

RIGHT OF FIRST REFUSAL

This Right of First Refusal (the "Agreement") is made and entered into this 26th day of January, 2023 by BH RE Investments, LLC, an Arizona Limited Liability Company, and/or its successors and assigns, (hereinafter referred to as "**Buyer**") and the County of Montrose, State of Colorado ("Montrose County" or "County") by and through the Montrose County Board of County Commissioners ("Board") (hereinafter referred to as "**Seller**").

~RECITALS~

A. Seller is the owner of certain real property located in the County of Montrose, State of Colorado, more particularly described on the attached Exhibit "A" which is incorporated herein by this reference (hereinafter referred to as the "**Property**").

B. Buyer is purchasing from Seller the real property adjacent to the Property as more particularly described on the attached Exhibit "B" which is incorporated herein by this reference (hereinafter referred to as the "**Adjacent Property**").

C. As additional consideration for Buyer's purchase of the Adjacent Property and for other good and valuable consideration, Seller has agreed to grant to Buyer an exclusive right of first refusal as it pertains to the Property, subject to the terms and conditions set forth below.

D. Accordingly, Buyer and Seller confirm and set forth their understanding of the exclusive right of first refusal Seller has agreed to grant to Buyer by their mutual making and entering into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Recitals Incorporated. The Recitals at the beginning of this Agreement are hereby incorporated into and made a part of this Agreement.
2. Grant of Right of First Refusal. By executing this Agreement, Seller grants to Buyer an exclusive right of first refusal to acquire the Property in accordance with this Agreement.
3. Exercise of Right of First Refusal.
 - a. Notice of Offer. If, at any time hereafter until December 31, 2027, (a) Seller receives a bona fide offer to sell or transfer the Property, or any portion thereof, or any interest in the ownership of the Property, on terms which Seller wishes to accept, or (b) Seller desires to enter into a bona fide agreement to sell or transfer the Property, or any portion thereof, or any interest in the ownership of the Property, on terms which Seller wishes to accept, or (c) Seller enters into a bona fide agreement to sell or transfer the Property, or any portion thereof, or any interest in the ownership of the Property, on terms which Seller accepts, (any such terms being the "**Offer**"), then Seller shall promptly give Buyer written notice of the Offer within five (5) days after Seller's receipt of the Offer, and Seller shall not close on the Offer as communicated in the notice to Buyer until Buyer has been given opportunity to exercise its right of first refusal with respect to the Offer as provided below. The notice from Seller shall include a true and complete copy of the terms and conditions of the Offer, or if the Offer was not made in writing, a true and

complete summary of the terms of the Offer, which in either case shall include, at a minimum, the price for the sale or transfer of the Property or any portion thereof or interest therein, each of the material financial terms of the proposed transaction, and the proposed closing date of the sale or transfer. Within three (3) days after Buyer's receipt of the notice (including the copy or summary of the Offer as required above), Buyer shall notify Seller in writing whether Buyer will exercise Buyer's right of first refusal. If Buyer either: (a) delivers written notice of its waiver of Buyer's right of first refusal, or (b) fails or declines to notify Seller in writing regarding Buyer's exercise of the right of first refusal within the three (3) day period allowed above, Buyer's right of first refusal hereunder shall conclusively be deemed to be waived with respect to the Offer, and Seller shall be free to accept and close on the Offer as communicated in the notice from Seller to Buyer, free and clear of Buyer's right of first refusal hereunder. If, however, either: (a) Seller does not close on the Offer as communicated in the notice from Seller to Buyer within one hundred eighty (180) days from the date Buyer waives or is deemed to have waived Buyer's right of first refusal with respect to the Offer, or (b) any of the terms and conditions of the Offer are revised in any material respect from the Offer as communicated to Buyer, then Buyer's right of first refusal provided for hereunder shall once again apply, and Seller shall not close on the Offer, as revised, without first giving Buyer the revised Offer and the right to exercise Buyer's right of first refusal as set forth in this Section 3.a.

b. Exercise of Right of First Refusal. If Buyer provides notice to Seller within the three (3) day period provided above that Buyer will exercise its right of first refusal, then Buyer shall be bound to observe and perform, in all material respects, the terms and conditions of the Offer as communicated to Buyer, except that (i) with respect to any payment under financial terms, Buyer may arrange alternative financing as compared with that contained in the Offer, provided that such alternative financing allows Seller the same or greater net proceeds from the sale, and (ii) the date for closing shall not be more than sixty (60) days after the date when Buyer gives such notice to Seller, unless the Offer contains a closing date beyond that time period.

4. Excluded Transactions. For purposes of this Agreement, none of the following transactions shall be considered to be a sale or transfer of the Property, and no offer, proposed agreement or agreement to enter in any of the following transactions shall be considered to be an offer, proposed agreement or agreement to sell or transfer the Property.

- a. The granting or creating of any security interest or lien in the Property, or any portion thereof, by way of a mortgage, deed of trust, financing statement or other security instrument; or
- b. Any transfer of the Property, or any portion thereof, to a trust or other entity controlled by Seller.
- c. Any lease of the property or any portion thereof.

5. Evidence of Waiver or Non-Applicability of Right of First Refusal. If, pursuant to Section 3a., Buyer is conclusively deemed to have waived the right of first refusal with respect to the Offer, and Seller is entitled to sell or transfer the Property free of the right of first refusal with respect to the Offer, then Buyer shall, within fifteen (15) days after Buyer's receipt of written request, execute and deliver to the requesting party an instrument, in recordable form, waiving Buyer's right of first refusal with

respect to the Offer.

6. Notices. Any notice, demand, request or other communication which may be permitted, required or desired to be given in connection with this Agreement shall be given in writing and directed to the parties at the following respective addresses:

If to Buyer: The address set forth in the records of the Arizona Corporation Commission for BH RE Investments, LLC or such address as shall be provided in writing by Buyer to Seller

If to Seller: Montrose County Board of County Commissioners
1140 N Grand Avenue, Suite #250
Montrose, CO 81401

Any notice given under this Agreement shall be considered properly given if addressed to the recipient at the appropriate address and forwarded (i) for delivery in person; or (ii) by overnight express mail/courier service, charges prepaid; or (iii) through the United States Post Office certified mail, return receipt requested. Any notice properly given shall be effective upon receipt. The initial address for notice to each party is set forth above. Either party may change its contact information for notice purposes by providing notice to that effect in accordance with this section. A notice may be given either by a party or on behalf of a party by such party's attorney.

7. Remedies Cumulative. If a party breaches any of the covenants or agreements of this Agreement, the other party shall be entitled to exercise any and all remedies available at law or in equity on account of such breach, including without limitation specific performance and injunctive relief. No remedy provided for in this Agreement shall be considered to exclude or suspend any other remedy, but the same shall be cumulative with and shall be in addition to every other remedy provided for in this Agreement or available at law or in equity, and every remedy provided for in this Agreement or available at law or in equity may be exercised from time to time consecutively or concurrently and so often as occasion may arise.

8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado.

9. Headings and Captions. The heading and captions used in this Agreement are for purpose of convenience of reference only and shall not be used to interpret the provisions of this Agreement.

10. Severability. If any provision of the Agreement or the application of any provision of this Agreement is held invalid, the remainder of this Agreement and the application of such provision other than to the extent it is held invalid will not be invalidated or affected thereby.

11. Counterparts. Each party signing this Agreement may execute one or more separate copies, and when each party has executed a copy of it, the copies taken together will be deemed to constitute a full and complete contract between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first written above.

BUYER:

BH RE Investments, LLC,
an Arizona limited liability company

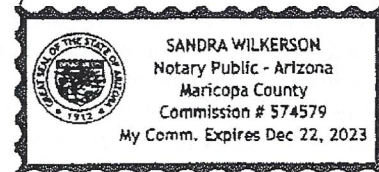
By: [Signature]
Lubertus Hayenga, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 26th day of January, 2022, by Lubertus Hayenga, in his capacity as Manager of BH RE Investments, LLC, an Arizona limited liability company.

[Signature]
Notary Public

My commission expires: 12-22-2023



SELLER:

Montrose County Board of County Commissioners

By: [Signature]
Sue Hansen, Chair

ATTEST [Signature]
[Signature]
Deputy Clerk of the Board

