

USE RESTRICTION AGREEMENT
Workforce Housing

THIS USE RESTRICTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2023 (the "Effective Date") by and between the TOWN OF PAGOSA SPRINGS, a Colorado home rule municipal corporation with an address of 551 Hot Spring Blvd., Pagosa Springs, CO 81147 (the "Town"), and FOUA, LLC, a Colorado Limited Liability Company, with an address of 564 East 2nd Ave, Suite 301, Durango, Co. 81301 ("Owner") (each a "Party" and collectively the "Parties").

WHEREAS, Owner owns certain real property within the Town, more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, in exchange for the Town's considerations described herein, Owner has agreed to set aside 1 unit at 262 Pagosa Street, unit #200A to lease to Qualified Residents or Qualified Households.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Property Owner Covenants.
 - a. The Owner agrees to set aside one studio Dwelling Unit at 262 Pagosa Street, Unit # 200A particularly described in **Exhibit A-1** ("Workforce Housing Unit") to lease to Qualified Residents or Qualified Households in accordance with the restrictions described in paragraphs 5 and 6 below; and
 - b. The Owner agrees to modify all exterior lighting fixtures in compliance with Town Code and include such in the Owner's design review proposal for approval by the Town
 - c. The Owner agrees that during the Term the Property is hereby burdened with the covenants and restrictions specified in this Agreement.
2. Town Considerations.
 - a. The Town agrees to grant a density bonus of one additional Dwelling Unit for 262 Pagosa Street and one additional Dwelling Unit for 232 Pagosa Street; and
 - b. The Town agrees to waive the building permit, plan review, and design review application fees associated with the Workforce Housing Unit; and
3. Definitions. For purposes of this Agreement, terms shall have their defined meaning according to of the Pagosa Springs Land Use Development Code and guidelines set forth in **Exhibit B**, attached hereto and incorporated herein (the "Guidelines"), and the following terms shall have the following meanings:
 - a. *Development* means all residential dwellings on the Property.

- b. *Dwelling Unit* means a single unit within the Development which provides complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
 - c. *Owner* means any individual(s) or company(s) that has legal rights, control, or legal title of or over the Property.
 - d. *Principal place of residence* means the home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom. To determine a person's principal place of residence, the criteria set forth in C.R.S. § 31-10-201(3), as amended, shall apply.
 - e. *Qualified Household* means a household having at least one Qualified Resident or a group of persons that contains at least one Qualified Resident wherein the household gross income does not exceed 120% of the Average Median Income ("AMI") as published by the Colorado Housing and Finance Authority for Archuleta County, Colorado. A Qualified Household may not have adult occupants that are not Qualified Residents.
 - f. *Qualified Resident* means a person who works a minimum of 32 hours per week or 1,000 hours per year or more at a business in Archuleta County, Colorado, or at the Wolf Creek Ski Resort in Mineral County, Colorado, that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business, and whose annual income is shown to be less than or equal to 120% of the AMI as published annually by the Colorado Housing and Finance Authority for Archuleta County, Colorado. To determine that a person is a Qualified Resident or group is a Qualified Household, Owner shall apply the Guidelines.
4. Term. This Agreement automatically expires **(Thirty (30) Years or In Perpetuity)** from the Effective Date ("Term"), whereupon this Agreement, including all use and occupancy restrictions set forth in Sections 1 and 5 hereof, shall become null and void and of no force and effect. Upon expiration of the Term, the Town agrees to execute and deliver to Owner, and Owner shall be permitted to record in the property records of Archuleta County, Colorado, any such instrument as Owner reasonably determines is necessary or appropriate to evidence the termination of this Agreement and expiration of the restrictive use and occupancy restrictions set forth herein.
5. Occupancy Restrictions for Workforce Housing Units.
- a. Owner shall allow occupancy of a Workforce Housing Unit only by written lease binding a Qualified Resident to occupancy for a duration of at least one (1) month.
 - b. Every occupied Workforce Housing Unit shall at all times, subject to the allowances further described in this Agreement, be occupied by a Qualified Resident or a Qualified Household for whom the Dwelling Unit is his or her or their principal place of residence.
 - c. All leases for Workforce Housing Units shall prohibit subleasing.

- d. All leases for a Workforce Housing Unit shall prohibit short-term rental of the Dwelling Unit by the occupant, and for the purposes of this Agreement “short-term” shall mean less than one (1) month tenancy.
 - e. Owner shall lease the Workforce Housing Unit to Qualified Residents or Qualified Households or hold out the Workforce Housing Units for lease to Qualified Residents or Qualified Households.
 - f. Owner shall not conduct any business activity on or in the Property, or within the Development other than for residential occupancy or as otherwise permitted within the zone district applicable to the Property, and Owner will include similar language in all leases restricting such business activity by Tenants.
6. Maximum Rent Restrictions. For each Workforce Housing Unit Owner shall not charge more than the maximum rent allowed by the most recent Income Limit and Maximum Rent Limit Table, as published by the Colorado Housing and Finance Authority (“CHFA”) for Archuleta County, to a Qualified Resident or Qualified Household. Total maximum monthly rent allowed is defined as housing costs that include: monthly rent, utilities (water, sewer, gas, electricity), owners dwelling unit insurance, and HOA dues.
7. Annual Verification. No later than June 1st of each year, beginning in the year following the first occupancy of the Development, Owner shall submit or cause to be submitted by Owner’s authorized representatives or agents, including, but not limited to, a property manager or qualified auditor engaged by Owner, to the Town for each Qualified Resident or Qualified Household occupied Workforce Housing Unit, as well as for the Development generally, the following information, which information shall be certified by each such tenant to be true and correct:
- a. Evidence to establish to the Town’s reasonable satisfaction that the required Dwelling Unit is leased to and occupied by only a Qualified Resident or Qualified Household, including documentation showing how the Owner applied the Guidelines to qualify the tenant(s) named on the Dwelling Unit’s lease as a Qualified Resident or Qualified Household for new leases and any renewing leases.
 - b. A copy of the lease form currently used to lease Dwelling Units and the current rent roll for the property listing the names of each tenant and the Dwelling Unit in which the tenants reside.
 - c. Proof of Owner’s annual calculation of the applicable annual income restriction at 120% or less of the AMI as published annually by the Colorado Housing and Finance Authority for Archuleta County, which is inclusive of the cost of utilities, in accordance with Section 3 of the Guidelines.
 - d. Proof of the Workforce Housing Unit’s maximum rental rate, as specified in Section 6 herein, as based on the Qualified Resident’s or Qualified Household’s income in accordance with Section 3 of the Guidelines.
 - e. Proof of insurance for the Development providing for such coverages, and in such amounts, as determined by Owner in its commercially reasonable judgment.

8. Audit Rights. If at any time the Town or the Town's representative has reasonable cause to believe Owner is violating the occupancy restrictions set forth in Section 5 of this Agreement, the Town, at the Town's sole cost and expense, may audit Owner's books and records related to the lease and occupancy of the Dwelling Units between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing Owner with 24 hours written notice. Owner shall cooperate with any such audit, and if an audit confirms Owner is in violation of the occupancy restrictions, Owner shall reimburse the Town for any and all costs and expenses of the audit.
9. Notice of Intent to Sell Property. In-lieu of the Town's considerations defined in section 2 associated with this project and the Town's interest to secure long-term workforce housing units, during the term of this agreement the Owner shall provide the Town with written notice within 21 days of Owner's intent to list the property (unit) for sale.
10. Breach and Remedies. In the event of a breach of this Agreement by Owner, if Owner fails to cure such breach within 90 days after written notice from the Town (identifying the breach and specifying the facts and circumstances giving rise to such breach), the Town shall have the right to demand immediate payment for any fees it waived pursuant to Section 2(b) of this Agreement. Additionally, if the default is due to Owner's failure to comply with the use and occupancy restriction set forth in Sections 5, the Town may recover liquidated damages in an amount equal to shortfall in the number of required Workforce Housing Units multiplied by the average monthly rental rate for all Workforce Housing Units located in the Development. By way of illustration only, if Owner has leased or reserved for lease only 20 Workforce Housing Units at any time during the term of this Agreement, Owner shall be responsible for liquidated damages to the Town equal to 5 (shortfall in required Workforce Housing Units) times the average monthly rent for all Workforce Housing Units. Such liquidated damages shall be paid monthly until the default is cured.
11. Miscellaneous.
 - a. Modification. This Agreement may only be modified by subsequent written agreement of the Parties.
 - b. Integration. This Agreement and any attached exhibits constitute the entire agreement between Owner and the Town, superseding all prior oral or written communications.
 - c. Runs with the Land. Subject to the terms and conditions set forth herein, the benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on Owner's successors and assigns, and any subsequent holder of an ownership interest in the Property, for the Term of this Agreement.
 - d. Severability. If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

- e. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Archuleta County, Colorado.

- f. Third Parties. There are no intended third-party beneficiaries to this Agreement.

- g. No Joint Venture. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

- h. Notice. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent prepaid, first-class United States Mail to the Party at the address set forth on the first page of this Agreement.

- i. Recording. This Agreement shall be recorded with the Archuleta County Clerk and Recorder.

(signature page follows)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF PAGOSA SPRINGS:

Shari Pierce, Mayor

ATTEST:

April Hessman, Town Clerk

OWNER:
FOUA, LLC.
262 Pagosa Street, Unit # 200A

Mr. Tracy Reynolds,
Authorized Representative

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2023, by Mr. Tracy Reynolds, the Authorized Representative of FOUA, LLC. and 262 Pagosa Street, unit #200A, Pagosa Springs, C. 81147, on behalf of said company.

Witness my hand and official seal. _____
Notary Public
(S E A L)
My commission expires: