

**AMENDED AND RESTATED  
DEED RESTRICTION AND COVENANT  
Lot \_\_\_\_, Two Rivers Subdivision**

**THIS AMENDED AND RESTATED DEED RESTRICTION AND COVENANT (“Covenant”)** is entered into as of \_\_\_\_\_, 2010 (“**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 \_\_\_\_, Two Rivers 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 than 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. Establishment of the Covenant.**

**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. 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.

**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.

**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.** Except for the limited circumstances stated in Section 11, 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 agree to such Price Appreciation Cap in writing. This limitation and restriction includes agreements that do not purport to run with the land and bind only the Subject Property Owner or a prospective buyer.

**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. Current Local Employee Standard.** 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. Retired or Disabled Local Employee Standard.** 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. Alternative Standard.** 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. Public Sector Employment.** 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. Co-Borrower.** 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. Renting the Subject Property.**

**3.1. Subject Property Owner Approval to Rent.** 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. Rental Regulations.** 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. Limitation on Rental Occupants.** 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. No County Liability.** 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. Selling the Subject Property.**

**4.1. Listing the Subject Property.** 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. County Transfer Fee.** 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. Waiver of County Transfer Fee.** 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 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. Appraisal.** 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. Sale of Subject Property at Expiration of Grace Period.** 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. Further Price Reductions.** 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. Exceptions.**

**8.1. Purchase, Rental, Ownership and Occupancy Requirements.** 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.

<p><b><u>If to Subject Property Owner:</u></b></p> <p>See address listed above in introductory paragraph</p>	<p><b><u>If to County:</u></b></p> <p>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</p>
	<p><b><u>If to Administrator:</u></b></p> <p>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</p>

**10.3. County Assistance and Financial Counseling upon Default of Secured Obligation.** 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. Rights Concerning the Exercise of Option to Purchase.**

**11.1. Definitions.** The following definitions shall apply to this Section 11.

**11.1.1. Resale Deficiency Balance.** If the County acquires the Subject Property pursuant to the terms of an Option to Purchase, the amount by which the County’s actual costs incurred upon resale of the Subject Property exceed the amount the County received in consideration for the resale of the Subject Property.

**11.1.2. Resale Price Cap Covenant.** A real covenant and equitable servitude that imposes a Price Appreciation Cap on the Subject Property.

**11.2. Application of Resale Price Cap Covenant.** If the County elects to exercise its rights pursuant to a separately executed Option to Purchase, and if the County incurs a Resale Deficiency Balance after resale of the Subject Property, then the County may elect to place a Resale Price Cap Covenant against the Subject Property that imposes a Price Appreciation Cap against the Subject Property equal to a three percent annual appreciation measured from the price that the County received for the Subject Property and adjusted each year from the date of that sale.

**11.3. Terms of Resale Price Cap Covenant.** The Resale Price Cap Covenant shall provide that the then Subject Property Owner and any heir, successor and assign of the then Subject Property Owner, and/or any Association governing the Subject Property, may at any time, but need not, pay the County the Resale Deficiency Balance, plus interest on the Resale Deficiency Balance. Interest on the Resale Deficiency Balance shall be adjusted on the first business day of every month to the amount indicated as the Prime Rate in the Wall Street Journal on that date. Upon payment of the Resale Deficiency Balance plus interest in full, the County shall immediately release the Subject Property from any force or effect of the Resale Price Cap Covenant and, thereupon, the Resale Price Cap Covenant shall have no further force or effect against the Subject Property.

**11.4. No Effect on Option to Purchase.** Nothing herein is intended to otherwise alter or affect the rights and interests of any party or intended third party beneficiary to the Option to Purchase.

## **Section 12. Definitions.**

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:

**12.1. Administrator.** The County or the County's designee.

**12.2. AMI.** 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.

**12.3. Application Fee.** The fee, in an amount set by County resolution, paid to the Administrator to process any application submitted pursuant to this Covenant.

**12.4. Assets.** 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.

**12.5. 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 through joint tenancy, a will, the intestacy provisions of the Colorado probate code or other applicable law, or the provisions of an Estate Planning Entity.

**12.6. 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.

**12.7. 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.

**12.8. 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.

**12.9. 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.

**12.10. 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.

**12.11. 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.

**12.12. County PUD/Subdivision Approvals.** The approvals granted for the Two Rivers Subdivision by the County and reflected by the Subdivision Governing Documents as well as by certain resolutions concerning the Two Rivers Subdivision recorded in the Official Records.

**12.13. 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.

**12.14. 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.

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

**12.16. 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.

**12.17. 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.

**12.18. 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.

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

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

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

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

**12.23. 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.

**12.24. 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.

**12.25. 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.

**12.26. LUC.** The San Miguel County Land Use Code.

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

**12.28. 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.

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

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

**12.31. 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.

**12.32. 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.

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

**12.34. Price Appreciation Cap.** A percentage limit on the amount that the Subject Property can appreciate by each year, which is intended to artificially lower the property value in order to maintain its affordability for certain owners and occupants. For example, if a property is purchased for \$100,000 with a Price Appreciation Cap of 3% per year, after one year, the owner may sell it for \$103,000; after five years the owner may sell it for \$112,551; after ten years the owner may sell it for \$130,477, etc. Nothing herein is intended to establish a Price Appreciation Cap on the Subject Property.

**12.35. 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.

**12.36. Procedures.** The uniform procedures adopted pursuant to Section 13.3.

**12.37. 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.

**12.38. 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.

**12.39. 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.

**12.40. 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.

**12.41. 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.

**12.42. 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.

**12.43. 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.

**12.44. 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.

**12.45. 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.

**12.46. 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.

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

**12.48. 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.

**12.49. 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.

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

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

**12.52. Subdivision Governing Documents.** 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 **Exhibit "A"**.

**12.53. Subject Property Owner.** 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.

**12.54. Telluride Region.** The area identified as such in the San Miguel County Master Plan.

**12.55. Total Household Assets.** The combined Net Assets of all Ownership Applicants and Contributing Occupants.

**Section 13. General Provisions.**

**13.1. Recording of Covenant.** This Covenant shall be recorded in the Official Records upon execution.

**13.2. Covenant Running With the Land - Binding Effect.** 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, lessees 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.

**13.3. Procedures.** 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.

**13.4. Further Actions.** 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.

**13.5. Gender and Number.** 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.

**13.6. Non-discrimination.** No person shall be discriminated against on the basis of race, national origin, sex, color, creed or physical infirmity.

**13.7. Personal Liability.** The Subject Property Owner shall be personally liable for any violations of this Covenant.

**13.8. Severability.** 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.

**13.9. 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.

**13.10. 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.

**13.11. 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.

**13.12. 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.

**13.13. 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.

**13.14. 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.



**ADMINISTRATOR:**

**SAN MIGUEL COUNTY HOUSING AUTHORITY**

By: \_\_\_\_\_  
Chair

Date: \_\_\_\_\_

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"**  
**(Lot P Two Rivers Subdivision Governing Documents)**

**General Declaration(s) for Lot P Two Rivers Subdivision:**

- (1) General Declarations for Lot P Two Rivers Subdivision, recorded on September 24, 1996 Reception No. 307591;
- (2) First Amendment to Declarations recorded on March 10, 1997 at Reception No. 311088;
- (3) Second Amendment and Supplemental to Declarations recorded on April 3, 1997 at Reception No. 311543;
- (4) Third Amendment to Declarations recorded on July 30, 1997 at Reception No. 313642;
- (5) Fourth Amendment to Declarations recorded on August 1, 1997 at Reception No. 313684;
- (6) Fifth Amendment to Declarations recorded on August 15, 1997 at Reception No. 313915;
- (7) Sixth Amendment to Declarations recorded on September 17, 1997 at Reception No. 314498;
- (8) Seventh Amendment to Declarations recorded on April 21, 1998 at Reception No. 318317;
- (9) Eighth Amendment to Declarations recorded on May 17, 1999 at Reception No. 326457; and
- (10) Any and all further Amendments and/or Supplements to Lot P Two Rivers Subdivision's General Declarations.

**Final Plats for Lot P Two Rivers Subdivision:**

- (1) Final Plat for Lot P Two Rivers Subdivision recorded September 24, 1996 in Plat Book 1 at Page 2120, Reception No. 307590;
- (2) First Amendment to Final Plat recorded on March 10, 1997 at Reception No. 311089;
- (3) Second Amendment to Final Plat recorded on April 3, 1997 at Reception No. 311542;
- (4) Third Amendment to the Final Plat recorded on May 16, 1997 at Reception No. 312271;
- (5) Fourth Amendment to the Final Plat recorded on July 29, 1997 at Reception No. 313585;
- (6) Fifth Amendment to the Final Plat recorded on August 15, 1997 at Reception No. 313916;
- (7) Sixth Amendment to the Final Plat recorded on September 17, 1997 at Reception No. 314499;
- (8) Seventh Amendment to the Final Plat recorded on April 21, 1998 at Reception No. 318318;
- (9) Eighth Amendment to the Final Plate recorded on May 17, 1999 at Reception No. 326458; and
- (10) Any and all further Amendments and/or Supplements to Lot P Two Rivers Subdivision's Plat(s).