

**RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:**

Town of Crested Butte
Attn: Town Clerk
P.O. Box 39
507 Maroon Avenue
Crested Butte, CO 81224

**Amended and Restated Declaration of Occupancy Covenants with
Resale Restrictions and Purchase Option**

This Amended and Restated Declaration of Occupancy Covenants with Resale Restrictions and Purchase Option (“Restatement”) is entered into this 1st day of APRIL, 2024 (the “Effective Date”) by and between the TOWN OF CRESTED BUTTE, COLORADO, a Colorado home rule municipality with an address of 507 Maroon Ave, Crested Butte, Colorado 81224 (the “Town”), and Valley Housing Fund, a non-profit corporation with an address of 214 Sixth Street, #8, c/o Elizabeth P. Appleton, PC, Crested Butte, CO 81224 (“Owner”) (each a “Party” and collectively the “Parties”).

WHEREAS, the Parties desire to amend and restate the Declaration of Occupancy Covenants with Resale Restrictions and Purchase Option recorded in Gunnison County, Colorado on September 28, 2022 at Reception 687478 (the “Declaration”) in its entirety as set forth in this Restatement;

WHEREAS, the Owner holds title to the real property located at 112, 114 and 116 Butte Avenue, Crested Butte, Colorado 81224, and legally described as:

**LOT 9, 10, and 11, BLOCK 5, PAUL REDDEN WORKFORCE HOUSING
SUBDIVISION, CRESTED BUTTE, GUNNISON COUNTY, COLORADO**

(the “Property”); 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 Property for the benefit of the Town by requiring occupancy of the Property by participants in the local workforce.

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

1. **GRANT OF COVENANTS.** The Owner submits the Property to the covenants and restrictions in this Restatement for the benefit of the Parties and enforceable by the Town. The Town may elect to designate a public housing agency as its designee for the purpose of administering all or a portion of this Restatement.



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. "Housing Guidelines" means the adopted Town of Crested Butte Housing Guidelines, as may be amended from time to time. A copy of the current Guidelines can be obtained at Town Hall, 507 Maroon Avenue in Crested Butte.
- d. "Local Employer" is a business that maintain a location in Gunnison County and employs individuals that meet the minimum work requirement. 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.
- e. "Maximum Resale Price" means the maximum sales price of the Property permitted under this Restatement.
- f. "Primary Residence" The sole and exclusive place of residence Qualified Resident as defined in the Housing Guidelines.
- g. "Qualified Resident" means:
 - (i) a full-time employee who resides in Gunnison County and works for a Local Employer a minimum of 1,500 hours per calendar year; or
 - (ii) a retired person who resides in Gunnison County and who worked as a full-time employee for a Local Employer a minimum of four years immediately prior to their retirement (as further defined in the Housing Guidelines); or
 - (iii) a disabled person who resides in Gunnison County and who worked as a full-time employee for a Local Employer for a minimum of four years immediately prior to their disability (as further defined in the Housing Guidelines).

and

- (iv) a natural person who does not own any improved residential real estate, as confirmed by the Town to the Town's satisfaction.

3. OCCUPANCY RESTRICTIONS.

- a. Occupancy. Except as otherwise provided in this Restatement, the Property must, at all times, be occupied as a Primary Residence by a Qualified Resident.



- b. The Qualified Resident must occupy the Property as their Primary Residence for at least nine months each year unless the Owner or Qualified Resident obtains prior written approval from the Town for a shorter occupancy for good cause.
 - c. Maximum Occupancy. The occupancy of the Property cannot exceed two Persons per bedroom unless the Town gives prior written approval to greater occupancy.
4. OWNERSHIP. Ownership is limited to Eligible Buyers.
5. LEASING. Leasing of the Property is allowed under the following conditions:
- a. The lessor must be an Eligible Buyer.
 - b. The lessee must be a Qualified Resident.
 - c. All occupants must be listed on the lease.
 - d. Leases must be in writing with a term of no less than six months.
 - e. Neither the Property, nor any portion thereof, may be used for a vacation rental, as defined in the Town Code.
 - f. Master leases to entities that would qualify as Eligible Buyers are permitted.
 - g. All Leases, Master Leases, and/or Subleases shall be approved in writing by the Town.
6. INITIAL PURCHASE PRICE. The initial purchase price of the Property is documented in the Acknowledgement of Deed Restriction for each parcel.
7. MAXIMUM RESALE PRICE. Prior to any sale of the Property, the Town shall determine the Maximum Resale Price.
- a. Subject to the limitations, policies, and procedures set forth in the Housing Guidelines, the Maximum Resale Price is subject to an increase of three percent (3%) of such price per year from the date of purchase to the date of Owner's Intent-to-Sell Notice, which such annual increase prorated at the rate of one-quarter percent (0.25%) for each whole month for any part of a year.
 - b. Subject to the limitations, policies, and procedures set forth in the Housing Guidelines, the cost of Permitted Capital Improvements, as defined in the Housing Guidelines, may be added to the Maximum Resale Price.
 - c. All Permitted Capital Improvements shall be approved by the Town prior to being added to the Maximum Resale Price.
 - d. In order for an Owner to obtain the Maximum Resale Price, the Property shall meet or exceed the Town's Minimum Standards for Seller to Receive Full Value (the "Minimum Standards") as set forth in the Housing Guidelines. If the Property does



not meet the Minimum Standards, the Town may (i) require that the Owner escrow at closing a reasonable amount as determined by the Town to bring the Property into compliance with the Minimum Standards, or (ii) reduce the Maximum Resale Price accordingly.

8. COMPLIANCE. The Owner shall comply with the Town's verification and audit requirements, as required by the Housing Guidelines and together with any additional information requested by the Town. The Town may require the Owner to meet in person to review documents including pay stubs, income tax returns, leases, proof of insurance, and tax payments, and to otherwise ensure compliance with this Restatement. The Town may allow the Owner to submit required documentation by mail, email, or any other method, in which case the Owner shall promptly respond to the Town's requests.
9. USE OF THE PROPERTY. The Owner shall ensure the Property is used in a way that will not cause harm to others or create a nuisance and must maintain the Property in good working order, in habitable condition, and in compliance with all laws. The Owner shall ensure the Property complies with all declarations, covenants, easements, and Permitted Mortgages (defined in Section 12). The Property 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 the Property, 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 Property 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.
11. TRANSFERS.
 - a. The Owner may transfer the Property only as permitted by this Restatement. Any purported transfer that does not strictly follow the procedures set forth herein is null and void.
 - b. If the Owner wishes to sell the Property, the Owner shall notify the Town in writing ("Intent-to-Sell Notice") at least fourteen days before the Owner is permitted to market the Property for sale. As soon as practicable after the Intent-to-Sell Notice, the Owner shall consult with the Town regarding the Maximum Resale Price permitted. Following the establishment of the maximum sales price the Owner may sell the Property under subparagraph d) and with the exception of the Option Events described below, priority for any sale will first be given to Eligible Buyers who qualify under Section 2 above.



c. 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 (iii) an Event of Default ("Option Events"), the Town may purchase the Property at the fair market value as determined by an appraisal ordered by the Town, or in the case of a foreclosure where the total obligations secured by the Permitted Mortgage exceed the appraised value, the total amount of obligations under the Permitted Mortgage ("Purchase Option").

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

- (1) The amount of 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 a receipt of the notice of foreclosure, it will have waived its right to exercise the Purchase Option. The Town's failure to exercise the Purchase Option does not render invalid this Restatement.
- (ii) If the Town elects to purchase the Property, the Town shall exercise the Purchase Option by notifying the Owner and any Permitted Mortgagee in writing of such election ("Notice of Exercise of Option") within sixty days after the Option Event. Upon giving the Notice of Exercise of Option, the Town may either proceed to purchase the Property directly or may assign the Purchase Option to an Eligible Buyer.
- (iii) The purchase by the Town or its assignee must be completed within ninety days after the Notice of Exercise of Option. Except as provided in Section 13, 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 Mortgagee undertaking a foreclosure.
- (iv) If the Town or its assignee has failed to complete the purchase within the ninety-day period, the Owner may sell the Property to any Eligible Buyer of their choosing. The offer must comply with all terms of this Restatement.

d. Property Sale.

- (i) The Owner may sell the Property to any Eligible Buyer of their choosing. The offer must comply with all terms of this Restatement and the Housing Guidelines.
- (ii) The prospective Eligible Buyer must in writing acknowledge the Property is subject to this Restatement as a condition of the contract to purchase the Property.

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- (iii) The Owner shall provide the Town a copy of the executed sales contract within ten 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 exceptions to coverage.
 - e. Transfer by Will or Inheritance. If the death of the Owner results in a transfer of the Property to any person or entity that does not qualify as an Eligible Buyer, the Property shall be sold to an Eligible Buyer.
- 12. CASUALTY. In the event of fire or other damage to the Property, the Owner shall promptly take all steps necessary to repair the damage and restore the Property 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 circumstance to the Town, and in such case the Town may excuse the Owner from repairing and restoring the Property, provided that the Homeowner uses 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 thirty days to cure the Event of Default before the Town exercises legal remedies unless the Town reasonably determines that its interest in the Property is in jeopardy, in which 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 Property. Any such default, late payment, or violation constitutes an Event of Default.
 - c. If the Town believes the Owner is violating this Restatement, the process for investigation, notice of violation, and due process are defined in the Guidelines. The Town may inspect the Property at reasonable times after providing the Owner with 24-hour notice. By this Restatement, the Owner grants the Town permission to enter the Property after such notice is provided.
 - d. If Owner is more than one individual, each shall be jointly and severally liable for compliance with this Restatement and any breach of this Restatement.
- 14. PERMITTED MORTGAGE.
 - a. A "Permitted Mortgage" is a loan secured by a deed of trust recorded against the Property for which the Owner has obtained the written permission of the Town



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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 Property in any other way only 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 Property at least ten 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 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 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 Property (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 Property (any such right or remedy, a "Foreclosure Action"), this Restatement will continue to run with the land and shall continue to encumber the Property:
 - (ii) The Owner authorizes any Mortgagee to provide the Town with any information requested by either with respect to the obligations secured by a deed of trust or other security instrument encumbering the Property 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 the Mortgagee.
 - e. Within sixty days after receipt of any notice described herein, 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 Property in the amount paid to cure the default and avoid foreclosure, including all fees and costs resulting from such foreclosure.
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 all losses, damages, liabilities, claims, court costs, and legal expenses that the Town may incur related in any way to the Property or this Restatement except to the extent arising solely out of the Town's gross negligence or wilful misconduct. The Owner shall

pay the Town on demand any amounts owing under this Section. The Owner's duty to indemnify will survive any release 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 Property 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. If an Owner's heirs, successors, or assigns do not
- 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 Property 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 Gunnison County, Colorado.
- e. In the event of any conflict between this Restatement and the Housing Guidelines, this Restatement shall control, then the Housing Guidelines.
- f. 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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Gunnison County, CO

TOWN OF CRESTED BUTTE, COLORADO,
a Colorado home rule municipality

By: [Signature]
Dara MacDonald, Town Manager

Attest:

[Signature]
Town Clerk/Deputy Town Clerk



Approved as to form:

[Signature]
Karl Horton, Town Attorney

OWNER, VALLEY HOUSING FUND

[Signature]
Scott Desmarais, Board President

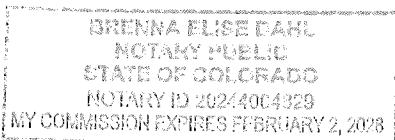
STATE OF COLORADO)
) ss.
COUNTY OF [GUNNISON]

The foregoing instrument was subscribed, sworn to and acknowledged before me this 26 day of March 2024, by Scott Desmarais as Board President.

Witness my hand and official seal.

My commission expires: 2/2/28

(SEAL)



[Signature] Brenna Dahl
Notary Public