

**SAN MIGUEL COUNTY  
AFFORDABLE HOUSING COVENANT,  
EQUITABLE SERVITUDE, AND REAL COVENANTS**

This **AFFORDABLE HOUSING COVENANT, EQUITABLE SERVITUDE, AND REAL COVENANTS** (hereinafter referred to as the “Covenant”) is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2017, by **XXXXXX** (“Declarant”) and their successors and assigns, for the benefit of San Miguel County, Colorado (“County”), the San Miguel County Housing Authority (“SMCHA”), and its duly designated and authorized agent, the San Miguel Regional Housing Authority (“RHA”) their successors or assigns (together “Beneficiaries”).

**Description of Property Subject to this Covenant.** The real property that is hereby burdened with this Covenant is legally described as follows:

<<INSERT LEGAL>>

(herein referred to as “the Property”).

**Recitals.**

a. Declarant and Beneficiaries intend for the property to remain affordable to specific income groups in the future through a fixed appreciation value and the terms of this Covenant; and

b. Ownership of the property is limited to Qualified Owners; and

c. This Covenant applies to the Declarant, as a Qualified Owner, and to all successors and assigns unless and until this Covenant is repealed and superseded by a subsequent Covenant executed by a new Declarant as a Qualified Owner; and

d. The purpose of this Covenant is to provide an affordable housing opportunity to Qualified Owners and their families, and it is not intended to provide a free market investment value.

**1. Covenant to Run with the Property.** In consideration of the Recitals set forth above and for value received, Declarant does hereby grant, declare and impose the following restrictions, real covenants and equitable servitude upon the Property. This Covenant shall be an appurtenant burden upon Declarant, its successors and assigns, and run with the title to the Property for the benefit of the Beneficiaries, their successors and assigns, who may enforce the agreement, restrictions, covenants and equitable servitude imposed hereby and compel compliance therewith through the initiation of judicial proceedings for, but not limited to, specific performance, injunctive relief, declaratory relief, eviction, and damages. The covenants and equitable servitude shall be binding on Declarant and any successors or assigns who own, rent or occupy or have any material interest in the Property, unless and until this Covenant is repealed and superseded by a subsequent Covenant executed by a new Declarant as a Qualified Owner. In such case, the new Covenant shall clearly state that it renders any prior Covenants null and void. In addition, the new Covenant shall specifically identify the recording

information, including Reception Number, of any repealed and superseded Covenants in the real property records of the San Miguel County Clerk and Recorder. There shall be no modification or amendment to the covenants and equitable servitude without the written consent of Beneficiaries and Declarant recorded with any such amendment or modification.

**2. Definitions.** The following definitions shall apply to terms used in this Covenant.

**2.1 “Guidelines”** shall mean the San Miguel County Affordable Housing Guidelines that are now or may in the future be adopted, upon the recommendation of RHA, by the SMCHA, their successors or agents, which may be in effect at the time of closing on a sale or other transfer of the Property, or its successor document, as may be amended from time to time without the consent of the Declarant. These Guidelines may be amended from time to time in the sole and absolute discretion of the RHA with the consent of the SMCHA.

**2.2 “Income Restriction”** shall mean an additional qualification requirement that applies to Declarant and all subsequent owners of the Property. Any Qualified Owner must comply with the qualification requirement by earning at or below 80% of the Area Median Income for San Miguel County as determined by the most recently published U.S. Department of Housing and Urban Development’s Area Median Income guidelines.

**2.3 “Non-Qualified Owner”** shall mean any person or entity that does not meet the income, asset, residency, employment, or other requirements specified in the Covenant or Guidelines necessary to own the Property and includes all persons who originally qualified as a Qualified Owner but subsequently became a Non-Qualified Owner. Non-Qualified Owners shall be required to offer the Property for sale as provided in Paragraph 5, below.

**2.4 “Owner”** shall mean either a Qualified Owner or a Non-Qualified Owner, as the context requires.

**2.5 “Party” or “Parties”** shall mean the Declarant, the County, SMCHA and RHA. All references herein to “RHA” shall be deemed to include the County and SMCHA, though the County and SMCHA may designate RHA as its agent in these matters.

**2.6 “Property”** shall mean that real property as identified above.

**2.7 “Qualified Owner”** shall mean Declarant or a natural person who acquires or possesses an ownership interest in the Property in compliance with the Covenant and the Guidelines and whose qualifications to own the Property have been certified by SMCHA or RHA at the time the Qualified Owner takes title to the Property. A Qualified Owner shall maintain continuous compliance with the Guidelines, as they may be amended from time to time, during the entire time that title to the Property is vested in the particular Qualified Owner.

**3. Restrictions on Ownership and Occupancy.** The ownership of the Property is limited exclusively to persons who meet the definition of “Qualified Owner” and their spouses, except as allowed in the Guidelines. Use and occupancy of the Property is limited exclusively to: Qualified Owners and their families. A Qualified Owner must:

- I. Occupy the Property as his or her sole place of residence;
- II. Not engage in any activity on or in the Property other than those permitted in the zone district and allowed by the applicable land use regulations;
- III. Sell or otherwise transfer the Property only in accordance with this Covenant;
- IV. Not permit any use or occupancy of the Property except in compliance with this Covenant.

**4. Maximum Sales Price.** In no event shall the Property be sold for an amount (“Maximum Sales Price”) in excess of the price calculated as follows:

The Sales Price paid for the Property, \$ 000,000.00:

PLUS, an increase in price of three percent (3%) per year from the date of purchase to the date of Owner's notice of intent to sell (compounded yearly and prorated at the rate of .25 percent per each whole month for any part of a year);

PLUS, the costs of any public improvements for which assessments were imposed by any County authorized Public or Local Improvement District or any lawfully created special improvement district since the recordation date of this Covenant;

PLUS, the costs approved by RHA of any capital improvements;

PLUS, any other costs allowed by RHA pursuant to Guidelines in effect on the date of Owner's notice of intent to sell.

**4.1 Date of Notice.** For purposes of this Covenant, “date of Owner's notice of intent to sell” shall be the date on which written notice of intent is delivered to RHA.

**4.2 No Guarantee of Price.** Nothing herein shall be intended or construed to constitute a representation or guarantee by the parties that upon the sale of the Property the Declarant shall obtain the Maximum Sales Price.

**4.3 No Assumption of Owner's Costs.** No Owner shall permit any prospective buyer to assume any or all of the Owner’s customary closing costs, nor accept any other consideration, which would cause an increase in the purchase price above the Maximum Sales Price. Owner shall pay all costs of advertising and marketing the Property for sale, including real estate sales commissions and fees paid to the RHA.

**4.4 Covenant Program Administration Fees.** At the time of sale, Owner must pay the Covenant Program Administration fee as provided herein. Such fees shall be paid by Owner to

RHA out of the Owner's proceeds of the sale of the Property and may not be added to the price of the Property.

**5. Procedures for Sale and Purchase of the Property.** Owner may, with prior written approval of the RHA and subject to any Guidelines in effect at the time the sale is closed, sell the Property to another Qualified Owner. Such sale shall be subject to the following procedure:

**5.1 Notice of Intent to Sell.** Owner must deliver written notice of intent to sell to the RHA prior to offering the Property for sale.

**5.2 Offering the Property for Sale.** Unless otherwise provided herein or by agreement with SMCHA or RHA, the Property must either be offered for sale through the RHA, or with a local real estate broker licensed to do business in the State of Colorado. The Property shall be offered for sale for a period of one year, or until a qualifying bid is accepted, commencing with the date Owner delivers to the RHA written notice of intent to sell. If the Property is offered for sale through RHA, the RHA staff will administer the sale in accordance with the guidelines in effect at the time of the listing with compensation pursuant to the existing guidelines.

In the event the Property is listed for sale with a local real estate broker licensed to do business in the State of Colorado, a listing agreement shall be executed specifying reasonable and customary terms of sale, including a brokerage commission. The Owner is required and responsible for providing RHA with an executed copy of the listing contract.

**5.3 Advice of Counsel.** Buyers and sellers are advised to obtain legal counsel regarding examination of title, contracts, sale documents and all other aspects of the purchase and sale transaction. Any fees of such counsel, real estate brokers or agents, appraisers and related services shall be at purchaser's or seller's own expense.

**5.4 Advertising the Property.** If the Property is offered for sale through RHA, RHA will either make it available to Qualified Owners on an existing waiting list or advertise the Property for sale in one or more of the local newspapers periodically until an offer is made to buy the Property.

**5.5 Priorities for Persons Offering to Buy the Property.** The person(s) offering to buy the Property at the highest price (in any event, not to exceed the maximum sale price) shall have the first right to purchase the Property. If two or more persons submit offers at the highest price, such person(s) shall have the right to buy the Property in the following priority, provided that they are certified by RHA as Qualified Owners:

- I. Persons with a present ownership interest in the Property;
- II. Spouses and/or children of the Owner;
- III. Beneficiaries;
- IV. Other priorities that may be adopted from time to time by Beneficiaries;

## V. Other Qualified Owners.

**5.6 Bid Period.** The minimum initial bid period for the Property shall be forty-five (45) days from the time the Property is first advertised for sale. At the end of this initial period, the person offering the highest price and with the highest priority, as set forth above, shall have the first right to purchase the Property. If there is more than one such person, their names will be drawn at random by RHA and the person whose name is drawn will have priority. If the terms of that person's offer, other than maximum price, as initially presented to Owner, are unacceptable to Owner, there shall be a mandatory negotiation period of five (5) business days to allow Owner and the potential buyer to reach an agreement regarding the terms of sale, including but not limited to closing date, due diligence, and financing conditions. If the buyer and Owner have not reached agreement during that period, the next highest priority buyer with the highest offer price shall be presented to Owner for consideration and a new five (5) business day negotiation period shall begin. This process shall continue until an agreement between a buyer and Owner is reached.

**5.7 Qualification of Buyer.** Prior to the closing of the sale of the Property, any prospective owner must be certified in writing as a Qualified Owner by RHA in accordance with this Covenant.

**6. Sole and Exclusive Residence.** The Property shall be the sole and exclusive place of residence of a Qualified Owner.

**6.1** A Qualified Owner shall be deemed to have changed his or her residence by becoming a resident or accepting full-time employment outside the boundaries of San Miguel County, or residing in the Property for fewer than nine (9) months per calendar year without the express written approval of the RHA. In such events, the Owner shall be declared a Non-Qualified Owner and the RHA may require the Owner to sell the Property in accordance with the provisions of Paragraph 5.

**6.2** If at any time a Qualified Owner of the Property acquires any interest in any improved residential property that can be legally used as a residence, other than the Property, in San Miguel County, such Owner shall be declared a Non-Qualifying Owner and may be required to immediately list the other property for sale and sell Owner's interest in such property at a sales price comparable to like units or properties in the area in which the property or dwelling unit(s) is (are) located. In the event the other property has not been sold by Owner within one hundred twenty (120) days of its listing, then Owner hereby agrees to immediately list the Property for sale pursuant to the provisions of Paragraph 5. If Owner desires to keep his interest in the other property, Owner shall immediately list the Property for sale pursuant to the provisions of Paragraph 5.

**7. Provisions Relating to Non-Qualified Owner(s).** In the event that either title to the Property vests by descent, operation of law or other means in individuals and/or entities who are not Qualified Owners as that term is defined herein, or the current Owner ceases to be a Qualified Owner, such person shall be declared a Non-Qualified Owner by RHA and shall

immediately offer the Property for sale as provided in Paragraph 5, above, and the highest bid by a Qualified Owner of not more than the Maximum Sales Price and at or in excess of ninety-five percent (95%) of the Maximum Sales Price shall be accepted. If the Property has been listed for sale in excess of 120 days and all bids are below ninety-five percent (95%) of the Maximum Sales Price, RHA will require the Non-Qualified Owner to have the Property appraised for current market value. RHA will require the Non-Qualified Owner to accept any bids submitted at or in excess of ninety percent (90%) of such current market value. In no event shall the Property be sold in excess of the Maximum Sales Price. The cost of the appraisal shall be paid by the Non-Qualified Owner(s).

**7.1 Agreement to Take Certain Actions.** Non-Qualified Owner(s) shall join in any sale, conveyance or transfer of the Property to a Qualified Owner and shall execute any and all documents and take all other actions necessary to do so.

**7.2 Limitations on Non-Qualified Owner(s).** Non-Qualified Owner(s) must not:

- I. Occupy the Property, except with the express written agreement of RHA;
- II. Rent all or any part of the Property, except with the express written agreement of RHA;
- III. Violate any of the Restrictions on Ownership described in Paragraph 3 above.

**7.3 Option to Purchase.** Lenders who are beneficiaries of a qualified first deed of trust or mortgage executed in connection with the sale of the Property must sign an Option to Purchase ("Exhibit A"), acknowledging the provisions of the Covenant and granting a right to the County or RHA to purchase the unit in a foreclosure under certain conditions. The Option to Purchase shall also grant the County or RHA or its successor, the right and option to purchase the Property for the Maximum Sale Price in the event the Property is owned by a Non-Qualified Owner. This option may be exercised by delivery of notice of intent to purchase to the Non-Qualified Owner(s) within a period of fifteen (15) calendar days after receipt of any written notice of sale submitted to RHA by the Non-Qualified Owner(s); and closing of the sale within sixty (60) days of delivery of notice of intent to purchase.

**8. Default in Payments by Declarant.** It shall be a violation of this Covenant for Owner to fail to timely pay any taxes due, or default in payments or other obligations due or to be performed under any promissory note secured by a first deed of trust or other security instrument encumbering the Property subject to these covenants. Owner shall immediately notify RHA in writing of any notification received from taxing authorities or a lender of past due payments or default in payment or other obligation due regarding the Property, or to be performed under a promissory note secured by a first deed of trust or other security instrument, within five (5) calendar days of Owner's notification of said default or past due payments.

Upon notification from Owner or other notice of such default, RHA may offer loan counseling or distressed loan services to the Owner, if any of these services are available; and

may require the Owner to sell the Property to avoid the commencement of foreclosure against the Property. In the event RHA determines a sale is necessary, Owner shall immediately offer the Property for sale according to the provisions of Paragraph 5. If a sales contract has not been executed within the forty-five (45) day period, Owner shall continue to offer the Property for sale for an additional 180 days, provided such extension does not conflict with the statutory rights of any secured creditor. In the event of an offering of the Property for sale pursuant to this Paragraph, RHA is entitled to require Owner to accept the highest of any qualified bids which satisfies Owner's financial and other obligations due under the promissory note secured by a first deed of trust, and any first deed of trust in favor of the County or RHA as described herein, and to conclude the sale to such qualified bidder. The County and RHA reserve the right to purchase the Property in the event no acceptable bid is otherwise made during the listing period.

Upon receipt of any notice of default as provided herein, the County and/or RHA shall have the right, in their sole discretion, to cure the default or any portion thereof. In such event, Owner shall be personally liable to the County or RHA, for amounts so paid by County and/or RHA together with interest thereon at the rate specified in the promissory note secured by the first deed of trust, plus one percent (1%), and all actual expenses of the County or RHA incurred in curing the default. Owner shall execute a promissory note secured by a first deed of trust encumbering the Property in favor of the County and/or RHA for the amounts expended by the County or RHA as specified herein, including future advances made for such purposes. Owner may cure the default and satisfy its obligation to the County or RHA under this subparagraph at any time prior to execution of a contract for sale, upon such reasonable terms as specified by RHA. Otherwise, Owner's indebtedness to the County or RHA shall be satisfied from the Owner's proceeds at closing.

**9. Disputes.** All disputes between Owner and the administrative staff of the RHA arising from the terms and conditions of this Covenant shall be heard and finally determined by the Board of Directors of RHA.

**10. Violation, Notice and Cure.** In the event a violation of this Covenant is discovered, RHA shall send a notice of violation to Owner specifying the nature of the violation and allowing Declarant thirty (30) days to cure. Said notice shall state that Owner may request a hearing before the RHA to determine the merits of the allegations. In order to request a hearing, a letter must be submitted to RHA staff no later than fifteen (15) days from the date of the notice of violation, stating the request. The Owner shall submit any additional information relevant to the alleged violation requested by RHA staff. A hearing will then be scheduled in a timely manner, within 30 days of the RHA receiving the request. If no hearing is requested and the violation is not cured within the thirty (30) day period, the Owner shall be considered to be in violation of this Covenant. If a hearing is held before the RHA, the decision of the RHA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

**11. Remedies.** There is hereby reserved to the parties hereto any and all remedies provided by law or in equity, including but not limited to specific performance, for violation of this Covenant. In the event of litigation, which arises out of a dispute concerning any of the

provisions of this Covenant or a violation of this Covenant, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

**11.1 Non-complying Sales.** In the event the Property is sold, transferred and/or conveyed without compliance herewith, such sale and/or conveyance shall be wholly null and void and shall confer no right, title or interest whatsoever upon the purported buyer or transferee. Each and every conveyance of the Property for all purposes shall be deemed to include and incorporate by this reference the covenants herein contained, even without reference therein to this Covenant.

**11.2 Failure to Cure.** In the event that Owner fails to cure any violation, Beneficiaries may resort to any and all available remedies, law or in equity, including, but not limited to, specific performance of this Covenant or a mandatory injunction requiring the sale of the Property by Owner as specified in Paragraph 5. The costs of such sale shall be paid out of the proceeds of the sale with the balance being paid to Owner.

**11.3 Violation Fixes Resale Price.** In the event of a violation of any of the terms or conditions contained herein by Owner, his heirs, successors or assigns, the sales price of the Property as set forth in Paragraph 4 shall, upon the date of such violation as determined by RHA, automatically cease to increase as set out in Paragraph 4 above, and shall remain fixed until the date said violation is cured.

**12. Release of Covenant In Event of Foreclosure or Deed In Lieu.** If Applicable, pursuant to that form of Option to Purchase, Exhibit A hereto, the terms of which are incorporated into this Covenant by this reference as if fully set forth, County and RHA may acquire the Property in the event of a foreclosure on a promissory note secured by a first deed of trust or mortgage, or the acceptance by the holder of such note and deed of trust, or mortgagee, of a deed in lieu of foreclosure for the Property. In the event the mortgagee or holder of the promissory note and first deed of trust is issued a public trustee's deed, or a deed following a judicial foreclosure, or has recorded a deed in lieu of foreclosure for the Property and neither the County nor the RHA exercises the option to purchase, RHA shall cause to be recorded in the records of the Clerk and Recorder for San Miguel County a full and complete release of this Covenant. Should the public trustee's deed be issued to any person or entity other than the holder of the first deed of trust or their assignee, this Covenant shall not be released or terminated. Should the County or RHA exercise the option pursuant to the terms of that certain Option to Purchase described above, the County or RHA may sell the Property to Qualified Owners, or rent same to Qualified Employees (as defined in the Guidelines) until sale to a Qualified Owner is effected.

**13. Covenant Program Administration Fee.** Upon closing of any sale of the Property, the seller shall pay RHA a Covenant Program Administration Fee, as set forth in the Guidelines. This fee shall be paid directly to RHA from the proceeds of sale at closing by the closing agent.

**14. Covenant as Encumbrance.** This Covenant constitutes an interest in real property, entitling Beneficiaries to all the rights and privileges under Colorado law, such as notice, cure and redemption.





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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by Shirley L. Diaz as Executive Director of the San Miguel Regional Housing Authority, a multijurisdictional housing authority.

WITNESS my hand and official seal. My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**CERTIFICATION OF SAN MIGUEL COUNTY HOUSING AUTHORITY**

Pursuant to the terms of the foregoing Affordable Housing Covenant and Covenants, **XXX** is hereby certified as a “Qualified Owner”.

**SAN MIGUEL COUNTY HOUSING AUTHORITY**

By: \_\_\_\_\_  
Executive Director of San Miguel Regional Housing Authority, as agent for San Miguel County Housing Authority

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Shirley L. Diaz, Executive Director, on behalf of the San Miguel Regional Housing Authority.

WITNESS my hand and official seal. My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public