

San Miguel County Guidelines For the Affordable Housing Covenant, Equitable Servitude, and Real Covenants (“Guidelines”)

Section 1: Purpose To provide housing affordable to specific income groups in San Miguel County (the “County”) in an effort to provide marketable affordable housing. Properties (herein after referred to as “Affordable Housing Units”) restricted under the County’s “Affordable Housing Covenant, Equitable Servitude, and Real Covenants” (hereinafter referred to as “Covenant”) are intended to remain affordable to specific income groups in the future through a fixed appreciation value and the terms of the Covenant. Further, the purpose of the Covenant is to provide an affordable housing opportunity to Qualified Owners, Qualified Employees and their families, and it is not intended to provide a free market investment value.

Section 2: Applicability These Guidelines apply to all properties restricted under the Covenant.

Section 3: Income and Asset Targets Consistent with the intent of the Covenant, units created under the Covenant are intended to be affordable to San Miguel County households earning at or below 80% of Area Median Income as defined by the U.S. Department of Housing and Urban Development. Upon the County’s request, the San Miguel Regional Housing Authority (the “RHA”) has provided the County with recommended Affordable Housing Guidelines, having gathered information from the most recent housing needs assessment that identifies and prioritizes targeted income groups.

INCOME, ASSET, RENTAL, AND OWNERSHIP QUALIFICATIONS:

- 3.1 A Qualified Employee, as defined in Section 6 herein, shall be subject to the following limitations in order to be eligible to rent an Affordable Housing Unit:
 - a. At least 75% of an Employee’s income must be derived from employment in San Miguel County; and
 - b. A Employee’s total personal net worth (including, but not limited to, ownership or beneficial interest in a business, bank accounts, investments such as bonds, stocks or mutual funds, trust funds, and real property) cannot exceed two times the purchase price of the unit (excluding non-occupant co-borrowers); and
 - c. An Employee cannot own or have any interest in improved residential real property that can be legally used as a residence in San Miguel County, Montrose County, Ouray County or Dolores County, Colorado.

- 3.2 A Qualified Owner, as defined in Section 6 herein, shall be subject to the following limitations in order to be eligible to own an Affordable Housing Unit:
 - a. At least 75% of a Qualified Owner’s income must be derived from employment in San Miguel County; and

- b. A Qualified Owner's total personal net worth (including but not limited to ownership or beneficial interest in a business, bank accounts, investments such as bonds, stocks or mutual funds, trust funds, and real property) cannot exceed two times the purchase price of the unit (excluding non-occupant co-borrowers); and
- c. A Qualified Owner cannot own or have any interest in improved residential real property that can be legally used as a residence in San Miguel County, Montrose County, Ouray County or Dolores County, Colorado.

3.3 Ownership of Affordable Housing Units is limited exclusively to:

- a. Qualified Owners and their spouses; or,
- b. the original developer of the project in which the unit is located; or,
- c. the San Miguel Regional Housing Authority, San Miguel County Housing Authority, or their successors or assigns.

3.4 Use and occupancy of Affordable Housing Units is limited exclusively to:

- a. Qualified Owners and their families; or,
- b. Qualified Employees.

SECTION 4: SALE STANDARDS Affordable Housing units which are offered for sale must be sold to one or more Qualified Owners.

4.1 In no case shall permitted capital improvements exceed ten percent (10%) of the Original Sales Price. All permitted capital improvement items and costs shall be approved by RHA prior to being added to the Maximum Sales Price.

4.2 The Original Sales Price of a unit shall be stated in the unit's Covenant.

4.3 The method for-calculating a resale price shall be specified in the Covenant for each unit, whose language shall be the final determination of resale price.

4.4 Sellers of Affordable Housing units have the following options for advertisement and marketing of their units:

- a. Seller may list the unit with a real estate broker licensed to do business in the State of Colorado; or,
- b. Seller may offer the unit for sale through RHA, subject to RHA's consent, who will either make the unit available to persons on an existing waiting list, or advertise the unit for sale on a general basis. In this case, the Seller shall pay RHA a fee equal to 2% of the sale price of the unit, in addition to the normal fees due to RHA according to the Covenant.

4.5 In the event that option 4.4.b. above is chosen by the Seller, RHA staff will be acting on behalf of RHA. It must be clearly understood by and between the parties to a sales transaction that RHA staff members are not acting as licensed brokers to

- the transaction, but as representatives of RHA and its interests. They shall nevertheless attempt to help both parties to consummate a fair and equitable sale in accordance with the current Guidelines.
- 4.6 Sellers of Affordable Housing are advised to consult with RHA staff prior to offering an Affordable Housing unit for sale, in order to obtain the most current information about the Housing Guidelines, and to verify the allowed maximum sale price of the unit and other applicable provisions of the Covenant concerning the sale. Actual notice of intent to sell an Affordable Housing unit must be given in writing to RHA at least 60 days prior to the sale of the unit.
 - 4.7 All Sellers and Purchasers of Affordable Housing units are advised to consult independent legal counsel regarding the examination of title and all contracts, agreements and title documents. The retention of such counsel, or related services, shall be at purchaser's and seller's own expense. All fees due to RHA shall be paid regardless of any action or services that the purchaser or seller may undertake or acquire.
 - 4.8 RHA advises, but does not require, that a local title company with experience in closings of Affordable Housing property be used to close the sale transaction. The title documents involved in a closing of Affordable Housing are unique and technical, and considerably more difficult to correct an improperly closed transaction can be avoided by use of an escrow and closing agent experienced in such transactions.
 - 4.9 At the closing of the sale, the seller will pay to RHA a Covenant Program Administration Fee equal to one percent (1%) of the sales price (in addition to the fee due to RHA if the seller has chosen to advertise the unit through RHA as in 4.4.b above). RHA may instruct the title company to pay such fees out of the funds held for the seller at closing.
 - 4.10 Qualified lenders who are beneficiaries of a qualified First Deed of Trust executed in connection with the sale of an Affordable Housing Unit must sign an Option to Purchase, acknowledging the provisions of the Covenant and granting a right to San Miguel County or San Miguel Regional Housing Authority, as agent for the San Miguel County Housing Authority, to purchase the unit in a foreclosure under certain conditions.
 - 4.11 Owners of Affordable Housing shall have the right to appeal for full or partial relief from the allowed sale price. Any appeal must be based on demonstrated financial hardship resulting from facts or circumstances beyond the reasonable control of the Owner and shall be heard by the RHA Board of Directors.

SECTION 5: COVENANT FORM AND PROCESS The developer of any newly constructed Affordable Housing unit must execute and deliver the original recorded copy of the Covenant in RHA's standard form prior to issuance of Certificate of Occupancy.

The Covenant and any amendments thereto must be recorded in the property records of San Miguel County. The original executed and recorded documents must be returned to RHA for their files.

- 5.1 The Covenant shall specify the allowed sale price for each Affordable Housing Unit. Also included will be the allowed increase rate for the Sale Price. RHA does not make any guarantees of the developer's ability to sell the Affordable Housing unit for its allowed price.
- 5.2 Subsequent purchasers of Affordable Housing units must execute an Acknowledgment of Covenant prior to closing the purchase of an Affordable Housing unit. Should an Affordable Housing unit be sold for less than its allowed price, the actual sale price shall become the basis for the future resale price.
- 5.3 The Covenant shall be approved by Fannie Mae for financing purposes. As part of this approval, the Covenant shall contain a provision which requires the Covenant to be canceled by San Miguel County, San Miguel County Housing Authority, and its designated and authorized agent, RHA, in the event of a foreclosure or issuance of a deed in lieu of foreclosure.
- 5.4 If Fannie Mae (FNMA)-type financing is used to purchase an Affordable Housing Unit an Option to Purchase shall be granted, with the consent of the borrower and the Lender who is secured by the first deed of trust, to RHA and/or San Miguel County to redeem the Affordable Housing Unit in the event of default by purchasing the unit from the holder of the trustee's deed at the redemption price plus actual costs of the holder. If neither RHA nor San Miguel County exercise this Option within 30 days after issuance of the Trustee's Deed, the Covenant shall be canceled by San Miguel County, San Miguel County Housing Authority, and RHA.

SECTION 6: EMPLOYEE QUALIFICATIONS, OWNERSHIP, OCCUPANCY STANDARDS AND VERIFICATION PROCESS The County has adopted the following procedures and qualifications for ownership and occupancy of Affordable Housing Units created under the Legislation.

- 6.1 A "Qualified Employee" is a person who meets the income and asset guidelines as set forth in Section 3 of these guidelines and who:
 - a. maintains primary and sole residence in San Miguel County, Montrose County, Ouray County or Dolores County and has been employed, on average, a minimum of 30 hours per week in San Miguel County for at least eight months of the past twelve months or who can demonstrate, to the satisfaction of SMCHA or RHA, an intent to be employed in San Miguel County for at least eight months within the next twelve months. A Qualified Employee must continue to meet all standards of eligibility during the entire time the property or unit is occupied by the employee; or,

- b. is Elderly (60 years of age or older), Handicapped or Disabled (verification required from the Social Security Administration or San Miguel County Social Services) and who has been a San Miguel County resident for at least 12 months immediately prior to the effective date of a lease or rental agreement or the closing date of a sale.

6.2 “Qualified Owner” shall mean a natural person who acquires or possesses an ownership interest in an Affordable Housing Unit in compliance with the terms and provisions of the Covenant 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. Except as otherwise provided herein, a “Qualified Owner” is a natural person who meets the income and asset qualifications in Section 3 of these Guidelines, and who:

- a. maintains primary and sole residence in San Miguel County, Montrose County, Ouray County or Dolores County and has been employed, on average, a minimum of 30 hours per week in San Miguel County for the past twelve months immediately prior to purchasing the property; or,
- b. is Elderly (60 years of age or older), Handicapped or Disabled (verification required from the Social Security Administration or San Miguel County Social Services) and who has been a San Miguel County resident for at least 12 months immediately prior to the closing date of a sale.
- c. Upon purchase of an Affordable Housing Unit, a Qualified Owner must make the unit his primary and sole place of residence.

6.3 “Qualified Employee Builder” shall mean any person who owns an Affordable Housing unit, has met the qualifications in Sections 3 and 6 herein, and desires to purchase undeveloped property (free market or deed restricted) in San Miguel County for the purpose of building a unit to be used as his primary residence once completed. A Qualified Employee Builder shall not be considered to be in violation if:

- a. he continues to maintain the Affordable Housing unit as his primary residence during construction; and,
- b. he has a current building permit; and,
- c. he completes construction, moves, and sells the Affordable Housing unit during a two year time period, which starts when the Qualified Employee Builder takes title to the undeveloped property.

If, at any time, the Qualified Employee Builder does not comply with (a), (b), or (c) above, he shall be considered to be in violation.

- 6.4 RHA will verify an applicant's income, occupancy, residency and employment. RHA will require payment of an application fee established by the RHA. RHA will require a sworn statement of the facts of the Employee's situation.
- 6.5 Any material misstatement of fact or deliberate fraud by the Employee in connection with any information supplied by the Employee to RHA shall be cause for forced sale of the unit.
- 6.6 RHA may grant exceptions to the criteria in these Guidelines for demonstrated hardship. Employees who wish to apply for an exception may do so by stating their case in writing and paying a \$100 application fee to RHA.

SECTION 7: AMENDMENTS Amendments to these Guidelines shall be made according to the following procedure:

- 7.1 RHA shall recommend amendments to the San Miguel County Housing Authority for its consideration and approval. Such amendment will be presented in form of a written resolution of the RHA Board of Directors. An RHA Board member or RHA Staff may propose such amendment.
- 7.2 The RHA shall consider such amendment in a timely manner, and shall report to San Miguel County Housing Authority its finding on the proposed amendment and recommending adoption, adoption with conditions or rejection of the proposed amendment.
- 7.3 Upon receiving RHA's report on the proposed amendment, the San Miguel County Housing Authority shall conduct a public hearing of the proposed amendment and either adopt, adopt with amendments or reject the proposed amendment. The public hearing on the proposed amendment shall be considered in a timely manner.
- 7.4 The RHA has reviewed these Guidelines during the calendar year of 2002 and will review them again at least every second year thereafter, and make a report to the San Miguel County Housing Authority regarding the effectiveness of the Legislation and the Guidelines in achieving the goals for which they were created, and including any changes recommended in either the Legislation or the Guidelines.