

**POLICY CONCERNING RIGHT OF FIRST REFUSAL  
OF  
CHATEAU CLAIRE, INC.**

Chateau Clare, Inc., a Colorado nonprofit corporation (the "**Association**") adopts the following policy concerning right of first refusal (this "**ROFR Policy**") as part of its rules and regulations. This policy supersedes any previous policies concerning its subject matter.

1. Introduction.

The Condominium Declaration for Chateau Claire is dated May 14, 1970, and recorded on July 30, 1970, at Rec. No. 116826 in the records of the Summit County Recorder, Colorado (the "**Declaration**"). Section 12 of the Declaration contains a right of first refusal (the "**ROFR**") that creates in the owners an option to purchase all or part of a condominium unit in Chateau Claire upon stated terms. This ROFR Policy governs the ROFR process subject to the Declaration and applicable law.

2. ROFR Process.

a. Applicability of ROFR Process (and Exempt Transactions).

The ROFR Process applies to any transfer of all or part of a condominium unit in Chateau Claire, including sales, gifts, leases and subleases, except for the following ("**Exempt Transactions**"):

- i. the creation of any tenancy having a term of less than 90 days;
- ii. the grant of any mortgage or deed of trust;
- iii. any transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant or joint tenants;
- iv. any transfer of the deceased's interest to a devisee by will or to his heirs under intestacy laws;
- v. any transfer to another owner or owners;
- vi. any transfer by an owner to a corporation controlled by him or by a corporation to its controlling shareholder or shareholders;
- vii. any transfer in lieu of foreclosure by a first lienor; and
- viii. any transfer to a first lienor purchasing at foreclosure of his lien.

Upon request by an interested party, the Association shall certify in writing in recordable form that a proposed transaction is an Exempt Transaction (if that is the case).

All rights and responsibilities concerning the ROFR Process must be carried out in good faith.

b. The Notice of Proposed Transfer.

Any owner (not including the Association) proposing any transfer of all or part of a condominium unit in Chateau Claire that is not an Exempt Transaction (the "**Seller**") shall provide the Association with a dated written notice (the "**Notice of Proposed Transfer**") naming the interest to be transferred (the "**Interest**"), the proposed transferee, and the price, if any, and all other terms, conditions and credits of the proposed transfer. It is acceptable for the Seller to provide the Notice of Proposed Transfer in the form of an executed contract for the acquisition of the Interest.

The substance of any proposed transfer cannot contradict the provisions of the Declaration. Specifically, any Notice of Proposed Transfer must provide as follows:

- i. In the case of a proposed transfer for value (*e.g.* one in which money changes hands), the time

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The Declaration speaks only to corporations and the Association does not consider transfers to limited liability companies, partnerships, trusts or any other legal entity to be exempt.

and place of closing, which must be within 30 days of the delivery of the Notice of Proposed Transfer. In the case of a proposed transfer not for value (*i.e.* a gift), the closing must take place at Denver, Colorado, on the 20th day after the Notice of Exercise (as defined below) or, if such date is a Saturday, Sunday, or court holiday, on the next succeeding business day;

ii. The Seller shall deliver to the Association at least five days before the closing date a title insurance commitment issued by a company reasonably acceptable to the Association, agreeing to insure marketable title to the Interest free and clear of all liens or encumbrances made or suffered by the Seller (such as any outstanding lien for assessments payable to the Association, a deed of trust, or a mechanic's lien). The three major local title companies, LandTitle Guarantee Company, Stewart Title and Title Company of the Rockies, are all deemed acceptable for purposes of this requirement without limitation to any others that may be deemed acceptable;

iii. The Seller shall execute and deliver to the Association at closing a special warranty deed conveying the Association as nominee for the Purchasing Owner(s) (as defined below) fee simple title to the Interest free and clear of free and clear of all liens or encumbrances made or suffered by the Seller;

iv. The transferee must pay the purchase price, if any, in the form of funds available for immediate withdrawal. The transferee is permitted to finance the acquisition of the Interest if provided in the Notice of Proposed Transfer. If the ROFR is exercised by more than one Purchasing Owner (as defined below), the Purchasing Owners will not be permitted to finance the acquisition of the Interest in any manner where the Interest would serve as security. If the ROFR is exercised by a single Purchasing Owner, then that Purchasing Owner will be able to finance acquisition of the Interest to the extent provided in the Notice of Proposed Transfer.

v. The Seller shall pay all the costs of closing, including but not limited to the costs of a new title insurance policy; and

vi. Taxes, rent and insurance premiums shall be prorated to the date of closing as applicable.

In the event of any conflict between the terms of the Declaration and the terms of the Notice of Proposed Transfer, the terms of the Declaration shall control and shall be deemed to be incorporated into the Notice of Proposed Transfer.

The Notice of Proposed Transfer may contain other provisions as determined by the Seller, provided, however, that the Seller cannot, to discourage other owners from exercising the ROFR, insert into the Notice of Proposed Transfer terms that are likely to be repugnant to the other owners. Such provisions are known as "poison pills" and are considered bad faith. While poison pills can take many forms, they may include such things as an abrupt closing (*e.g.* "sign and close" contract), a restriction on the use that can be made of the condominium unit after closing, or unusual consideration for the transfer.

Every Notice of Proposed Transfer must make allowance for the time needed for the other owners to determine whether to exercise the ROFR and to exercise any rights provided in the transaction, such that any deadlines shall not run before a reasonable time after the ROFR may be exercised. Any deadline that runs before the ROFR is exercised shall be deemed to be extended until five business days after the ROFR is exercised.

The Association shall have the sole and absolute right to determine if a given Notice of Proposed Transfer complies with the Declaration and this ROFR Policy; the Association may reject any Notice of Proposed Transfer it determines is noncompliant. If the Association rejects a Notice of Proposed Transfer, then the Seller cannot convey the Interest without submitting a new Notice of Proposed Transfer deemed compliant by the Association.

To the extent that any Notice of Proposed Transfer requires payment of earnest money, it must state the date of delivery and the name of the proposed escrow agent (which is usually the title company that will issue the title insurance policy and handle the closing). If the proposed escrow agent refuses to accept any earnest money deposit because, for example, it has not yet been provided with a binding contract, then it shall be deemed sufficient for the earnest money to be tendered by the Purchasing Owner to the proposed escrow agent even if not accepted. The Purchasing Owner must then provide the earnest money upon request by the Association after arrangements are made for it to be accepted.

c. Notice to Owners following receipt of Notice of Proposed Transfer.

Within three days after its receipt of a Notice of Proposed Transfer, the Association shall mail or personally deliver copies thereof to all the owners other than the Seller (the "**Notice to Owners**"). If the Seller provides the Notice of Proposed Transfer in the form of a full contract for acquisition of the Interest, the Association may prepare a summary thereof to send to the owners indicating how interested owners may obtain a copy of the full contract upon request. The addresses for mailing the Notice to Owners shall be those on record with the Association for each respective condominium unit or, if none, the address listed with the Summit County Assessor for the owner of the condominium unit at issue. The date of mailing or personal notice shall be referred to as the "**Notice Date**." The Notice to Owners shall state the manner for any interested owner to provide a response if desired.

d. Exercise of ROFR by Purchasing Owners.

Each of the owners other than the Seller shall be entitled to exercise the ROFR. If a condominium unit has more than one owner, then all owners of the unit must exercise the right together. Within ten days after the Notice Date, any owner wishing to exercise the ROFR (the "**Purchasing Owner**") shall give written notice thereof to the Association and the percentage of the Interest that such owner is willing to acquire. If such owner does not indicate a different percentage, then it will be assumed that the owner is willing to acquire the entire Interest. The ROFR shall be deemed exercised if enough Purchasing Owners give notice within the allowed time sufficient to acquire 100% of the Interest. The ROFR process is not a bidding process and no Purchasing Owner can change the terms stated in the Notice of Proposed Transfer. An exercise of the ROFR must be on the terms stated in the Notice of Proposed Transfer and no other.

e. Effect of exercise of ROFR.

Once the ROFR is exercised, the Seller and all Purchasing Owners shall be contractually bound to the terms of the Notice of Proposed Transfer. Such contract shall be enforceable by the Association against the Seller and the Purchasing Owners and by the Seller and Purchasing Owners against each other. A Purchasing Owner may withdraw from the transaction only with the written consent of the Seller and any other Purchasing Owners or as provided in the Notice of Proposed Transfer. If all Purchasing Owners withdraw from the transaction, then it shall be considered failure to exercise the ROFR and the Seller will have the rights provided below in this circumstance.

The Purchasing Owners shall be severally liable for their performance of the contract according to the extent of their participations. Notwithstanding any previous statements by the Purchaser Owners as to the percentage of the Interest they are willing to acquire, the default is that the Purchasing Owner shall participate in proportion to their undivided interests in the general common elements as stated in the Declaration. For example, if Owner A owns a  $3 \frac{12}{21}$  interest in the general common elements and Owner B owns a  $2 \frac{8}{21}$  interest in the general common elements, and Owner A and B are the Purchasing Owners, then Owner A shall pay 60% of the acquisition cost (and acquire 60% of the Interest) and Owner B shall pay 40% of the acquisition cost (and acquire 40% of the Interest). This default may be modified by unanimous agreement of the Purchasing Owners delivered to the Association in writing at least five days before the closing date. In the event that the Purchasing Owners own undivided interests in different general common elements under the Declaration, the Association may equitably determine the extent to which each Purchasing Owner is required to participate.

In the event that there is only one Purchasing Owner, the Association may assign or delegate some or all its rights and obligations with respect to the ROFR to the Purchasing Owner who may then deal directly with the Seller. However, the Purchasing Owner must keep the Association reasonably apprised of the status of the transaction and provide the Association with copies of the closing documents.

f. Notice of Exercise.

If enough Purchasing Owners participate to acquire 100% of the Interest, then the Association shall promptly give written notice to the Seller indicating that the ROFR has been exercised (the "**Notice of Exercise**").

g. Closing.

At closing, the Seller shall deliver the special warranty deed to the Association as nominee for the Purchasing Owner(s) and pay such items as are required by the Seller and the Purchasing Owner(s) shall pay the

purchase price to the Seller in the required percentages and subject to any proper adjustments. The parties shall execute such additional documents as are customary and proper as requested by the title company handling the closing.

h. Post-Closing.

After closing, the Association shall hold or dispose of the Interest according to the written instructions of a majority in interest of the Purchasing Owners. In the absence of such instructions, the Association may take such actions concerning the Interest as it deems necessary or advisable. Unless provided in the written instructions, no Purchasing Owner shall have a right of possession of the Interest and the Association may control the same.

The Association shall be under no obligation to expend any funds or incur any liabilities relating to the Interest, such as for repair and maintenance, snow removal, landscaping, ad valorem property taxes, assessments payable to the Association, property insurance and management fees.

i. Payment of Association's expenses and other items.

The Association is permitted to expend funds and incur liabilities, including attorney's fees, relating to the ROFR process and the Interest. If the closing occurs, the Purchasing Owner(s) shall be obligated to reimburse the Association for such items (along with all assessments relating to the Interest) upon request and before the Association is obliged to follow any instructions from the Purchasing Owner(s) regarding the Interest. If the closing does not occur, then the Seller shall be obligated to reimburse the Association for such items. In all cases, the items payable to the Association shall constitute an assessment lien against the Interest and the Association shall have all normal enforcement powers relating thereto.

j. Effect of failure to exercise ROFR.

In the event that the ROFR is not exercised, the Seller shall be free to transfer the Interest on the terms provided in the Notice of Proposed Transfer, and no other, for a period of 45 days from the tenth day following the Notice Date. Upon request by an interested party, the Association shall certify in writing in recordable form that a proper Notice of Proposed Transfer was given and that the ROFR was not exercised.

k. Effect of change in transaction.

The Seller and the ultimate transferee of the Interest, whether it be a Purchasing Owner or third party, must follow the terms of the transaction expressed in the Notice of Proposed Transfer. Any change in terms, including any assignment of rights, is considered a new proposed transfer that will re-start the ROFR process. Upon request by the Association, any Seller or Purchasing Owner shall be required to certify the terms of the transaction in writing and provide such reasonable confirmatory documentation as the Association shall require.

l. Association Powers.

The Association retains the power to modify this ROFR Policy at any time or to take other actions from time to time in furtherance of the administration of the ROFR Process not inconsistent with the Declaration.

m. Indemnification.

By participating in the ROFR process, any Seller, Purchasing Owner or third party agrees to release, defend and indemnify the Association, including its board members, officers, managers and attorneys, from any liability relating thereto. The Association may require any such participant to confirm acceptance of this ROFR Policy before proceeding with the ROFR Process.

**CERTIFICATION:**

The foregoing policy was adopted effective June 7, 18 (date).

By: 

The **K**lug Law Firm, LLC