Guidelines are part of Eagle County’s broader solution of making housing available for and affordable to Eagle County’s growing workforce. All development in unincorporated Eagle County shall adhere to the Guidelines.

¹ Terms that are capitalized in Chapter 1 are defined in Chapter II, below.

SECTION 1-200 Summary of the Guideline Requirements

Through the Guidelines, Eagle County seeks to preserve community character and vitality, support economic sustainability by housing its workforce, maintain the relationship between Primary Residences and vacation homes, and keep the negative impacts associated with commuting from worsening. The Guidelines include the following key components:

(1) ***Inclusionary Housing for Residential Developments.*** In order to slow the shift from primary to secondary home ownership, Eagle County has set its base rate for Local Resident Housing at 35 percent of the total square footage of a project, a figure substantially below the 52 percent of the residential square footage in Eagle County that is currently occupied by local residents. As such, all new Residential Development, except un-subdivided 35-acre parcels, must include the following:

(A) Affordable Housing equal to 35 percent of total Net Square Footage of the Residential Development;

or

(B) Affordable Housing equal to 30 percent of total Net Square Footage of the Residential Development and Resident-Occupied Housing equal to 10 percent of total Net Square Footage of the Residential Development.

or

(C) Affordable Housing equal to 30 percent of total Net Square Footage of the Residential Development and voluntary adoption of a 1.5 percent transfer assessment placed on the second and all subsequent sales of all market-rate units (excluding units resold to Eligible Households).

or

(D) Affordable Housing equal to 25 percent of total Net Square Footage of the Residential Development and voluntary adoption of a 1.5 percent transfer assessment placed on the second and all subsequent sales of all market-rate units (excluding units resold to Eligible Households) and Resident-Occupied Housing equal to 10 percent of total Net Square Footage of the Residential Development.

(2) ***Affordable Employee Housing Required for Commercial Mitigation.*** All new Commercial Development that, by hiring new employees, creates the need for one or more additional housing units must mitigate the impact of such development on Eagle County housing stock by providing Affordable Housing for up to 100 percent of the housing demand generated by Households with incomes less than 140 percent AMI, accounting for current in-commuting rates (for an overall mitigation rate for the housing demand created by all new jobs of 55 percent). If 20 percent of Net Square Footage of the new Commercial Development is Affordable Commercial Space the mitigation rate will be reduced by 10 percentage points to 45 percent.

(3) For mixed-use projects, only the higher of the (1) (Inclusionary Housing) or (2) (Affordable Employee Housing) requirements apply at the lowest applicable AMI-affordability levels.

(4) Either Affordable Rental Housing or Affordable For-Sale Housing may be constructed to comply with the Inclusionary Housing or the Commercial Employee Housing Mitigation component of the Guidelines.

(5) While on-site construction of Local-Resident Housing is preferred, it may be built off site under conditions enumerated herein.

The Guidelines apply to all applicants for Development Permits, including all governmental and non-profit entities, in unincorporated Eagle County. The Guidelines do not apply to development within the municipalities of Vail, Avon, Minturn, Red Cliff, Eagle, Gypsum, or Basalt.

Compliance with the Guidelines represents one of several relevant elements in a land use application as detailed in Eagle County’s Land Use Regulations and the Comprehensive Plan. Complying with the Guidelines, however, does not assure an applicant that a Development Permit will be approved.

SECTION 1-300 Administrative Procedures

The Program Administrator is authorized to administer and enforce the provisions of the Guidelines and to promulgate reasonable rules and regulations for the administration and enforcement of the Guidelines, to be contained in the Administrative Procedures, including, but not limited to, the following and as provided for more specifically herein:

1. Updated assumptions related to interest rates, median sales prices in Eagle County, AMI, property taxes, insurance, private mortgage insurance (“PMI”) and HOA fees;
2. Application procedures and the selection process for Households interested in purchasing or renting Local-Resident Housing; and
3. The process for re-certification of residency and employment requirements.
4. The process for listing Local Resident Housing for resale.
5. Updated Commercial Mitigation formulas as updated information is available concerning the following: job generation rates, jobs held per employee, employees generated by type of job, number of employees per Household, and average unit size.
6. Calculation of in-lieu payments pursuant to Section 3-131, *infra*.
7. Fixing the distribution of Affordable For-Sale Housing and the preferred distribution of Affordable Housing unit types and sizes provided pursuant to the Guidelines.
8. Fixing standards for storage in Local Resident Housing.
9. Setting required Bedroom mixes in response to changing market demand.
10. Setting minimum and maximum size limits for Local Resident Housing.
11. Fixing the method of establishing the value of Permitted Capital Improvements.

CHAPTER II – DEFINITIONS

The terms, phrases, words, and clauses in the Guidelines shall have the meaning assigned below. Any terms, phrases, words, or clauses not defined herein will have the meanings as defined in the Eagle County Land Use Regulations.

Accessory Dwelling Units (“ADUs”): ADUs are as defined by the Eagle County Land Use Regulations.

Administrative Procedures: A document promulgated by the Program Administrator that sets forth specific eligibility criteria, AMI levels, purchase prices and rents, sale and leasing procedures, payment in-lieu amounts, employment generation rates and other information relevant to the development and operation of Local-Resident Housing required by Inclusionary Housing and Commercial Mitigation.

Affordable Commercial Space: Commercial rental or for-sale space meeting the requirements of Section 3-111.

Affordable For-Sale Housing: For-sale dwelling units in which Eagle County has an interest through its housing authority or similar agency, that meet initial sales prices, resale price-appreciation caps, size, quality, and other criteria set forth in the Guidelines and that are subject to deed restrictions.

Affordable Housing: Affordable For-Sale Housing and Affordable Rental Housing.

Affordable Housing Credits: Credits that may be awarded at Eagle County’s sole discretion for projects that exceed the requirements of the Guidelines and which may be bought and sold pursuant to the Guidelines.

Affordable Rental Housing: Affordable Housing, available for rent to and occupation by Eligible Households, that are burdened by a deed restriction consistent with Section 4-130 of the Guidelines and in a form approved by the County Attorney and the Program Administrator.

Area Median Income (“AMI”): The local estimates of median family income compiled and released annually by the Department of Housing and Urban Development. As used in the Guidelines, AMI shall mean the most current figures available at the time from the U.S. Department of Housing and Urban Development, adjusted for Eagle County.

Bedroom: A room to be used for sleeping purposes that meets applicable International Building Code requirements.

Board of County Commissioners (“BoCC”): The Board of County Commissioners for Eagle County, Colorado.

Capital Improvement: Unless otherwise defined in the deed restriction governing the Affordable For-Sale Housing, any fixture erected as a permanent improvement to real property excluding repair, replacement, and maintenance costs.

Commercial Development: Any development that is not a Residential Development for which a Development Permit or building permit is required, the application for which was not complete at the time of adoption of the Guidelines. Institutional uses such as government buildings, schools, hospitals, and facilities operated by non-profit service agencies are considered to be Commercial Development.

Commercial Mitigation: The policy of requiring the construction of Affordable Housing designed to house employee growth generated by Commercial Development.

Dependent: A minor child by blood or adoption (21 years of age or younger) or other relative of the owner of an Affordable For-Sale Housing unit, which child or relative is taken and listed as a Dependent for federal income tax purposes by such owner or his present or former spouse. Dependents must also reside with the owner at least six months and one day (183 days) out of every 12-month period.

Development Permit: Any preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development or site plan, or similar application for new construction.

Disabled Person: A person who meets the definition of “individual with a disability” contained in 29 U.S.C. Section 706(8), or as defined in the Americans with Disabilities Act of 1990.

Eagle County: Eagle County, Colorado.

ECO Build Standards: The currently approved Eagle County Efficient Building Code as codified in the Land Use Regulations. The code requires a certain number of points to be met prior to occupancy that demonstrate energy efficiency, environmentally-friendly material use, and improved indoor air quality.

Eligible Household: A Household that meets the criteria set forth in Chapter V of the Guidelines.

Guidelines: The Eagle County Local Resident Housing Guidelines, as amended from time to time.

Gross Household Income: The combined adjusted gross income of all individuals who will occupy the unit regardless of legal status or relationship to the owner or lessee.

Gross Income: The total income derived from a business, trust, employment, or other means and from income-producing property, before deductions for expenses, depreciation, taxes, and similar allowances.

Household: All individuals who will occupy the unit regardless of legal status or relation to the owner or lessee.

Household Size: The number residents in the Household residing there for greater than 6 months per year. To be included, Dependents must be listed on federal income tax forms for the past two years. A pregnancy may be counted toward the family size requirement with documentation from a medical provider.

Housing Plan: Housing Plan meeting all of the criteria set forth in Section 3-200 of the Guidelines that demonstrates how the applicant will satisfy the requirements of the Guidelines.

Inclusionary Housing: The Eagle County policy requiring a percentage of units or Net Square Footage within Residential Developments to be restricted for ownership or occupancy by Eligible Households in order to ensure adequate housing stock for local residents and maintain the current ratio primary to secondary home ownership.

Local-Resident Housing: Affordable Housing and Resident-Occupied Housing.

Lodge Room: A unit rented nightly or weekly and taxed for the full year as a commercial use. Any Bedrooms in the unit above one will be considered a separate Lodge Room.

Maximum Purchase Price: The maximum price for which Affordable For-Sale Housing may be initially sold, as provided for in Section 3-160, *infra*.

Maximum Rental Rate: The maximum average monthly rent payment for an Affordable Rental Housing unit, as provided for in Section 3-161.

Maximum Resale Price: Unless otherwise defined in the restrictive covenant recorded against an Affordable For-Sale Housing unit, the owner's purchase price increased by the allowable appreciation, set forth in Section 5-180, *infra*, plus the value of all Permitted Capital Improvements, as provided for in Section 5-182, *infra*.

Net Square Footage (Feet):² A calculation based on interior area that is measured from the interior walls, including all interior partitions, habitable basements (including unfinished basements that have the potential to meet habitability standards once finished), interior storage areas, and closets and laundry area. Such calculations shall not include mechanical areas, exterior storage, stairwells, garages (either attached or detached), patios, decks, and porches. Applicants shall receive a 50-percent credit for storage space when providing storage space for Affordable or Resident-Occupied Units. Storage credit may not exceed 10 percent (20 percent of the Net Square Footage) of the total Net Square Footage of the Affordable Housing or Resident-Occupied Housing.

Permitted Capital Improvement: Capital Improvements for which costs may be recovered upon resale of Affordable For-Sale Housing, as provided for in Section 5-182, *infra*.

Primary Residence: The residence in which an owner or renter lives for at least 8 out of any 12 months or 240 days out of 365 days, whichever is longer.

Program Administrator: The administrator of Eagle County Inclusionary Housing and Commercial Mitigation plan provided for in the Guidelines. The Program Administrator shall be the Eagle County Housing Director unless another person is appointed by the BoCC.

Qualified Employees: Employees meeting the requirements of Section 5-110, *infra*.

² This definition differs from the square footage definition in the Eagle County Land Use Regulations, which is based on exterior-wall measurements.

Qualified Employers: Employers of Qualified Employees.

Resident-Occupied Housing: Housing with a restrictive covenant recorded against it requiring that it be owned and occupied in perpetuity by an Eagle County resident as his or her Primary Residence.

Residential Development: Any development in Eagle County that is designated as “residential” by the Eagle County Land Use Regulations, which would result in the creation of one or more dwelling units or lots and for which a Development Permit is required, the application for which was not complete at the time of adoption of the Guidelines. Subdivided land resulting in parcels of at least 35 acres in size on which residential property is proposed consistent with applicable zoning is excluded from the definition of Residential Development. Residential Development includes residential units that are for sale and for rent. For purposes of triggering obligations under the Guidelines, market-rate, for-sale and rental properties are treated identically.

Roaring Fork Valley: The land within the Roaring Fork River Valley and the valleys with tributary streams or rivers, including the Frying Pan River, the Crystal River, Snowmass Creek, Capital Creek, Maroon Creek, and Castle Creek. This includes, but is not limited to, the towns of Aspen, Snowmass Village, Woody Creek, Carbondale, Redstone, Marble, and Glenwood Springs.

CHAPTER III – REQUIREMENTS FOR AND DEVELOPMENT OF AFFORDABLE HOUSING AND RESIDENT-OCCUPIED HOUSING

SECTION 3-100 Inclusionary Housing

At least thirty-five (35) percent of the Net Square Footage of all new Residential Developments shall be Affordable Housing.³

SECTION 3-101 Resident-Occupied Housing Option

Providing 10 percent of the Net Square Footage of new Residential Development as Resident-Occupied Housing may be substituted for 5 percentage points of the Affordable Housing requirement.

SECTION 3-102 Voluntary Transfer Assessment Option

The applicant may impose an ownership transfer assessment of 1.5 percent on all sales of free-market units to non-Eligible Households for a 5 percentage point reduction in its Affordable Housing obligation. The assessment shall remain in place in perpetuity. The proceeds from the assessment shall be paid to a non-profit entity specified by the BoCC for the purpose of creating Affordable Housing in Eagle County.

SECTION 3-103 Residential Lots

When the Development Permit application seeks to create only residential lots, the Inclusionary Housing requirement of the Guidelines shall be based on the applicant’s estimate at the time of the application of the Residential Development Net Square Footage that will be constructed on such lots. The Inclusionary Housing requirement from lot creation shall generally be imposed at the time of subdivision, except upon showing of good cause to the BoCC. If additional Net Square Footage is later requested and approved, an additional housing or in-lieu payment shall be required at that time. If purchasers build smaller units than the estimate, they may sell their unused housing allocation as Affordable Housing Credits.

³ ADUs are acceptable as Affordable Rental housing with no rental or condominium restrictions, but they must be rented to and occupied only by Eligible Households. ADUs cannot be used as guest accommodations or left vacant.

SECTION 3-110 Commercial Mitigation

Applicants constructing new Commercial Development shall mitigate the impact on Eagle County's housing stock by building Affordable Housing for at least 55 percent of the new employees generated by the particular development. Affordable For-Sale Housing required pursuant to Commercial Mitigation shall be priced on average at 100 percent AMI. (This is equivalent to 100 percent Commercial Mitigation for jobs paying less than 140 percent AMI, accounting for current in-commuting rates.) No mitigation is required for existing jobs at the site to be developed. Mitigation rates shall be based on the most recent Eagle County Nexus study. For 2008, "55 percent mitigation" equates to 715 Net Square Feet of Affordable Housing per 1000 Net Square Feet of Commercial Space and 204 Net Square Feet of Affordable Housing per Lodge Room. The Program Administrator is authorized to update these mitigation calculations as the Eagle County Nexus Study is revised and to explain these calculations in the Administrative Procedures.

The Affordable Housing demand generated by a Commercial Development shall be determined utilizing an average job generation rate of 2.8 employees per 1,000 square feet of commercial space with adjustments for multiple job holding and multiple employees per Household. The standard commercial "unit," for purpose of calculating Commercial Mitigation requirements, shall be 1,000 Net Square Feet.

If the applicant can document, to the BoCC's reasonable satisfaction, that the proposed development will generate fewer jobs per square foot than the overall merged average for the life of the Commercial Development then the applicant may use the proven lower job-generation rate in calculating Commercial Mitigation obligations.

SECTION 3-111 Affordable Commercial Space

Applicants for Commercial Developments where 20 percent of Net Square Footage of Commercial Development will be leased or sold as Affordable Commercial Space are eligible for a 10 percentage point reduction in their Commercial Mitigation requirement.

Affordable Commercial Space is retail or office space that is leased or sold at or less than 60 percent of existing market conditions, as determined by Eagle County in its sole discretion. Affordable Commercial Space may be leased directly by the applicant, but only to a non-relative. Side payments from tenants or purchasers are prohibited. The tenant or purchaser must be approved by Eagle County. Affordable Commercial Space may increase in rent or sales prices at no more than 5 percent annually in perpetuity, simple interest, pursuant to a recorded deed restriction in a form approved by Eagle County.

SECTION 3-120 Mixed-Use Developments

If both Commercial Mitigation and Inclusionary Housing requirements apply because the application contains a mix of Commercial Development and Residential Development, then the higher Net Square Footage requirement for delivering Affordable Housing applies, at the lower initial sales price.⁴

SECTION 3-130 Alternative Means of Compliance

In an effort to provide the flexibility necessary for the development industry, an applicant may comply with the Affordable Housing requirement for the Inclusionary Housing and Commercial

⁴ For example, if a mixed-use project of 100,000 Net Square Feet of total Residential Development and 50,000 Net Square Feet of Commercial Development were proposed, the affordable housing obligation would be 35,750 square feet at an average price point affordable to a family earning 100% AMI. This represents the higher Net Square Footage requirement of Commercial Mitigation (35,750) or Inclusionary Housing (35,000), at the 100 AMI level required by Commercial Mitigation.

Mitigation policies in the following ways, all of which are subject to approval by the BoCC, at its sole discretion:

- A. An applicant may be permitted, at the discretion of Eagle County, to build the Affordable Housing units on-site or off-site, if such off-site location conforms to the criteria of Section 3-180, *infra*.
- B. Pursuant to Section 3-131, an applicant may provide Eagle County with an in-lieu payment.
- C. An applicant may dedicate land to Eagle County that meets all criteria in Section 3-132, *infra*.
- D. An applicant may contract with a third party to complete on-site or off-site housing. The original applicant shall be responsible for assuring that these units are in compliance with the Guidelines.
- E. An applicant may purchase Affordable Housing Credits, as provided for in section 3-133, *infra*.
- F. An applicant may propose alternative housing solutions, or other community benefit of similar value, of the applicant's own devising, as provided for in Section 3-134, *infra*.

Applicants are prohibited from using units built as replacement of housing affordable to households earning less than 140 percent AMI toward satisfaction of Inclusionary Housing or Commercial Mitigation requirements. Any such housing destroyed in the development process must be replaced with units of similar affordability and size, in addition to said requirements.

SECTION 3-131 Payment in-Lieu

An applicant may apply to satisfy all or part of its Inclusionary Housing or Commercial Mitigation requirements by making an in-lieu payment if development of Affordable or Resident-Occupied Housing is impracticable, as determined by the BoCC. Payment in lieu of providing housing is discouraged and will be allowed only upon a showing of impracticability of development of the Affordable or Resident-Occupied Housing. Applicants, however, may satisfy their obligation to construct partial units by making an in-lieu payment. (For example, if the obligation requires construction of 10.65 units, an in-lieu payment could be made to satisfy the .65 unit requirement rather than building an entire unit.).

The payment-in-lieu represents the difference between prevailing market prices and the Maximum Purchase Price at 100 percent AMI, plus a 15 percent administrative fee, and shall be based on the Gross Household Income of a family of three. This calculation shall be performed by the Program Administrator. The purpose of the administrative fee is to offset the increased cost to Eagle County of managing the development of Affordable Housing, the escalating cost of land and increased time it takes Eagle County to build Affordable Housing.

All in-lieu payments shall be paid to the Eagle County Housing Fund prior to the issuance of certificate of occupancy for either the free-market or Affordable Housing or Resident-Occupied Housing component of the Residential or Commercial Development. The in-lieu dollar amount shall be set at the time of payment. In-lieu payments shall be placed into a separate, interest-bearing account and shall be used by Eagle County for housing programs throughout Eagle County. Any interest or other income earned on moneys deposited in said interest-bearing account shall be credited to the account.

The in-lieu amount may be lowered at the BoCC's discretion upon a showing that the in-lieu payment as provided for herein would render the development impracticable, but only if 1) the applicant shows that the land was purchased 12 months prior to the adoption of the Guidelines, 2) the appreciation on the property was less than the required in-lieu payment, and 3) the in-lieu of payment would exceed 3 percent of the estimated market value of the units to be constructed.

Under this method, the in-lieu payment cannot be lowered to less than 3 percent of the value of the units to be constructed. Any reduction in the in-lieu payment must be approved by the BoCC as part of the land-use approval process. Particular consideration may be given to developments of less than 30,000 sq. ft. or development on less than 1 acre.

SECTION 3-131.1 Calculation of In-Lieu Payments

In-lieu payments are calculated based on the affordability gap between 100 percent AMI and the median sales price per square foot in Eagle County (including the Eagle County municipalities). The Program Administrator shall update these requirements annually based on the prior year's median sales price per square foot and Eagle County's AMI for the current year.

SECTION 3-132 Land in-Lieu

An applicant may satisfy its Inclusionary Housing and Commercial Mitigation obligations through a voluntary conveyance of land to Eagle County. The land conveyed shall be free of all liens and encumbrances and shall be conveyed by general warranty deed, must be commensurate in value with the total in-lieu payment, including the 15 percent administrative fee and must be capable of supporting the amount of housing the applicant is required to build. The land must also meet the criteria set forth in Section 3-160, *infra*. An applicant may use cash to make up any gap between the value of the donated land and the in-lieu payment. Eagle County, at its sole discretion, shall decide whether to accept land offered in lieu of an applicant's Inclusionary Housing and Commercial Mitigation obligations. Land so conveyed to Eagle County may be located within any of the Eagle County municipalities.

SECTION 3-133 Affordable Housing Credits

Applicants who build more than the minimum amount of Affordable Housing required by the Guidelines may transfer Affordable Housing Credits to another applicant for their use in meeting their Inclusionary Housing or Commercial Mitigation obligations. All sections of the Guidelines remain in force, including timing of construction. No Affordable Housing Credits will be allowed for housing units built prior to the adoption of the Guidelines.

SECTION 3-134 Other Proposals

The BoCC, at its sole and exclusive discretion, may consider other proposals to provide Local-Resident Housing, or other forms of affordable housing or other community benefits as a condition of a Development Permit approval, consistent with applicable law. Businesses or agencies with their own housing programs may receive credit for any pre-existing, deed-restricted employee stock when constructing new Commercial Development at the BoCC's sole and exclusive discretion.

SECTION 3-140 Incentives for Meeting or Exceeding the Guidelines

If an applicant has provided a combination of compliance measures that meet or exceed the minimum requirements for Inclusionary Housing or Commercial Mitigation, Eagle County, at its sole discretion, may offer the following incentives, to the extent allowed by Eagle County Land Use Regulations:

- A. Density bonus: As part of a planned unit development ("PUD") application, Eagle County may offer a density bonus over the otherwise maximum number of units allowed by the property's zoning and development standards.
- B. Site design flexibility: Provided that the standard of housing or the purpose and intent of the Guidelines and the Eagle County Land Use Regulation are not compromised, Eagle County may consider flexible application of design standards such as minimum lot size, floor area ratio (FAR), lot coverage, set backs, parking, and landscaping.

- C. Priority permitting: Eagle County may prioritize the project throughout various procedures such as zone change, subdivision, variance, building permit, etc.
- D. Public funding assistance: Eagle County may assist with the application process for applicants who decide to pursue funding assistance from state or federal agencies. Eagle County may also choose to use funds to match state, federal, or private grants.
- E. Public-private partnerships: Eagle County may participate or facilitate participation with other governmental entities regarding financing or purchasing of Affordable Housing units directly from the applicant or other purchases that will reduce the costs of the affordable portion of the project.
- F. Road impact fee waivers: The BoCC, on the recommendation of the Road Impact Fee Committee, may waive Eagle-County imposed road impact fees for Affordable Housing Units (but not Resident-Occupied Units).
- G. Other fee waivers: The BoCC may waive any other fee allowed by the Eagle County Land Use Regulations for Affordable Housing Units only in its sole and exclusive discretion.

SECTION 3-150 Eagle County Interest in Affordable Housing

To qualify as Local Resident Housing, Eagle County must take an interest in the Affordable Housing unit through its housing authority or similar agency.

SECTION 3-160 Initial Pricing of Affordable For-Sale Housing

Affordable For-Sale Housing in Residential Developments shall be initially priced for sale to Eligible Households at no more, on average, than 105 percent of AMI. The units shall be priced in a spectrum of prices consistent with market demand as such need is established by the Eagle County Needs Assessment, as the same may be amended from time to time. The Program Administrator is authorized to set the preferred distribution of Affordable For-Sale Housing, taking into account housing need, the maximum affordable purchase price for each AMI sector, and the needs assessment gap. As a general matter, Affordable Rentals are appropriate for households with Gross Household Incomes of 60 percent AMI or lower. Affordable For-Sale Housing is appropriate for households with Gross Household Incomes of 60-140 percent AMI. Resident-Occupied Housing is appropriate for households with Gross Household Incomes over 140 percent AMI. Prices set as low as 60 percent AMI are encouraged and will be considered in requests for incentives allowed by Section 3-140, *supra*. In no circumstances shall Affordable For-Sale Housing be priced greater than 140 percent AMI.

SECTION 3-161 Maximum Rental Rates of Affordable Rental Housing

Maximum Rental Rates for Affordable Housing units, except ADUs, must initially be set at rates that are affordable for Households with incomes no greater than 80 percent AMI, unless structured parking is provided for 80 percent or more of the units, in which case rents can be initially set at the 90 percent AMI level. ADUs have no rental-rate restrictions.

SECTION 3-162 Price Adjustments for Structured Parking

Applicants are encouraged to minimize the use of land for parking. If at least 80 percent of the parking spaces for Affordable Housing units are within a parking structure (not surface spaces), initial sales prices and rents may be priced at AMI levels up to 10 percentage points higher than otherwise allowed.

SECTION 3-163 Pricing of Resident-Occupied Housing

Sale prices for Resident-Occupied Housing are not limited. A spectrum of pricing responsive to market demand is encouraged.

SECTION 3-164 Adjustments to Prices and Rents

Up to the time of issuance of certificate of occupancy, the applicant may request that the Program Administrator adjust the Maximum Purchase Prices or Maximum Rents to conform to updated AMI figures. Any such modification to prices or rents will be done through an amendment to the Housing Plan and will not require formal amendment to the Development Permit.

SECTION 3-170 Timing of Construction of Local Resident Housing

All required Local Resident Housing units must be provided prior to, or concurrently and proportionally with, the production of Residential Development's market-rate housing, or production of the Commercial Development as measured by issuance of building permits, unless Eagle County-approved Housing Plan provides otherwise.

SECTION 3-180 Location of Local-Resident Housing

Affordable Housing and Resident-Occupied Housing should generally be provided on-site, if possible. Exceptions to this strong preference include Residential Development on sites in rural locations inconvenient to employment centers and public transit, or Commercial Development that involves hazardous substances and impacts not compatible with residential uses.

The applicant may also propose to locate the Affordable Housing or Resident-Occupied Housing off-site if the off-site location better serves the needs of workforce housing; relevant criteria may include, but is not limited to, applicable comprehensive and master plans, a "Community Center" designation, scoring on Eagle County's Sustainable Community Design Index, site location, geologic and other hazards, site slope, public infrastructure, suitable soils and drainage, and proximity to public transit. The location of all Affordable Housing and Resident-Occupied Housing must be set forth in the Housing Plan. It is intended that the proposed site be within the same general vicinity of Eagle County as proposed the Commercial or Residential Development. Applicants are strongly discouraged from proposing off-site Local Resident Housing in a different community (incorporated or unincorporated) from the Development Permit site primarily to reduce development costs.

SECTION 3-200 Housing Plan Required

In order for an application for a Development Permit to be deemed complete, an applicant shall submit a complete Housing Plan, which has been previously approved by the Program Administrator. Compliance with the Housing Plan shall be a condition of approval for the Development Permit.

At a minimum, the Housing Plan shall contain the following information, as applicable:

1. Total number of proposed residential Net Square Footage in any Residential Development;
2. Total number of Affordable Housing, Resident-Occupied Housing, and market-rate units, including proposed units types, Net Square Footage, number of Bedrooms per unit, targeted income category, and initial sales price;
3. Total square-footage of any Commercial Development and number of employees generated from the development utilizing standards set forth in these Guidelines;
4. Average Net Square Footage of the proposed Affordable For-Sale Housing and average size of finished Net Square Footage of market rate housing units;
5. Average lot size of proposed Affordable For-Sale Housing and average lot size of market rate housing units, as applicable;
6. Location of proposed Affordable For-Sale Housing within the development, by unit type and size;

7. Proposed production schedule of Affordable For-Sale Housing and market units;
8. Concept for marketing to Households that may be eligible for the Affordable Housing;⁵
9. Proposed Maximum Sales Prices for all Affordable For-Sale Housing;
10. Any proposed alternative methods of compliance with these Guidelines; and
11. Any other information deemed to be relevant by the Program Administrator.

All additional information required by the Program Administrator shall be consistent with the terms and intent of the Guidelines and shall be expressly set forth in the Administrative Procedures

The Housing Plan shall be recorded with the applicant's property at the time the Development Permit is granted. Any amendment of the Housing Plan prior to recording requires the approval of the Program Administrator with right of appeal to the BoCC as provided in the Eagle County Land Use Regulations.

SECTION 3-300 Homeowners and Condominium Associations

Any documents creating a condominium or homeowners association shall require that the Affordable For-Sale Housing will only be assessed monthly dues and other shared assessments based on the proportionate ratio of the value of the Affordable For-Sale Housing or lot compared to market-rate units in the same development.

SECTION 3-310 Divided Ownership of Affordable Rental Housing Limited

No Affordable Rental Housing unit shall be converted in the future to free-market, for-sale housing through subdivision, the cooperative form of ownership, condo-conversion, or some similar form of ownership inconsistent with its affordable purpose, unless the owner proposes providing substantially similar substitute Affordable Housing and such proposal is pre-approved by the BoCC. Under no circumstances shall any portion of an Affordable Housing unit be leased or rented for any period of time without the prior written approval of the Program Administrator and compliance with the Guidelines. In the event of non-compliance with this restriction, such rental or lease shall be wholly null and void and shall confer no right or interest whatsoever to or upon the purported tenant or lessee.

SECTION 3-400 Unit Quality

Local Resident Housing shall meet the requirements of all land-use regulations and local building codes. They should be architecturally compatible with surrounding uses. Exterior finishes should not be substantially inferior to the materials used on free-market units; Resident-Occupied Housing should appear compatible with free-market housing.

Enhancing the long-term affordability of Local Resident Housing through designs that reduce utility costs is strongly encouraged. Units must meet minimum ECO Build Standards as provided for in the Eagle County Land Use Regulations; payment in-lieu of meeting ECO Build standards is not permitted. Surpassing the minimum standards through Energy Star appliances, passive and active solar applications, geo-thermal heating systems, additional insulation and other measures that reduce energy consumption will be reviewed when considering applications.

⁵ Employers may purchase Affordable For-Sale or Rental Units for resale or rental to their employees.

SECTION 3-500 Storage

Sufficient storage shall be provided to meet the needs of Local Resident Housing occupants. Rules and regulations governing specific storage requirements for Local Resident Housing shall be set by the Program Administrator.

SECTION 3-600 Unit Design

Local Resident Housing is intended to be a long-term asset, the quality and appearance of which is very important. Local Resident Housing designs must address livability, maintenance, health, safety concerns, climate, lifestyle, and needs of the types of Households the units are intended to serve. Costly-to-operate amenities are strongly discouraged. Structured parking is encouraged. To enhance livability, balconies, decks and small yards are also encouraged.

SECTION 3-700 Local Resident Housing Bedroom Mix and Size

When required to develop one or two Affordable Housing units, the applicant shall build two-Bedroom units at a minimum of 1,000 Net Square Feet. When required to develop more than two units, the applicant should include a distribution of one-, two- and three-Bedroom units as determined by the Program Administrator. Four-Bedroom units are also permitted if market demand is shown to be adequate. The Program Administrator may set required Bedroom mixes in response to changing market demand. Applications for Local Resident Housing, apartment vacancy rates, Bedroom mix for planned Residential Developments and other market indicators should be taken into consideration. While there are no specific Bedroom mix requirements for Residential Occupied units, the applicant is expected to have analyzed market demand and competition and to propose a mix that is responsive and appropriate.

Minimum and maximum sizes may be set by the Program Administrator within the following Net Square Feet parameters: studios: 500-1000; one Bedrooms: 650-1300; two Bedrooms: 800-1500; three bedrooms: 950-1700; four bedrooms: 1,100-2,000.

SECTION 3-800 Initial Sales and Marketing of Affordable-Housing and Resident-Occupied Units

The applicant shall be responsible for the initial sales and marketing of Affordable For-Sale Housing and Resident-Occupied Units. Eagle County shall have the right to review the terms of each sale for compliance with the Guidelines.

CHAPTER IV – MATERIAL TERMS OF DEED RESTRICTIONS (RESTRICTIVE COVENANTS)

All Local Resident Housing shall be burdened by deed restrictions, which shall run with the land, as provided for in the Guidelines.

SECTION 4-100 Deed Restrictions for Local Resident Housing

All deed restrictions burdening Local Resident Housing units must include resale restrictions binding future buyers and sellers to the applicable conditions set forth in the Guidelines and shall be in a form approved by the Program Administrator and the Eagle County Attorney’s Office. All purchasers shall execute the deed restriction as well as an Acknowledgement of Deed Restriction, a document accepting the purchaser’s agreement to be bound by both the recorded deed restriction covering the sale unit and the Guidelines.

SECTION 4-110 Deed Restrictions for Affordable For-Sale Housing

The material terms for restrictive covenants against Affordable For-Sale Housing are as follows:

- a. Eligible Households only (Section 5-100, 5-110);
- b. May not own other residential property, with limited exceptions (Section 5-120);
- c. Income and asset cap (Section 5-130): Gross Household Income less than 140 percent AMI and Household assets less than 1.5 percent sales price);
- d. Limitations on rentals (Sections 5-140 and 5-170);
- e. Primary Residency use only with annual re-certifications (Sections 5-160 and 5-161);
- f. Initial sales pricing restrictions (Section 3-120);
- g. Resale, price-appreciation cap (Sections 5-180, 5-182);
- h. Ownership interest conveyed to Eagle County (3-150); and
- i. Resale by Eagle County (Sections 5-171).

SECTION 4-120 Resident-Occupied Housing

The material terms for restrictive covenants against Resident-Occupied Housing shall be as follows:

- a. Resident-Occupied Housing may be owned and occupied only by an Eagle County resident as his or her Primary Residence pursuant to Section 5-170, *infra* (Section 5-100).

No household members may own other real property, subject to exceptions (Section 5-120).

SECTION 4-130 Affordable Rental Housing

The material terms for restrictive covenants against Affordable Rental Housing, except ADUs, shall be as follows:

- a. Eligible Households only (Section 5-100);
- b. Maximum rents (Section 3-161);
- c. Ownership interest conveyed to housing authority (Section 3-150); and
- d. Income limitations (Section 5-130).

SECTION 4-140 Deed Restrictions for Affordable Commercial Space

All Affordable Commercial Space must contain resale and rental restrictions binding future owners to the applicable conditions set forth in the Guidelines in effect at the time of property transfer, including the following:

- a. Must be leased or sold to a non-relative (Section 3-111);
- b. Rents and purchase prices must be set at 60 percent of market rate (Section 3-111); and
- c. Appreciation and rent may increase by no more than 5 percent, non-compound, annually (Section 3-111).

CHAPTER V – OWNING AND RENTING LOCAL-RESIDENT HOUSING

SECTION 5-100 Eligibility

Affordable Housing units shall be owned or rented only by (1) Eligible Households that include at least one Qualified Employee and that meet the eligibility requirements provided for in this Chapter or (2) employers of Qualified Employees. Purchasers must provide a down payment on the Affordable Housing unit in an amount no less than 1 percent of the purchase price.

Resident-Occupied Housing must be owned and occupied, except as specifically provided in Section 5-170, by an Eagle County resident who makes the Resident-Occupied Housing his or her Primary Residence.

Eligibility requirements must be met before submitting a bid to purchase or rent a Local-Resident Housing unit.

In determining the priority of Eligible Households for Affordable Housing units, the Program Administrator may award points based upon the following criteria in order of importance: Gross Household Income in relation to purchase price (preferring Eligible Households with fewer financial options); length of employment in Eagle County; proximity of work to housing; current ownership of Affordable Housing; length of residency in Eagle County; service for governmental and public-service entities in Eagle County; and intergovernmental agreements.

For all Affordable Housing three-Bedroom units, priority shall be given to Eligible Households who have a Household Size of four or more persons regardless of their Household's cumulative total points. Similarly, for all four or more Bedroom Affordable Housing units, priority will be given to Eligible Households who have a Household Size of five or more persons regardless of the Household's cumulative total points.

If two individuals are applying jointly, only the higher priority applicant will be considered in determining a Eligible Household's priority. Priority for larger units shall be assigned based on Household size. This prioritization shall be made pursuant to Administrative Procedures promulgated by the Program Administrator.

If two or more qualified bids are submitted at the highest bid price and the bidders have equal priority in the selection procedure, point ties shall go to the Household with the greater Household Size. If this does not resolve the tie, the Program Administrator shall hold a lottery to determine the winning Eligible Household.

SECTION 5-110 Employment Qualification

For as long as the Household owns or rents the Affordable Housing unit (A) all members of an Eligible Household must cumulatively earn at least 75 percent of the Household's Gross Household Income in Eagle County or (B) at least one occupant-owner must occupy the Affordable Housing unit as his or her primary residence and must be a Qualified Employee pursuant to the following criteria:

1. Has earned a living primarily in Eagle County by having worked an average of at least thirty (30) hours per week on an annual basis at a business with an office or job site physically located in Eagle County (multiple jobs in Eagle County may be combined to reach 30 hours per week); or
2. Has been hired for a job in Eagle County on a permanent basis (meaning that there is an expectation that the employment will continue for a period of at least six (6) months) to work at least thirty (30) hours per week; or
3. Is over the age of sixty (60) and has earned a living primarily in Eagle County (by having worked an average of at least 30 hours per week for the previous five years or

for five (5) years immediately prior to his retirement working a minimum of 8 months of each year employed); or

4. Is a Disabled Person who has been a full-time employee in Eagle County (subject to the above exceptions) for a minimum of two years immediately prior to his or her disability or has been granted an exception to the minimum of 30 hours per week in order to continue with a federal or state benefit program through the Division for Developmental Disabilities (state) or SSI (federal), if the person works the maximum number of hours per week the program will allow; or
5. Is a single parent with one or more Dependents, with at least one being under the age of five (5) or enrolled full-time in a school in Eagle County.

SECTION 5-120 Limits on Owning Other Real Estate

No member of an Eligible Household or member of a household owning a Resident-Occupied unit, including, but not limited to, spouses and children under 18 years of age, may own residential real estate anywhere as of closing or signing the lease for the Local-Resident Housing unit, subject to the following exceptions:

1. If the Eligible Household member is currently an owner of an Affordable For-Sale Housing unit, and he or she seeks to sell his or her existing unit and purchase another Affordable For-Sale Housing unit contemporaneously; or
2. If currently-owned residential property is listed for sale; or
3. If the relevant household member has leased his existing unit located outside of Eagle County at a market rate rent (leases to immediate family members do not qualify) for a period of at least one (1) year, and submits annual verification that the property remains leased at a market rate.

For an Eligible Household member whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties that constitute inventory in such and the business shall not constitute ownership of other residential real estate.

Subject to the exceptions above, during ownership of a Local-Resident Housing unit, no household member shall own any interest alone or in conjunction with others, in any other developed residential real estate in Eagle County. Residential real estate that is owned by a member of a prospective occupant of Local-Resident Housing may not deed residential real estate to a corporation or other person or entity except at fair market value nor may residential real estate be deeded to a corporation or other legal entity in which the household member has any financial interest in order to meet these requirements.

SECTION 5-130 Income and Assets Limitations

All purchasers and renters of Affordable Housing must have Gross Household Income of less than 140 percent AMI. Eligibility for Affordable For-Sale Housing is also limited to Households with total assets with a market value of no more than 150 percent (1.5 times) the price of the unit to be purchased, excluding government-qualified retirement accounts.

There are no income caps or asset limitations for purchasers of Resident-Occupied units.

SECTION 5-140 Rental of Affordable Housing by Qualified Employers for Employees

Qualified Employers may purchase and lease Affordable Housing to employees who are members of Eligible Households. Qualified Employers may not impose additional deed restrictions to Affordable Housing without the express consent of the Program Administrator.

SECTION 5-150 Applying for Local Resident Housing

Households interested in purchasing or renting Local Resident Housing must submit an application to Eagle County on a form consistent with the Guidelines and approved by the Program Administrator.

SECTION 5-160 Maintaining Occupancy

The occupant of an Affordable Housing unit or the owner of a Resident-Occupied Housing unit will be deemed to have ceased to use the unit as his Primary Residence by accepting permanent employment outside of the Eagle County area (employment in the Roaring Fork Valley is acceptable for units located in the Roaring Fork Valley), by residing in the unit for fewer than 8 months out of any 12 months or 240 days out of 365 days whichever is longer, or by registering to vote outside of Eagle County.

SECTION 5-161 Re-Certification of Affordable Housing and Resident-Occupied Housing

Once an Affordable Housing unit has been purchased or rented, it must continue to be owned and occupied only by Qualified Households. No later than February 1 of each year, the owner or renter of an Affordable For-Sale Housing or Affordable Rental Unit, respectively, shall submit to Eagle County two copies of a sworn affidavit on a form to be obtained from Eagle County, verifying that the owner or renter continues to meet employment, residency, and income requirements, as applicable, while owning no other residential property with the exceptions provided for herein.

Once a Resident-Occupied Housing unit has been purchased, it must continue to be owned and occupied only by household members meeting the requirements of Section 5-100 and 5-120, *supra*. No later than February 1 of each year, the owner of a Resident-Occupied Housing Unit shall submit to the Program Administrator two copies of a sworn affidavit on a form to be obtained from the Program Administrator, verifying that the owner continues to meet employment or residency requirements, as applicable, while owning no other residential property with the exceptions provided for herein.

Failure to provide information as required by the Program Administrator and any applicable deed restrictions may result in forfeiture of appreciation, a county-mandated sale, or any other available remedy at law or equity.

SECTION 5-170 Leave of Absence

A leave of absence for the owner of an Affordable Housing unit or a Resident-Occupied Housing unit from such occupancy requirement may be granted at the sole discretion of the Program Administrator, subject to clear and convincing evidence that shows the reason for leaving and a commitment to return. Said evidence shall be in written form, presented to Eagle County for review and decision thirty (30) days prior to leaving. The leave of absence shall be for one year and may, at the discretion of Eagle County, be extended up to one additional year, but in no event shall it exceed two years. In the case of an approved leave of absence, the owner shall only rent to an individual who meets the eligibility requirements herein. Rents charged during a leave of absence may not exceed Maximum Rental Rates for Affordable Rentals. The tenant must obtain a Letter of Certification from the Program Administrator. The owner shall provide a copy of the lease agreement executed between the owner and tenant to Eagle County. For Affordable Housing units, rents may not exceed the Maximum Rental Rate for the Affordable Rental unit.

SECTION 5-180 Reselling Affordable Housing

12. No owner of an Affordable Housing unit shall sell the unit for an amount greater than the Maximum Resale Price for the unit, which shall consist of the original purchase price paid for the Affordable Housing unit excluding any sales or financing costs, increased by the percentage increase in average wages in Eagle County during the

ownership period and by the value of Permitted Capital Improvements as described in Section 5-182, *infra*, less depreciation of such Permitted Capital Improvements. There are no resale price limitations on Resident-Occupied Housing units.

SECTION 5-181 Listing Units for Resale

All Local Resident Housing must be listed for resale with Eagle County or its designee using a standard listing contract form approved by the Program Administrator.

SECTION 5-182 Permitted Capital Improvements

Owners of Affordable Housing are allowed a maximum of 10 percent of the initial purchase price (the price paid for the unit by the owner making the Permitted Capital Improvement) over each five-year period for Permitted Capital Improvements from the date of the initial purchase by such owner. Every five years, the 10 percent allowance shall reset based on a recalculated resale value of the unit. Unused amounts shall not accumulate from five-year period to five-year period—unused amounts do not roll over from one period to the next. Permitted Capital Improvements may be depreciated for wear and tear and obsolescence.

The method of establishing the value of Permitted Capital Improvements shall be established according to rules and regulations promulgated by the Program Administrator.

SECTION 5-183 Sales Fees

Unless otherwise set forth in the deed restriction recorded against a Local Resident Occupied unit, at the closing of the sale, the seller shall pay Eagle County a sales fee provided for as follows:

- a. If the unit has been owned for more than 5 years, a 1.5 percent fee.
- b. If the unit has been owned for less than 5 years, a 1.5 percent fee if the owner provides documentation to Eagle County's satisfaction, that he or she intends to purchase another property as a permanent residence within Eagle County or intends to lease a permanent residence within Eagle County for at least 12 months.
- c. If the unit has been owned for less than 5 years, a 4 percent fee if the owner cannot make the showing required above.

The seller shall instruct the title company to pay the sales fee to the transaction agent out of the funds held for the seller at the closing.

The Seller must deposit 0.5 percent of the listing price with the escrow agent upon listing the unit. 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 should withdraw the listing after advertising has commenced, the seller shall be obligated to pay the escrowed 0.5 percent of the listing price directly to Eagle County. In the event that the seller withdraws for failure of any bids to be received at maximum price or with acceptable terms, the seller shall be responsible for all advertising and administrative costs incurred by Eagle County.

SECTION 5-184 Closing Costs

Sellers of Affordable Housing shall not permit any prospective buyer to assume any of the seller's customary closing costs, including the fees set forth herein, nor accept any other consideration that would increase the purchase price above the bid price so as to induce the seller to sell to such prospective buyer.

CHAPTER VI – MISCELLANEOUS PROVISIONS

SECTION 6-100 Liberal Construction

The Guidelines shall be liberally construed so as to further their purposes.

SECTION 6-200 Severability

If any provision, clause, sentence, or paragraph of the Guidelines or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of the Guidelines that can be given effect without the invalid provision or application, and to this end the provisions of the Guidelines are declared to be severable.

SECTION 6-300 Modification

The Guidelines may be modified by the BoCC in only a public hearing on the record. The Administrative Procedures may be promulgated and amended by the Program Administrator in a manner consistent with the terms and intent of the Guidelines without BoCC approval.

SECTION 6-400 Grievance Procedures

A grievance is any dispute that a unit owner, purchaser, or applicant may have with Eagle County with respect to action or failure to act in accordance with the rights, duties, welfare, or status of these persons or entities. Procedures for filing such a grievance are as follows:

1. A written grievance or appeal must be presented to the Program Administrator or successor position. It shall specify:
 - a. The particular ground(s) upon which it is based;
 - b. The action requested; and
 - c. The name, address, telephone number of the complainant and similar information about his/her representative, if any.
2. Upon presentation of a written grievance, the Program Administrator shall meet with complainant to review the grievance and resolve the issue, if possible.
3. If the issue is not resolved, the complainant may request a hearing before the BoCC.

Rules for the hearing before the BoCC follow the provisions of the Eagle County Land Use Regulations as found in Chapter I, Section 1.16 Appeals.

SECTION 6-500 Enforcement

The Guidelines are hereby incorporated as a component of the Eagle County Comprehensive Plan. Enforcement of the Guidelines will be pursuant to Chapter I, Section 1.14 Enforcement and Chapter II, Chapter VII Enforcement, as amended, of the Eagle County Land Use Regulations. Remedies include a forced sale, eliminating appreciation, withholding monies from escrow, legal proceedings at law and equity, and all other remedies available under applicable law and equity.

SECTION 6-600 Foreclosure

In the event of a foreclosure or of acceptance of a deed in-lieu of foreclosure by the holder of a promissory note secured by a first deed of trust on a Unit, Eagle County shall have the option to purchase the Unit, which shall be exercised as set forth in the Master Deed Restriction. The Owner has an obligation to notify Eagle County once the Owner perceives a foreclosure difficulty.

SECTION 6-700 Exemption for Lack of Reasonable Relationship or Impracticability

Any person or entity affected by the Guidelines may petition the BoCC for an exemption to reduce, modify, or waive the requirements contained in the Guidelines on the grounds that they are not reasonably related to the impact of the proposed development, to the extent such

reasonable relationship is required under Colorado law, or render development impracticable. Procedures for filing such a grievance will follow the provisions of the Eagle County Land Use Regulations as found in Chapter I, Section 1.16 Appeals. Such an appeal is required before an agency action is deemed final for purposes of appealing application of the Guidelines.