

First Amended and Restated Deed Restriction of Occupancy Covenants

This First Amended and Restated Deed Restriction of Occupancy Covenants (“Restatement”) is entered into this ____ day of _____, 2024 (the “Effective Date”) by and between the TOWN OF RICO, COLORADO, a Colorado home rule municipality with an address of _____ (the “Town”), and BRD LLC, a Colorado limited liability company with an address of _____ (“Owner”) (each a “Party” and collectively the “Parties”).

WHEREAS, the Parties desire to amend and restate the Housing Restriction Covenant recorded in Dolores County, Colorado on _____ at Reception No. _____ (the “Deed Restriction”) in its entirety as set forth in this Restatement;

WHEREAS, the Owner holds title to the real property legally described as:

LOT 6, BEDROCK SUBDIVISION, ACCORDING TO THE PLAT RECORDED ON _____ AT RECEPTION NO. _____, WITH THE DOLORES COUNTY CLERK AND RECORDER

(the “Property”); and

WHEREAS, the Owner intends to develop a common interest community on the Property and create condominium units (“Units”) thereon; and

WHEREAS, in exchange for good and valuable consideration and the mutual covenants set forth herein, the Owner has agreed to place certain restrictions on the occupancy of the Units for the benefit of the Town by requiring occupancy of the Units by participants in the local workforce.

In consideration of the foregoing, the Parties hereby amend and restate the Deed Restriction as follows:

1. GRANT OF COVENANTS. The Owner submits the Units to the covenants and restrictions in this Restatement for the benefit of the Parties and enforceable by the Town or its designee(s). This Restatement shall be binding on all owners of the Property or a Unit, including any Owner who acquires title to a Unit.
2. DEFINITIONS.
 - a. “Eligible Buyer” means:
 - (i) a Qualified Resident; or
 - (ii) a Local Employer.

- b. “Household.” A household consists of all the people who occupy a housing unit.
 - c. “Local Employer” is a business, corporate entity, special district, school district, or municipality that conducts its operations primarily within the boundaries of Dolores County, Colorado or the Telluride R1 School District. If an employer does not qualify as a Local Employer, the Town may, in its sole discretion and on a case-by-case basis, qualify such employer as a Local Employer.
 - d. “Maximum Sale Price” means the maximum amount that a Unit may be sold for under this Restatement.
 - e. “Permitted Capital Improvements” mean capital improvements which the Owner can evidence by itemized receipts or itemized invoices. Permitted Capital Improvements exclude regular maintenance and costs to repair normal wear and tear, and appliance replacements.
 - f. “Primary Residence” means the sole and exclusive place of residence of the Qualified Resident.
 - g. “Qualified Resident” means:
 - (i) an individual who has been a resident of Dolores County, Colorado or the Telluride R1 School District, as may be amended from time to time for the proceeding 12 months; or
 - (ii) an individual who has worked for a Local Employer a minimum of 700 hours during the preceding 12 months; or
 - (iii) an individual who provides a Local Employer’s written confirmation of the individual’s current and ongoing employment for the Local Employer which will lead to a minimum of 700 hours during the next 12-months, or that the individual will commence such employment within 60 days;
 - (iv) If an individual does not qualify as a Qualified Resident, or a previously qualified individual no longer qualifies, the Town may, in its sole discretion and on a case-by-case basis, qualify such individual as a Qualified Resident.
3. OCCUPANCY RESTRICTIONS. A Unit must, at all times, be used and occupied as a Primary Residence by a Qualified Resident.
 4. OWNERSHIP. The Owner of a Unit must, at all times during ownership of a Unit, be a Qualified Resident or Local Employer.
 5. NOTICE OF INTENT TO SELL. Any time an Owner desires to sell a Unit, the Owner must provide a written notice of intent to sell (“Notice of Intent”) to the Town at least 30 days prior to offering the Unit for sale. The Town shall, within 14 calendar days, establish the “Maximum Sale Price” for the Unit.

6. MAXIMUM SALE PRICE. The Maximum Sale Price shall not exceed an increase of 4% per year from the then Owner's date of purchase to the date of the Notice of Intent. The annual increase shall be prorated for each whole month for any part of a year.
7. PERMITTED CAPITAL IMPROVEMENTS. The value of Permitted Capital Improvements, may be added to the Maximum Sale Price. The Town shall approve each Permitted Capital Improvement prior to adding to the Maximum Sale Price.
8. COMPLIANCE. The Owner shall comply with the Town's verification, audit and other administrative requirements, as may be adopted and in effect from time to time, and provide any additional information requested by the Town. The Town may require the Owner to provide documentation to ensure compliance with this Restatement.
9. USE OF THE UNITS. The Owner of a Unit shall ensure the Unit is used in a way that will not cause harm to others or create a nuisance and must maintain the Unit in good working order, in habitable condition, and in compliance with all laws. The Owner shall ensure the Unit complies with all declarations, covenants, easements, and Permitted Mortgages (defined in Section 14). The Unit may not be used for any commercial purpose other than home occupations as are permitted in residential zoned districts within the Town.
10. TAXES, ASSESSMENTS, AND INSURANCE. The Owner shall pay, when due, all taxes and governmental and homeowner association assessments that relate to a Unit, unless taxes and assessments are escrowed by a Permitted Mortgagee (defined in Section 14), in which case payment shall be made as directed by the Permitted Mortgagee. The Owner shall also maintain property owner's insurance equal to the full replacement value of the Unit and provide the Town with certificates evidencing such insurance upon the Town's request. If the Owner or the Permitted Mortgagee fails to pay taxes, assessments, or insurance, the Town may pay such taxes, assessments, and insurance on the Owner's behalf. The Owner shall promptly reimburse the Town for any amounts paid on its behalf together with interest at the rate of 8% per annum on all such amounts until paid in full.
11. TRANSFERS.
 - a. An Owner shall transfer the Unit only as permitted by this Restatement. Any purported transfer that does not strictly follow the procedures set forth herein is null and void.
 - b. Town's Purchase Option in the event of Foreclosure.
 - (i) Upon (i) the Town's receipt of a notice of a foreclosure, (ii) any sale or transfer resulting from a foreclosure or in lieu of a foreclosure, or (iii) an Event of Default ("Option Events"), the Town may purchase the Unit at the Maximum Sale Price, or in the case of a foreclosure where the total obligations secured by the Permitted Mortgage (the "Obligations") exceed the Maximum Sale Price, the total amount of the Obligations ("Purchase Option").

For purposes of this subparagraph (c)(i):

- (1) The amount of the total Obligations owed to the Permitted Mortgagee is to be calculated as of the date of sale to the Town or its assignee, and
 - (2) If the Town does not exercise its Purchase Option after receipt of the notice of foreclosure, it will have waived its right to exercise the Purchase Option.
- (ii) If the Town elects to purchase the Unit, the Town shall exercise the Purchase Option by notifying the Owner and the Permitted Mortgagee in writing of such election (“Notice of Exercise of Option”) within 60 days after the Option Event. Upon giving the Notice of Exercise of Option, the Town may either proceed to purchase the Unit directly or may assign the Purchase Option to an Eligible Buyer.
 - (iii) The purchase by the Town or its assignee must be completed within 90 days after the Notice of Exercise of Option. Except as provided in Section 13, below, the Purchase Option will remain in effect with respect to any subsequent Option Events. The time permitted for the completion of the purchase may be extended by mutual agreement of the Town (or its assignee) and the Owner and, if applicable, the Permitted Mortgagee undertaking the foreclosure or transfer in lieu of foreclosure.
 - (iv) If the Town or its assignee has failed to complete the purchase within the 90 day period, the Owner may sell the Unit to any Eligible Buyer of their choosing. The offer must comply with all terms of this Restatement.

c. Unit Sale.

- (i) The Owner may sell the Unit to any Eligible Buyer of their choosing. The offer must comply with all terms of this Restatement.
- (ii) The prospective Eligible Buyer must in writing acknowledge the Unit is subject to this Restatement as a condition of the contract to purchase the Unit. The Town may provide the form of such acknowledgement, which shall be recorded at closing.
- (iii) The Owner shall provide the Town with a copy of the executed sales contract within 10 calendar days of accepting such any offer. Before closing, the Owner shall also provide the Town with a title insurance commitment that identifies this Restatement as an exception to coverage.
- (iv) At closing, the Owner of a Unit and the Eligible Buyer shall execute a sworn statement affirming that the sales price of the Unit recited in the executed sales contract is the only value exchanged for the sale of the Unit.

- d. Transfer by Will or Inheritance. If the death of the Owner results in a transfer of the Unit to any person or entity that does not qualify as an Eligible Buyer, the Unit shall be sold to an Eligible Buyer in accordance with this Restatement.
12. CASUALTY. In the event of fire or other damage to the Unit, the Owner, or the homeowners association, as the case may be, shall promptly take all steps necessary to repair the damage and restore the Unit to its condition immediately before the damage. This obligation applies even if insurance proceeds are insufficient to pay the cost of repairs. If repair and restoration are not possible (for example, in the case of sinkhole or other condition that materially adversely impacts and precludes restoration of the structure), the Owner shall provide documentation of such circumstances to the Town, and in such case the Town may excuse the Owner from repairing and restoring the Unit, provided that the Owner uses any available insurance proceeds to pay off any Permitted Mortgage.
13. DEFAULT.
- a. Any violation of this Restatement by Owner, including any defaults in payment or other obligations to a Permitted Mortgagee (defined in Section 14), constitute an Event of Default. If an Event of Default occurs, the Town shall provide the Owner with written notice. The Owner will then have 30 days to cure the Event of Default before the Town exercises legal remedies including, without limitation, commencing an action for injunctive relief, unless the Town reasonably determines that its interest in the Unit is in jeopardy, in which case the Town may act immediately.
 - b. The Owner shall immediately notify the Town, in writing, of any notification received regarding any default under any Permitted Mortgage, any overdue or delinquent taxes or assessments, or any violation of any monetary or nonmonetary covenant related to the Unit. Any such default, late payment, or violation constitutes an Event of Default.
 - c. If the Town believes the Owner is violating this Restatement, the Town may inspect the Unit at reasonable times after providing the Owner with 24-hour notice. By this Restatement, the Owner grants the Town permission to enter the Unit after such notice is provided.
 - d. The Town shall send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner 15 days to determine the merits of the allegations, or to correct the violation. In the event the Owner disagrees with the allegation of violation of this Restatement, the Owner may request, in writing, a hearing before the Town Manager. If the Owner does not request a hearing and the violation is not cured within the 15 day period, the Owner shall be considered in violation of this Restatement.
 - e. Whenever this Restatement provides for a hearing before the Town Manager, such hearing shall be scheduled by the Town within 10 days of the date of

receipt of a written request for a hearing. At any such hearing, the Owner or other aggrieved party may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made, and the decision of the Town shall be a final binding decision, subject to judicial review.

- f. The Town shall have the exclusive authority to interpret or enforce this Restatement, or any portion of it, in the Town's sole subjective discretion, subject to judicial review.
- g. If the Owner is more than one individual, each shall be jointly and severally liable for compliance with this Restatement and any breach of this Restatement.
- h. There is hereby reserved to the parties hereto any and all remedies provided by law for breach of this Restatement or any of its terms. In the event the parties resort to litigation with respect to any or all provisions of this Restatement, the prevailing party shall be awarded its damages, expenses and costs, including reasonable attorney's fees.

14. PERMITTED MORTGAGE.

- a. A "Permitted Mortgage" is a loan secured by a deed of trust recorded against a Unit for which the Owner has obtained the written permission of the Town pursuant to this Section, together with any modifications which may be made from time to time. A "Permitted Mortgagee" is the lender on the deed of trust securing a Permitted Mortgage, and its assignees.
- b. The Owner may only grant a lien or deed of trust or encumber the Unit in any other way after first obtaining written permission of the Town. The Owner shall submit, in writing, all relevant information about the proposed terms and conditions of any loan secured by the Unit at least 10 days prior to the expected closing.
- c. By signing this Restatement, the Town gives written permission for the first-lien priority deed of trust which was recorded prior to this Restatement and shall be subordinate to this Restatement. The Town also hereby permits any assignee of such existing first-lien priority deed of trust to be a Permitted Mortgagee, subject to the terms and conditions of this Restatement at any time it purchases such deed of trust.
- d. Survival of Restatement Upon Exercise of Remedies by Mortgagees.
 - (i) If the holder of any mortgage, deed of trust, or other encumbrance on the Unit (each a "Mortgagee") conducts a foreclosure sale, accepts a deed in lieu of foreclosure, or exercises any other right or remedy that results in the Owner no longer having title to the Unit (any such right or remedy, a "Foreclosure Action"), this Restatement will continue to run with the land and shall continue to encumber the Unit.

- (ii) The Owner authorizes any Mortgagee to provide the Town with any information requested by it, either with respect to the obligations secured by a deed of trust or other security instrument encumbering the Unit including, without limitation, the original or maximum principal amount of the loan, the interest rate and other terms governing repayment, payment history, including any history of delinquent payments, current payments of principal, interest, and late fees due or delinquent, and the amount of total Obligations currently secured by the Mortgage.
 - (iii) The Owner understands and agrees that nothing in this Restatement constitutes a promise or guaranty by the Town to any Mortgagee.
 - e. Within 60 days after receipt of any notice described in Section 14.b., above, the Town may (but shall not be obligated to) proceed to make any payment required to avoid foreclosure. Upon making any such payment, the Town may place a lien on the Unit in the amount paid to cure the default and avoid foreclosure, including all fees and costs resulting from such foreclosure and interest at the rate of 8% per annum.
15. INDEMNIFICATION; WAIVER OF LIABILITY. The Owner shall defend, indemnify, and hold harmless the Town and its directors, officers, agents, successors, and assigns from and against any and all losses, damages, liabilities, claims, court costs, and legal expenses that the Town may incur related in any way to the Unit or this Restatement except to the extent arising solely out of the Town's gross negligence or willful misconduct. The Owner shall pay the Town on demand any and all amounts owing under this Section. The Owner's obligations hereunder will survive any release or termination of this Restatement.
16. GENERAL PROVISIONS.
- a. A determination by a court of competent jurisdiction that any part of this Restatement is illegal or unenforceable will not cancel or invalidate the remainder of such part or this Restatement, instead the Restatement shall be amended to the smallest degree possible to effectuate its purpose and the Parties' intentions absent the illegal or unenforceable provision, and the remainder of the provision and this Restatement shall remain in full force and effect. This Restatement is to be governed and construed in accordance with the laws of the State of Colorado. In the event of any dispute regarding this Restatement or its enforcement or interpretation, the Parties acknowledge and agree that the laws of the State of Colorado shall exclusively apply and that exclusive venue for any such dispute shall be in the county in which the Unit is located.
 - b. Except as otherwise provided herein, the provisions and covenants of this Restatement run with the land and bind the Owner's heirs, successors, and assigns.
 - c. Owner shall execute further documents and take further actions as may be

reasonably required by the Town to carry out the provisions and intent of this Restatement. The Owner and Town agree to reform these Restrictions as necessary to ensure that mortgages or deeds of trust on the Unit remain eligible for purchase by Fannie Mae and Freddie Mac and insured by FHA.

- d. Any amendment, modification or release of this Restatement requires a signed and written agreement of the Owner and Town, recorded with the Clerk and Recorder of Dolores County, Colorado.
- e. No term or condition of this Restatement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10- 101 *et seq.*

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TOWN OF RICO, COLORADO,
a Colorado home rule municipality

By: _____
_____, _____

Attest:

Town Clerk

Approved as to form:

_____, Town Attorney

OWNER: BRD, LLC

Jason Soules, Manager

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____day of _____2024, by Jason Soules, as Manager of BRD, LLC.

Witness my hand and official seal.

My commission expires: _____

(SEAL)

Notary Public