

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR EXTENDED VESTING OF THE RED TAIL RANCH (F/K/A WHATLEY RANCH) PUD

This first amendment (“First Amendment”) amends the Development Agreement for Extended Vesting of the Red Tail Ranch (f/k/a Whatley Ranch) PUD dated March 24, 2004 and recorded June 9, 2004 at Reception No. 758767 (“2004 Development Agreement”) and (“Agreement Amendment”) is made as of the ___ day of _____ 202404, between the SUMMIT COUNTY BOARD OF COUNTY COMMISSIONERS (“Summit County” or the “County”) and BUD & DOT, LLLP Bolthouse, LLC, a Colorado limited liability company, successor-in-interest to Bud & Dot, LLLP (“Developer”).

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RECITALS

WHEREAS, Summit County is authorized by Section 12800 of the Summit County Land Use and Development Code, as currently in effect or hereinafter amended (“Code”) and C.R.S. 24-68-101 *et seq.*, to enter into an agreement with a landowner or developer to provide for a vested property rights period according to the terms and for the period identified in a development agreement; and

WHEREAS, Developer is the owner of certain real property located in Summit County, Colorado, legally described on Exhibit A, which exhibit excludes Lot 1 of the Whatley Reserve Subdivision (“Lot 1”), attached hereto and by this reference incorporated herein (the “Property”); and

WHEREAS, the Property contains approximately 488 acres and, together with Lot 1, is currently zoned for a Planned Unit Development (“PUD”); and

WHEREAS, the County and Developer desire to protect the ranching and natural resource values of the Property; and

WHEREAS, Developer ~~Summit County has submitted a request to the County for~~ previously approved an application for a major PUD modification (“PUD Modification”) pursuant to Section 12200 *et seq.* of the Code which included a name change for the development to the Red Tail Ranch Planned Unit Development, and subsequently requested a name change for the development to the Red Tail Ranch Planned Unit Development (“The Red Tail Ranch PUD”); and

WHEREAS, the Upper Blue Planning Commission previously recommended that the Board of County Commissioners approve The Red Tail Ranch PUD subject to certain conditions, find found that The Red Tail Ranch PUD constitutes constituted a site specific development plan and approve approved this the development agreement; and

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WHEREAS, ~~Developer has also submitted an~~ By Resolution No. 2004-28 recorded June 9, 2004 at Reception No. 758767, Summit County previously approved for a site specific development plan and development agreement and requested a finding that for The Red Tail Ranch

PUD ~~constitutes a site specific development plan~~ in accordance with the provisions of Section 12800 of the Code ~~and that wherein~~ the owner's development rights for the Property ~~be were~~ vested ~~on March 24, 2004 ("2004 Development Agreement")~~; and

WHEREAS, Summit County has now received a completed application and all required fees and submittals ~~for a site specific development plan and development agreement and referred the application for The Red Tail Ranch PUD to the appropriate agencies for this First Amendment wherein the 2004 Development Agreement will be amended to extend the vested rights provided thereunder for a further period of a minimum of 2 years and a maximum of 12 years~~; and

~~WHEREAS, the Upper Blue Planning Commission has reviewed The Red Tail Ranch PUD and development agreement, has held public hearings on January 22 and February 26, 2004 with public notice as required by law and considered the evidence and testimony presented at those hearings; and~~

~~WHEREAS, the Upper Blue Planning Commission recommended that the Board of County Commissioners approve The Red Tail Ranch PUD subject to certain conditions, find that The Red Tail Ranch PUD constitutes a site specific development plan and approve this development agreement; and~~

WHEREAS, the Summit County Board of County Commissioners has reviewed ~~The Red Tail Ranch PUD and this development agreement~~ First Amendment at a public hearing held on March 22, 20024 with public notice as required by law and considered the evidence and testimony presented at that hearing; and

WHEREAS, Summit County has determined that The Red Tail Ranch PUD ~~is~~ remains in general conformance with the Joint Upper Blue Master Plan and the Countywide Comprehensive Plan as in effect ~~at the time of the 2004 Development Agreement in 2004~~; and

WHEREAS, Summit County has approved this ~~Agreement~~ First Amendment through a quasi-judicial process by resolution.

NOW THEREFORE, in consideration of the recitals set forth above and provisions of this ~~Agreement~~ First Amendment, the parties agree as follows.

AGREEMENT

The 2004 Development Agreement is hereby amended as follows. The remainder of the 2004 Development Agreement not otherwise amended herein shall remain in full force and effect.

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1. Paragraph 1 Vesting is amended as follows:

Extension of Vesting Warranted. Summit County acknowledges and agrees that it has determined that circumstances warrant an other extension of the vested property rights for the Property ~~because: (1) the public is benefited by a deliberate, slow staged development of the Property with minimal adverse impact on the environment in the interim; (2) the size (488 acres) of the Property; (3) this~~

~~Agreement allows the ability to gradually phase the development (4) this Agreement addresses certain public health, safety and welfare concerns, including but not limited to certain road improvements; (5) the public is benefited by establishing specific design standards; for all of the reasons supporting the original vesting period under the 2004 Development Agreement, including (6) the public is assured the public that the Property will not be able to be upzoned by a County process or a town annexation process for a minimum of an additional 10-2 years, with a maximum potential of 20-12 additional years; (7) the construction and financing of improvements and facilities needed to support the development have been addressed by requiring a site plan review and associated agreements as part of the PUD; and (8) the findings required for a major PUD modification have been met and satisfied.~~

~~(a)2.~~ Paragraph 1(c) is amended as follows:

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~~(b) — Site Specific Development Plan. Summit County acknowledges and agrees that The Red Tail Ranch PUD constitutes a site specific development plan, and the permitted uses, development standards, status of existing uses, utilities and improvements obligations, and other provisions relating to the Property as set forth in The Red Tail Ranch PUD Designation, a copy of which is attached hereto as Exhibit B, shall be deemed incorporated herein by reference.~~

~~(e) — Extension of Vesting Period. Pursuant to its authority under Section 12808 of the Code, the Board of County Commissioners, on behalf of Summit County, agrees that the vested property rights period for the Property shall be extended again from the term under the 2004 Development Agreement for an additional two (2) years from the Effective Date of this First Agreement Amendment. In addition, the conveyance of all or a portion of the Property and allocation of density units to an unaffiliated third party shall vest the density unit rights in such third party for Thereafter and subject to this Section of the First Amendment, the vesting period shall automatically be extended for an additional five (5) additional two-year (2-year) periods (for a total maximum of 120 additional years beyond the term in the 2004 Development Agreement Amendment). Notwithstanding the foregoing, Developer shall have the right to terminate any automatic extension of the vesting period provided hereunder by providing written notice thereof to the County on or before sixty (60) days prior to the then-existing termination date of the vesting period.~~

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~~(d) Title Insurance. Evidence of title insurance has been provided to Summit County.~~

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~~(e) Rights Which are Vested. Only the rights which are identified herein, as they pertain to the Property, shall constitute vested property rights under this Agreement. These rights are as follows:~~

~~(i) No Downzoning. The right to be protected against the County initiating any zoning action to reduce the maximum number of residential dwelling units or lots permitted on the Property, which provides for 11 single family units (not including Lot 1), 6 caretaker units (two of which are existing structures as described in The Red Tail Ranch PUD, namely, the Homestead House and the Tack House) and agricultural and accessory uses, all as specified in The Red Tail Ranch PUD.~~

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~~Two single family units are already constructed on the Property. The Developer may seek a downzoning of the Property via conservation easements, PUD modification and a modification to this Agreement.~~

~~(ii) Development Plan. The Developer shall have the right to develop the Property and engage in uses in the manner identified in The Red Tail Ranch PUD and as specifically set forth in the PUD Designation, Exhibit B, provided the applicable provisions of the PUD and the Code are met, including but not limited to the need for site plan review for future single family development and the need for grading permits in accordance with the provisions of the Code.~~

~~(iii) Timing of Development. In recognition of the nature of the development to occur on the Property pursuant to the terms of this Agreement, the benefit of a phased and lengthy development period to protect the unique historic character and agricultural nature of the Property, and the possible impact of economic conditions and economic cycles and varying market conditions during the course of development, the right to develop the Property in such order and at such rate and at such time as the market dictates within the structure of this Agreement.~~

~~(iv) Uniformity of Requirements. The right to continue and complete development of the Property with conditions, standards and requirements which are no more onerous than those then being imposed by Summit County on other developers on a reasonably uniform and consistent basis, except to the extent such conditions, standards and requirements conflict with the terms and conditions of The Red Tail Ranch PUD, in which case the terms and conditions of the PUD shall control, including, without limitation, the densities, permitted uses, transfer of development rights, development standards, utilities and improvements as set forth in the PUD Designation, Exhibit B hereto.~~

~~(f) Compliance with the PUD. All development of the Property shall comply with standards and requirements of The Red Tail Ranch PUD Designation.~~

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~~(g) Upzoning and Change of Applicable Legislation Prohibited. The Developer shall not seek an increase in density or land use intensity (“Upzoning”) within the boundaries of The Red Tail Ranch PUD by rezoning, PUD modification, annexation or other planning process during: (i) the initial ten year vesting period authorized by this Agreement; or, (ii) during the additional 10 year vesting period authorized by Section 1(e) above, but only as to any such conveyed portion of the Property and corresponding allocation of density. The Developer shall not seek to change the applicable master plans nor the Development Code in an effort to allow the Upzoning of The Red Tail Ranch PUD during the applicable vesting period.~~

~~(h) Transfer of Development Rights. Developer may transfer development rights as vested by this Agreement from The Red Tail Ranch PUD in accordance with the provisions of the Code. If development rights are transferred from The Red Tail Ranch PUD, the vested rights as enabled by this Agreement shall be reduced by the amount of density transferred. Developer shall submit an application for a PUD modification in accordance with the requirements of the Code to reduce the density in The Red Tail Ranch PUD if density is transferred.~~

~~(i) Conservation Easements. Developer may place conservation easements within the Property that limit the development rights as vested by this Agreement. If a conservation easement limits~~

~~the development rights as vested by this Agreement, the vested rights as enabled by this Agreement shall be reduced by the amount of density transferred or encumbered by such an easement.~~

~~(j) Status of Applicable Land Use Plans. Developer acknowledges and agrees that the County is amending the Upper Blue Master Plan Maps and incorporating them into the Joint Upper Blue Master Plan, and that the current land use designations for the Property may be changed to reflect the land uses and density permitted by this Agreement and The Red Tail Ranch PUD.~~

~~(k) Historic Resources. Developer agrees to preserve the historic Homestead House, Tack House and Barn in accordance with the requirements of The Red Tail Ranch PUD.~~

~~2. Creation of Vested Property Right. Approval of this Agreement may create a vested property right pursuant to 24-68-101 *et seq.* (Colorado Revised Statutes as Amended) subject to compliance with the site specific development plan approved by the Board of County Commissioners on March 22, 2004 and recorded under Reception No. 753383 and subject to the requirement that notice of approval of this development agreement be published not more than 14 calendar days from the date of approval.~~

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~~Paragraph 10(i) is amended as follows:Applicable Laws/Reserved Powers.~~

~~(a) Application of Laws of General Nature. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for herein, the execution of this Agreement shall not preclude the current or future application of County laws, rules or regulations which are general in nature and applicable to all property subject to land use or other regulation by Summit County, including, but not by way of limitation, building, fire and engineering codes, to Developer's construction of the improvements within the Property, as such laws may be in effect from time to time throughout the term of this Agreement. Except to the extent Summit County otherwise specifically agrees, any construction of improvements within the Property shall be done in compliance with the then-current building, fire and engineering requirements of Summit County.~~

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~~(b) Amendment of Code; Zoning Documents and Actions. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of Summit County to adopt or amend any Summit County law, including, but not limited to Summit County's: (i) Development Code, (ii) the Joint Upper Blue Master Plan and/or the Countywide Comprehensive Plan; provided, however, that no such adoption, amendment, zoning or land use action by Summit County, or pursuant to initiative, shall alter, impair, prevent, diminish, impose a moratorium upon or otherwise delay the development or use of the Property as provided for in The Red Tail Ranch PUD.~~

~~3. Covenant With Land. This Agreement shall run with the Property and be binding upon and inure to the benefit of the parties hereto, their successors and assigns, including specifically, but not limited to, such individuals, entity or entities affiliated or unaffiliated with Developer as actually take title to any of such Property.~~

~~4. Improvements/Implementation. All improvements of The Red Tail Ranch PUD relating to the Property shall be in accordance with the requirements of such PUD.~~

~~5. — Enforcement/Damages. The provisions of this Agreement shall be enforceable by the parties at law or in equity and the parties may pursue damages or specific performance or both in the event of any breach of this Agreement, except as provided for in paragraph 7, below. If at any time any provision or requirement stated in this Agreement has been breached by Developer, Summit County may withhold approval of any or all site plans or plat maps, or the issuance of any or all grading or building permits or occupancy permits applied for on the Property, until such breach has been remedied; provided, however, that the County shall not take affirmative action on account of such breach until it shall have first notified the Developer as provided herein. If Developer fails to remedy a material breach of this Agreement after six (6) months advance written notice, the property rights vested by this Agreement shall be forfeited.~~

~~6. — Notice Of Default; Cure. Prior to any action against Summit County for breach of this Agreement, Developer shall give Summit County a sixty (60) day written notice of any claim by the Developer of a breach or default by Summit County, and Summit County shall have the opportunity to cure such alleged default within such time period. Prior to any action against Developer for breach of this Agreement, Summit County shall give Developer a sixty (60) day written notice of any claim by Summit County of a breach or default by Developer, and Developer shall have an opportunity to cure such alleged default within such time period.~~

~~7. — No Remedy. Summit County shall not be responsible for and the Developer shall have no remedy against Summit County if development of The Red Tail Ranch PUD is prevented or delayed for reasons beyond the control of Summit County. In no event shall the County be liable for money damages in the event of a breach or default by the County,~~

~~8. — Indemnification. The Developer agrees to indemnify and hold Summit County, its officers, employees, insurers, and self insurance pool, harmless from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or intentional act or omission of Developer or its employees, contractors, representatives or agents; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of Summit County, its officers, employees, or agents. Developer agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Developer. Developer also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.~~

~~9. — Periodic Review. The County may conduct periodic reviews of this Agreement and the requirements of The Red Tail Ranch PUD to ensure compliance with the requirements of this Agreement and The Red Tail Ranch PUD.~~

~~10. — Miscellaneous.~~

~~(a) — Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of the remaining provisions of the Agreement.~~

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~~(b) — Vested Property Right. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended.~~

~~(c) — Waiver. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Summit County and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. Summit County's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any improvements.~~

~~(d) — Amendment. No amendment of the terms of this Agreement shall be valid unless in writing and executed and adopted pursuant to those procedures set forth in Section 12809 of the Code and in accordance with all applicable law.~~

~~— Recording and Effective Date. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado. This Agreement shall not be effective until it is recorded in the Summit County Clerk and Recorder's Office ("Effective Date").~~

3. _____

~~(e) — Sovereign Immunity. Nothing contained in this Agreement shall constitute a waiver of Summit County's sovereign immunity under any applicable state or federal law.~~

~~(f) — Successors and Assigns; Binding Effect. Where used herein, the term "Developer" shall also mean any of the heirs, executors, trustees, transferees, successors and assigns of Developer, and all such parties shall have the right to enforce the terms of this Agreement as if they were the original parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.~~

~~(g) — Dispute Resolution; Venue; Attorneys' Fees. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in District Court of Summit County, Colorado. The Developer expressly waives its right to bring such action in or to remove such action to any other court, whether state or federal. The prevailing party in any such action shall recover its reasonable attorneys' fees and costs.~~

~~(h) — Covenant of Cooperation. The parties covenant and agree to cooperate in good faith with one another in the performance of their respective rights and obligations hereunder in order that each may reasonably realize their respective benefits hereunder. The parties further covenant and agree to cooperate in good faith with one another in the event of any legal challenge to this Agreement.~~

~~(i) — Notice. Any notice required or permitted hereunder shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:~~

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To Summit County: Board of Commissioners
P.O Box 68
Breckenridge, CO 80424

with a copy to: Jeffrey L. HuntleyKeely Ambrose
County Attorney
P.O. Box 68
Breckenridge, CO 80424

To the Developer: Bud & Dot, LLLPBolthouse, LLC
c/o Gary and Nancy CarlstonWilliam Bolthouse
515 Arapahoe Avenue4650 W Hanoverian Way
Boulder, CO 80302Littleton, CO 80128

With a copy to: Richard JohnsonJoel Mayo
Johnson & Repucci LLPDavis Graham & Stubbs
LLP
2521 Broadway, Suite A155017th Street, Suite 500
DenverBoulder, CO 80202304

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Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been given three (3) days after deposit in the United States mail. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process. Either party may change the name or address for giving notice by providing notice of such change in the manner provided for herein.

~~(j) — Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding relating to such subject matter.~~

~~11. — Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.~~

~~(a) — Third Parties. This Agreement is not intended and shall not be deemed to confer upon any third party (excepting successors and assigns of Developer after the Effective Date) any benefits or any right to claim damages or to bring suit or other proceeding against either party because of any term contained in this Agreement.~~

EXECUTED as of the date first above written.

**BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO**

By: _____

Title: _____

ATTEST:

By: _____

Title: _____

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By: _____
William Bolthouse
Manager of Bolthouse, LLC
By: _____

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STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2024 by _____.

Witness my hand and official seal:

Notary Public

My commission Expires: _____