SPECIAL MEETING AGENDA
Wednesday, January 13, 2021

Join a Meeting, Zoom.us, Meeting Id # 534.180.495, Password 014764, audio 1-301-715-8592 or 1-253-215-8782
Telluride, Colorado

1. **9:30 AM CALL TO ORDER - ZOOM Special Daily Meeting - Zoom.us - Join a Meeting, Meeting Id # 534.180.495, Password 014764, audio 1-301-715-8592 or 1-253-215-8782**

2. **REVIEW OF AGENDA**

3. **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

4. **ADMINISTRATIVE MATTERS**

   a. Further discussion on the Advisory Board for Public Health.

      60 mins Board of Commissioners and Staff

   b. 10:30 am Executive Session: Discussion on the allocation of the last CVRF funds, citation (4)(b).

      30 mins Mike Bordogna, County Manager

   c. 11:00 am Update on the 5-star committee membership.

      15 mins Kris Holstrom, Commissioner

   d. Late Addition: Executive Session Discussion regarding the Siemens Contract, citation (4)(b).

      Mike Bordogna, County Manager

   e. 11:15 am Consideration of a resolution authorizing the Chair or Chair Pro Tem to sign the construction contract and financing documents associated with the energy performance project./MOTION

      5 mins Amy Markwell, County Attorney

   f. Other, as needed.

5. **MANAGER MATTERS**

   a. 11:20 am Potential Executive Session: Update on the Gold Run Preschool and Norwood Habitat house, citation (4)(b).

20 mins   Mike Bordogna, County Manager

b. Update and Other, as needed.

6. **Break 11:40 pm - 12:45 pm**

7. **12:45 pm PUBLIC HEALTH AND ENVIRONMENT**

(Board of Commissioners sitting as the San Miguel County Board of Public Health and Environment.)

a. 12:45 pm Discussion and update with the San Miguel County Stakeholders concerning the COVID 19 outbreak.

75 mins   Grace Franklin, Public Health Director

b. Other, as needed.

8. **2:00 pm COUNTY HOUSING MATTERS**

(Board of Commissioners sitting as the San Miguel County Housing Authority.)

a. Discussion on the previously presented concept of fines as a tool for violations.

15 mins   Mike Bordogna, County Manager; Lois Major, Attorney; Corenna Howard, SMRHA Director

b. Late Addition: Consideration of the 50-year term for Deed Restrictions.

Lois Major, Attorney representing SMHA

c. Discussion on keeping deed restrictions in place as units turn over.

15 mins   Mike Bordogna, Cty Manager; Lois Major, Attorney; Corenna Howard, SMRHA Director

d. Discussion on future legal representation for San Miguel Housing Authority.

10 mins   Mike Bordogna, Cty Manager; Lois Major, Attorney; Corenna Howard, SMRHA Director

e. Other, as needed.

9. **PUBLIC COMMENT FOR ITEMS ON THE AGENDA**

10. **ADJOURNMENT**

NOTE: This agenda is subject to change, including the addition of items up to 24 hours in advance or the deletion of items at any time. All times are approximate. The County Manager reports may include administrative items not listed. Regular Meetings, Public Hearings, and Special Meetings are recorded, and ACTION MAY BE TAKEN ON ANY ITEM. Formal Action cannot be taken at Work Sessions. For further information, contact the County Administration office at 970-728-3174. If

special accommodations are necessary per ADA, contact 970-728-3174 prior to the meeting.

The official, designated posting place for all BOCC notices will be online at https://www.sanmiguelcountyco.gov/liveagenda. Use this link to view the live agenda with any last-minute changes. To be automatically notified, please sign up at www.sanmiguelcountyco.gov, sign up for alerts, and follow the prompts.

AGENDA ITEM - 4.a.

TITLE:

Further discussion on the Advisory Board for Public Health.

Presented by: Board of Commissioners and Staff
Time needed: 60 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

This is a follow-up conversation from our regular meeting on January 6, 2021.

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

AGENDA ITEM - 4.b.

TITLE:

10:30 am Executive Session: Discussion on the allocation of the last CVRF funds, citation (4)(b).

Presented by: Mike Bordogna, County Manager
Time needed: 30 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

AGENDA ITEM - 4.c.

TITLE:

11:00 am Update on the 5-star committee membership.

Presented by: Kris Holstrom, Commissioner
Time needed: 15 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description	Upload Date
At Large #1	1/11/2021
At Large #2	1/11/2021
At Large #3	1/11/2021
Lodging #1	1/11/2021
Lodging #2	1/11/2021
Lodging #4	1/11/2021

Saved without Personal Info as At-Large #1

Dear Commissioner Holstrom,
I would be interested in serving on the 5 Star Business Certification Committee.

I would like to serve on the committee as a service to the community and to help to ensure that the county can prioritize both its economic and public health. I am a political economist by training and my work focuses on economic development questions. Generally, I work on developing economies and oil exporters, but I am interested in doing more directly to address economic development in my own community.

I don't think I have a philosophy per se on the balance between economic and public health, but I do have a strong sense that the failures of the last year in rolling out reliable community testing, awareness and prioritizing of bars over schools has led the US to some poor policy choices. Our family has stayed in San Miguel precisely because schools have been open and have had good leadership. As a resort community, the tourism industry is also essential, but visitors need to understand their role in protecting the livelihoods of the service and tourism sectors. I would like to see more businesses open and to survive this year, including more indoor dining, but I also appreciate that in the period running up to full community vaccinations we face a strong resurgent virus that is more contagious than in previous months. I have had a first-hand experience with our local EMS and hospital system, as I suffered a heart attack just before Christmas. I was lucky that Telluride Fire Dept and EMS could reach my rural home and that their quick thinking and care got me to Montrose Hospital. At Montrose Hospital, I was released within a day because there were simply no beds to keep me overnight. That experience taught me how critical our health system is and how vulnerable it is to becoming overwhelmed.

I am able to commit to weekly meetings over the course of a month or more.

Thank you for your consideration.

Saved without personal info as At-Large #2

Please consider this email as my interest in occupying the 5 Star Committee vacant seat.

As a full-time resident of Mountain Village with an advanced degree in Epidemiology and Health Policy and Administration, I have spent most of my active business life using the methods of a scientist to assist varied entities in decision making. Understanding and identifying risk, quantifying them and then creating and using econometric models to predict risk has been at the core of my life's work. As a business executive with more than 35 years of experience with government and public/private companies, I have direct experience in crafting and helping to activate specific policy goals. In short, I'm rooted in data and evidence-based decision making but I'm also capable of communicating and selling policy.

My rationale for servicing in such a capacity is twofold: This is my community and I have a long term interest in its continued viability and success for myself, and for my children. In addition, I have the expertise and bandwidth to be of help and I would be remiss in not offering my service.

This particular position seems tailored for someone with my varied background which incorporates health care science, policy creation/implementation and the development of campaigns needed to attract allies that help ensure success.

Specifically and under the current conditions of this COVID pandemic, a careful and nuanced approach needs to be considered which attempts to both minimize actual health risk ***and*** economic disruption. I am very concerned that in an attempt to minimize all health risk to zero, we will undermine the long term economic viability of our neighbor's business and in turn, the long term viability of our area. At the same time, the corollary of ignoring all health risks to benefit business isn't workable either. Rather, a sober, rational and well defined goal must be negotiated wherever possible to achieve the shared goals we must embrace. Risk is always around us. Knowing how to properly quantify risk and live successfully within its borders is key.

Finally, there is likely no single solution that will satisfy each and every challenge we face. What may work in Telluride may not work in Norwood. It is more than likely that several interlocking strategies many be needed to craft a coherent and workable whole. Clearly and methodically understanding any challenge is a start. Overcoming it requires inventiveness, flexibility, adaptability and the ability to communicate clearly.

Thank you for your consideration.

Saved as At-Large #3
1. Name, business and/or affiliation, and general location that you live in the County
I live in Norwood;

2. Why are you interested in serving on the committee in this role?
I previously served as an elected official in the municipal government São Paulo, Brazil, for 2 terms. Within that capacity for the 4 years I held office, we had to respond to 3 different epidemic outbreaks (Zika, Dengue, and Yellow Fever). As such, I have prior experience working in a public function, with public health considerations being dominant issues. I have reflected heavily on my time in public office in the context of epidemics due to COVID, and I continually give serious thought to the question of "did I (we) do enough to mitigate the impact on people's lives?" This opportunity is a chance for me to ensure that I continue to contribute my faculties, knowledge, and lived professional experience and do what's possible to mitigate the impact on people's lives. Moreover, as part of my master's degree in Political Economy and Economic Development, I studied epidemics and public policy, which is the ideal nexus that this committee is looking to address for San Miguel County.

3. Describe your philosophy on the balance between Public Health and Economic Health
A full, complex answer to this question requires multiple pages. In more simplistic terms, any philosophical approach on its own is meaningless. A philosophical approach must be guided by reason, research, and fact. My overall approach encompasses these facets so that I strive to remain rational and pragmatic. In essence, I'm guided more by the idea of "what works." There is a decent depth of COVID-19 research at this time to help make informed decisions on what works to reduce the transmission rate and what behaviors and practices will augment it. Moreover, I bring my past pragmatic experience dealing with epidemic outbreaks and an advanced academic study in the field to understand the dynamics within economics. It's imperative to understand that there is a mutual relationship between economics and public policy; the two domains depend and adapt to the other's influences. The same relationship directly applies to our current reality, where public health considerations of an epidemic carry significant ramifications for the region's economic health. To balance the impact on either requires adaptability, creativity, and forethought of the ramifications of public policy decisions.

4. Can you commit to participating in weekly meetings for a month or more?
I should be able to - it depends on the meetings' timing and balancing that with my work responsibilities. Meetings occurring outside regular business hours will not be an issue. If the meetings are occurring during the workday, I feel confident in my ability to contribute as long as I have advanced notice to block out the time in my calendar.

1. Your name and the address of your property or properties

Short term lodging owner

2. Why are you interested in serving on the committee in this role?

As a homeowner and a local business owner, I have a vested interest in the outcome of such a committee. I have the resources and ability to commit time and work to such an endeavor. I would like to be a part of the process and help in finding equitable solutions.

3. Describe your philosophy on the balance between Public Health and Economic Health

I am always pragmatic in my approach. I am open to data, different approaches and my beliefs are not hardened. My philosophy, in general, would be:
1) Put procedures and processes in place to create a safest environment as possible - governed by health expertise and data.
2) Be transparent with the public and customers on what steps and processes have been done and why.
3) Ultimately empower consumers with the informed choice of whether they its too risky or not risky for their personal circumstances. If you are successful in conditions 1 and 2, coupled with a strong vaccination of health care workers, you can re-open and allow individuals to make informed decisions for their own families and well being.
4) All that being said, govt has the responsibility to have a catch-all where if public health resources - such as hospital beds and/or professionals are too scarce —— then looks for ways to limit potential exposure such as closures and or capacity constraints.
4a) To mitigate this, vaccine rollout amongst the local population has to be swift as possible.

4. Can you commit to participating in bi-weekly meetings for a minimum of 6 months?

Yes, that should be no problem.

San Miguel County's 5 Star Business Certification Program

Thank you for considering serving as a representative on the 5 Star Administrative Committee. The committee will review applications and make recommendations to the County's Public Health director for businesses wishing to permit in person shopping and dining activities at their location. As a participant on the committee, you may be tasked with handling confidential information and make decision in a committee structure, representing the decisions only of the committee if disagreements arise. We invite you to apply for this important position by filling out the following information and sending via email to Commissioner Kris Holstrom at krish@sanmiguelcountyco.gov with the subject line "5 star committee". Thank you in advance for your assistance and if you have further questions about the committee, please reach out to Commissioner Holstrom to seek those answers.

Please answer the following:

1. Name, business and affiliation

   Lodging Company

2. Why are you interested in serving on the committee in this role?

I am always interested in contributing to the community as a whole and especially from the lodging perspective and I think this is a great way to combine the two.

3. Describe your philosophy on the balance between Public Health and Economic Health

For me I feel the focus on economic health is extremely important. While the balance of public health is very important, especially right now during a pandemic, other aspects of public health is sometimes poised to fall through the cracks as not enough focus is put on economic health, I'm thinking mainly of other community issues such as increased depression, drug and substance abuse etc. To me it's important for a community not to let the cure be worse than the disease itself, especially in an overall physically healthy community such as Telluride.

4. Can you commit to participating in weekly meeting for a month or more?

Yes.

San Miguel County's 5 Star Business Certification Program

Thank you for considering serving as a representative on the 5 Star Administrative Committee. The committee will review applications and make recommendations to the County's Public Health director for businesses wishing to permit in person shopping and dining activities at their location. As a participant on the committee, you may be tasked with handling confidential information and make decision in a committee structure, representing the decisions only of the committee if disagreements arise. We invite you to apply for this important position by filling out the following information and sending via email to Commissioner Kris Holstrom at krish@sanmiguelcountyco.gov with the subject line "5 star committee". Thank you in advance for your assistance and if you have further questions about the committee, please reach out to Commissioner Holstrom to seek those answers.

Please answer the following:

Saved without personal info as Lodging #4

1. Name, business and affiliation *Lodging Company*
2. Why are you interested in serving on the committee in this role?

   Throughout this pandemic, I have been on the lookout for ways to help/serve. I have a long history in the lodging business and believe I could provide helpful input for this program and assist business in re-opening earlier than otherwise possible.

3. Describe your philosophy on the balance between Public Health and Economic Health

   Certainly a centrist when it comes to this balance. Covid is a very serious virus that deserves to be treated with respect and caution, particularly in the way it impacts health care and front line workers. With that said, I also understand the hardships that businesses are experiencing due to shutdowns and closures, and how that can also negatively impact peoples lives and health. I believe that local and federal goverments should continue to foster programs to help these businesses wherever possible.

4. Can you commit to participating in weekly meeting for a month or more?

   Yes

AGENDA ITEM - 4.d.

TITLE:

Late Addition: Executive Session Discussion regarding the Siemens Contract, citation (4)(b).

Presented by: Mike Bordogna, County Manager
Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

Per request by Mike Bordogna, Posted 9:35 am on 1/12/2021.

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

AGENDA ITEM - 4.e.

TITLE:

11:15 am Consideration of a resolution authorizing the Chair or Chair Pro Tem to sign the construction contract and financing documents associated with the energy performance project./MOTION

Presented by: Amy Markwell, County Attorney
Time needed: 5 mins

PREPARED BY:

Amy Markwell, County Attorney

RECOMMENDED ACTION/MOTION:

Motion to approve the resolution authorizing and directing the Chair or the Chair Pro Tem to execute the Transaction Documents necessary for the energy performance project on behalf of the County.

INTRODUCTION/BACKGROUND:

Lynn Padgett will be available if there are any questions. Backup to follow.

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description	Upload Date
1/12/2021 Update version of Resolution	1/12/2021

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS, SAN MIGUEL COUNTY, COLORADO FOR THE EXECUTION OF DOCUMENTS RELATED TO THE COUNTY'S ENERGY SAVINGS CONSERVATION PROJECT

RESOLUTION 2021-001

WHEREAS, San Miguel County, Colorado (the "County"), is a political subdivision duly organized and existing under the laws of the State of Colorado; and

WHEREAS, it is hereby determined that a true and real need exists for the acquisition and installation of certain equipment (the "Equipment") for an energy savings conservation project at certain of the County's facilities as identified in the hereinafter-defined performance contracting agreement; and

WHEREAS, the Board of County Commissioners of San Miguel County, Colorado has determined that the financing of the property described in the Equipment Lease Purchase Agreement presented at this meeting is for a valid public purpose, is essential to the operations of San Miguel County and is in accordance with sections 30-11-104.1 and 104.2, C.R.S.; and

WHEREAS, the County is authorized under the Constitution and laws of the State of Colorado (the "State") to enter into lease purchase agreements to finance the acquisition and installation of the Equipment; and

WHEREAS, in order to accomplish the foregoing, it is necessary and desirable for the County to enter into the following documents:

1. Performance Contracting Agreement with Siemens Industry, Inc. (the "Performance Contracting Agreement");

2. Equipment Lease Purchase Agreement (the "Agreement") with Sterling National Bank, as lessor (the "Lessor"), for the purposes described therein, including to provide financing for the Equipment, for a lease term not to exceed 16 years, with the aggregate principal components of rental payments not to exceed $675,000, and the interest components of rental payments to be computed at an interest rate not to exceed 2.43%.

3. Escrow Agreement (the "Escrow Agreement"), with the Lessor and the escrow agent named therein for the purpose of establishing an escrow fund into which Lessor will deposit an amount equal to the aggregate principal components of rental payments under the Agreement; and

(the Performance Contracting Agreement, the Agreement and the Escrow Agreement are referred to herein as the "Transaction Documents").

NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BODY OF SAN MIGUEL COUNTY, COLORADO, AS FOLLOWS:

Section 1. The Transaction Documents are hereby approved in substantially the forms submitted to and reviewed by the governing body of the County on the date hereof, with such changes therein as are deemed necessary by the County attorney and approved by the Chair of the Board of County Commissioners, said officer's execution thereof to be conclusive evidence of the approval thereof. The Chair or the Vice Chair of the County are each hereby authorized and directed to execute and deliver the Transaction Documents on behalf of and as the act and deed of the County.

Section 2. The County shall, and the officials and agents of the County are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this resolution and to carry out, comply with and perform the duties of the County with respect to the Transaction Documents and the acquisition and installation of the Equipment.

Section 3. The County has made certain capital expenditures in connection with the acquisition and installation of the Equipment prior to the date hereof, and the County expects to make additional capital expenditures in connection with the acquisition of the Equipment in the future. The County intends to reimburse itself for all or a portion of such expenditures, to the extent permitted by law, with the proceeds of the Agreement or other tax-exempt obligations to be delivered by the County. The maximum principal amount of the Agreement or other tax-exempt obligations expected to be delivered for the Equipment is not expected to exceed $1,000,000.

Section 4. This resolution will take effect and be in full force from and after its adoption by the governing body of the County.

MOVED, READ AND ADOPTED by the Board of County Commissioners of the County of San Miguel, State of Colorado, at its Special Meeting held in Telluride, Colorado the 13th day of January, 2021.

SAN MIGUEL COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS

____
Lance Waring, Chair

Vote:	Hilary Cooper	Aye	Nay	Abstain	Absent
	Kris Holstrom	Aye	Nay	Abstain	Absent
	Lance Waring	Aye	Nay	Abstain	Absent

ATTEST:

____
Carmen Lynn Warfield, Chief Deputy Clerk

AGENDA ITEM - 5.a.

TITLE:

11:20 am Potential Executive Session: Update on the Gold Run Preschool and Norwood Habitat house, citation (4)(b).

Presented by: Mike Bordogna, County Manager
Time needed: 20 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

AGENDA ITEM - 7.a.

TITLE:

12:45 pm Discussion and update with the San Miguel County Stakeholders concerning the COVID 19 outbreak.

Presented by: Grace Franklin, Public Health Director
Time needed: 75 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

AGENDA ITEM - 8.a.

TITLE:

Discussion on the previously presented concept of fines as a tool for violations.

Presented by: Mike Bordogna, County Manager; Lois Major, Attorney; Corenna Howard, SMRHA Director
Time needed: 15 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

Staff direction is requested. - Do you want us to move forward with a proposal for the Board of County Commissioners concerning the adoption of a schedule of fines

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description	Upload Date
Policy Memorandum	1/11/2021

POLICY MEMORANDUM

TO: SMCHA/BOCC Board
FROM: Lois Major, Special Counsel to the SMCHA
DATE: January 11, 2021
MEETING: January 13, 2021
RE: Update the BOCC on the consideration of Adoption of a Schedule of Fines

ISSUE: Short of forcing the sale of a deed-restricted home or the termination of a deed-restricted rental lease, SMRHA's compliance and enforcement tools are inadequate to effectively promote program responsibility, integrity, and public trust.

P**URPOSE**: Update the BOCC on the consideration of adoption of a Schedule of Fines as part of the County's Amended and Restated Deed Restriction and Covenant and the LUC Deed Restriction as an enforcement option within the deed restrictions to guarantee compliance with the rules of the program and with the individual deed restrictions.

BACKGROUND: The SMRHA Board held a work session on a potential policy to establish fines for the most common and damaging violations to the program on December 7, 2020. It is on the SMRHA Board agenda for February 1, 2021 to discuss comments and possibly forward recommendations to the BOCC. In general, the SMRHA was supportive of adding fines as a tool for the SMRHA staff. The SMRHA noted that fines should align with other regional housing authorities and have a reasonable expectation of enforcement. However, the SMRHA Board wanted to the introduction of fines presented in a non-confrontational manner and spend time on the education and outreach steps of the process.

DEED RESTRICTIONS IN THE COUNTY:
1. Land Use Code: LUC §§ 5-1304, 5-1305 and 5-1306
2. The Amended and Restated Deed Restriction and Covenant (Covenant") by neighborhood.

The County R-1 Housing Deed Restrictions have two forms, the original (the "LUC Deed Restriction") which is codified in §§ 5-1304 and 5-1305 of the San Miguel County Land Use Code (the "LUC"). LUC § 5-1304 is the language of the Deed Restriction itself, which is included as a plat note on every property subject to the Deed Restriction. The LUC § 5-1305 D. requires that the language of LUC § 5-1304 be recorded against a property in order for the property to become "Affordable Housing," and therefore subject to the Deed Restriction. The current language of LUC § 5-1305 D. is attached as Exhibit 1. LUC § 5-1305 contains the guidelines, rules and regulations that apply to every property subject to the Deed Restriction. LUC § 5-1306 contains additional housing provisions regarding project developers and exceptions. The Covenant is a document that was painstakingly created and adopted over a period of years and is in use by most of the county deed-restrict property owners. The Covenant was created in response to the unintended consequences of a changing LUC and its impacts on the property owners' rights. A current Covenant Template for Lawson Hill is attached as Exhibit 2.

Unlike the LUC Deed Restriction, the Covenant does not have a set of guidelines which could be amended from time to time. In order to amend the Covenant, both the County and the Owner must consent in writing after the governing [Homeowner's] Association has a chance to review the change and comment. The Association does not have any power to require or prevent amendments.

From the Covenant:

1.6. Limitation on Amendments to Covenant.

1.6.1.This Covenant shall not be amended or modified without the prior, written consent of the Subject Property Owner and the County, in their respective, sole and exclusive discretion. Any proposed modification to this Covenant shall be first referred to all applicable Association's governing the Subject Property and the Association(s) shall be given a reasonable opportunity to review and comment on the proposed amendment prior to its execution.

DISCUSSION: SMCHA and SMRHA : a brief history.

SMCHA Authority

As a separate political subdivision and a public corporation of the state, SMCHA has the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate (C.R.S. 29-1.204.5, Part 4).

SMCHA has the power "to do or perform any acts and things authorized by this section under, through or by means of an agent…" (C.R.S. 29-1- 204.5(3)(IV)(m)). SMCHA's powers include the adoption of regulations respecting the exercise of its powers and the carrying out of its purposes (Section 204.5 (3)(k)) and to exercise any other powers essential to the provision of its functions (C.R.S. 29-1.204.5(l)). This includes enforcement that can be delegated to an agent.

The 2007 Intergovernmental Agreement (IGA) authorizes SMRHA to enforce all aspects of the [County's] affordable housing program, and all applicable statutory and regulatory requirements. The 2007 IGA is attached as Exhibit 3. Section 6 of the IGA appoints the SMRHA Board as "its agent for the limited purpose of performing those duties specified in the Annual Work Plan in accordance with the terms and conditions set forth herein." The annual work plan could include the direction to adopt and enforce a schedule of fines if so requested.

The Covenant also grants power to SMRHA as its designee to administer the Covenant. See: Covenant: Paragraph 1.4. Administration and Enforcement. This Covenant shall be administered by the County or its designee ("Administrator"). This Covenant shall be enforceable by the County by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of non-complying Subject Property Owners or Occupants, or such other remedies and penalties as may be specified in this Covenant.

Current Violations and Penalties: For both the LUC and the Covenant deed restrictions, the current protocol is usually a first contact from the SMRHA. If the issue is not cleared, then a Notice of Violation (NOV) is sent. The NOV must detail the violation(s) and describe the rights of the accused violator. Even when the violation is conclusively determined against the owner, the owner then has a full year to come into compliance. The consequence for a violation that cannot be cured within a year is that the owner must sell the property. The period to comply is long and the consequences are harsh. A middle ground with quick and targeted penalties is the goal of a revamped penalty and fine structure.

Possible Penalties and Schedule of Fines

Should we create a Schedule of Fines to address all types of compliance and program violations to achieve a targeted 100% compliance within the housing program? If yes, fines should be simple, consistent, logical, graded by severity, punitive, effectively deterrent, and easily communicated in such a way as to promote public education and voluntary compliance and accountability.

The schedule of fines would be specific as to the range of penalties applicable to each type of violation (i.e. fines should not be discretionary). Such specificity gives the public notice of what the penalty is for a violation and helps prevent unequal treatment of violators. The Schedule of Fines should cover all violations stated in the Covenant and the LUC deed restrictions.

Fines are meant to deter owners, renters, and landlords from breaking the affordable housing rules. Through public education and outreach, SMRHA could clearly communicate expectations for program compliance. The more severe the violation, the steeper the fine. The proposed fines range from $250 for a Stage 1 violation up to $5,000 for a Stage 5 violation.

Five stages of violations and fines. These are taken directly from the Aspen Pitkin model which is attached as Exhibit 4. It is a good place to start for determining levels of violations and amounts of fines. Although still serious, Stage 1 violations include the least severe compliance violations, while Stage 5 violations are the most severe violations and the detrimental to the affordable housing program. Each stage of violation allows for a 15-day cure period from the time of Notice of Violation (NOV), which can carry over into all five levels of the Schedule of Fines, giving alleged violators (in all but the most severe cases or when a violation can no longer be cured and there is sufficient enough evidence to prove it) more time to cure or appeal an alleged violation prior to forfeiting their home or rental unit.

Under the current County deed restrictions, any owner in the program is only allowed 15 days to cure a NOV or ask for a hearing regarding the accusations. Failure to cure a NOV within 15 days is grounds for starting the clock on losing one's deed restricted home. For an occupant of a rental unit, the Occupant shall have sixty days from the date that the Occupant received the notice to cure the violation. If the violation is not cured, the Occupant must vacate the property on day 60. Losing a home or rental unit is severe. However, under the proposed NOV and Schedule of Fines process, an alleged violator who fails to requalify, for example, under Stage 1, would effectively receive 90 days to either cure or appeal a NOV before having to forfeit their home or rental unit.

RECOMMENDATION:
Direct SMRHA staff to develop an appropriate Schedule of Fines. Direct SMRHA staff to develop a strategy to educate and involve the owners of County deed restricted property. Schedule the adoption of the Schedule of Fines as an action item.

Attachments:
Exhibit 1: LUC 5-1305
Exhibit 2: Exhibit 3: 2007 IGA with SMRHA (unsigned for ease of reading).
Exhibit 3: Amended and Restated Deed Restriction and Covenant for Lawson Hill ("Covenant")
Exhibit 4: Aspen Pitkin County Housing Authority (APCHA) Schedule of Fines

EXHIBIT 1

Current Version of LUC §5-1305 D. Procedure for Qualifying Affordable Housing

Property becomes designated as Affordable Housing when the San Miguel County Board of Commissioners or its designee and the Owner of the Property execute and record with the Office of the Clerk and Recorder of San Miguel County a final plat containing the County R-1 Housing Deed Restriction (Section 5-1304) or a separately recorded document imposing the County R-1 Housing Deed Restriction on the Property. Prior to the issuance of a certificate of occupancy for each "Employee Apartment" and "Employee Dormitory" unit, the Owner shall subject the unit to the County R-1 Housing Deed Restriction through proper execution and recordation of that document, as described in this Section 5- 1305 D.

EXHIBIT 2

INTERGOVERNMENTAL AGREEMENT
among
SAN MIGUEL REGIONAL HOUSING AUTHORITY
SAN MIGUEL COUNTY, COLORADO
THE SAN MIGUEL COUNTY HOUSING AUTHORITY
THE TELLURIDE HOUSING AUTHORITY
THE TOWN OF TELLURIDE
THE MOUNTAIN VILLAGE HOUSING AUTHORITY
THE TOWN OF MOUNTAIN VILLAGE

This Intergovernmental Agreement is made and entered into this ____ day of ___________, 2007, by and among the San Miguel Regional Housing Authority (“RHA”); San Miguel County, Colorado, a body corporate and politic (the “County”); the San Miguel County Housing Authority (“SMCHA”); the Telluride Housing Authority (“THA”); the Town of Telluride, Colorado, a municipal corporation (“Telluride”); the Mountain Village Housing Authority (“MVHA”); and the Town of Mountain Village (“Mountain Village”) all of which are political subdivisions (as defined in C.R.S. § 29-1-202) organized and existing by virtue of the laws of the State of Colorado. SMCHA, THA and MVHA may be collectively referred to as the “Housing Authorities”; and the County, Telluride and Mountain Village may be collectively referred to as the “Housing Jurisdictions.”

1. RECITALS. This Intergovernmental Agreement is made with reference to the following facts:

1.1 Pursuant to the Colorado Constitution, Article XIV, section 18, and C.R.S. §§ 24-55-103, 29-1-202, 203 as amended, RHA, the Housing Authorities and the Housing Jurisdictions may cooperate and contract with one another to provide any function, service or facility, lawfully authorized to each of them, if authorized by the resolution of the governing board of each entity;

1.2 On or about March 31, 1994, SMCHA entered into an Intergovernmental Agreement with the THA wherein THA agreed to perform certain functions and assume certain responsibilities of SMCHA;

1.3 RHA was formed pursuant to an Intergovernmental Agreement between the County and Telluride dated January 28, 1997and amended February 5, 2003;

1.4 REPEAL. The intent and purpose of this Agreement is to repeal and supersede that certain Intergovernmental Agreement between the RHA, the County, Telluride SMCHA, and THA dated October 29, 2003 and the First Amendment to the same IGA dated April 6, 2005 that relates to certain administrative responsibilities and functions to be performed by the RHA. Once this Agreement is fully executed by the Parties, the October 29, 2003 IGA and the First Amendment to the same IGA dated April 6, 2005 will be null and void.

1.5 The Housing Jurisdictions and the Housing Authorities are desirous of cooperating and contracting with RHA to assume certain administrative responsibilities, and to perform certain functions, as described herein below, with regard to certain specific programs that the Housing Authorities administer; and RHA desires to assume such program responsibilities and duties in accordance with the terms and conditions set forth herein.

2. TERM. This Agreement shall commence on the date of signing, indicated above, and shall remain in effect for an initial term through and including December 31, 200_. Thereafter, this Agreement shall be automatically renewed for successive one-calendar-year terms unless and until any party gives notice of non-renewal. Notwithstanding anything herein to the contrary, in the event any party gives such notice of non-renewal, the parties shall confer in good faith in an effort to adjust the rights and duties hereunder so that termination may be avoided. If the parties are unable to agree on appropriate modifications of this Agreement within a six month period, this Agreement shall terminate upon the expiration of such six month notice period.

3. SERVICES. During the annual budget process for the RHA, the RHA and Housing Jurisdictions shall determine the services and functions to be performed by RHA for the coming year. The services and functions identified shall be compiled into one controlling document (the "Annual Work Plan") for each year.

4. COMPENSATION AND BUDGET. In consideration of RHA performing the services and functions identified in the Annual Work Plan, the Housing Jurisdictions shall pay to RHA an amount established in a budget for RHA that is approved by all of the Housing Jurisdictions, payable as determined by each Housing Jurisdiction individually.

Prior to adopting a budget, RHA shall provide to the Housing Jurisdictions a copy of a proposed budget for each of the funds or accounts administered by RHA for review. The budget and any material amendments thereto must be approved by the Housing Jurisdictions before adoption by the RHA.

5. COOPERATION. Each party agrees to cooperate with the others and to take all actions and to provide all information and documentation reasonably required to enable the parties to fulfill their respective obligations under this Agreement. On request, the Housing Jurisdictions and the Housing Authorities shall deliver to RHA those records (or copies thereof) that are necessary for RHA to perform the services and functions specified in the Annual Work Plan. Any such records shall remain the property of the entity that provided them and shall be promptly returned upon request.

6. AGENCY RELATIONSHIP. The Housing Jurisdictions and Housing Authorities do hereby appoint and designate RHA as its agent for the limited purpose of performing those duties specified in the Annual Work Plan in accordance with the terms and conditions set forth herein. RHA, as the designated agent of the Housing Jurisdictions and Housing Authorities for the purposes set forth herein, shall be fully and solely responsible for the performance of its designated responsibilities in accordance with all applicable statutory and regulatory requirements. RHA may not assign its obligations to the County and SMCHA under this Agreement without the prior written approval of the Housing Jurisdictions and Housing Authorities. RHA may not assign its obligations to Telluride and THA under this Agreement without the prior written approval of the Housing Jurisdictions and Housing Authorities. RHA may not assign its obligations to Mountain Village and

MVHA under this Agreement without the prior written approval of the Housing Jurisdictions and Housing Authorities.

7. ASSIGNMENT OF REVENUES BY THE COUNTY. The County and SMCHA do hereby assign to RHA all of its legal right, title and interest in and to the revenues and fees listed below, as they become due and payable during the initial and any renewal term of this agreement to be credited against the compensation due to RHA from the County:

7.1 Deed Restriction Administration Fees:

7.1.1 Application fees paid by applicants for Deed Restricted housing pursuant to San Miguel County Land Use Code ("LUC") section 5-1305 E. V.;

7.1.2 Rental fees paid by owners of Deed Restricted Rental projects as a one-time fee for each tenancy pursuant to LUC section 5-1305 F. III;

7.2 The one percent (1%) transfer assessment (1% of the purchase price paid by the Seller of Deed Restricted property at closing) pursuant to LUC section 5-1305 F. II.;

7.3 Lawson Hill Real Estate Transfer Assessment as established in Section 21 and as detailed in Section 2.2.6 of the Preliminary Development Plan Approval for the Lawson Hill Planned Unit Development recorded in Resolution No. 1991-22 of the Board of Commissioners of San Miguel County and constituting three-fourths of one percent (0.75%) of the purchase price of Deed Restricted property at Lawson Hill paid by the Buyer, subject to the exemptions, amounts and additional provisions set forth in Section 5.9 of the Declaration for Lawson Hill;

7.4 Lawson Hill Retail Sales Assessmentas established in Section 21 and as detailed in Section 2.2.6 of the Preliminary Development Plan Approval for the Lawson Hill Planned Unit Development recorded in Resolution No. 1991-22 of the Board of Commissioners of San Miguel County and constituting one-half of one percent (0.5%) of the Retail Sales Assessment, subject to the exemptions, amounts and additional provisions set forth in Section 5.10 of the Declaration for Lawson Hill.

Any amounts collected by RHA in excess of the compensation set forth above shall be deposited into the R-1 Loan Default Reserve Fund.

Upon request or at least semi-annually, RHA shall provide the County with an accounting of the revenues and fees listed.

8. R-1 LOAN DEFAULT RESERVE. After payment of the compensation set forth above, RHA shall deposit all revenues received from the sources specified in Section 7, above, in the R-1 Loan Default Reserve Fund as established in Resolution 1992-7 and Resolution 1994-46 of the Board of County Commissioners of San Miguel County, Colorado. RHA shall be responsible for using the funds in the R-1 Loan Default Reserve, in strict compliance with all applicable regulatory requirements, in cases where there is a substantial threat of loss of the deed restriction through foreclosure for the purpose of maintaining the existing supply of deed restricted properties and for any other purposes authorized pursuant to this Section 8. To that end and without limiting the powers hereby conferred on RHA, RHA is specifically authorized to cure defaults by owners of property subject to the R-1 Housing Deed Restriction, to the extent there are sufficient funds available in the R-1 Loan Default Reserve for such purposes. RHA shall keep and maintain the funds in the R-1 Loan Default Reserve separate and apart from any and all other revenues which it receives from any other sources and shall hold such funds in compliance with C.R.S. § 29-4-209(1)(p) so as to be readily available for use to cure any loan default which may occur. RHA may use funds available in the R-1 Loan Default Reserve for purposes in addition to the curing of loan defaults, only upon the prior written approval of the SMCHA. RHA shall make reasonable efforts to cure any monetary defaults of Deed Restricted property but only if necessary to avoid loss of the deed restriction; provided, RHA shall not be required to expend any funds for this purpose other than loan default reserve funds described in this section then in RHA's possession, and RHA shall not be required to take any actions, other than those specifically described in this Agreement, to cure such default.

9. MANAGEMENT CONTROL.

9.1 For the purpose of assuring RHA is performing its contractual obligations in compliance with the terms and conditions of this Agreement and all applicable statutory and regulatory requirements, RHA shall meet with the Housing Jurisdictions periodically as requested by any one of the Housing Jurisdictions to report on its activities, and shall, upon request, provide a written report of its activities performed pursuant to this Agreement, including appropriate documentation fully accounting for all revenues received, administered and disbursed pursuant to this Agreement. Such reports shall be prepared in accordance with generally accepted accounting principles. RHA shall maintain appropriate records separately; accounting for all revenues received pursuant to this Agreement in accordance with generally accepted accounting practices.

9.2 Upon written request of any one of the Housing Jurisdictions, RHA shall make available to the Housing Jurisdictions and their independent auditors, all of its financial records and documentation related to RHA's performance of its contractual obligations hereunder. Such financial records shall be made and kept in accordance with standard government accounting principles and in compliance with applicable provisions of the Colorado Local Government Audit Law. RHA shall be solely responsible for the administration of any and all revenues that it receives pursuant to this Agreement in compliance with applicable provisions of state and federal statutes, rules and regulations. Should RHA fail or refuse to account for the receipt administration and expenditure of revenues received pursuant to this Agreement in accordance with the terms and conditions specified herein, any one of the Housing Jurisdictions may declare RHA to be in default and the Housing Jurisdictions, jointly or separately, may exercise any of the legally available rights and privileges.

10. LIABILITY AND INSURANCE. It is specifically agreed and understood that each party to this Agreement shall bear full legal responsibility for its acts and omissions and those of its officers, employees, and agents, in the performance of its contractual obligations. Except as otherwise provided for herein, no officers, employees, or agents of the RHA shall be deemed to be officers, employees, or agents of the County, SMCHA, THA, Telluride, MVHA or Mountain Village for any purpose. Except as otherwise provided herein, no officers, employees, or agents of the

County, SMCHA, THA, Telluride, MVHA or Mountain Village shall be deemed to be officers, employees, or agents of the RHA. All parties agree to obtain and maintain during the term of this Agreement, including all renewals, a comprehensive policy of liability insurance, including errors and omissions coverage, with minimum liability limits of at least two million dollars ($2,000,000.00) per loss, two million dollars ($2,000,000.00) annual aggregate. Within thirty days of the effective date of this Agreement, and no late than January 10 of any subsequent annual term, each party shall deliver to the others, at the address specified herein, a duly executed certificate of insurance demonstrating that the required liability insurance coverages are in effect and that such certificate may not be canceled, rescinded, or otherwise revoked, without at least ten days prior written notice to the other parties. Except to the extent specifically provided for herein, no party shall be legally entitled to indemnification from any other party for any cost, damages, settlements, liabilities, or judgments which it incurs in any litigation arising from this agreement brought by a third party. The parties hereto agree they are relying on and do not waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections, provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time may be amended.

11. LEGAL COSTS IN DEFENSE OR ENFORCEMENT OF THE R-1 HOUSING DEED RESTRICTION. The County shall be fully and solely responsible for the payment of all costs, settlements, and judgments, including all litigation costs and outside counsel attorney's fees, incurred by the County, SMCHA and/or RHA, associated with any legal proceedings challenging the validity, or concerning the enforcement, by legal action or otherwise, of the R-1 Housing Deed Restriction, as codified in the San Miguel County Land Use Code, including any amendments thereto, in which the County, SMCHA and/or RHA are named as parties. In the event of such litigation, the County shall be solely responsible for the legal defense of RHA, should it be named as a party, and shall have full and sole authority to settle, compromise, or contest such litigation as it deems appropriate, in its sole discretion.

Nothing contained in this section or elsewhere in this Agreement shall authorize or permit the County, SMCHA or any person or entity to settle, compromise, or consent to any order or judgment against RHA related to its performance under this Agreement without the express written consent of RHA.

12. LEGAL COSTS IN DEFENSE OF AFFORDABLE HOUSING AND EMPLOYEE HOUSING PROVISIONS OF THE TELLURIDE LAND USE CODE. Telluride shall be fully and solely responsible for the payment of all costs, settlements, and judgments, including all costs of legal defense and attorney's fees, incurred by Telluride, THA or RHA associated with any legal proceedings challenging the validity, or concerning the enforcement, by legal action or otherwise, of the affordable housing and/or the employee housing provisions of the Telluride Land Use Code, and/or Telluride financed housing, and associated guidelines, including any amendments thereto, in which Telluride, THA and/or RHA are named as parties. In the event of such litigation, Telluride shall be solely responsible for the legal defense of RHA, should it be named as a party, and shall have full and sole authority to settle, compromise, or contest such litigation as it deems appropriate, in its sole discretion.

Nothing contained herein shall authorize or permit Telluride, THA or any person or entity to settle, compromise, or consent to any order or judgment against RHA related to its performance under this Agreement without the express written consent of RHA.

13. LEGAL COSTS IN DEFENSE OF AFFORDABLE HOUSING AND EMPLOYEE HOUSING PROVISIONS OF THE MOUNTAIN VILLAGE MUNICIPAL CODE. Mountain Village shall be fully and solely responsible for the payment of all costs, settlements, and judgments, including all costs of legal defense and attorney’s fees, incurred by Mountain Village, MVHA or RHA associated with any legal proceedings challenging the validity, or concerning the enforcement, by legal action or otherwise, of the affordable housing and/or the employee housing provisions of the Mountain Village Municipal Code and associated guidelines, including any amendments thereto, in which Mountain Village, MVHA and/or RHA are named as parties. In the event of such litigation, Mountain Village shall be solely responsible for the legal defense of RHA, should it be named as a party, and shall have full and sole authority to settle, compromise, or contest such litigation as it deems appropriate, in its sole discretion.

Nothing contained herein shall authorize or permit Mountain Village, MVHA or any person or entity to settle, compromise, or consent to any order or judgment against RHA related to its performance under this Agreement without the express written consent of RHA.

14. INTEGRATION. This Agreement constitutes the full, complete, and integrated understanding of the parties hereto and no prior or contemporaneous promise, representation, term, condition, or understanding, of either party regarding the subject matter specified herein, shall be of any legal force or effect unless embodied herein in writing, or in a subsequent written amendment to this Agreement mutually agreed to by the parties.

15. DEFAULT. Should any party to this Agreement fail or refuse to perform any of its contractual obligations, any other party may declare the party in breach of its contractual obligations to be in default by providing to that party a written notice specifying, with particularity, the grounds for the default. The party declared to be in default shall have a period of thirty days (or such longer period as is reasonably required, providing the defaulting party shall commence within such 30-day period and diligently pursue a cure to completion) from its receipt of the written notice of default to cure the specified breach to the reasonable satisfaction of the non-defaulting parties. Should the defaulting party fail or refuse to cure the specified breach to the satisfaction of any other party within the time period specified, the non-defaulting parties may declare this Agreement terminated, effective upon the defaulting party’s receipt of written notice of termination. The parties may pursue such remedies at law or in equity to which they may be entitled, and the prevailing parties in any action arising out of this Agreement shall be entitled to an award of their actual costs and attorney’s fees.

16. SEVERABILITY. The provisions of this Agreement are severable and the invalidity of any section, phrase, clause or portion of the Agreement as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Agreement.

17. NOTICE. Notice shall be by certified mail, return receipt requested, or by personal delivery. The address of the parties for the delivery of any notices authorized by this Agreement are:

San Miguel Regional Housing Authority
P.O. Box 840, Telluride, CO 81435

Telluride Housing Authority
P.O. Box 397, Telluride, CO 81435

Board of County Commissioners
County of San Miguel
P.O. Box 1170, Telluride, CO 81435

San Miguel County Housing Authority
P.O. Box 1170, Telluride, CO 81435

Town of Telluride
P.O. Box 397, Telluride, CO 81435

Town of Mountain Village
455 Mountain Village Blvd., Suite A
Mountain Village, CO 81435

Mountain Village Housing Authority
455 Mountain Village Blvd., Suite A
Mountain Village, CO 81435

Notice shall be effective, if sent by certified mail, on the third day following mailing; or, upon receipt if delivered in person.

18. CONTACT PERSON. For the purpose of facilitating contact and communication between the parties the following persons are hereby designated as contact persons for the respective parties:

RHA:	Executive Director San Miguel Regional Housing Authority P.O. Box 840, Telluride, CO 81435 Tel: 728-3034/Fax: 728-5371
County/ SMCHA:	Lynn Black, County Administrator San Miguel County P.O. Box 1170, Telluride, CO 81435 Tel: 728-3844/Fax: 728-3718
Telluride/ THA:	Frank Bell, Town Manager P.O. Box 397, Telluride, CO 81435 Tel: 728-3071/Fax: 728-3078
Mountain Village/ MVHA:	

The parties may change the designated contact person at their sole discretion by providing the other parties with written notice of such change.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

SAN MIGUEL REGIONAL HOUSING AUTHORITY

By: ___________________________

ATTEST:

____

SAN MIGUEL COUNTY HOUSING AUTHORITY

By: ___________________________

ATTEST:

____

BOARD OF COMMISSIONERS, SAN MIGUEL COUNTY, COLORADO

By: ___________________________

ATTEST:

____

TELLURIDE HOUSING AUTHORITY

By: ___________________________

ATTEST:

____

TOWN OF TELLURIDE, COLORADO

By: ___________________________

ATTEST:

EXHIBIT 2

____

MOUNTAIN VILLAGE HOUSING AUTHORITY

By: ______________________________

ATTEST:

____

TOWN OF MOUNTAIN VILLAGE

By: ______________________________

ATTEST:

____

AMENDED AND RESTATED
DEED RESTRICTION AND COVENANT
Lot ____, Lawson Hill Subdivision/PUD

THIS AMENDED AND RESTATED DEED RESTRICTION AND COVENANT ("**Covenant**") is entered into as of ____________, 20__ ("**Effective Date**"), by and among the following persons and parties:

1. The County of San Miguel, State of Colorado acting by and through its Board of County Commissioners, whose address is P.O. Box 1170, 333 W. Colorado Ave., 3rd Floor, Telluride, Colorado 81435 ("**County**");

2. The San Miguel County Housing Authority, whose address is P.O. Box 1170, 333 W. Colorado Ave., 3rd Floor, Telluride, Colorado 81435 ("**County Housing Authority**");

3. ____, (individually or collectively, "**Subject Property Owner**"), whose current mailing address is as follows: ___________________________, Telluride, Colorado 81435.

The County, County Housing Authority, and Subject Property Owner are sometimes individually referred to as a **"Party"** and sometimes collectively as the **"Parties."** The Parties hereby agree as follows:

RECITALS

The Parties acknowledge and agree to the following Recitals and further agree that each Recital: (a) forms a portion of the basis of this Covenant; and (b) is incorporated in this Covenant.

A. This Covenant is intended to help preserve a sufficient supply of Deed Restricted Property to meet the needs of locally employed residents of the Telluride R-1 School District while allowing customary free-market (unrestricted) practices to influence the sale and rental of Deed Restricted Property as much as possible.

B. The Subject Property Owner is the current, fee simple owner of Lot ____, Lawson Hill Subdivision/PUD pursuant to the Subdivision Governing Documents, San Miguel County, Colorado ("**Subject Property**").

C. The County granted its approval for the Subdivision within which the Subject Property is included, which approvals include the County PUD/Subdivision Approvals and other relevant approvals ("**County Approvals**"). The Subject Property is located within the Subdivision.

D. Through the implementation of the County Approvals, certain covenants were placed on the Subject Property, including the Original Plat Note. The Original Plat Note was intended to govern certain aspects of the ownership, use and occupancy of the Subject Property by requiring all such ownership, use and occupancy to comply with certain provisions of the San Miguel County Land Use Code, specifically the guidelines, rules and regulations contained in LUC Section 5-1305.

E. In addition to LUC Section 5-1305, which is referenced in the Original Plat Note, LUC Section 5-1306 also applies to the Subject Property and governs certain specific aspects of the ownership, use and occupancy of the Subject Property.

F. For purposes of simplicity and use in this Covenant, the Parties agree that for definitional purposes, the Original Plat Note, LUC Section 5-1305, LUC Section 5-1306 and any other related documents, instruments or agreements restricting ownership, use and occupancy of the Subject Property, if any, are collectively referred to herein as the **"Original Deed Restriction."**

G. The Original Deed Restriction continues to encumber the Subject Property and constitutes a covenant and restriction burdening the Subject Property and running with title to Subject Property.

H. The Parties intend that the purpose of this Covenant is to: (a) terminate and extinguish the Original Deed Restriction, except with respect to any Option to Purchase and/or any Co-Borrower Agreement; and (b) substitute the terms, conditions and restrictions contained in this Covenant for the terms, conditions and restrictions contained in the Original Deed Restriction, except with respect to any Option to Purchase and/or any Co-Borrower Agreement, which shall continue to be effective pursuant to its original terms and conditions. This Covenant, upon its execution by the Parties and recording in the public records of the San Miguel County Clerk and Recorder, shall hereafter govern certain of the terms and conditions of ownership, use and occupancy of the Subject Property by the Subject Property Owner, and the Subject Property Owner's heirs, successors and assigns as addressed herein.

I. For the purposes set forth above and herein, the Subject Property Owner, the Subject Property Owner's heirs, successors and assigns, and all persons acquiring an interest in the Subject Property, whether or not it shall be so expressed in any deed or other instrument of conveyance, shall be deemed to covenant and agree during the period of their ownership interest in the Subject Property, to hold their interest(s) subject to the covenants and restrictions contained in this Covenant, which shall be deemed to run with title to the Subject Property for the specified duration of the Covenant.

J. The Parties recognize and agree that the Subject Property may be included in one or more common interest ownership communities, each of which is governed by a Homeowners' or Condominium Owners Association, and that the Homeowners' or Condominium Owners Association has promulgated certain governing documents, including, without limitation, the Subdivision Governing Documents, that may further affect the use of the Subject Property. Nothing herein is intended to alter or diminish the respective duties and obligations of the Subject Property Owner to comply with any terms and conditions of such Subdivision Governing Documents that may be more restrictive then the terms and conditions of this Covenant.

K. Capitalized terms shall have the meanings set forth in Section 12 of this Covenant if not otherwise defined herein.

COVENANT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated in this Covenant as substantive provisions, the mutual covenants, restrictions and equitable servitudes stated herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby represent, covenant and agree as follows:

Section 1. Deed Restriction.

1.1. Termination of Original Deed Restriction.

1.1.1. Except as provided for below, all components of the Original Deed Restriction: (a) are each hereby forever terminated, extinguished and vacated and will no longer be considered a covenant or restriction burdening the Subject Property or binding the Subject Property Owner; (b) shall no longer have any force, effect, or legal significance with respect to the ownership, use and occupancy of the Subject Property; and (c) is replaced by this Covenant.

1.1.2. The foregoing provisions of Section 1.1.1 notwithstanding, the Parties intend that any Option to Purchase or Co-Borrower Agreement recorded before the Effective Date shall not be altered, amended, modified, terminated or otherwise extinguished by the execution of this Covenant and that the Option to Purchase will continue to apply to and affect the Subject Property in accordance with the terms and conditions stated in the Option to Purchase.

1.1.3. The foregoing provisions of Section 1.1.1 notwithstanding, the Parties further intend that: (a) no substantive rights of a Lender, if any existed under the Original Deed Restriction, are intended to be altered, amended, modified, terminated or otherwise extinguished by the execution of this Covenant; (b) no consent by the Lender is required by the County or is being obtained in connection with the execution of this Covenant; and (c) should a Lender at any time during the Term determine that Lender's consent was required for this Covenant and the failure to obtain such Lender consent was determined to be an event of default under the documents evidencing the Secured Obligation, the Parties intend that this Covenant shall be terminated and extinguished from the Subject Property and that the Original Deed Restriction shall automatically apply to and become a covenant against the Subject Property until such time as Lender executes and delivers its consent to this Covenant. The Parties agree to cooperate and assist each other in executing any document necessary to evidence the reversion of the Covenant in the event of an objection by Lender.

1.2. <u>Establishment of the Covenant</u>.

1.2.1. As of the Effective Date, the terms and conditions of this Covenant shall completely and conclusively govern the ownership, use and occupancy of the Subject Property relative to the subject matter herein.

1.2.2. No subsequent changes that may be made to the Original Plat Note, or to LUC Sections 5-1305 or 5-1306 will have any affect or impact to this Covenant, including the ownership, use and occupancy of the Subject Property.

1.2.3. The Subject Property Owner shall not permit any ownership, use or occupancy of the Subject Property except in compliance with this Covenant.

1.2.4. The terms and conditions of this Covenant reflect the complete and entire understanding of the Parties with respect to the matters addressed herein and no other documents, laws, regulations, guidelines and the like shall be applied against Subject Property Owner in connection with its use of the Subject Property that purport to modify or amend the terms and conditions of this Covenant.

1.3. <u>Term</u>. The **"Term"** of this Covenant shall commence on the Effective Date and shall continue until May 18, 2042 ("**Expiration Date**"). At the option of the County, the duration of this Covenant may be extended after the Expiration Date for an additional period of fifty (50) years after public hearing and comment on the proposed extension. Any other amendment must be agreed to in writing by all Parties as provided for in this Covenant.

1.4. <u>Administration and Enforcement</u>. This Covenant shall be administered by the County or its designee ("**Administrator**"). This Covenant shall be enforceable by the County by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of non-complying Subject Property Owners or Occupants, or such other remedies and penalties as may be specified in this Covenant.

1.5. Termination. This Covenant shall not terminate except upon the occurrence of any one of the following events, at which time this Covenant shall be deemed to have automatically expired and either Party may, but need not, record a termination statement evidencing the termination:

1.5.1. Expiration. Expiration of the Term of this Covenant as set forth in Section 1.3.

1.5.2. Foreclosure. If an Option to Purchase has been executed and recorded, this Covenant may terminate in the manner provided for in the Option to Purchase.

1.5.3. By the County. The County expressly reserves the right to terminate this Covenant, including but not limited to the right to vacate and extinguish the effect of the terms, conditions, covenants and restrictions as it relates to the Subject Property by recording a "Termination of Amended and Restated Deed Restriction Covenant" in the Official Records executed by all of the then Subject Property Owners of the Subject Property and by the County.

1.6. Limitation on Amendments to Covenant.

1.6.1. This Covenant shall not be amended or modified without the prior, written consent of the Subject Property Owner and the County, in their respective, sole and exclusive discretion. Any proposed modification to this Covenant shall be first referred to all applicable Association's governing the Subject Property and the Association(s) shall be given a reasonable opportunity to review and comment on the proposed amendment prior to its execution.

1.6.2. Nothing herein shall preclude the County from amending LUC Sections 5-1305 and 5-1306 from time to time, provided that no such amendments to LUC Sections 5-1305 and 5-1306 shall apply to or otherwise affect the use, ownership or occupancy of the Subject Property unless this Covenant is amended in writing to incorporate such amendments as agreed to by the Subject Property Owner and the County.

1.7. Subject to Market Forces. Except as specifically stated in this Covenant, resale of the Subject Property is subject to normal market forces. Nothing herein shall be construed to constitute a representation or guarantee by the County that on resale the Subject Property Owner shall obtain any profit, or return on investment. The Subject Property Owner hereby recognizes, acknowledges and understands that neither the County nor the Administrator is required or obligated in any manner to aid the Subject Property Owner in receiving any particular resale price. The Subject Property Owner further recognizes, acknowledges and understands that depending on market conditions at the time of resale, the Subject Property Owner may incur a loss upon resale of the Subject Property.

1.8. Price Appreciation Caps. The County will not enter into any agreement with the Subject Property Owner that imposes a Price Appreciation Cap on the Subject Property, unless the applicable Association(s) expressly agrees to such Price Appreciation Cap in writing. This provision does not preclude San Miguel County, as an owner, from negotiating a profit sharing requirement or any other mechanism to recoup its expenditure of funds during the resale of the Affordable Housing unit.

Section 2. Purchasing the Subject Property.

2.1. Limitation on Purchase. Purchase of the Subject Property is limited to Qualified Purchasers and their Spouses. Although a Spouse of a Qualified Purchaser may take title to the Subject Property, a Spouse of a Qualified Purchaser is not a Qualified Purchaser unless he or she becomes an Ownership Applicant and independently receives approval as a Qualified Purchaser. The Administrator shall approve an Ownership Applicant as a Qualified Purchaser if the Ownership Applicant satisfies: (1) the Current Local Employee Standard; (2) the Retired or Disabled Local Employee Standard; or (3) the

Alternative Standard. The Ownership Applicant must submit documentation sufficient for the Administrator to verify that he or she meets the applicable standard.

2.1.1. <u>Current Local Employee Standard</u>. The Ownership Applicant: (a) has maintained his or her Primary Residence within the Four County Region for at least eight of the twelve months immediately preceding the date that the Administrator receives the Ownership Applicant's Purchase Application; (b) has earned Qualifying Income for at least 1032 hours of the twelve months immediately preceding the date that the Administrator receives his or her Purchase Application, and is currently earning Qualifying Income; and (c) for the particular eight to twelve months that establish the Ownership Applicant's residency under Section 2.1.1(a) above, the Ownership Applicant's Household Non-Qualifying Income calculated during that period does not exceed the Ownership Applicant's Household Qualifying Income.

2.1.2. <u>Retired or Disabled Local Employee Standard</u>. The Ownership Applicant is Retired or is Disabled, and for at least five of the eight years immediately preceding the date that the Administrator receives their Purchase Application, the Ownership Applicant: (1) has maintained his or her Primary Residence within the Four County Region for at least eight months of each applicable year; (2) was earning Qualifying Income for at least 1032 hours of each applicable year; and (3) for each applicable year, the Ownership Applicant's Household Non-Qualifying Income did not exceed the Ownership Applicant's Household Qualifying Income.

2.1.3. <u>Alternative Standard</u>. For each of the three years immediately preceding the date that the Administrator receives their Purchase Application: (1) the Ownership Applicant has maintained his or her Primary Residence within the Telluride R-1 School District for at least eight months of each year; (2) the sum of the Ownership Applicant's Household Qualifying Income and Household Non-Qualifying Income does not exceed 100% AMI for the applicable household size; and (3) the Ownership Applicant's Total Household Assets amount to no more than two times the Contract Price of the Subject Property.

2.2. <u>Public Sector Employment</u>. An Ownership Applicant seeking approval as a Qualified Purchaser pursuant to the Current Local Employee Standard, and hired by a Public Sector Employer may not be required to meet the employment-term requirement, subject to the approval of the County.

2.3. <u>Co-Borrower</u>. A person who does not meet the requirements for approval as a Qualified Purchaser, but who is necessary as a co-borrower in order for an Ownership Applicant to obtain financing, may be listed on title to the Subject Property provided that: (1) the Ownership Applicant provides the Administrator with a letter from the Lender stating the co-borrower's name and relationship to the Ownership Applicant, and that the co-borrower is necessary and must be listed on title in order for the Ownership Applicant to obtaining financing to purchase the Subject Property; and (2) the Ownership Applicant and the co-borrower enter into a Co-Borrower Agreement providing that, in the event the co-borrower takes full title to the Subject Property for any reason, the co-borrower shall notify the Administrator immediately, and shall either sell the Subject Property to a Qualified Purchaser or otherwise comply with the terms of this Covenant within one year of the date that the co-borrower takes full title.

Section 3. <u>Renting the Subject Property</u>.

3.1. <u>Subject Property Owner Approval to Rent</u>. The Subject Property Owner may not rent or lease the Subject Property, or any portion of the Subject Property, for any amount of time, without written approval from the Administrator, which approval shall be in accordance with the terms of this Section 3. If the Subject Property Owner intends to continue to occupy the Subject Property as his or her Primary Residence and will share occupancy with the Qualified Tenant(s) then the Administrator shall issue a written approval to the Subject Property Owner to rent the Subject Property within five business days after the Subject Property Owner notifies the Administrator of the Subject Property Owner's intent to rent the Subject Property. If the Subject Property Owner does not intend to occupy the Subject Property as his or her Primary Residence then the Subject Property Owner must comply with any other requirements pursuant to this Covenant prior to receiving an approval to rent from the Administrator. An approval to rent operates only to allow the Subject Property Owner to offer the Subject Property for rent. All potential Occupants must submit a Rental Application and receive approval as a Qualified Tenant prior to occupying the Subject Property.

3.2. <u>Rental Regulations</u>. Any advertisement to rent the Subject Property shall specify that all potential renters must receive approval as a Qualified Tenant prior to occupying the Subject Property. The Subject Property Owner shall provide the Administrator with a fully executed copy of the lease or other occupancy agreement no later than ten business days after it is fully executed. The Subject Property Owner may not lease the Subject Property for a term of less than thirty days.

3.3. <u>Limitation on Rental Occupants</u>. Occupancy of the Subject Property pursuant to a lease, rental, or other occupancy agreement, is limited to Qualified Tenants. The Administrator shall approve a Rental Applicant as a Qualified Tenant if the Rental Applicant: (1) is earning Qualifying Income for an average of at least thirty hours per week, or (2) demonstrates an intent to earn Qualifying Income for an average of at least thirty hours per week. The Rental Applicant must submit documentation sufficient to verify compliance with the requirements for approval as a Qualified Tenant.

3.4. <u>No County Liability</u>. Nothing herein requires, or shall be construed to require the County or the Administrator, or any officer, director, employee, agent, designee, assignee, or successor thereof, to protect or indemnify the Subject Property Owner against any loss attributable to rental, including but not limited to non-payment of rent or damage to the Subject Property; nor shall the County or the Administrator, or any officer, director, employee, agent, designee, assignee, or successor thereof, be responsible for locating a Qualified Tenant to occupy the Subject Property in the event that the Subject Property Owner is unable to find a Qualified Tenant, or if a Qualified Tenant fails to occupy the Subject Property for the entire term of the lease.

Section 4. <u>Selling the Subject Property</u>.

4.1. <u>Listing the Subject Property</u>. In the event the Subject Property Owner desires to sell the Subject Property, the Subject Property Owner shall submit written notice to the Administrator of their intent to sell the Subject Property, which notice must be submitted at least five days prior to offering the Subject Property for sale. The Subject Property Owner may sell the Subject Property for sale by owner or list and sell the Subject Property through a real estate broker licensed in the state of Colorado.

4.2. <u>County Transfer Fee</u>. Upon closing, the seller shall pay a County Transfer Fee to the County in an amount equal to 1% of the sales price. If the fee imposed by this Section 4.2 is not paid when due, then the fee, all costs of collection of the fee, and interest on the unpaid balance at a rate of 8% per year or at the statutory interest rate in C.R.S. § 5-12-102, as amended, whichever is less, shall constitute a perpetual lien on the Subject Property. The County may foreclose this lien in the same manner as property tax liens of the County.

4.3. <u>Waiver of County Transfer Fee</u>. The seller is not required to pay the County Transfer Fee if the seller has already purchased another Deed Restricted Property or if the seller purchases another Deed Restricted Property no more than six months after closing on the sale of the Subject Property. If the seller has not already purchased another Deed Restricted Property, the seller shall make arrangements, to the satisfaction of the Administrator, to place the County Transfer Fee in escrow, and the fee shall remain in escrow until the first to occur of the following two events: (1) The seller acquires title to another Deed

Restricted Property within six months of closing on the sale of the Subject Property, and has not purchased any material interest in any other Residential Property in the Telluride R-1 School District in the interim, in which case the County Transfer Fee shall be refunded to the seller; or (2) The seller has not acquired title to another Deed Restricted Property within six months of closing on the sale of the Subject Property, in which case the County Transfer Fee shall be paid to the County.

Section 5. Continuing Ownership.

5.1. Limitation on Continuing Ownership. Ownership of the Subject Property is limited to Qualified Owners and their Spouses. The Administrator may, at any time: (1) require the Subject Property Owner to verify that he or she is a Qualified Owner, (2) require the Subject Property Owner to verify that any Occupant is a Qualified Occupant, (3) require the Subject Property Owner to verify that he or she has not defaulted in any Secured Obligation related to the Subject Property, and/or (4) require the Subject Property Owner to verify that he or she is otherwise fully compliant with this Covenant. The Subject Property Owner shall be given a reasonable time to respond to such requests.

5.2. Approval as a Qualified Owner. The Administrator shall approve a Subject Property Owner as a Qualified Owner if the Subject Property Owner satisfies: (1) the Continuing Residence Standard, and (2) the Continuing Employment Standard.

5.2.1. Continuing Residence Standard. The Subject Property Owner has occupied the Subject Property as his or her Primary Residence for at least eight of the twelve months immediately preceding the Compliance Date, as evidenced by documentation the Administrator may request, or, if acceptable to the Administrator, by an affidavit affirming the same.

5.2.2. Continuing Employment Standard. The Subject Property Owner supplies documentation that the Administrator acknowledges is sufficient to verify at least one of the following.

(a) The Subject Property Owner has been employed for and earning Qualifying Income on at least 1032 hours of the twelve months immediately preceding the Compliance Date.

(b) The Subject Property Owner is Retired.

(c) The Subject Property Owner is at least 55 years of age and has maintained Primary Residence in the Telluride R-1 School District for a total of at least twenty years and has owned property subject to the County, Town of Telluride or Town of Mountain Village deed restriction, in compliance with the terms of such applicable deed restriction, for the five years immediately preceding the Compliance Date.

(d) The Subject Property Owner is the Spouse of a Qualified Owner.

(e) The Subject Property Owner is the surviving Spouse of a deceased Subject Property Owner.

(f) The Subject Property Owner is the former Spouse of a Qualified Owner and acquired title to the Subject Property as: (i) the Spouse of a Qualified Purchaser; (ii) the Spouse of a Qualified Owner; or (iii) pursuant to a court approved property settlement or other court order.

(g) The Subject Property Owner previously was a Qualified Owner, but is currently unemployed; provided that for at least eight of the twelve months immediately preceding the Compliance Date, the Subject Property Owner met the requirements for approval as a Qualified Owner and/or received unemployment benefits from the Colorado Department of Labor.

5.3. **Transfer of Title.** The Subject Property Owner must receive approval from the Administrator prior to entering into or executing any transaction that conveys title to an interest in the Subject Property, including but not limited to transfer of title to an Estate Planning Entity.

5.4. **Exemptions.** If the Subject Property Owner supplies documentation sufficient to verify any of the following, he or she shall be exempt from the Continuing Residence Standard, the Continuing Employment Standard, or both in accordance with the terms and conditions set forth below.

5.4.1. **Beneficiary Owner.** The Subject Property Owner is a Beneficiary Owner; provided that he or she notifies the Administrator within thirty days of the date that he or she acquires title to the Subject Property and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation. A Beneficiary Owner shall be exempt from both the Continuing Residence and Continuing Employment Standards, and shall be deemed a Qualified Owner for all purposes in connection with this Covenant, for one year after acquiring title to the Subject Property. Furthermore, a Beneficiary Owner shall receive an automatic Approval to Rent for one year after acquiring title to the Subject Property. After one year, a Beneficiary Owner must receive approval as a Qualified Owner or otherwise comply with the terms of this Covenant.

5.4.2. **Co-Borrower.** The Subject Property Owner is on title to the Subject Property as a Co-Borrower pursuant to Section 2.3. A Co-Borrower who is a Subject Property Owner shall be exempt from the Continuing Residence and Continuing Employment Standards as long as he or she is compliant with the terms of the Co-Borrower Agreement.

5.4.3. **Absence for Less than One Year.** The Subject Property Owner will be absent from the Four County Region for a period of time greater than four months but not greater than one year; provided that the Subject Property Owner notifies the Administrator at least one month before starting the leave of absence, and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation. The Subject Property Owner shall be exempt from both the Continuing Residence and Continuing Employment Standards for one year after the date the Subject Property Owner begins the leave of absence. The Subject Property Owner must receive approval as a Qualified Owner no later than one year after returning from the leave of absence.

5.4.4. **Military Service.** The Subject Property Owner will be absent from the Four County Region due to United States military orders, provided that: (1) the Subject Property Owner notifies the Administrator within five days of receiving the United States military order, and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation; (2) the Subject Property Owner maintains the Subject Property as their legal residence for tax purposes; (3) if the Subject Property Owner is registered to vote in San Miguel County at the time they receive the military orders, the Subject Property Owner maintains voter registration in San Miguel County; and (4) the Subject Property Owner receives approval as a Qualified Owner within one year after he or she is no longer under such United States military orders. The Subject Property Owner shall be exempt from both the Continuing Residence and Continuing Employment Standards for as long as the Subject Property Owner is unable to meet the standards due to United States military orders.

5.4.5. **Family Medical Need.** The Subject Property Owner does not, or will not reside, at the Subject Property in order to care for an Immediate Family member who has a Serious Health Condition, as defined in the Family and Medical Leave Act, 29 U.S.C. § 2611, as amended, provided, however, that the Subject Property Owner notifies the Administrator at least one month after he or she no longer occupies the Subject Property as his or her Primary Residence, and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation, which documentation, except as prohibited by applicable law, shall include documentation from the Immediate

Family Member's Health Care Provider, as defined in the Family and Medical Leave Act, 29 U.S.C. § 2611, as amended, evidencing the need for the Subject Property Owner's absence. The Subject Property Owner must receive approval as a Qualified Owner within one year of when the Family Medical Need ceases.

5.4.6. Disability. The Subject Property Owner is Disabled, provided, however, that the Subject Property Owner notifies the Administrator within one month of when he or she no longer meets the Continuing Employment Standard and the Administrator acknowledges receipt of the notification and sufficiency of the provided documentation. The Subject Property Owner shall be exempt from the Continuing Employment Standard for as long as the Subject Property Owner is Disabled. The Subject Property Owner shall also be exempt from the Continuing Residence Standard for one year after the date he or she provides the Administrator with the notice required herein.

Section 6. Continuing Occupancy.

6.1. Limitation on Continuing Occupancy. Occupancy of the Subject Property is limited to Qualified Owners and their Spouses, and to Qualified Occupants. The Administrator may, at any time, require any Occupant to verify that he or she is a Qualified Occupant and/or is otherwise fully compliant with this Covenant.

6.2. Approval as a Qualified Occupant. The Administrator shall approve an Occupant as a Qualified Occupant if the Occupant does not own or control any interest or right in the Subject Property whatsoever, and provides documentation that the Administrator acknowledges is sufficient to verify that the Occupant: (1) is under twenty-one years of age; (2) is a member of the Qualified Owner's Immediate Family; (3) is Disabled; or (4) is earning Qualifying Income for an average of at least thirty hours per week. Examples of such documentation are set forth in the Procedures.

6.3. Effect of Failure to Receive Approval as Qualified Occupant. In the event an Occupant fails to receive approval as a Qualified Occupant, such failure shall constitute a violation of this Covenant by both the Occupant and the Subject Property Owner.

Section 7. Ownership of Other Residential Property Prohibited.

7.1. Prohibition. Subject Property Owners and Occupants, as well as their Spouses and Dependents, if any, may not own more than a 10% interest, direct or indirect, in other Residential Property in the Telluride R-1 School District. This prohibition includes partial or full corporate ownership established to provide a beneficial interest sufficient to permit the use and occupancy by the owner or part-owner of such property. Except as otherwise provided in this Section 7, and unless granted an exception pursuant to Section 8, failure to comply with this Section 7.1 is a violation of this Covenant and shall be addressed in accordance with the provisions of Section 9 of this Covenant.

7.2. Definitions. The following definitions shall apply to this Section 7.

7.2.1. Acquisition Date. The date on which the Subject Property Owner acquires title to the Subject Property.

7.2.2. Appraised Value. The value of the Subject Property arrived at by the process described in Section 7.4.

7.3. Grace Period for Qualified Purchasers. If an Ownership Applicant is approved as a Qualified Purchaser and he or she, or any other Subject Property Owner, or any Occupant, or the Spouse or Dependent of the Qualified Purchaser or of any other Subject Property Owner or Occupant owns more than a 10% interest, direct or indirect, in other Residential Property in the Telluride R-1 School District on the Acquisition Date, the Subject Property Owner shall have a grace period of one year from the Acquisition Date to sell the other Residential Property or obtain an exception pursuant to Section 8.

7.4. <u>Appraisal</u>. If the Subject Property Owner has not sold the other Residential Property or obtained an exception within nine months after the Acquisition Date, the Subject Property Owner shall immediately retain a real property appraiser licensed in the State of Colorado to provide a value of the Subject Property at the Subject Property Owner's expense. The Subject Property Owner shall provide that value to the Administrator no later than ten months after the Acquisition Date and the Administrator shall inform the County of the Subject Property Owner's submitted value. If the County does not dispute the Subject Property Owner's submitted value, then that value shall be deemed the Appraised Value. If the County does dispute the accuracy of the Subject Property Owner's submitted value, the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the County's expense. If the two values differ by $10,000 or less, the average of the two values shall be deemed the Appraised Value. If the two values differ by more than $10,000, the two appraisers shall select a third appraiser to appraise the Subject Property at the equal expense of the Subject Property Owner and the County, and the average of the three values shall be deemed the Appraised Value. If the Subject Property Owner fails to submit their value to the Administrator within the required time period, the Administrator shall so notify the County and the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the Subject Property Owner's expense and that value shall be deemed the Appraised Value.

7.5. <u>Sale of Subject Property at Expiration of Grace Period</u>. If, at the expiration of the grace period provided for in Section 7.3, the Subject Property Owner has not sold the other Residential Property, obtained an exception, or otherwise complied with this Covenant, the Subject Property Owner shall immediately list the Subject Property for sale at a price not to exceed 90% of the Appraised Value and shall accept the first offer that complies with the Complying Offer Terms. If the accepted offer does not result in a sale of the Subject Property, then the Subject Property Owner shall accept the next offer that meets the Complying Offer Terms until either the Subject Property is sold or the Subject Property Owner obtains an exception or otherwise complies with this Covenant.

7.6. <u>Further Price Reductions</u>. If the Subject Property Owner has not sold the other Residential Property, obtained an exception, or otherwise complied with the terms of this Covenant within fifteen months after the Acquisition Date, the Subject Property Owner shall immediately lower the listing price of the Subject Property, which shall not exceed 90% of the Appraised Value, by an amount that is 3% of the Appraised Value, and shall continue to lower the listing price of the Subject Property by the same amount (3% of the Appraised Value) every three months thereafter until the Subject Property Owner has sold the other Residential Property, obtained an exception, or otherwise complied with the terms of this Covenant; except, however, the Subject Property Owner is not required to lower the listing price below 60% of the Appraised Value. If the Subject Property Owner fails to comply with the provisions of this Section 7, the County may, at its option, purchase the Subject Property for 75% of the Appraised Value.

Section 8. <u>Exceptions</u>.

8.1. <u>Purchase, Rental, Ownership and Occupancy Requirements</u>. Any: (1) Ownership Applicant, Rental Applicant, Subject Property Owner or Occupant who does not meet one or more of the requirements for approval as a Qualified Purchaser, Qualified Tenant, Qualified Owner, or Qualified Occupant, respectively, may apply to the Administrator for an exception to any such requirement. The Administrator shall refer a copy of the proposed exception to any Association governing the Subject Property and the Association shall be given a reasonable opportunity to review and comment on the proposed exception prior to final review and action.

8.2. Prohibition on Ownership of Other Residential Property. Any Subject Property Owner or Occupant, or any such Subject Property Owner or Occupants' Spouse or Dependent, who owns Residential Property in violation of Section 7.1, may apply to the Administrator for an exception.

8.3. Standards for Granting an Exception. The Administrator shall not grant an exception except upon a finding that the person requesting the exception has established compelling circumstances, which shall not include financial hardship, justifying the requested exception; and that granting the requested exception is consistent with the purpose and intent of this Covenant. When considering whether the requested exception is consistent with the purpose and intent of this Covenant as stated in Recital A, the Administrator shall consider the following guidance:

8.3.1. Stable Resident Population. This Covenant is intended to help preserve a stable resident population, strong sense of community, and socio-economic mix in the Telluride Region by ensuring a sufficient supply of housing that is affordable and responsive to the diverse needs of the various segments of the community employed in the Telluride R-1 School District.

8.3.2. Deed Restricted Property Market. This Covenant creates a housing market for employees in which sales prices directly relate to the income earned by those who live and work in the Telluride R-1 School District (Qualified Purchasers), while allowing customary free-market practices to influence the sale and rental of Deed Restricted Property as much as possible. Exceptions to this Covenant should be allowed only when the exception will not affect the correlation between local income levels and sales prices.

8.3.3. Consistency and Uniformity. Consistency and uniformity is of vital importance. It is only through consistent and uniform application of this Covenant that the Deed Restricted Property market will remain properly defined, thus allowing free-market forces to accurately regulate the sales prices of Deed Restricted Property.

Section 9. Violations and Remedies.

9.1. Notification of Violation. In the event an alleged violation of this Covenant is discovered, whether pursuant to a procedure or provision herein, from a citizen complaint, or by other means, the Administrator shall send a written notice of such violation to all Subject Property Owners of the Subject Property, and if applicable, to Occupants of the Subject Property. The notice shall state: (1) the nature of the alleged violation; (2) the specific provisions of this Covenant that the Subject Property Owner and/or Occupant has allegedly violated; (3) the steps required by the Subject Property Owner and/or Occupant to cure the violation; (4) the remedies that the County may pursue if the alleged violation is not cured; (5) the reasonable timeframe within which the Subject Property Owner and/or Occupant must cure the alleged violation; (6) that the Subject Property Owner and/or Occupant has a right to request a hearing before the Administrator to determine the merits of the allegations and to discuss potential remedies; (7) that the Subject Property Owner and/or Occupant must notify the Administrator that he or she requests such a hearing no later than fifteen days after receiving the notice; and (8) that the alleged violation will be considered conclusively determined if the Subject Property Owner and/or Occupant does not request such a hearing.

9.2. Public Hearing. All materials that any party wants the Administrator to consider at a hearing pursuant to Section 9.1 must be submitted to the Administrator no later than ten working days before the date of the hearing. Unless prohibited by law, all submitted materials will be included in the public record for the hearing. At the conclusion of the hearing, the Administrator shall: (1) find the alleged violation conclusively determined, (2) find that the alleged violation lacks merit, or (3) continue the hearing to a specified date and time.

9.3. Definitions. The following definitions shall apply to this Section 9.

9.3.1. Appraised Value. The value of the Subject Property arrived at by the process described in Section 9.4.1.

9.3.2. Violation Date. The date on which a violation is conclusively determined.

9.4. Procedure for Subject Property Owner to Cure Violation. If a violation is conclusively determined with respect to the Subject Property Owner, the Subject Property Owner shall have one year from the Violation Date to cure the violation.

9.4.1. Appraisal. If the Subject Property Owner has not cured the violation within nine months after the Violation Date, the Subject Property Owner shall immediately retain a real property appraiser licensed in the State of Colorado to provide a value of the Subject Property at the Subject Property Owner's expense. The Subject Property Owner shall provide that value to the Administrator no later than ten months after the Violation Date and the Administrator shall inform the County of the Subject Property Owner's submitted value. If the County does not dispute the Subject Property Owner's submitted value, then that value shall be deemed the Appraised Value. If the County does dispute the accuracy of the Subject Property Owner's submitted value, the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the County's expense. If the two values differ by $10,000 or less, the average of the two values shall be deemed the Appraised Value. If the two values differ by more than $10,000, the two appraisers shall select a third appraiser to appraise the Subject Property at the equal expense of the Subject Property Owner and the County, and the average of the three values shall be deemed the Appraised Value. If the Subject Property Owner fails to submit their value within the required time period, the Administrator shall so notify the County and the County shall retain its own licensed real property appraiser to appraise the value of the Subject Property at the Subject Property Owner's expense and that value shall be deemed the Appraised Value.

9.4.2. Sale of Subject Property to Cure Violation. If the Subject Property Owner has not cured the violation within one year after the Violation Date, then the Subject Property Owner shall immediately list the Subject Property for sale at a price not to exceed 90% of the Appraised Value and shall accept the first offer that complies with the Complying Offer Terms. If the accepted offer does not result in a sale of the Subject Property, then the Subject Property Owner shall accept the next offer that meets the Complying Offer Terms until either the Subject Property is sold or the Subject Property Owner otherwise cures the violation.

9.4.3. Further Price Reductions. If the Subject Property Owner has not cured the violation within fifteen months after the Violation Date, the Subject Property Owner shall immediately lower the listing price of the Subject Property, which shall not exceed 90% of the Appraised Value, by an amount that is 3% of the Appraised Value, and shall continue to lower the listing price of the Subject Property by the same amount (3% of the Appraised Value) every three months thereafter until the Subject Property is sold or the Subject Property Owner otherwise cures the violation; except, however, the Subject Property Owner is not required to lower the listing price below 60% of the Appraised Value. If the Subject Property Owner fails to comply with the provisions of this Section 9, the County may, at its option, purchase the Subject Property for 75% of the Appraised Value.

9.5. Procedure for Occupant to Cure Violation. If a violation is conclusively determined with respect to an Occupant, the Occupant shall have sixty days from the date that the Occupant received the notice required by Section 9.1 to cure the violation. If the Occupant has not cured the violation at the end of this sixty-day period, then the Occupant shall immediately vacate the Subject Property. An Occupant's violation of this Covenant also constitutes a violation by the Subject Property Owner.

9.6. Noncompliant Transfer Voidable. Title to the Subject Property, whether in whole or in part, shall not be sold or otherwise conveyed except in accordance with this Covenant. In the event the Subject Property is sold or otherwise conveyed in any manner that is not in accordance with this Covenant, such sale or conveyance shall be voidable at the County's option. If such sale or conveyance is declared void it shall confer no title whatsoever upon the purported transferee.

9.7. Additional Remedies. In the event of default by any Party, to any section of this Covenant, any other Party to this Covenant, following notice and opportunity to cure, may pursue all available remedies, including but not limited to an action for specific performance, injunctive relief and/or damages. The remedies provided for herein are cumulative in nature. Personal jurisdiction and venue for any civil action commenced by any Party to this Covenant, whether arising out of or relating to this Covenant, will be deemed to be proper only if such action is commenced in the District Court for San Miguel County, Colorado. This Covenant shall be governed by and construed in accordance with the laws of the State of Colorado. The prevailing Party in any action arising from this Covenant shall recover their costs, fees and expenses, including reasonable attorney fees and expert witness fees, from the other Party. No failure by any Party hereto to exercise any right that it may have pursuant to this Covenant shall be deemed a waiver of that right, or of the right to demand exact compliance with the terms of this Covenant, or of any other right expressly or implicitly granted herein.

Section 10. Documentation and Notices.

10.1. Documentation. The Administrator must be able to verify the truth and authenticity of any documentation submitted pursuant to this Covenant, and may refuse to accept any documentation that is not reasonably verifiable by an independent and reliable source. Furthermore, the submitted documentation must be reasonably sufficient for the Administrator to find that, as a whole, it establishes compliance with the applicable standard or requirement. Any person who submits documentation pursuant to this Covenant shall submit an affidavit along with the documentation, stating that all such documentation is true and accurate. If any documentation is determined to be inaccurate, the person who submitted such documentation is subject to disqualification from the application and/or approval process.

10.1.1. Privilege or Disclosure Otherwise Prohibited by Law. Any person who, in connection with the procedures contained in this Covenant, references customers and/or clients with whom he or she has a relationship that is subject to a legal privilege, such as the attorney-client, therapist-client, or physician-patient privilege shall not, in any event, be required to disclose the names or any other identifying information of such customers and/or clients. In this case, the person shall provide all of the required documentation but shall rename all clients as "Client 1," "Client 2," etc. Furthermore, no person shall be required to submit or disclose any documentation, the submission or disclosure of which is prohibited by law.

10.1.2. Confidentiality. The Administrator shall review and maintain all financial information, business client information, and any other information required by law to be kept confidential, that is submitted pursuant to the terms of this Covenant, in absolute and strict confidence. Under no circumstance shall any such confidential information be purposefully disclosed in any manner to any person other than the County, the Administrator the San Miguel County Attorney, the San Miguel County Administrator, or any other person or entity with the consent of the person who submits the information, provided that such disclosure is not otherwise prohibited by law.

10.2. Notices. Any notice in connection with this Covenant shall be in writing, addressed to the appropriate Party, and shall be delivered in person, by overnight delivery or courier service, or by the United States Postal Service certified mail, return receipt requested, and with adequate postage prepaid. Such notice shall be deemed delivered at the time of personal delivery, or, if mailed, on the date postmarked, but if mailed the time period for any required response shall run from the date of receipt by the addressee, as evidenced by the return receipt. Rejection or other failure by the addressee to accept the notice, or the inability to deliver the notice because of a change of address of which no notice was given, shall be deemed receipt of the notice on the third day following the date postmarked. The addresses of the Parties to which notice is to be sent shall be those set forth below. A Party may change their address only by providing written notice of such change to all other Parties.

<u>If to Subject Property Owner</u>: See address listed above in introductory paragraph	**<u>If to County</u>**: Mailing Address: Office of the County Attorney P.O. Box 791 Telluride, CO 81435 Phone: 970-728-3879 Fax: 970-728-3718 Email: attorney@sanmiguelcounty.org
	<u>If to Administrator</u>: San Miguel Regional Housing Authority 820 Black Bear Road P.O. Box 840 Telluride, CO 81435 Phone: 970-728-3034 Fax: 970-728-5371 Email: smrha@telluridecolorado.net

10.3. <u>County Assistance and Financial Counseling upon Default of Secured Obligation</u>. Any Subject Property Owner who receives notification of a past due payment(s), a default in payment, or a default of any other obligation due or to be performed pursuant to a Secured Obligation, shall notify the Administrator, who shall in turn notify the County no later than two weeks after the Subject Property Owner received such notification. Subject to availability of funds, the County may, in its sole discretion, provide temporary financial assistance and/or financial counseling to the Subject Property Owner, which assistance shall be subject to terms and conditions the County deems necessary, including, but not limited to provisions for the Subject Property Owner to repay the County. A Subject Property Owner is encouraged to make the Administrator aware of these circumstances as early as possible to best allow the County to determine if any such assistance is feasible, it being recognized that the longer the default exists, the less likely it is that the County can provide assistance. Nothing herein shall obligate the County to provide such assistance.

Section 11. <u>Definitions</u>.

The Parties acknowledge and agree to the following definitions and further agree that each definition: (a) forms a portion of the basis of this Covenant; and (b) is incorporated in this Covenant. As used in this Covenant, the following definitions shall be given the meaning ascribed to the term as the same are stated below:

11.1. <u>Administrator</u>. The County or the County's designee.

11.2. <u>AMI</u>. The area median income for San Miguel County, Colorado based on the most recently published area median income limits established by the United States Department of Housing and Urban Development.

11.3. <u>Application Fee</u>. The fee, in an amount set by County resolution, paid to the Administrator to process any application submitted pursuant to this Covenant.

11.4. <u>Assets</u>. With respect to any person or entity, anything that has tangible or intangible value, including property of all kinds, both real and personal; includes among other things, patents and causes of action that belong to any person, as well as any stock in a corporation and any interest in the estate of a decedent; also, the entire property of a person, association, corporation, or estate that is applicable or subject to the payment of debts. Assets shall include funds or property held in a living trust or any similar entity or interest, where the person has management rights or the ability to apply the assets to the payment of debts. Except, however, Assets shall not include pension plans, 401a plans, 401k plans, IRAs, or other similar retirement accounts, provided that the Ownership Applicant is not eligible to take a distribution therefrom without penalty.

11.5. Beneficiary Owner. A Subject Property Owner who is not a Qualified Owner, and who acquires title to the Subject Property as the result of the death of the deceased Subject Property Owner, whether though joint tenancy, a will, the intestacy provisions of the Colorado probate code or other applicable law, or the provisions of an Estate Planning Entity.

11.6. Co-Borrower Agreement. An agreement by which a person is permitted to be on title to the Subject Property without otherwise meeting the terms for approval as a Qualified Purchaser or Qualified Owner in order to assure that a Qualified Purchaser or Qualified Owner is able to secure a loan.

11.7. Compliance Date. The date on which the Administrator notifies the Subject Property Owner and/or Occupant(s) that he or she must verify compliance with the terms of this Covenant and receive approval as a Qualified Owner or Qualified Occupant.

11.8. Complying Offer Terms. An offer to acquire the Subject Property that is for cash (eg. does not require Subject Property Owner to carry back seller-financing) that is equal to or exceeds the current listing price of the Subject Property, and that proposes a closing of not later than 90 days from the offer date.

11.9. Contract Price. The price of the Subject Property as identified on a Colorado Real Estate Commission approved form for the purchase and sale of the Subject Property that is fully executed between the current Subject Property Owner and any given Ownership Applicant.

11.10. Contributing Occupant. An Occupant who is, or who will be, contributing funds towards the acquisition of the Subject Property or towards payments on a Secured Obligation encumbering the Subject Property.

11.11. County. The County of San Miguel, State of Colorado, acting by and through its Board of County Commissioners or as the San Miguel County Housing Authority.

11.12. County PUD/Subdivision Approvals. The approvals granted for the Lawson Hill Subdivision/PUD by the County and reflected by the Subdivision Governing Documents as well as by certain resolutions concerning the Lawson Hill Subdivision/PUD recorded in the Official Records.

11.13. County Transfer Fee. A fee in an amount equal to one percent of the Contract Price that the seller of the Subject Property shall pay to the Administrator upon closing of a sale of the Subject Property.

11.14. Deed Restricted Property. Any property in unincorporated San Miguel County that is subject either to the Original Deed Restriction, or to a real covenant, equitable servitude, or other agreement in favor of the County, and restricting the ownership, use and occupancy of such property to persons who satisfy certain requirements, terms, and/or qualifications.

11.15. Dependent. Any person who can be claimed as a Qualifying Child or Qualifying Relative on another's federal tax return.

11.16. Disabled. A person who receives Social Security Disability, Worker's Compensation for Permanent Total Disability, and/or disability payments through any other official state or federal disability program.

11.17. Domestic Partnership. A relationship between two individuals of the same or opposite sex in which: (1) each individual is at least eighteen years of age; (2) neither individual is legally married to another person or in a Domestic Partnership with another person; (3) the individuals are not related by blood closer than would bar marriage in the state of Colorado; (4) the individuals share a mutual obligation of support and responsibility for each other's welfare; and (5) the individuals are financially interdependent as documented by at least two of the following arrangements: (a) common ownership of real property or a common leasehold interest in real property; (b) common ownership of a motor vehicle; (c) a joint bank account or a joint credit account; (d) designation as a beneficiary for life insurance or retirement benefits, or under a will; (e) assignment of durable power of attorney; or (f) such other proof that the Administrator deems sufficient to establish financial interdependency.

11.18. Estate Planning Entity. A trust, family limited partnership or similar entity created and funded by a Qualified Owner and controlled by such Qualified Owner until that Qualified Owner's death or disability.

11.19. Four County Region. San Miguel County, Montrose County, Ouray County and Dolores County, all in the State of Colorado.

11.20. Homeowners' Association or Condominium Association ("Association"). An association of owners organized under § 38-33.3-301, C.R.S., as amended.

11.21. Household Non-Qualifying Income. The combined Non-Qualifying Income of all Ownership Applicants, their Spouses, and Contributing Occupants.

11.22. Household Qualifying Income. The combined Qualifying Income of all Ownership Applicants, their Spouses, and Contributing Occupants.

11.23. Immediate Family. A person's parents, Spouse, children, and siblings; and a person's Spouse's parents, children and siblings. The terms "parents," "children," and "siblings" includes step-relatives, adopted/adoptive relatives and foster relatives.

11.24. Lender. An individual or company that has loaned funds to the Subject Property Owner for the purpose of financing some portion of the Subject Property Owner's acquisition of the Subject Property, which loan is secured by a Secured Obligation duly recorded against the Subject Property.

11.25. Liabilities. With respect to any person or entity, the total amount owed on obligations that legally bind the person or entity to settle a debt.

11.26. LUC. The San Miguel County Land Use Code.

11.27. Net Assets. With respect to any person or entity, Assets minus Liabilities.

11.28. Non-Qualifying Income. All income that is not Qualifying Income. With respect to any person or entity, Non-Qualifying Income includes, but is not limited to, any money, and the cash value of any goods or services in lieu of money, received from any source whatsoever, including but not limited to remuneration for labor, products or services; money received from governmental assistance programs; tax refunds; prize winnings; gifts; pensions; investments; and money, or goods or services in lieu of money, received from any other source. Except, however, Non-Qualifying Income shall not include any of the following: (a) income taxed by the federal government but not distributed to such person or entity, or funds distributed to cover the anticipated tax liability of the non-distributed income, but only to the extent that such funds do not exceed the tax liability of the non-distributed income; or (b) equity from the proceeds of a sale of the Ownership Applicant's previous Primary Residence that was sold within the twelve months immediately preceding the date that the Administrator receives the Ownership Applicant's Purchase Application or (c) a gift or any other funds up to 30% of the Contract Price of the Subject Property.

11.29. Occupant. Any person who occupies the Subject Property as his or her Primary Residence but who has no ownership interest in the Subject Property.

11.30. Official Records. The official records of the Clerk and Recorder of San Miguel County, Colorado.

11.31. Option to Purchase. A separately executed and recorded agreement providing the County with an option to purchase the Subject Property under certain specified circumstances. The Subject Property may or may not be subject to an Option to Purchase. As stated in Section 1.1, this Covenant does not affect the rights of any party to any Option to Purchase and does not affect the rights of any Lender.

11.32. Original Plat Note. That certain plat note included on the County PUD/Subdivision Approvals for the Subdivision, which plat note restates LUC § 5-1304 as it existed on the date the plat was recorded.

11.33. Ownership Applicant. Any person who desires to purchase the Subject Property and who submits a Purchase Application and pays the appropriate Application Fee.

11.34. Primary Residence. A person's principal or primary home or place of abode, meaning that home or place of abode in which a person's habitation is fixed and to which that person, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. In determining what is a person's principal or primary home or place of abode, the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of Immediate Family, if any, leaseholds, situs of personal and real property, and motor vehicle registration.

11.35. Procedures. The uniform procedures adopted pursuant to Section 13.3.

11.36. Public Sector Employer. The state of Colorado and its agencies and entities, counties, cities, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, and drainage conservation companies or districts organized and existing under the laws of the state of Colorado.

11.37. Purchase Application. The form that an Ownership Applicant submits to the Administrator to request approval as a Qualified Purchaser, and which requires certain documentation and information necessary to determine if the Ownership Applicant satisfies the requirements for approval as a Qualified Purchaser. The Ownership Applicant must verify that all information provided in the Purchase Application is true and accurate. If any of the information is determined inaccurate or non-verifiable, the Ownership Applicant may be subject to disqualification.

11.38. Qualified Occupant. Any person who is not the Subject Property Owner, and who occupies the Subject Property as his or her Primary Residence in compliance with this Covenant.

11.39. Qualified Owner. Any person or entity with an ownership interest in the Subject Property, who maintains such ownership in compliance with this Covenant as provided for in Section 5; or the County, the Town of Telluride, or the Town of Mountain Village.

11.40. Qualified Purchaser. An Ownership Applicant who has received approval pursuant to the terms of this Covenant to purchase the Subject Property; or the County, the Town of Telluride, or the Town of Mountain Village.

11.41. Qualified Tenant. A Rental Applicant who has received approval pursuant to the terms of this Covenant to occupy the Subject Property pursuant to a rental or lease agreement executed by the Rental Applicant and the Qualified Owner. A person who receives approval as a Qualified Tenant must meet the requirements for approval as a Qualified Occupant for as long as they occupy the Subject Property.

11.42. Qualifying Income. Income earned from employment that either requires one's physical presence in the Telluride R-1 School District or that necessitates one's physical presence in the Telluride R-1 School District in order to provide goods or services to residents or visitors in the Telluride R-1 School District.

11.43. Rental Applicant. Any person who desires to occupy the Subject Property pursuant to a lease or rental agreement to be executed by the Rental Applicant and a Qualified Owner, and who submits a Rental Application and pays the appropriate Application Fee.

11.44. Rental Application. The form that a Rental Applicant submits to the Administrator to request approval as a Qualified Tenant, which requires certain documentation and information necessary to determine if the Rental Applicant satisfies the requirements for approval as a Qualified Tenant. The Rental Applicant must verify that all information provided in the Rental Application is true and accurate. If any of the information is determined to be inaccurate or non-verifiable, the Rental Applicant may be subject to disqualification.

11.45. Residential Property. (1) An individual residential dwelling that is developed with open yards on all sides of the dwelling unit, including all manufactured housing (pursuant to C.R.S. 30-28-115(3)) and all mobile homes on permanent foundations, but not including recreational or other wheeled vehicles; (2) a residential dwelling unit in a structure containing two or more such units, the living spaces of which are individually owned, the balance of the property (both land and building) is owned either in common by the owners of the individual units or by an association consisting of such owners; (3) one of at least two individually owned, unconnected residential dwelling units located on property owned either in common by the owners of such units or by an association consisting of such owners; or (4) a legally created parcel of land shown with a separate and distinct number or letter on a subdivision plat recorded in the Official Records, or a parcel described by metes and bounds with access to at least one dedicated public right-of-way and held under separate ownership; and that is zoned for Residential Use.

11.46. Residential Use. Real property that is used or legally could be used for non-commercial dwelling purposes.

11.47. Retired. A person who is more than 59 years of age and is receiving pension benefits, retirement benefits, IRA disbursements, or Social Security retirement benefits.

11.48. Secured Obligation. Any payment or other material obligation due to be performed under a promissory note secured by a deed of trust, mortgage, or other security instrument, encumbering the Subject Property.

11.49. Spouse. One's husband or wife by lawful marriage, or a person with whom one is a member of a Domestic Partnership.

11.50. Subdivision. The subdivision of land reflected in the County PUD/Subdivision Approval, which was established pursuant to the Subdivision Governing Documents.

11.51. <u>Subdivision Governing Documents</u>. The Subdivision was created pursuant to that certain General Declaration and Final Plat(s), as the same may be amended or supplemented from time to time, as described on attached **<u>Exhibit "A"</u>**.

11.52. <u>Subject Property Owner</u>. The person(s) or entity identified as such in this Covenant, inclusive of his/her/their heirs, successors, personal representatives, assigns, designees, lessees, licensees, grantees, transferees, or any other person or entity who has a present right to possess, use or convey a legally recognized and protected interest in the Subject Property.

11.53. <u>Telluride Region</u>. The area identified as such in the San Miguel County Master Plan.

11.54. <u>Total Household Assets</u>. The combined Net Assets of all Ownership Applicants and Contributing Occupants.

Section 12. <u>General Provisions</u>.

12.1. <u>Recording of Covenant</u>. This Covenant shall be recorded in the Official Records upon execution.

12.2. <u>Covenant Running With the Land - Binding Effect.</u> Each and every conveyance of the Subject Property, for all purposes, shall be deemed to include this Covenant and to fully incorporate all terms of this Covenant by this reference. This Covenant constitutes a real covenant and equitable servitude that runs with the Subject Property through the expiration of the Term and burdens the Subject Property for the benefit of the County, and shall be binding on the Subject Property Owner, and on the heirs, personal representatives, assigns, 1essees and licensees, any transferee of the Subject Property Owner, and any other person or entity who becomes the Subject Property Owner of the Subject Property.

12.3. <u>Procedures</u>. The Parties recognize and agree that the County may from time to time adopt uniform procedures intended to further implement the provisions of this Covenant, including the administration of appeals to any decision rendered pursuant to this Covenant. The Procedures shall not materially differ from or alter any of the terms and conditions of this Covenant. Prior to adoption of the Procedures, the County shall make materials available for reasonable public review and comment and reasonable notice of the proposed action and right to review and comment shall be given the Subject Property Owner. The Procedures, when adopted, shall be made available at the County and Administrator offices.

12.4. <u>Further Actions</u>. The parties to any agreement contemplated under this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

12.5. <u>Gender and Number</u>. Whenever the context so requires in this Covenant, the neuter gender shall include any or all genders and vice versa, and the use of the singular shall include the plural and vice versa.

12.6. <u>Non-discrimination</u>. No person shall be discriminated against on the basis of race, national origin, sex, color, creed or physical infirmity.

12.7. <u>Personal Liability</u>. The Subject Property Owner shall be personally liable for any violations of this Covenant.

12.8. <u>Severability</u>. Should a court of competent jurisdiction find and determine that a specific provision or provisions of this Covenant are legally void, invalid, or otherwise unenforceable, such specific provision or provisions shall be deemed to be severable from the remainder of this Covenant, which shall remain legally valid and in full force and effect.

12.9. Successors. Except as otherwise provided herein, the provisions and covenants contained in this Covenant shall inure to and be binding upon the heirs, successors and assigns of the Parties.

12.10. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against any Party hereto, except on the basis of a written instrument executed by the Parties hereto. Nothing in this Covenant shall be deemed to waive or otherwise limit any defenses or immunities that may be available to the County or the Administrator under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101. et seq., or other applicable law.

12.11. Counterparts. This Covenant may be executed in multiple counterparts or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. The facsimile transmission of a signed copy hereof or of any notice to be given to the other Party or his or her agent, shall be considered valid and constitute a signed original. A signed "hard copy" of the Covenant shall not be necessary, but may be executed by the Parties.

12.12. No Third Party Benefit. Except as herein provided, no person or entity, other than a Party to this Covenant, shall have any right of action under this Covenant. It is the express intent of the Parties hereto that any person or entity who is not a Party to this Covenant, but who receives services or benefits under this Covenant, shall be deemed an incidental beneficiary only.

12.13. Integration. This Covenant constitutes the entire integrated understanding of the Parties regarding the subject matter set forth herein and no prior or contemporaneous promise, representation, term, condition, or understanding shall be of any legal force or effect, unless embodied herein in writing, or in a written amendment mutually agreed to by the Parties.

12.14. Captions. Captions are for convenience only and are not to be construed as defining or limiting in any way the scope of intent of the provisions of such Sections.

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

The persons executing this Covenant on behalf of the respective Parties to this Covenant hereby warrant and affirm their authority to enter into this Covenant on behalf of the named Parties hereto and warrant and affirm their authority to bind the named Parties hereto to all terms, conditions, and obligations contained in this Covenant.

SAN MIGUEL COUNTY, COLORADO:
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF SAN MIGUEL,
STATE OF COLORADO

By: ___________________________________ Date: ___________________________________
Chair

ATTEST: ______________________________
Chief Deputy Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

Acknowledged, subscribed and sworn to before me this ____ day of __________________, 20___, by ____, as Chair of the Board of Commissioners of San Miguel County, Colorado, and by ______________________________________, as Chief Deputy Clerk to the Board of County Commissioners of San Miguel County, Colorado.

Witness my hand and official seal.

______________________________________ ______________________________________
Notary Public Date Commission Expires

ADMINISTRATOR:

SAN MIGUEL COUNTY HOUSING AUTHORITY

By: ____________________________________ Date: ___________________________________
Chair

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

Acknowledged, subscribed and sworn to before me this ____ day of __________________, 20___, by ____, as Chair of the San Miguel County Housing Authority.

Witness my hand and official seal.

_______________________________________ _______________________________________
Notary Public Date Commission Expires

SUBJECT PROPERTY OWNER

By: _______________________________________ Date: _____________________________________

____
Printed Name

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

Acknowledged, subscribed and sworn to before me this ____ day of ___________________, 20___, by ____.

Witness my hand and official seal.

_______________________________________ _______________________________________
Notary Public Date Commission Expires

SUBJECT PROPERTY OWNER

By: _______________________________________ Date: _____________________________________

____

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

Acknowledged, subscribed and sworn to before me this ____ day of ___________________, 20___, by ____.

Witness my hand and official seal.

_______________________________________ _______________________________________
Notary Public Date Commission Expires

Exhibit "A"
(Lawson Hill Subdivision/PUD Governing Documents)

General Declaration(s) for Lawson Hill Subdivision/PUD:

(1) Declaration for Lawson Hill, recorded April 16, 1992, at No. 276371 in Book 490 at page 925
(2) First Supplement to Declaration for Lawson Hill, recorded May 18, 1992, at No. 276937 in Book 492 at page 340;
(3) First Amendment to Declaration for Lawson Hill, recorded August 21, 1992, at No. 278961 in Book 496 at page 918;
(4) Declaration of Covenants, Conditions and Restrictions, recorded September 11, 1992, at No. 279394 in Book 497 at Page 901;
(5) Second Supplement to Declaration for Lawson Hill, recorded June 16, 1993, at No. 285307 in Book 512 at page 551;
(6) Declaration of Covenants, Conditions and Restrictions, recorded June 16, 1993, at No. 285308 in Book 512 at Page 553;
(7) Second Amendment to Declaration for Lawson Hill, recorded November 8, 1993, at No. 288408 in Book 520 at page 86;
(8) Party Wall Declaration Duplex Residences (Lots 302, Units 302-11 and 302-12), recorded September 14, 1994, at No. 294544 in Book 535 at page 163;
(9) Fourth Supplement to Declaration for Lawson Hill, recorded October 18, 1994, at No. 295198 in Book 536 at page 655;
(10) Party Wall Declaration Duplex Residences (Lots 22 A and B), recorded October 9, 1995, at No. 301166 in Book 551 at page 577;
(11) Declaration of Covenants, Conditions, Restrictions and Easements (Lots 322A and 322 B), recorded December 18, 1995, at No. 302403 in Book 554 at page 658;
(12) Fifth Supplement to Declaration for Lawson Hill, recorded August 12, 1996, at No. 306843 in Book 565 at page 1002;
(13) Third Supplement to Declaration for Lawson Hill, recorded August 14, 1996, at No. 306867 in Book 566 at page 34;
(14) Third Amendment to Declaration for Lawson Hill, recorded July 3, 1997, No. 313200 in Book 583 at page 601;
(15) Fifth Supplement to Declaration for Lawson Hill, recorded August 6, 1997, at No. 313760 in Book 585 at page 72;
(16) Correction of Third Supplement to Declaration for Lawson Hill, recorded March 19, 1999, in No. 325041;
(17) Fourth Amendment to Declaration for Lawson Hill, recorded February 19, 2002, at No. 347160;
(18) Fifth Amendment to Declaration for Lawson Hill, recorded March 28, 2002, at No. 348021;
(19) Declaration of Access and Utility Easements Including Use and Maintenance Provisions (Lot HUB-2A, Lot HUB-2B, Lot HUB-2C, Lot HUB-2D, Lot HUB-2E and Lot HUB-2F), recorded May 13, 2004, at No. 366153;
(20) Declaration of Access and Utility Easements (Lot HUB-2C), recorded May 13, 2004, at No. 366154;
(21) Declaration of Covenants and Use Restrictions (Lot HUB-2A, Lot HUB-2B, Lot HUB-2D, Lot HUB-2E and Lot HUB-2F), recorded May 13, 2004, at No. 366155;

(22) Sixth Amendment to Declaration for Lawson Hill, recorded March 17, 2006, at No. 382780; and any and all such other, if any, duly executed amendments or supplements to the Declaration (collectively and together with the Original Declaration, the "**Declarations**").

Final Plats for Lawson Hill Subdivision/PUD:

(1) Plat for Lawson Hill, described as Lawson Hill, Phase 1, recorded on April 16, 1992, at No. 276370 in Plat Book 1 at page 1272;
(2) Plat for Lawson Hill, described as Lawson Hill, Phase 2, recorded on May 18, 1992, at No. 276936 in Plat Book 1 at page 1282;
(3) Insubstantial Amendment to Plat, recorded on September 11, 1992, at No. 279392 in Plat Book 1 at page 1353;
(4) Replat of Lot J in Lots J1 and J2, recorded November 6, 1992, at No. 280738 in Plat Book 1 at page 1373;
(5) Subdivision Exemption for Lot Line Adjustment, Lots 36A, 36B & tract 508-A, Phase 1 &2, recorded on January 8, 1993, at No. 282137 in Plat Book 1 at page 1398;
(6) Replat of Lot 211 into Lots 211A and 211B, recorded October 7, 1993, at No. 287768 in Plat Book 1 at page 1564;
(7) Map, described as Lawson Hill Retaining Wall, Lots 14-18, recorded on January 21, 1994, at No. 289986 in Plat Book 1 at page 1626;
(8) Plat for Lawson Hill, described as Lawson Hill, Phase 4, recorded on September 27, 1994, at No. 294689 in Plat Book 1 at page 1750;
(9) Second Insubstantial Amendment to Plat, recorded on July 5, 1995, at No. 299682 in Plat Book 1 at page 1887;
(10) Plat for Lawson Hill P.U.D. Phase 9, recorded July 14, 1995, at No. 299816 in Plat Book 1 at page 1891;
(11) Substantial Plat Amendment of Lot 322, Phase 5, (Lots 322A & B), recorded December 12, 1995, at No. 302283 in Plat Book 1 at page 1959;
(12) Final Plat, Rezoning and Substantial P.U.D. Amendment to Lots 426 & Tract 509, recorded December 19, 1995, at No. 302452 in Plat Book 1 at page 1960;
(13) Rezoning and Substantial Amendment to Lawson Hill Final Plat and PUD, Lots 11, 12 and 13, Phase One and Two and Lot 425, Phase 9, recorded February 8, 1996, at No. 303353 in Plat Book 1 at page 1995;
(14) Substantial Plat Amendment to Lot F, Lawson Hill, Filing 6, recorded February 15, 1996, at No. 303470 in Plat Book 1 at page 1998;
(15) Subdivision Exemption for Essential Community Facilities for Lot 425, Phase 9, recorded April 25, 1996, at No. 304826 in Plat Book 1 at page 2037;
(16) Lawson Hill PUD, Phase 12, recorded April 25, 1996, at No. 304827 in Plat Book 1 at page 2039;
(17) Final Plat, Lawson Hill PUD, Phase 11, (Lots 314-316), recorded May 3, 1996, at No. 305016 in Plat Book 1 at page 2046;
(18) Insubstantial Amendment to Lot 26, Phase One and Two, recorded May 7, 1996, at No. 305068 in Plat Book 1 at page 2047;
(19) Second Substantial Amendment to the Final Plat of Lot B, Phase 2, recorded July 11, 1996, at No. 306255 in Plat Book 1 at page 2071;
(20) Telecam/Ilium Subdivision Exemption for Lot Line Adjustment between Lots P, 426, Q, Q-1. Tract 503, Preliminarily Platted Lot T, Tract 509, and Final Plat of Tract 509A, and Insubstantial Plat Amendment for Lot P, recorded September 11, 1996, at No. 307391 in Plat Book 1 at page 2105;
(21) Substantial Plat Amendment to Final Plat of Lot 425A, Phase 9, recorded September 12, 1996, at No. 307393 in Plat Book 1 at page 2111;

(22) Subdivision Exemption for a Lot Line Adjustment Between Lot P, Phase 9 and Lot 426, Phase 10, recorded May 15, 1997, at No. 312262 in Plat Book 1 at page 2238;
(23) Third Amendment to the Planned Community Map for Two Rivers Located on Lot P, Phase 9, Third Amendment to the Planned Community Map for Two Rivers Located on Lot P, Phase 9, (Lot C, Tracts 22, 23, 24 and 26), recorded July 29, 1997, at No. 313585 in Plat Book 1 at page 2261;
(24) Condominium Map for Sunshine Valley Condominiums Located on Lot P, Phase 9, recorded August 15, 1997, at No. 313918 in Plat Book 1 at page 2273;
(25) Second Amendment to the Condominium Map for Top of the Hill at Lawson Hill, Located on Lot O, Phase 1, recorded March 20, 1998, at No. 317668 in Plat Book 1 at page 2339;
(26) Condominium Map for Ridgeview at Lawson Hill, Located on Lot O, Phase 1, recorded March 20, 1998, at No. 317670 in Plat Book 1 at page 2340;
(27) Substantial Plat and PUD Amendment for Lots 406, 425-4 and 302-9/10, recorded July 28, 1998, at No. 320232 in Plat Book 1 at page 2410;
(28) Substantial Plat and PUD Amendment for Lots O, P, 314 and 315, recorded March 16, 1999, at No. 324971 in Plat Book 1 at page 2511;
(29) Subdivision Exemption for a Single Lot Split for Lot 400, recorded April 26, 1999, at No. 325920 in Plat Book 1 at page 2540;
(30) Substantial Plat and PUD Amendment for Lots 404, 405, 406, 407, 408, 414, 415, 417, 418, 421, 422 and 425-4, recorded May 10, 1999, at No. 326303 in Plat Book 1 at page 2548;
(31) Insubstantial Amendment to the Final Plat of Lot 33A, recorded June 2, 1999, at No. 326925 in Plat Book 1 at page 2576;
(32) Substantial Plat/PUD Amendment and Lot Line Adjustment of Lots 408, 414 and 425-4, Phase 9, (Lot 410), recorded August 2, 1999, at No. 328259 in Plat Book 1 at page 2604;
(33) Substantial Plat/PUD Amendment, Rezoning, Lot Line Adjustment and Road Standard Variance for Lots 6A, 6B, 316, 302-6 and Units 314-11, 314-12, 314-13, 315-1 and 315-2 of Elk Meadows , recorded October 28, 1999, at No. 330139 in Plat Book 1 at page 2628;
(34) Road Standard Exemption and Substantial Plat and PUD Amendment for Lot O, recorded December 21, 2000, at No. 338713 in Plat Book 1 at page 2840;
(35) Road Standard Exemption and Substantial Plat and PUD Amendment for Lot P, recorded December 21, 2000, at No. 338714 in Plat Book 1 at page 2842;
(36) Final Plat of Tract 501, Phase 13, recorded July 27, 2001, at No. 342838 in Plat Book 1 at page 2908;
(37) Insubstantial Plat Amendment of Lot 31,recorded November 14, 2001, at No. 345085 in Plat Book 1 at page 2961;
(38) Community Map for Ridgeview at Top of the Hill at Lawson Hill Subordinate Association, (Lot O, Unit 1), recorded December 18, 2001, at No. 345802 in Plat Book 1 at page 2974;
(39) Supplemental Community Map, Condominium Community of Rio Vistas, Phase II, at Top of the Hill at Lawson Hill Subordinate Association, Located on Lot O, Phase 1, recorded March 14, 2002, at No. 347699 in Plat Book 1 at page 2984;
(40) Fifth Supplement to the Condominium Map for Unit SV140 Sunshine Valley Condominiums Located on Lot P, Phase 9, recorded March 15, 2002, at No. 347719 in Plat Book 1 at page 2992;
(41) Subdivision Exemption for Lot Line Adjustment and an Insubstantial Plat Amendment for Lots 5B and 6, recorded June 18, 2002, at No. 349809 in Plat Book 1 at page 3033;
(42) Subdivision Exemption for a Single Lot Split in an Existing Subdivision and Amendment to the Map for Elk Meadows, Located on Lot 314, Phase 11, recorded November 22, 2002, at No. 353265 in Plat Book 1 at page 3077;

(43) Insubstantial Plat/PUD Amendment, Lot 322-A, recorded December 6, 2002, at No. 353578 in Plat Book 1 at page 3085;

(44) Substantial Plat/PUD Amendment for Unit SV-141, Sunshine Valley Condominiums, Located on Lot P, recorded January 15, 2003, at No. 354410 in Plat Book 1 at page 3095;

(45) Subdivision Exemption for a Single Lot Split in an Existing Subdivision and Amendment to the Map for Elk Meadows, Located on Lot 314, Phase 11, (314 -2 &3), recorded April 21, 2003, at No. 356713 in Plat Book 1 at page 3126;

(46) Correction Plat of Subdivision Exemption for a Single Lot Split in an Existing Subdivision and Amendment to the Map for Elk Meadows, Located on Lot 314, Phase 11, (314-2 &3), recorded June 27, 2003, at No. 358311 in Plat Book 1 at page 3156;

(47) Subdivision Exemption for a Lot Line Adjustment to Adjust Lot Lines Between Tract 503 and Lot Q and Insubstantial Plat Amendment to Eliminate Preliminary Platted Lot T, recorded July 11, 2003, at No. 358629 in Plat Book 1 at page 3158;

(48) Subdivision Exemption for Single Lot Split for Lot 309, and Lot Line Adjustment for Lot 309, Tract 509 and Tract 511 , Phase 5, (509, 511,309-1-11), recorded September 17, 2003, at No. 360316 in Plat Book 1 at page 3186;

(49) Lawson Hill PUD, Phase 14, Final Plat and a Replat of Lots J1 and J2, Filing 1 and a Replat of Tract 501, Filing 13, recorded October 9, 2003, at No. 360995 in Plat Book 1 at page 3199;

(50) Insubstantial Plat/PUD Amendment to Lots J1 and J2, A-1 and Tract 501-W, recorded November 17, 2003, at No. 362028 in Plat Book 1 at page 3211;

(51) Subdivision Exemption for Lot Line Adjustment of Tracts 501 and 505 and Final Plat of Tract 505, recorded January 21, 2004, at No. 363535 in Plat Book 1 at page 3226;

(52) Lawson Hill PUD, Phase 15, (502, 503-A, 508, 509-B & C, HI and L), recorded October 14, 2005, at No. 378712 in Plat Book 1 at page 3545;

(53) Lot HUB-2AF, A Subdivision Exemption for Lot Line Adjustment and Insubstantial Plat/PUD Amendment of Lot HUB-2A and Lot HUB-2F, According to the Subdivision Exemption for Single Lot Split and Insubstantial Amendment for Lot A-1, recorded July 14, 2006, at No. 385327 in Plat Book 1 at page 3682;

(54) Insubstantial Amendment to Tract 503, recorded September 26, 2006, at No. 387097 in Plat Book 1 at page 3734;

(55) Subdivision Exemption for Lot Line Adjustment for Tract 503, 509B and 509C, recorded September 26, 2006, at No. 387099 in Plat Book 1 at page 3735;

(56) Substantial PUC and Plat Amendment to Final Plat for Lots 440, 441, 442, 443, 444, Tract 516 and Lot2 Q-2 through Q-37, Substantial Plat and PUD Amendment and Rezoning for Lots Q, Q-1 and 426, recorded December 7, 2006, at No. 388898 in Plat Book 1 at page 3768;

(57) Subdivision Exemption for a Single Lot Split in an Existing Subdivision Insubstantial PUD Amendment for Lot 316, recorded June 12, 2008, at No. 402053 in Plat Book 1 at page 3969;

(58) Boundary & Topographic Survey Lot 407, Phase 9, recorded October 8, 2008, in Survey Book 1 at page 672;

(59) Single Lot Split in an Existing Subdivision for Lot 400, Phase 9, recorded May 29, 2009, at No. 407159 in Plat Book 1 at page 4193; and any and all such other, if any, duly executed amendments or supplements to the Plat.

(60) Subdivision Exemption for Single Lot Split of Lot 440, recorded June 11, 2015, at No. 437927, in Plat Book 1 at Page 4732.

(61) Subdivision Exemption for Lot Line Adjustment of Lots J1 and J2, recorded June 17, 2015, at No. 438059 in Plat Book 1 at page 4737;

(62) Insubstantial Plat Amendment for Lots Q-3 and Q-4, recorded June 23, 2016, at No.442934 in Plat Book 1 at Page 4804;

(63) Substantial Plat and PUD Amendment for Lots Q-15, Q-23, Q-24, and Q-25, recorded July 5, 2016, at No. 443050 in Plat Book 1 at Page 4806;

(64) Substantial Plat and PUD Amendment for Lots Q-2R, Q-4R, Q-5R, Q-8R, Q-9R, Q-10R, Q-12R, Q-13R, Q-14R, Q-16R, Q-17R, Q-19R, Q-20R, Q-21R, Q-29R, Q-30R, Q-31R, Q-32R, Q-33R, Q-34R, Q-35R, and Lots SV-110R, SV-120R, SV-130R, and Outlots 6R, 14R, 32R, Sunshine Valley Condominiums, recorded February 3, 2020, at No. 462121.

REGULATION APPENDICES

APPENDIX A: APCHA FEE SCHEDULE

APCHA Fee	*Amount*
Ownership Application Fee Payable upon submission of application and/or Ownership Application and Bid Packet No Bid Fee for first bid submitted with Ownership Application	$ 50
Ownership Bid Submission Fee Per-bid amount payable upon submission of bids after initial ownership application	5
First-Time Tenant Long-term Rental Application Fee (Non-Managed, Managed, Tax Credit (Properties) / Payable upon submission of application	50
Seasonal/Dormitory Rental Application Fee (per person) Payable upon submission of application	35
Rental Requalification Fee (Non-Managed, Managed, Tax Credit Properties) Payable by APCHA tenants and owners upon requalification every two years	35
Sale Listing Fee Non-refundable portion of Transaction Fee payable by seller upon listing	750
Sale Transaction Fee Payable upon closing, includes non-refundable Sale Listing Fee	2% of sale price
Ownership Transfer Fee Payable by transferor upon transfer of ownership unit to immediate family member No transaction fee for immediate family transfers	100
Capital Improvements Review and Site Visit	50
Fee-in-lieu (city fee) and Impact Fee (county fee), Also known as a Dedication Fee charged for private sector property development, Calculated under city and county land use regulations and codes and APCHA Regulations	*

*The fee-in-lieu/impact fee is based on the corresponding sections of the Land Use Codes for the City and County and/or calculated per Table V of these Regulations.

APPENDIX B

APPROVED BY RESOLUTION NO. 11 (SERIES OF 2019)

EFFECTIVE MARCH 1, 2020

SCHEDULE OF FINES		
#	Stage 1 Violation	Fine Range**\
1	Failure to submit accurate and all documentation required to qualify by original deadline set by APCHA.	$150 - $180
2	Failure to provide requested information to establish continued compliance by original deadline set by APCHA.	$150 - $180
3	Failure to provide Census Information by original deadline set by APCHA.	$150 - $180
4	Failure to pay HOA assessments (general or special) after failing to cure delinquency. HOA must follow collections policies and procedures under CCIOA before reporting owner to APCHA.	$150 - $180
5	Failure to pay property taxes annually by the deadline imposed by Pitkin County.	$150 - $180
6	Failure to allow the APCHA to inspect the property or unit as provided in the deed restriction, after providing Owner with no less than 24 hours' written notice.	$150 - $180
7	Failure to get roommate approved prior to move-in.	$150 - $180
8	Intentionally Left Blank	$150 - $180

**Fines will be adjusted annually based upon the Consumer Price Index, All Items, U.S. City Average, Urban Wage Earners and Clerical Workers (Current Series) published by the U.S. Department of Labor, Bureau of Labor Statistics. Fine amounts shall increase by an amount based upon the CPI effective January 1 of each year. Stage 1 Violations will have 15 days to cure prior to assessing any fines.

#	Stage 2 Violation	Fine Amount
1	Failure to requalify by Stage 1 NOV deadline.	$400 to $480
2	Failure to provide requested information to establish continued compliance by Stage 1 NOV deadline.	$400 to $480
3	Failure to provide Census Information by Stage 1 NOV deadline.	$400 to $480
4	Failure to pay HOA assessments (general or special) by Stage 1 NOV deadline.	$400 to $480
5	Failure to pay property taxes by Stage 1 NOV deadline.	$400 to $480
6	Failure to maintain eligibility (generally).	$400 to $480
7	Failure to obtain approved Leave of Absence (LOA).	$400 to $480
8	Failure to provide APCHA with copy of signed lease prior to occupancy by tenant(s).	$400 to $480
9	Failure to notify APCHA in writing of any default within five business days of Owner's notification; e.g., pending foreclosure.	$400 to $480
10	Failure to cure Stage 1 Violation.	$400 to $480
11	Intentionally Left Blank	$400 to $480
12	Intentionally Left Blank	$400 to $480

#	Stage 3 Violation	Fine Amount
1	Failure to requalify by Stage 2 NOV deadline.	$1,000 - $1,200
2	Failure to provide requested information to establish continued compliance by Stage 2 NOV deadline.	$1,000 - $1,200
3	Failure to provide Census Information by Stage 2 NOV deadline.	$1,000 - $1,200
4	Failure to pay HOA assessments (general or special) by Stage 2 NOV deadline.	$1,000 - $1,200
5	Failure to pay property taxes by Stage 2 NOV deadline.	$1,000 - $1,200
6	Failure to get lease approved in advance.	$1,000 - $1,200
7	Charging rent up to $200 in excess of amount permitted by Deed Restriction and/or Regulations.	$1,000 - $1,200
8	Exceeding maximum vacancy period of rental unit.	$1,000 - $1,200
9	Failure to cure Stage 2 Violation or Pay Stage 2 Fine.	$1,000 - $1,200
10	Intentionally Left Blank	$1,000 - $1,200
11	Intentionally Left Blank	$1,000 - $1,200
12	Intentionally Left Blank	$1,000 - $1,200

#	Stage 4 Violation	Fine Amount
1	Failure to requalify by Stage 3 NOV deadline.	$2,500 - $3,000
2	Failure to provide requested information to establish continued compliance by Stage 3 NOV deadline.	$2,500 - $3,000
3	Failure to provide Census Information by Stage 3 NOV deadline.	$2,500 - $3,000
4	Failure to pay HOA assessments (general or special) by Stage 3 NOV deadline.	$2,500 - $3,000
5	Failure to pay property taxes by Stage 3 NOV deadline.	$2,500 - $3,000
6	Failure to occupy unit as sole and exclusive place of residence.	$2,500 - $3,000
7	Failure to use and occupy unit exclusively to house persons who meet the definition of Qualified Resident(s) (owner(s)) and their families.	$2,500 - $3,000
8	Failure to work full-time in Pitkin County as required by Deed Restriction and/or Regulations.	$2,500 - $3,000
9	Owning other developed residential property in OEZ in violation of Deed Restriction and/or Regulations.	$2,500 - $3,000
10	Use of premises for other than residential purposes.	$2,500 - $3,000
11	Advertising rental without APCHA approval as required by Deed Restriction and/or Regulations.	$2,500 - $3,000
12	Charging more than $200 in rent in excess of amount permitted by Deed Restriction and/or Regulations.	$2,500 - $3,000
13	Failure to cure Stage 3 Violation or Pay Stage 3 Fine.	$2,500 - $3,000
14	Intentionally Left Blank	$2,500 - $3,000
15	Intentionally Left Blank	$2,500 - $3,000

#	Stage 5 Violation	Fine Amount
1	Failure to requalify by Stage 4 NOV deadline.	$5,000 – $6,000
2	Failure to provide requested information to establish continued compliance by Stage 4 NOV deadline.	$5,000 - $6,000
3	Failure to provide Census Information by Stage 4 NOV deadline.	$5,000 - $6,000
4	Failure to pay HOA assessments (general or special) by Stage 4 NOV deadline.	$5,000 - $6,000
5	Failure to pay property taxes by Stage 4 NOV deadline.	$5,000 - $6,000
6	Failure to occupy unit as sole place of residence during time unit is owned by Stage 4 NOV deadline.	$5,000 - $6,000
7	Failure to use and occupy unit exclusively to house persons who meet the definition of Qualified Resident(s) (owner(s)) and their families by Stage 4 NOV deadline.	$5,000 - $6,000
8	Failure to work full-time in Pitkin County as required by Deed Restriction and/or Regulations by Stage 4 NOV deadline.	$5,000 - $6,000
9	Failing to list other developed residential property in OEZ in violation of Deed Restriction and/or Regulations by Stage 4 NOV deadline.	$5,000 - $6,000
10	Selling or conveying a property or unit without APCHA approval.	$5,000 - $6,000
11	Encumbering property with debt in any form which exceeds at any time the Maximum Resale Price of the Unit.	$5,000 - $6,000
12	Permitting any use or occupancy of Unit not in compliance with the Deed Restriction and/or Regulations.	$5,000 - $6,000
13	Making unauthorized improvements and/or failing to obtain building permit or certificate of occupancy with respect to capital improvements.	$5,000 - $6,000
14	Creating an additional dwelling unit as defined in the Pitkin County or City of Aspen Land Use Codes, in or on the property.	$5,000 - $6,000
15	Rental of all or part of a unit in violation of the Deed Restriction and/or Regulations.	$5,000 - $6,000
16	Submitting false/inaccurate information.	$5,000 - $6,000

17	Failure by Non-Qualified Transferees to transfer Property or Unit to a Qualified Buyer.	\$5,000 - \$6,000
18	Using deed restricted property as income producing property.	\$5,000 - \$6,000
19	Failure to list home by deadline after NOV becomes final.	\$5,000 - \$6,000
20	Accepting any consideration which would cause an increase in the purchase price above the bid price to induce an Owner to sell to a prospective buyer.	\$5,000 - \$6,000
21	Fraud (as defined in Regulations).	\$5,000 - \$6,000
22	Selling or otherwise transferring Unit not in accordance with the Deed Restriction and/or Regulations.	\$5,000 - \$6,000
23	Sell or otherwise transfer Unit for use in a trade or business.	\$5,000 - \$6,000
24	Purchasing other developed residential property in OEZ while owning an APCHA deed restricted property.	\$5,000 - \$6,000
25	Failure to Cure Stage 4 Violation or Pay Stage 4 Fine.	\$5,000 - \$6,000
26	Intentionally Left Blank	\$5,000 - \$6,000
27	Intentionally Left Blank	\$5,000 - \$6,000

AGENDA ITEM - 8.b.

TITLE:

Late Addition: Consideration of the 50-year term for Deed Restrictions.

Presented by: Lois Major, Attorney representing SMHA
Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

A public hearing will need to be scheduled on a change to the LUC.

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description	Upload Date
Memo	1/11/2021

MEMORANDUM

TO:	SMCHA Board
CC:	Amy Markwell, Mike Bordogna & Corenna Howard
FROM:	Lois Major, Special Counsel to SMCHA
DATE:	January 11, 2020
MEETING:	January 13, 2021
RE:	Consideration of the TERM of the Amended and Restated Deed Restriction and Covenant Templates and scheduling a Public Hearing on possible similar change to the LUC

Purpose: Consideration of the TERM in the Amended and Restated Deed Restriction and Covenant Templates (New Covenant) and amending §5-1304 et seq of the Land Use Code (LUC) and provide direction to San Miguel Regional Housing Authority staff.

Background: The general deed restriction in the County was moved into the LUC in 1991. Several adjustments and updates were made over the course of the next decade. In January 2002, the BOCC began the process that culminated in the New Covenant. Basically, the New Covenant was crafted to ensure that the Guidelines and Rules and Regulations that apply to deed-restricted property could not be changed without the owner's written consent and to clarify and address specific issues and matters that were not covered or not clearly addressed in either the "Original Deed Restriction" or LUC Section 5-1305, the Guidelines, Rules and Regulations Governing Affordable Housing.

At all times, the option to use the New Covenant was up to the affected property owner. However, once the New Covenant was executed by the owner, that piece of property continued to be covered by the New Covenant and could not revert back to the LUC deed restriction, see New Covenant, Section 12: General Provisions; 12.2 Covenant Running with the Land-Binding Effect and 12.8 Severability.

LUC Deed Restriction Term: The LUC placed a restriction on the property for a term of fifty (50) years with an option to extend for another fifty (50) years under LUC 5-1304 R-1 Housing Deed Restriction after public hearing and comment. The first 50-year term expires on May 18, 2042. The BOCC must call for a public hearing in order to extend this date.

New Covenant: The New Covenant is a contract that distinguishes all rights and obligations under the LUC and creates new ones under its own terms. The New Covenant continued the fifty (50) year term and for the most part expires on May 18, 2042. Because both parties can agree to new terms under the New Covenant a simple solution is to restart the 50-year term, or longer, at each transfer of the property.

2. Current Language:

A. LUC: 5-1304 R-1 Housing Deed Restriction

The following deed restriction shall be imposed on each parcel of real property designated as Affordable Housing pursuant to Section 5-1305 of the San Miguel County Land Use Code.

5-1304 Deed Restriction. (parts omitted)

The foregoing restriction on ownership, use and occupancy constitutes a covenant that runs fifty (50) years from the date of recordation with the title to the Property as a burden thereon for the benefit of the Board of County Commissioners of San Miguel County, Colorado, or its designee, and shall be binding on the Owner, and on the heirs, personal representatives, assigns, lessees and licensees and any transferee of the Owner. The duration of this restriction and covenant shall extend for an initial period of fifty (50) years, and at the option of the Board of County Commissioners of San Miguel County, or its designee, may be extended for an additional period of fifty (50) years after public hearing and comment on the proposed extension. This restriction and covenant shall be administered by the Board of County Commissioners of San Miguel County, Colorado, or its designee, and shall be enforceable by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of non-complying Owners, users or occupants, or such other remedies and penalties as may be specified in Sections 1-16 and 5-1305 of the San Miguel County Land Use Code, or under law.

B. New Covenant: 1.3 Term

The **"Term"** of this Covenant shall commence on the Effective Date and shall continue until May 18, 2042 ("**Expiration Date**"). At the option of the County, the duration of this Covenant may be extended after the Expiration Date for an additional period of fifty (50) years after public hearing and comment on the proposed extension. Any other amendment must be agreed to in writing by all Parties as provided for in this Covenant.

3. Proposed Changes: Deletions are shown by ~~strikethrough~~ and additions in *italics*.

A. LUC: 5-1304 R-1 Housing Deed Restriction

The foregoing restriction on ownership, use and occupancy constitutes a covenant that runs fifty (50) years from the date of ~~recordation with the title to~~ *purchase of* the Property as a burden thereon for the benefit of the Board of County Commissioners of San Miguel County, Colorado, or its designee, and shall be binding on the Owner, and on the heirs, personal representatives, assigns, lessees and licensees and any transferee of the Owner. ~~The duration of this restriction and covenant shall extend for an initial period of fifty (50) years, and at the~~

~~option of the Board of County Commissioners of San Miguel County, or its designee, may be extended for an additional period of fifty (50) years after public hearing and comment on the proposed extension.~~ *The 50-year term shall begin anew upon each sale, transfer, and/or conveyance.* This restriction and covenant shall be administered by the Board of County Commissioners of San Miguel County, Colorado, or its designee, and shall be enforceable by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of non-complying Owners, users or occupants, or such other remedies and penalties as may be specified in Sections 1-16 and 5-1305 of the San Miguel County Land Use Code, or under law.

B. <u>New Covenant: 1.3 Term</u>

The **"Term"** of this Covenant shall commence on the Effective Date and shall continue until ~~May 18, 2042~~ ________________ , fifty (50) years from today's date ("**Expiration Date**"). ~~At the option of the County, the duration of this Covenant may be extended after the Expiration Date for an additional period of fifty (50) years after public hearing and comment on the proposed extension. Any other amendment must be agreed to in writing by all Parties as provided for in this Covenant.~~

4. **New Covenants already Executed:** In the event you adopt the revised language, the issue of what happens with the already executed New Covenants arises. Those Owners shall be subject to the original paragraph 1.3 and the term of the deed restriction shall be continued until May 18, 2092. Those owners should be advised in writing of the BOCC action and a Notice of Extension should be recorded against each property in the Clerk and Recorder's Office.

Summary: The purpose and intent of the County Affordable Housing Program is to provide affordable housing for people who earn a living in the Telluride R-1 School District. Protecting the deed restriction on the properties for fifty (50) years furthers the County Affordable Housing Program goals and prevents future uncertainty.

If so revised, the owners who have already executed a New Covenant should be offered a simple addendum or an updated version of the New Covenant.

Motions for SMCHA to Consider:

1. The SMCHA Board/BOCC finds that the proposed language changes for <u>LUC: 5-1304 R-1 Housing Deed Restriction</u> and <u>New Covenant: 1.3 Term</u> clarifies the term of the deed restriction, prevents future uncertainty in the LUC and the New Covenant, does not prejudice owners of deed-restricted property and is in line with the purpose and intent of the County Affordable Housing Program and **move to:**

i. set a Public Hearing to consider revision of the language in LUC: 5-1304 R-1 Housing Deed Restriction as presented in Section 3 of this memo [with/without changes];

ii. revise the language in the New Covenant: 1.3 Term as presented in Section 3 of this memo [with/without changes];

iii. advise owners of deed-restricted property who are under the New Covenant in writing of the BOCC action and record a Notice of Extension against each such property in the Clerk and Recorder's Office.

and

iv. authorize the County and/or the SMRHA to execute the "updated" New Covenant as prepared by the County Attorney's Office to be used in future transfers.

AGENDA ITEM - 8.c.

TITLE:

Discussion on keeping deed restrictions in place as units turn over.

Presented by: Mike Bordogna, Cty Manager; Lois Major, Attorney; Corenna Howard, SMRHA Director
Time needed: 15 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

AGENDA ITEM - 8.d.

TITLE:

Discussion on future legal representation for San Miguel Housing Authority.

Presented by: Mike Bordogna, Cty Manager; Lois Major, Attorney; Corenna Howard, SMRHA Director
Time needed: 10 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

Staff direction needed as Lois major will be retiring.

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			