

## 5-1304 R-1 Housing Deed Restriction

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

5-1304            Deed Restriction

Subject Property: (Legal Description) ("Property")

The ownership of the Property is hereby limited exclusively to Employees and their spouses maintaining primary and sole Residence in San Miguel County, Montrose County, Ouray County or Dolores County, Colorado, and to certain other persons and entities as permitted in Section 5-1305 of the San Miguel County Land Use Code, and the use and occupancy of the Property is hereby limited exclusively to such Employees who earn their incomes primarily within the Telluride R-1 School District and their spouses and children. Ownership, use and occupancy of the Property is subject to such definitions, exceptions and qualifications specified in Section 5-1305 of the San Miguel County Land Use Code, including but not limited to the following:

In the event Affordable Housing is sold, transferred and/or conveyed without compliance with Section 5-1305 of the San Miguel County Land Use Code, such sale, transfer and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of Affordable Housing, for all purposes, shall be deemed to include and incorporate by this reference all terms of that certain Section 5-1305, including but not limited to those provisions governing the sale, transfer or conveyance of property.

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

Notwithstanding the foregoing, this Deed Restriction shall automatically terminate upon the failure to exercise the Option to Purchase the Property granted in any Option to Purchase Affordable Housing by and between the San Miguel County Housing Authority

and the holder of a first mortgage and subsequent issuance of a public trustees deed to the holder of a promissory note or governmental agency guaranteeing, insuring or acquiring the note (except San Miguel County, the Housing Authority or any successor, a Project Developer as defined in the Land Use Code or any non-profit affordable housing corporation) secured by a first deed of trust encumbering the Property. The date of termination shall be the date of recording the Public Trustee's Deed conveying the Property.

In addition, San Miguel County expressly reserves the right to terminate this Deed Restriction as to the Property upon recording a Termination Agreement in the office of the Clerk and Recorder of San Miguel County executed by all of the then owners of the Property and the Board of County Commissioners.

### **5-1305 Guidelines, Rules and Regulations Governing Affordable Housing in the Telluride R-1 School District**

#### 5-1305 A. Purpose

This Section shall govern the ownership, use and occupancy of Affordable Housing in the Telluride R-1 School District of San Miguel County, including all "Employee Apartment" and "Employee Dormitory" dwelling units (defined on the Final Plat for Filing 1, Telluride Mountain Village) platted prior to the adoption of the Land Use Code. These guidelines, rules and regulations are intended to help preserve a sufficient supply of Affordable Housing to meet the needs of locally employed residents in the Telluride R-1 School District while allowing customary free-market (unrestricted) practices to influence sale and rental of Affordable Housing as much as possible. The Housing Authority may adopt less restrictive regulations than those that follow in this Section 5-1305, on a temporary basis only, to address extenuating circumstances as necessary to achieve the purpose of the County R-1 Housing Deed Restriction.

#### 5-1305 B. Definitions

- I. "Acknowledgement of Deed Restriction" shall mean that document executed by the Owner of Affordable Housing in which the Owner acknowledges and agrees to comply with the Deed Restriction (see Section 5-1305 F.V.).
- II. "Acquisition Costs" shall mean the aggregate of:
  - a. "Original Purchase Price," which is the gross amount paid by the Owner to acquire the Property; plus
  - b. "Initial Construction Costs," which is the gross amount paid by the Owner both to construct a dwelling unit on unimproved Affordable

Housing Property and to obtain a certificate of occupancy for such dwelling unit; plus

- c. "Home Improvements Costs," which is the gross amount paid by the Owner for improvements to such dwelling unit after issuance of certificate of occupancy, not to exceed 10 percent of the aggregate of the Original Purchase Price plus Initial Construction Costs.
- III. "Affordable Housing" shall mean residential lots and dwelling units restricted by the County R-1 Housing Deed Restriction (Section 5-1304), to ownership by Employees and their spouses and by Project developers and owners of Multi-family Units, and to use and occupancy by Employees and their spouses and children.
- IV. "Affordable Housing Project" shall mean all the Affordable Housing granted approval by a single preliminary plat approved by the San Miguel County Board of Commissioners.
- V. "Certificate of Qualification" shall mean that document in which the Housing Authority certifies an Owner as a Qualified Owner or an occupant as an Employee according to the Deed Restriction (see Section 5-1305 F.V.).
- VI. "Deed Restriction" shall mean Land Use Code Section 5-1304.
- VII. "Employee" shall mean a person who has earned his living primarily within the Telluride R-1 School District by having worked there an average of 30 hours per week for at least eight months of the past year and maintains primary and sole Residence in San Miguel County, Montrose County, Ouray County or Dolores County. The Housing Authority shall determine whether a person qualifies as an Employee based on criteria including, but not limited to, percent of income earned within the Telluride R-1 School District, place of voter registration, place of automobile registration, drivers license address, income tax records and public service involvement within the Telluride R-1 School District community. A person not otherwise meeting the definition of Employee may be qualified as an Employee by the Housing Authority or its designee if that person is more than 60 years of age and has been employed in the Telluride R-1 School District for at least five out of the previous eight years. Determination of Employee eligibility by the Housing Authority's designee may be appealed to the Housing Authority.
- VIII. "Home Improvement Costs" shall mean only those costs associated with improvements or fixtures erected, installed or attached as permanent, functional, non-decorative features of the Property, for purposes of

conserving energy or water, benefiting seniors or disabled persons, protecting health and safety, or adding to or finishing permanent storage or living space. Home Improvement Costs shall not cover repair, replacement or maintenance; landscaping, hot tubs, steam showers, saunas or similar features; modifying decks or balconies; upgrading appliances, plumbing, mechanical fixtures, carpets or other interior items included in original construction; and installing or upgrading decorative features including lights, window coverings and similar items. The Housing Authority must approve all items proposed for inclusion under Home Improvement Costs.

- IX. "Housing Authority" shall mean the San Miguel County Housing Authority established by the San Miguel County Board of Commissioners or its successors.
- X. "Live-work Housing" shall mean a multi-family structure located within the Low Intensity Industrial (I) Zone containing Affordable Housing dwelling units, and industrial space. The number of industrial units may not exceed the number of Affordable Housing dwelling units in each structure.
- XI. "Non-occupant Owner" shall mean a person, group or entity that owns one or more Affordable Housing Multi-family Units pursuant to Land Use Code Section 5-1305 C.IX.
- XII. "Option to Purchase" shall mean the Option to Purchase Affordable Housing agreement which may be entered into by and between San Miguel County, the Owner and the holder of a first mortgage that grants the Housing Authority the right to acquire the Subject Property in event of a foreclosure (see Section 5-1305 F.V.).
- XIII. "Owner" shall mean an Employee, Project Developer or Housing Authority holding fee title to Affordable Housing.
- XIV. "Project Developer" shall mean a person, group, organization, agency or other entity holding fee title to Affordable Housing and to which either:
  - a. Final Plat approval for Affordable Housing is granted by the San Miguel County Board of Commissioners;
  - b. Development Permit approval for an entire Affordable Housing project is granted by the San Miguel County Planning Director;
  - c. An entire Affordable Housing Project is wholly sold, conveyed or otherwise transferred by a Project Developer in accordance with the provisions of the Section 5-1305;

- d. Fee title to an "Employee Apartment" or "Employee Dormitory" unit in the Telluride Mountain Village has been legally conveyed;
- e. Land zoned for Affordable Housing is sold, conveyed, or otherwise transferred for the purpose of constructing Affordable Housing for resale to qualified Employees in conformance with a contractual agreement with the Housing Authority executed prior to such sale, conveyance or transfer; or
- f. Land zoned for Affordable Housing is sold, conveyed, or otherwise transferred for the purpose of constructing Affordable Housing for resale to qualified Employees in conformance with a contractual agreement with the Housing Authority executed prior to such sale, conveyance or transfer. Notice is hereby given that if the Housing Authority has reasonable cause to believe that a Project Developer under this definition is not actively developing and marketing lot(s) and/or unit(s) in conformance with such contractual agreement, the Housing Authority may purchase the lot(s) and improvements at the same price the Project Developer paid, plus any other remedies included in a specific contractual agreement. In the event the original lot has been subdivided and partially sold, the Housing Authority may pay a prorated amount based on the price the Project Developer paid.

XV. "Property" shall mean the real estate subject to the R-1 Housing Deed Restriction and the improvements thereon.

XVI. "Qualified Owner" shall mean:

- a. an Employee, Project Developer, or Non-occupant Owner whose right to own Affordable Housing has been certified by the Housing Authority, or
- b. the Housing Authority, San Miguel County or the Town of Telluride.

XVII. "Residence" shall mean the principal or primary home or place of abode of a person, meaning that home or place of abode in which a person's habitation is fixed and to which he, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. A Residence is a permanent building, or part thereof, including a house, condominium, apartment, room in a house or mobile home. No vacant lot shall be considered a Residence.

- a. In determining what is the principal or primary place of abode of a person, the following circumstances relating to such person may be

taken into account: Business pursuits, employment, income sources, residence for income or tax purposes, age, marital status, Residence of parents, spouse and children, if any, leaseholds, situs of personal and real property, voting registration and motor vehicle registration.

- b. A person shall not be considered to have gained residence in San Miguel County, Montrose County, Ouray County or Dolores County, Colorado while retaining his home or domicile elsewhere. If a person moves to any location outside San Miguel County, Montrose County, Ouray County or Dolores County, Colorado he shall be considered to have lost his Residence in San Miguel County, Montrose County, Ouray County or Dolores County, Colorado.

5-1305 C. Ownership, Use and Occupancy Regulations

- I. The ownership of Affordable Housing shall be limited exclusively to Employees and their spouses and to Project Developers and Non-occupant Owners, the Housing Authority or its designee, the San Miguel County Board of Commissioners and the Town of Telluride.
- II. No Employee shall be permitted to own or occupy Affordable Housing if such Employee, such Employee's spouse or such Employee's dependent owns any material interest, direct or indirect, in a "Single-family Residence," "Condominium" or "Lot" zoned for "Residential Use" (as such terms are defined in Article 6 of this Land Use Code) located elsewhere in San Miguel County, Montrose County, Ouray County or Dolores County. This prohibition includes partial or full corporate ownership established for the purpose of evading this provision or to provide beneficial interest sufficient to permit use and occupancy by the owner or part owner. In addition, Affordable Housing Single-family Residences and Duplexes must be owner-occupied and may not be rented, except as permitted by the Housing Authority pursuant to Section 5-1305 G.I.
- III. The use and occupancy of Affordable Housing shall be limited exclusively to Employees, their spouses and children and other immediate family members.
- IV. An Affordable Housing unit shall be the primary and sole Residence of the occupying Employee(s).
- V. A Qualified Owner shall sell Affordable Housing only to a Qualified Owner and shall rent or otherwise limit occupancy of Affordable Housing only to Employees.

- VI. An Employee shall not engage in any business activity in Affordable Housing other than Home Occupations, as defined in this Code.
- VII. An Owner shall occupy or rent Affordable Housing only in accordance with this Section 5-1305 and shall not allow Affordable Housing to be used, sold or otherwise transferred for use in a trade or business.
- VIII. The terms of this Section 5-1305 of the San Miguel County Land Use Code shall constitute covenants running with the Property, as described in the R-1 Housing Deed Restriction (Section 5-1304 A.), as a burden thereon, for the benefit of, and shall be specifically enforceable by, the San Miguel County Board of Commissioners or its designee, by any appropriate legal action including but not limited to specific performance, injunction, eviction of non-complying owners and/or occupants, and/or by any of the enforcement and remedy provisions of Section 1-16 of this Land Use Code.
- IX. Any person, group, organization, agency or other entity may own one or more Affordable Housing "Multi-family Units" (as defined in Article 6 of this Land Use Code). Ownership of Multi-family units shall be subject to the Owner limiting occupancy of the Affordable Housing Multi-family Unit only to qualified Employees. On or prior to assuming ownership of an Affordable Housing Multi-family Affordable Unit, the Owner shall execute and record an Acknowledgement of Deed Restriction in the property records of San Miguel County.
- X. Free Market Property owned by an applicant shall not be transferred to any other person or persons or other entities for the purpose of evading these regulations.

5-1305 D. Procedure for Qualifying Affordable Housing

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

5-1305 E. Procedure for Purchasing and Occupying Affordable Housing

An Employee may not purchase or occupy Affordable Housing until he has:

- I. Submitted a standard application provided by the Housing Authority with all required documentation to the Housing Authority or its named designee;
- II. Appeared before the Housing Authority or its designee to testify as to the veracity of evidence of employment supplied to the Housing Authority or its designee in a manner proscribed by the Housing Authority or its named designee;
- III. In the case of intended purchase, recorded a copy of the Housing Authority's written certification of the Owner's qualification with the Office of the Clerk and Recorder of San Miguel County. In the case of intended rental occupancy, delivered a copy of the Housing Authority's written certification of the Employee's qualification to the Owner;
- IV. Provided a signed copy of a lease or other occupancy agreement, if the Affordable Housing is rented, to the Housing Authority or its named designee; and
- V. Paid an application fee in an amount set by Board of County Commissioners resolution, to the Housing Authority for processing his qualification application.

5-1305 F. Procedure for Selling and Renting Affordable Housing

- I. No Affordable Housing may be sold or rented without submission of written notice of intent to sell or rent the Affordable Housing to the Housing Authority. Such written notice must be submitted to the Housing Authority or its designee at least 30 days prior to offering or listing for sale or five days prior to leasing of the Property.
- II. In the event an Owner desires to sell Affordable Housing, the Owner may sell the unit himself or list and sell the unit through a real estate broker licensed in the State of Colorado. The Owner or broker, if any, shall promptly advertise the Affordable Housing for sale to qualified Employees. The **seller** shall upon closing of a sale pay a fee to the Housing Authority in an amount equal to one percent of the sales price. This one-percent fee shall include a Deed Restriction Administration fee in an amount set by Board of County Commissioners resolution. If the one-percent fee imposed by this section is not paid when due, that fee, all costs of collection of that fee and interest shall constitute a perpetual lien on the property. The County may foreclose this lien in the same manner as other property tax liens of the County.

- III. In the event an Owner desires to rent Affordable Housing, the Owner may rent the unit himself or rent the unit through a real estate broker licensed in the State of Colorado. The Owner or broker, if any, shall promptly advertise the Affordable Housing for rent to qualified Employees. The Owner shall pay a Deed Restriction Administration fee set by Board of County Commissioner resolution for each Employee signing a lease for an Affordable Housing unit. If the administration fee is not paid promptly upon execution of a lease, that fee, all costs of collection of that fee and interest shall constitute a perpetual lien on the property. The County may foreclose this lien in the same manner as other property tax liens of the County.
- IV. For rentals of Affordable Housing only, the Housing Authority shall qualify an Employee for occupancy based upon demonstration of intent to be employed for at least eight months within the next 12 months. In making a determination about the applicant's intent, the Housing Authority may rely upon evidence including but not limited to: work patterns and written references, income tax records, current employment within the Telluride R-1 School District, percent of income earned from employment sources and public service involvement.
- V. As part of all sales and other transfers of Affordable Housing, the following documents shall be executed and recorded in the Office of the Clerk and Recorder of San Miguel County (in addition to recordation of the Deed Restriction on the appropriate plat for the Subject Property):
  - a. an Acknowledgement of Deed Restriction, in which the Owner acknowledges and agrees to abide by all terms and conditions of the Deed Restriction;
  - b. a Certificate of Qualification, in which the Housing Authority certifies that the Owner is a Qualified Owner under the provisions of the Deed Restriction;
  - c. any other contractual agreements that apply to the Affordable Housing unit that are necessary to evidence the Housing Authority's conditions of approval of the sale.
- VI. If Fannie Mae (FNMA)-type financing is used to purchase an Affordable Housing unit, as determined by the Housing Authority, the Housing Authority shall permit the Owner and the holder of the first deed of trust an Option to Purchase agreement which grants an option to the Housing Authority, San Miguel County, or the Town of Telluride to purchase the Affordable Housing in the event of a default in financing. FNMA-type financing is limited to commercial banking and lending institutions licensed to engage in mortgage lending practices in the State of Colorado.

5-1305 G. Rental Regulations

- I. An Owner may not rent Affordable Housing for any period of time without the written approval of the Housing Authority, as evidenced by a written certification signed by the Housing Authority or the Board of Commissioners or its designee, and such rental shall be subject to the Housing Authority's conditions of approval.
- II. Prior to occupancy of Affordable Housing by an Employee, or any renter, the Employee must be approved by the Housing Authority pursuant to all qualification requirements set forth in this Section 5-1305.
- III. A signed copy of the lease or other occupancy agreement must be provided to the Housing Authority prior to occupancy by an Employee, pursuant to Section 5-1305 E.IV.
- IV. In no case shall the rental deposit required by an Owner exceed twice the monthly rental, and in no case shall an Owner require that the rent for more than one month be paid in advance.
- V. Nothing herein shall be construed to require the Housing Authority or any other entity to protect or indemnify an Owner against any loss attributable to rental, including but not limited to non-payment of rent or damage to Affordable Housing, nor shall the Housing Authority or any other entity be responsible for locating an Employee to occupy Affordable Housing in the event that no Employee occupant is found by the owner.

5-1305 H. Violations

- I. The Housing Authority may require at any time that an Owner verify within five days of such request by the Housing Authority that:
  - a. The Owner is a Qualified Owner and/or
  - b. Any particular tenant is a qualified Employee.
- II. In the event an occupant of Affordable Housing does not or no longer qualifies as an Employee, the Housing Authority may require that occupant to:
  - a. Vacate rental Affordable Housing within 60 days, or re-qualify as an Employee within that period; or
  - b. Vacate Affordable Housing he owns and cause it to be listed for sale pursuant to Section 5-1305 F. within one year, or re-qualify as an Employee within that period.

- III. In the event a violation is discovered, the Housing Authority shall provide a written notice of violation to the Owner detailing the nature of violation. Said notice shall state that the Owner may request a hearing before the Housing Authority within 15 days from the date of notice of violation to determine the merits of the allegations and to discuss remedies of the violation. If the Owner fails to request a hearing, the violation is considered to be conclusively determined.
- IV. Default by an Owner in payments or other material obligations due or to be performed under a promissory note secured by a deed of trust encumbering Affordable Housing ("Secured Obligations") by an Owner shall constitute a violation of this Section 5-1305 and of Section 1-1504 of the San Miguel County Land Use Code. Each Owner shall notify the Housing Authority in writing immediately upon receipt by the Owner or his agent of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a first deed of trust, as described herein, within five calendar days of the Owner's notification from lender, or its assigns, of said default of past payments.

5-1305 I. Remedies

- I. There is hereby reserved to the Housing Authority any and all remedies provided by law and by Section 1-16 of this Land Use Code for violation of this Section 5-1305 or any of its terms. In the event of litigation with respect to any or all provisions of this Section, the prevailing party in such litigation shall be entitled to recover damages and costs, including reasonable attorney's fees.
- II. In the event Affordable Housing is sold, transferred and/or conveyed without compliance with this Section 5-1305, such sale, transfer and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of Affordable Housing, for all purposes, shall be deemed to include and incorporate by this reference all terms of this Section 5-1305, including but not limited to those provisions governing the sale, transfer or conveyance of Property.
- III. In the event an Owner fails to remedy any violation, the Housing Authority may resort to any and all available legal action, including but not limited to injunction or specific performance of this Section 5-1305 requiring the sale of Affordable Housing by the Owner. The costs of such sale shall be charged against the proceeds of the sale, with the balance being paid to the Owner.

IV. Nothing herein to the contrary withstanding, if an Employee Owner of Affordable Housing no longer qualifies to own Deed Restricted housing, based on the definition of Employee in Section 5-1305 B. and/or the Ownership Use and Occupancy Regulations in Section 5-1305 C. and fails to requalify within one year but continues to make all required principal and interest payments on an Affordable Housing ownership unit, he must offer the property for sale, and he must accept a bid equal to or exceeding, the aggregate of his (i) Original Purchase Price, plus (ii) Initial Construction Costs, if any, plus (iii) Home Improvements Costs, if any, not to exceed 10 percent of the aggregate of the Original Purchase Price plus Initial Construction Costs, if any. As used in this Section 5-1305 I.IV., "Original Purchase Price" means the gross amount paid by such Employee Owner to acquire the Affordable Housing ownership unit; "Initial Construction Costs" means, if and only if the Affordable Housing ownership unit when acquired by such Employee Owner was an unimproved lot, the gross amount paid by such Employee Owner to construct a dwelling unit on such unimproved lot and to obtain a certificate of occupancy for such dwelling unit, and "Home Improvement Costs" means the gross amount paid by such Employee Owner for improvements to such dwelling unit after issuance of a certificate of occupancy for such dwelling unit. Real estate commissions, the Real Estate Transfer Assessment (RETA), closing costs, appraisals, and any other costs not approved by the Housing Authority shall not be allowed to be incorporated into the listing price once the one year requalification period has ended. The Owner shall not be required to accept a bid that requires the Owner to carry back any portion of the purchase price by a note. If no bids are submitted that equal or exceed his original purchase price plus proven home improvements, he does not have to accept any, and he, his spouse and/or his children may continue to occupy the unit (without violating the provisions of Section 5-1305 H.II.b.), provided that the Property continues to be offered for sale through a real estate broker licensed in the State of Colorado and any bid equal to or exceeding the Original Purchase Price plus Initial Construction Costs plus Home Improvements Costs is accepted.

5-1305 J. Foreclosure

I. The Housing Authority may require the Owner to sell Affordable Housing that becomes subject to a default in order to avoid commencement of any foreclosure proceeding against the Affordable Housing, regardless of whether the Housing Authority has received notice pursuant to Section 5-1305 H.IV. In the event the Housing Authority determines that sale of the Property is necessary, the Owner shall immediately offer the Property for sale or enter into a Standard Exclusive Right to Sell Listing contract, with price and terms not to exceed prevailing price and terms for similar lots or units in the then-current Affordable Housing market, on forms approved

by the Colorado Real Estate Commission. The seller shall promptly advertise the Affordable Housing for sale to qualified Employees. The seller shall upon closing pay a fee to the Housing Authority of one percent of the sales price. In the event of a listing of Affordable Housing pursuant to this Section, the Housing Authority may require the Owner to sell the Affordable Housing unit or units to an Employee who submits the highest bid that satisfies the owner's Secured Obligations received at least 10 days prior to the expiration of the redemption period.

- II. Pursuant to the specific terms of an Option to Purchase (if this agreement has been offered, accepted and executed between the Owner, the holder of the first deed of trust and the Housing Authority), with and recorded Pursuant to the specific terms of an Option to Purchase, to be executed simultaneously with and recorded immediately subsequent to the first deed of trust, the terms of which are incorporated into this Section 5-1305 by this reference as if fully set forth herein, the Deed Restrictions contained herein shall terminate in the event of foreclosure by the holder of the promissory note secured by a first deed of trust on the respective Affordable Housing and subject to the issuance of a public trustee's deed to the holder of the promissory note or governmental agency guaranteeing, insuring or acquiring the note from the holder, provided that the Housing Authority, the San Miguel County Board of Commissioners and/or the Telluride Town Council is granted an option to acquire the public trustee's certificate of purchase within 30 days after the issuance thereof for an option price not to exceed the sum for which the property was sold at foreclosure sale with interest from the date of sale, together with any taxes paid or other proper charges as provided by law, with interest from the date such expense was paid. Such interest shall be charged at the default rate if specified in the original instrument or, if not so specified, at the regular rate specified in the original instrument. If applicable, in the event the Housing Authority exercises its option to purchase, the Housing Authority may resell or hold, own or rent the Affordable Housing, subject to the provisions of this Section 5-1305.

Notwithstanding the event of foreclosure by the holder of the promissory note secured by a first deed of trust on the respective Affordable Housing, if an Option to Purchase agreement was neither offered nor executed between the Owner, the holder of the first deed of trust, and the Housing Authority, then the deed restrictions contained herein shall not terminate and the property will maintain its restricted status.

- III. In the event that the Housing Authority exercises the option pursuant to the terms of that certain Option to Purchase, described above, and thereafter acquires title to the Property, the Housing Authority and/or its designee may sell the Affordable Housing or rent it to qualified Employees until sale is affected.

5-1305 K. Notices

Any notice, consent or approval required under this Section 5-1305 shall be provided in writing by certified mail, return receipt requested, properly addressed and with postage fully prepaid, to the Housing Authority address provided below or to the Owner at an address provided by that Owner at the time of qualifying Affordable Housing (per Section 5-1305 D.). Addresses may be changed with written notice to all other parties to this Section.

Address for the Housing Authority:

San Miguel County Housing Authority  
c/o San Miguel Regional Housing Authority  
P.O. Box 840  
Telluride, CO 81435

5-1305 L. General Provisions

- I. **Forms of Documents.** All forms of documents referred to in Section 5-1305 F.V. (including the Acknowledgement of Deed Restriction, the Certificate of Qualification and the Option to Purchase) shall be approved by the County Attorney prior to use.
- II. **Further Actions.** The parties to any agreement contemplated under this Section 5-1305 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 Section or any agreement or document relating hereto or entered into in connection herewith.
- III. **Gender and Number.** Whenever the context so requires in this Section 5-1305, 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.
- IV. **Non-discrimination.** No Employee shall be discriminated against on the basis of race, national origin, sex, color, creed or physical infirmity.
- V. **Personal Liability.** The Owner shall be personally liable for any violations of the provisions in Section 5-1305.
- VI. **Severability.** Whenever possible, each provision of this Section 5-1305 shall be interpreted in such a manner as to be valid under applicable law; however, if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating any remaining provision.

- VII. **Successors.** Except as otherwise provided herein, the provisions and covenants contained in this Section 5-1305 shall inure to and be binding upon the heirs, successors and assigns of the parties.
- VIII. **Waiver.** No claim of waiver, consent or acquiescence with respect to any provision of this Section shall be valid against any party hereto, except on the basis of a written instrument executed by the parties to the **R-1 Housing Deed Restriction**. However, the party for whose benefit a condition is inserted shall have the unilateral right to waive such condition.

### **5-1306 Additional Affordable Housing Provisions**

5-1306 A. Purpose of this Section

This Section sets forth additional, temporary rights of ownership and usage of Affordable Housing that may be permitted upon Housing Authority review, which shall not be considered a part of the Deed Restriction. All definitions contained in Section 5-1305 shall apply in this Section 5-1306.

5-1306 B. Project Developer Approvals

The provisions of this Section 5-1306 B. are intended to provide incentives to construct Affordable Housing on unimproved land so zoned.

- I. Any person, group, organization, agency or other entity may apply to the Housing Authority for approval as a Project Developer for construction of one or more Affordable Housing dwelling units.
- II. A prospective Project Developer shall submit a written application to the Housing Authority containing:
- a. the name of the Project Developer;
  - b. a description of the Project, including location, lot number(s), lot size(s), unit size(s), and general construction characteristics;
  - c. a description of financing for the Project, including the name of the lending institution for land and/or construction, terms of the loan and repayment schedule;
  - d. a business and marketing plan for the Project, including plans for resale, name of listing agent, expected time period needed for resale, estimated costs of construction, expected sale price and

profit; or, if the Project is intended for rental, expected rents and proposed management agent; and

- e. qualifications of the Project Developer and any Project contractor(s) or management agent(s).

III. The Housing Authority's designee shall approve a prospective Project Developer as a Qualified Owner if the Housing Authority's designee finds that:

- a. all information required by Section 5-1306 B. has been provided; and
- b. the qualifications of the prospective Project Developer and/or any Project contractor(s) are adequate and sufficient to give reasonable assurance to the Housing Authority that the Project will be completed as contemplated in the application.

IV. Decisions made by Housing Authority's designee in regard to applications made under this Section 5-1306 B. may be appealed to the governing Board of the Housing Authority.

V. Approval of a Project Developer shall be evidenced by a contract executed by and between the Project Developer and the Housing Authority, which shall be recorded as a covenant against the Affordable Housing Property. Such contract shall refer to and incorporate the contents of the Project Developer application as required herein. The form of such contract shall be approved by the County Attorney.

VI. If the Housing Authority has reasonable cause to believe that a Project Developer under this definition is not actively developing and marketing lot(s) and/or unit(s) in conformance with such contractual agreement, the Housing Authority may purchase the lot(s) and improvements at the same price the Project Developer paid, plus any other remedies included in a specific contractual agreement. In the event the original lot has been subdivided and partially sold, the Housing Authority may pay a prorated amount based on the price the Project Developer paid.

5-1306 C. Exceptions to Definition of Employee

I. The Housing Authority may grant exceptions to the definition of Employee at Section 5-1305 B.VII. of the Land Use Code. Applications for exception require payment of the standard fee for One-step County Review as established by Board of Commissioners Resolution adopting or modifying Land Use Application Review Fees.

- II. As a condition of an exception, the Housing Authority may require the execution of a contractual agreement between the Housing Authority and the Employee setting forth the terms of the exception to be recorded as a covenant against the Affordable Housing Property. The form of such contract shall be approved by the County Attorney.
  
- III. Applications for exceptions to Section 5-1305 (except pursuant to Section 5-1306 C.IV. below) shall be heard by the governing Board of the Housing Authority:
  - a. Conditions for exception:
    - i. The Owner of an Affordable Housing Property desires a leave of absence for a specific period for purposes of travel, schooling, temporary job assignment or other reasonable purpose, or;
    - ii. The applicant establishes other compelling circumstances, which shall not include financial hardship, justifying an exception.
  
  - b. Submission Requirements. An application for exception pursuant to this section shall include, at a minimum, an affidavit from the applicant describing the circumstances and reasons why exception is necessary, and shall include the following minimum information:
    - i. Proof and history of employment in San Miguel County;
    - ii. A statement as to whether the applicant owns any other property inside or outside San Miguel County;
    - iii. The nature and extent of the applicant's community commitments and involvement; and
    - iv. A statement describing any change in circumstances warranting an exception.
  
  - c. San Miguel Regional Housing Authority Review. The exception application shall first be reviewed by the San Miguel Regional Housing Authority and a recommendation shall be made to the Housing Authority.
  
  - d. Fee. Applications for exception shall include payment of the standard fee for One-step County Review.

- e. Other Requirements. Any exceptions which may be granted pursuant to this section shall require a written agreement approved by the County Attorney and shall include such terms, security, conditions, remedies as the Housing Authority may require in its sole discretion, including, without limit, measures to ensure compliance with any such agreement. The County may withhold building permits, issue stop work orders, assess penalties, seek specific performance or require improvement agreements or impose other conditions to secure an exception.
- f. Review Standards. All applications must be found, in the sole discretion and judgment of the Housing Authority, to be consistent with the purpose and intent of Section 5-1305 of the Land Use Code.

IV. An exception to the definition of Employee shall be granted to enable listing on the title a co-borrower who is not an Employee, if a co-borrower is necessary for an Employee to qualify for financing to purchase an Affordable Housing Property. Such exception shall be granted upon:

- a. receipt of a letter from the Lender on behalf of the Employee that states:
  - i. the co-borrower's name and relationship to the Employee,
  - ii. a co-borrower is necessary for the Employee to qualify for financing to purchase the Affordable Housing Property in question, and
  - iii. it is necessary for the co-borrower to be listed on the title to the Affordable Housing Property; and,
- b. execution of a contract by and between the Employee, the co-borrower and the Housing Authority providing for sale of the unit in the event the co-borrower takes full title to the Affordable Housing Property for any reason. Such contract shall require that the co-borrower contact the Housing Authority immediately upon taking full title to the Affordable Housing Property. Within 60 days of the date the co-borrower takes full title, the co-borrower must accept a bid equal to or exceeding the Acquisition Cost of the Property as defined in Section 5-1305 B.II. The form of such contract shall be approved by the County Attorney. Application for approval of a co-borrower shall be made to the Housing Authority and shall be subject to such additional Housing Authority conditions as may be in effect at the time of application.