

SECTION 5-13: ACCESSORY DWELLING UNITS AND AFFORDABLE HOUSING

5-1301 General

This section of the Code establishes standards for accessory dwelling and affordable housing.

5-1302 Accessory Dwelling Units

5-1302 A. Applicability

One accessory dwelling unit per lot or parcel may be approved in the HD, MD and LD Zone Districts (only within the Telluride Region as defined in the Telluride Regional Area Master Plan) subject to compliance with the standards in this section. Refer to sections 3-4 and 4-7 for procedures and submission contents.

5-1302 B. Standards

- I. An accessory dwelling unit shall not be:
 - a. Rented for a term less than six (6) months.
- II. An accessory dwelling unit shall:
 - a. Provide off-street parking in compliance with Section 5-702;
 - b. Be limited to a maximum size of eight hundred (800) square feet;
 - c. Be built in accordance with the County's adopted Building Code;
 - d. Be attached to the main residence, unless either no higher than sixteen (16) feet or located within a customary residential accessory building, such as a garage;
 - e. In combination with the principal residence not exceed the maximum allowable floor area of the applicable zone district; and
 - f. Comply with the San Miguel County Sanitation Regulations.
- III. Accessory dwelling units (ADU) that are voluntarily deed-restricted in exchange for an Employee Housing Impact Fee credit shall be subject to the County R-1 Housing Deed Restriction (see Sections 5-1304 and 5-1305) and ADU Deed Restriction Covenant.

5-1303 Affordable Housing in the Telluride R-1 School District

To promote affordable housing, impact mitigation shall be required as a condition of approval pursuant to this Code for the following types of development in the Telluride R-1 School

District: office, restaurant and retail, hotel, residential, multi-family, ski area, and other commercial uses, based on the formulas in this section. "Fee" refers to a monetary amount paid for Residential (single-family and duplex) Development. "Mitigation" refers to required construction of an employee housing unit(s) for Commercial Development, Multi-family and Residential Development if required.

5-1303 A. Office, Restaurant, Retail and other Commercial Development

Office, restaurant, retail and other commercial development has been found to generate 3 employees per 1,000 gross square feet (gsf). Developers of these use types shall mitigate 15 percent of this impact based on the amount of gsf approved pursuant to this Code, as follows:

- I. Each new office, restaurant and retail development shall be required to build deed-restricted housing for one employee for every 2,250 gsf;
- II. No mitigation shall be required for developments of less than 2,250 gsf.

5-1303 B. Hotel Development

The number of employees that need to be housed as impact mitigation for hotel development shall be determined using the following formula (based on the definition of "population density"):

- I. Divide the total number of hotel units by two (2) (to get the equivalent number of condominium units);
- II. Multiply that number by three (3) (to get the residential density equivalent in number of persons; 3 persons per condominium unit); and
- III. Calculate 15 percent of the residential density equivalent (and round down to the nearest whole number) to determine how many employees shall be housed to mitigate 15 percent of the impact of the hotel development.

5-1303 C. Residential Subdivision or Multi-family Development

- I. One of every three lots in each new residential Subdivision shall be deed-restricted using the R-1 Housing deed restriction specified in Section 5-1304 or as approved by the BOCC.
- II. One of every three units in each new Multi-family Development shall be deed-restricted using the R-1 Housing deed restriction specified in Section 5-1304 or as approved by the BOCC.
- III. Subdivisions that previously mitigated their impacts through the provision of deed restricted lots or cash-in-lieu shall be exempt from further mitigation.

5-1303 D. Ski Area Development

- I. Each ski area development that creates new base facilities in San Miguel County shall provide housing for 15 percent of its employees during all seasons; and
- II. For each new ski lift added to an existing ski area, the ski area operator shall provide housing for two ski area employees.

5-1303 E. Size, Location and Occupancy of Mitigation Units

Deed restricted housing constructed as affordable housing may be occupied by any person(s) qualifying under the deed restriction established by these County regulations or as approved by the Board of Commissioners. Families may occupy larger units or portions thereof if at least one member of the family qualifies under the deed restriction, and additional occupants also must qualify under the deed restriction.

- I. Deed restricted housing constructed as affordable housing impact mitigation shall provide:
 - a. At least four hundred (400) square feet of space; and
 - b. Full living, kitchen and sanitation facilities for each employee required to be housed.
- II. Affordable housing units shall be constructed on the site of the primary development, except as allowed by the Board of County Commissioners.
- III. Affordable housing units shall be constructed simultaneously with or prior to the primary development. In residential subdivisions, the required affordable housing lots platted shall be available to qualified employees at the same time that free market lots are offered for sale.

5-1303 F. Summary of Impact Mitigation Standards for Affordable Housing

Development Type	Employees Generated	Mitigation Level	Mitigation Required
Office	3/1,000 gsf	15%	1 / 2,250 gsf
Restaurant	3/1,000 gsf	15%	1 / 2,250 gsf
Retail	3/1,000 gsf	15%	1 / 2,250 gsf
Hotel	1.5/unit	15%	0.225 / unit
Ski Area	Year-round & Seasonal	15%	All Seasons
Residential Subdivisions		37%	1 / 3 lots
Multi-unit Projects		37%	1 / 3 units

5-1303 G. Employee Housing Impact Fee/Mitigation

- I. The employee housing Impact Fee/Mitigation applies to all Development for which a Building Permit application is applied for and approved by the County, unless exempted from payment of the employee housing Impact Fee/Mitigation pursuant to Section 5-1303. G. XI of this Code, or that has otherwise fully mitigated its Employee Housing Impacts in accordance with the applicable LUC provisions. The employee housing Impact Fee/Mitigation applies to:
 - a. the new construction of a Building for which a Building Permit is required under the County's Building Codes;
 - b. the construction of an addition to an existing Building for which a Building Permit is required under the County's Building Code; or
 - c. a change in use where the new use generates more employees than the previous use generated.
- II. The purpose of the employee housing Impact Fee/Mitigation is to require the applicable development to pay to mitigate the impacts of development and land use to the employee housing stock managed or controlled by the County or its authorized designee, the San Miguel Regional Housing Authority.
- III. The employee housing Impact Fee is based on the difference between the free market price of housing in the Telluride Region and the price that is affordable to households with incomes equivalent to the Area Median Income. The method used in calculating the employee housing Impact Fee has been adopted by the Board of County Commissioners based upon research conducted by Planning staff and is contained in Appendix E of this Code.
- IV. The employee housing Impact Fee constitutes a fee of general applicability within the County and as such shall be applicable to all property located within the Telluride R-1 School District in the unincorporated County.
- V. Responsibility for Administration and Collection of Employee Housing Impact Fee. The employee housing Impact Fee will be determined by the County's Building Department or any other entity determined by the Board of County Commissioners to collect such employee housing Impact Fee. The Building Department will determine the Square Footage of Floor Area of a project for purposes of calculating the required employee housing Impact Fee. The Planning Office will make all other determinations and interpretations regarding employee housing Impact Fee administration required to properly implement these regulations,

including, but not limited to, the calculation of any applicable credit as defined in this Code. The County intends to use the money solely for defraying the cost of capital facilities for deed-restricted, affordable housing pursuant to State of Colorado Statute 29-20-104.5.

- VI. When Employee Housing Impact Fee is Calculated and Due. The employee housing Impact Fee shall be a condition of a receipt of a Development Permit and shall be calculated and paid at time of issuance of a Building Permit.
- VII. Calculation of Employee Housing Impact Fee. The employee housing Impact Fee shall be calculated based upon the type of Development authorized to be constructed by the Building Permit, the number of employees generated by the development, and the total Square Footage of Floor Area proposed to be constructed as authorized by the Building Permit.
- VIII. Determination of Square Footage of Floor Area subject to Employee Housing Impact Fee. The determination of the Square Footage of Floor Area of a Building that is subject to the employee housing Impact Fee will be calculated based on the San Miguel County Land Use Code, and the Department's policies, procedures and methods of calculating Square Footage of Floor Area under this Code.
- IX. Mixed Use Buildings. For Buildings that are mixed use (e.g., Commercial/Industrial/Residential Buildings) the employee housing Impact Fee/Mitigation will be applied as follows:
 - a. Residential area (two (2) units or fewer) will be charged the employee housing Impact Fee for Residential Development.
 - b. Commercial area will be required to provide employee housing Impact Mitigation for that Commercial Development, Hotel Development, and Ski Area Development which ever applies.
 - c. Multi-Family Development (three (3) units or more) will be required to provide employee housing Impact Mitigation.
- X. Multiple Types of Buildings on One Lot. All Buildings constructed on the same Lot or Parcel will be charged the employee housing Impact Fee or be required to provide employee housing Impact Mitigation based on the Building Permit issued for each Building.
- XI. Exemptions to the Employee Housing Impact Fee/Mitigation. An employee housing Impact Fee/Mitigation will not be required to be paid or constructed for the following categories of Development:

- a. Any Single-family Residence, Duplex, Multi-family unit or Lot that is Deed-Restricted under the County R-1 Housing Deed Restriction, Covenant or other restriction approved by the Board of County Commissioners is exempt from paying the Impact Fee.
- b. Change of Use. Change of use without adding additional Square Footage of Floor Area or without increasing employee generation as determined herein will not result in the assessment of an employee housing Impact Fee/Mitigation.
- c. Residential or Commercial Remodels. Commercial or Residential interior remodels that do not involve the construction of additional Square Footage or do not increase employee generation as determined herein will not result in the assessment of an employee housing Impact Fee/Mitigation.
- d. Affordable Housing in Subdivisions. Existing or proposed subdivisions that include deed-restricted affordable housing units properly restrained through deed-restrictions from open market sale or use to ensure that it is properly characterized as affordable housing, as such term is defined by this Code, may be given a level of credit to offset or mitigate the total employee housing Impact Fee assessed, unless there is an increase in the density or a change in use that increases employee generation. To evaluate and determine the level of credit assessed, the percent of deed-restricted, affordable housing units will be evaluated in relation to the impact mitigation required of that Development when approved.
- e. Single-family Dwelling less than one thousand eight hundred (1,800) sq. ft. of Floor Area. The Board of County Commissioners finds that residential improvements less than one thousand eight hundred (1,800) sq. ft. are presumed to be occupied by local employees, and only residential improvements with a Floor Area of one thousand eight hundred (1,800) sq. ft. or larger should pay employee housing Impact Fees. This is based on the fact that residential improvements above one thousand eight hundred (1,800) sq. ft. of Floor Area have a strong tendency for non-resident occupancy, and the employee generation for non-resident occupied residential structures (second homes) is significantly greater than that for resident-occupied improvements creating impacts beyond the County's ability to mitigate without a fee assessed for the development.
- f. Other Exemptions. The Board of County Commissioners may grant additional exemptions and waivers of the employee housing

Impact Fee/Mitigation when deemed to be in the public interest due to special circumstances or unique situations where the Development provides community benefit(s), or where the value of such benefit(s) meets or exceeds the mitigation that would otherwise be required.

- XII. Right to Appeal Employee Housing Impact Fee Determination to Board of County Commissioners. Any person aggrieved by the decision of the Planning Office with respect to the administration of the employee housing Impact Fee under this Code will have the right to appeal such decision to the Board of County Commissioners pursuant to the Section 1-1903 of this Code. In addition, a developer may present alternative calculations of employee generation to the Board of County Commissioners for review and consideration.
- XIII. Future Revisions to Employee Housing Impact Fee Regulations. The employee housing Impact Fee regulations may be reviewed periodically and relevant mitigation requirements adjusted as determined appropriate by the Board of County Commissioners.
- XIV. Employee Housing Impact Fee Calculation for Residential Development. The employee housing Impact Fee shall apply to the Development of Residences, as defined in this Code, whose housing impacts have not previously been mitigated. The employee housing Impact Fee also applies to:
 - a. New additions to existing detached Single-family Buildings. The fee shall be assessed only for the additional square footage beyond the one thousand eight hundred (1,800) s.f. exemption threshold;
 - b. New additions to existing Multi-Family Buildings that are two (2) units or less;
 - c. Accessory Dwelling Units (regardless of size), unless the unit is subject to the County R-1 Housing Deed-Restriction (see Sections 5-1304 and 5-1305) and ADU Deed Restriction Covenant; and
 - d. Caretaker units (regardless of size), unless the unit is subject to the County R-1 Housing Deed-Restriction (see Sections 5-1304 and 5-1305) and ADU Deed Restriction Covenant.
- XV. Employee Housing Impact Mitigation Rate. All new Residential Development shall be assessed the Impact Mitigation Rate as set forth in the table below based on the size (square feet of Floor Area) of the unit approved for each Development to mitigate for the employees generated, as shall be amended from time to time by the Board of County Commissioners.

a. Impact Mitigation Rate summary table.

Square Footage		Mitigation Rate
0	1,799	0%
1,800	2,500	30%
2,501	3,000	42%
3,001	4,000	66%
4,001	12,000	90%

XVI. Generation rate of Employees for Single Family Residential and Duplex Dwellings.

a.
$$\text{Generation Rate} = 0.070174(e)^{0.000.322 \times \text{New Floor Area}} + 0.11(\text{New Floor Area}/1000)$$

XVII. Market-Affordability Gap Fee. The formula to calculate the market-affordable price gap involves a three-step process:

- a. Calculate the amount that households in a certain income category can afford to pay for housing.
- b. Determine the market price for housing using available previous home sales data.
- c. Compare market price to the affordable amount calculated to determine the gap. Use conversion factors to express the gap in per-unit, per employee and per square foot amounts.
- d. Appendix E of this Code sets forth the procedures that shall be used by County Planning staff to calculate the Employee Housing Impact Fee, which shall be calculated by April 30 of each calendar year.
- e. Appendix E, Table 2, of this Code sets forth the Impact Fee Calculation each year for residential development.

XVIII. Calculation for the Residential Employee Housing Impact Fee. The amount of Impact fee shall be calculated using the following formula, based on (A) the number of Employees generated by the development, as determined under XVI above (“Employees Generated”), multiplied by (B) the provision of four hundred (400) square feet of space per employee generated by the development as determined under 5-1303 E. I above (“Minimum Mitigation Unit Size”), and multiplied by (C) the Required Employee Housing Mitigation Rate as determined under XV above for single-family and duplex uses, multiplied by (D) the Market-Affordability

Gap Fee per square foot.

Employees Generated X 400 sq. ft. X Required Percentage Mitigation Rate X Market-Affordability Gap Fee Per Square Foot

- XIX. Credit for the construction of a Deed-restricted Accessory Dwelling Unit (ADU) / Caretaker Units that is subject to the County R-1 Housing Deed-Restriction (see Sections 5-1304 and 5-1305) and ADU Deed Restriction Covenant will be granted as follows: Affordable Housing Unit Floor Area to be constructed X Impact Fee/SF. The amount of credit shall not exceed the amount of impact fee owed by residential developer.
- XX. Commercial Development is not required to pay an Impact Fee but is required to provide Affordable Housing Units as determined in Section 5-1303 A., 5-1303 B. and 5-1303 D.
- XXI. Multi-Family Development is not required to pay an Impact Fee but is required to provide Affordable Housing Units as determined in Section 5-1303 C.

The San Miguel County Building Department is responsible for determining the impact fee per Section 5-1303 F. V. above.

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 one hundred (100) years from the date of purchase of the Property as a burden thereon for the benefit of the Board of County Commissioners of San Miguel County, Colorado, or its designee, and shall be binding on the Owner, and on the heirs, personal representatives, assigns, lessees and licensees and any transferee of the Owner. The 100-year term shall begin anew upon each sale, transfer, and/or conveyance. This restriction and covenant shall be administered by the Board of County Commissioners of San Miguel County, Colorado, or its designee, and shall be enforceable by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of non-complying Owners, users or occupants, or such other remedies and penalties as may be specified in Sections 1-16 and 5-1305 of the San Miguel County Land Use Code, or under law.

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 dwelling units in the Telluride Region that are permanently deed restricted by the County's R-1 Housing Deed Restriction to limit use and occupancy to persons (and their families) who live and earn their livings primarily in the R-1 School District of San Miguel County, or such other deed restriction as approved by the BOCC.
- 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.

a. The ownership restriction shall not apply to accessory dwelling units or caretaker units that are accessory to a principal single-family dwelling and deed-restricted pursuant to the requirements of

LUC Section 5-1303 G. XIX.

- 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.

The seller shall not be required to pay the one-percent Deed Restriction Administration fee if the seller has already purchased another County Deed-Restricted Unit or if the seller purchases another County Deed-Restricted Unit no more than six months after closing on the sale of the County Deed-Restricted Unit that the seller is selling. If the seller has not yet purchased another County Deed-Restricted Unit, the seller shall make arrangements, to the satisfaction of the Housing Authority's Designee, to place the one-percent Deed Restriction Administration fee in escrow. The one-percent Deed Restriction Administration fee shall remain in escrow until the first to occur of the following two events:

- (1) The seller purchases another County Deed-Restricted Unit, and has not purchased any material interest in any other residential property in San Miguel, Montrose, Ouray or Dolores County in the interim, in which case the one-percent Deed Restriction Administration fee shall be refunded to the seller; or
- (2) The end of six months after the seller closes on the sale of the County Deed-Restricted Unit that the seller is selling, and the seller has not purchased another County Deed-Restricted Unit, in which case the one-percent Deed Restriction Administration fee shall be paid to the Housing Authority.

- 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. In addition, said notice shall advise the alleged violator of the fine associated with each alleged violation as required by the Schedule of Violations and Fines and any additional opportunity to cure before the fines or consequences escalate. If the Owner fails to request a hearing, the violation is considered to be conclusively determined against the Subject Property Owner and/or Occupant and fines shall continue to accrue until the violation is cured or the maximum fine has been reached.
- 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.

- a. In addition to the remedies provided for in this Section 5-1305 I. Remedies, the Housing Authority shall impose fines for violations as outlined in the Schedule of Violations and Fines as adopted pursuant to Resolution 2021-21 and attached hereto as Exhibit A. Said Schedule of Violations and Fines may be amended from time to time and shall be reviewed every five years or more frequently as determined by the Housing Authority. A copy of the current Schedule of Violations and Fines shall be available at SMRHA and posted on the SMRHA website.

- 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.

**EXHIBIT A
SCHEDULE OF VIOLATIONS AND FINES**

**San Miguel County Housing Authority
APPROVED BY RESOLUTION NO. 2021-021 (SERIES OF 2021)
Effective July 7, 2021**

	Violation	Fine per day	Maximum Fine
1	Failure to submit accurate and all documentation required to establish continued compliance by original deadline set by SMRHA.	\$20.00	\$140.00
2	Failure to submit accurate and all documentation required to establish continued compliance by second deadline set by SMRHA.	\$25.00	\$350.00
3	Failure to submit accurate and all documentation required to establish continued compliance by third deadline set by SMRHA.	\$30.00	\$1,000.00
4	Failure to maintain eligibility (generally).	\$20.00	\$5,000.00
5	Failure to occupy unit as sole and exclusive place of residence.	\$20.00	\$5,000.00
6	Failure to work full-time in the Telluride R-1 School District as required by Deed Restriction and/or Regulations.	\$20.00	\$2,000.00
7	Purchasing and/or owning other developed residential property in violation of the deed restriction.	\$20.00	\$2,000.00
8	Advertising rental without mention of deed restriction status as required by Deed Restriction.	\$20.00	\$2,000.00
9	Failure to get roommate approved prior to move-in.	\$25.00	\$5,000.00
10	Failure to provide SMRHA with copy of signed lease prior to occupancy by roommate or tenant.	\$20.00	\$2,000.00
11	Rental of all or part of a unit in violation of the Deed Restriction, Regulations, and/or the SMC LUC.	\$25.00	\$5,000.00
12	Use of premises for other than residential purposes.	\$100.00	\$5,000.00
13	Using deed restricted property as income producing property.	\$100.00	\$5,000.00
14	Creating an additional dwelling unit as defined in the SMC LUC.	\$100.00	\$5,000.00
15	Failure to obtain approved Leave of Absence (LOA).	\$20.00	\$2,000.00
16	Submitting false/inaccurate information (per offense).	-	\$750.00
17	All other violations not specifically named.	\$20.00	\$2,000.00
	*All Owners shall be given 14 days from Notice of Violation by SMRHA to cure prior to the assessment of fines.		
	*Violation and Fine Schedule will be reviewed and updated every five years or sooner as determined by SMRHA		

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 either as discretionary exceptions, administrative exceptions, or staff exceptions. Applications for discretionary or administrative exceptions 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 discretionary or administrative exceptions, 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 discretionary exceptions to Section 5-1305 shall be heard by the governing Board of the Housing Authority:
 - a. Conditions for discretionary exception:

- i. The Owner of an Affordable Housing Property desires a leave of absence greater than one year 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.

- IV. Applications for administrative exceptions to Section 5-1305 shall be reviewed and may be approved by the Staff of the San Miguel Regional Housing Authority with the consent of the governing Board of the Housing Authority:
 - a. Conditions for administrative exception:
 - i. The Owner of an improved Affordable Housing Property desires a period of time, not to exceed twenty four (24) months from the date of acquisition of the second property, in which to own both an improved Affordable Housing Property and an unimproved Affordable Housing Property with the limitation that the twenty four month period of time is designed to allow the Owner to construct the necessary improvements on the unimproved Affordable Housing Property so that the previously unimproved property is occupied and used by the Owner as the primary residence, provided the Owner sells the improved Affordable Housing Property to a qualified Employee within the twenty four month period. Pursuant to the specific agreement between the Housing Authority and Owner, failure to timely sell the Affordable Housing Property may result in a forced sale, including, but not limited to, the available remedies of Section 5-1305 I. IV;
 - ii. The Owner of an improved Affordable Housing Property desires a period of time, not to exceed twenty four (24) months from the date of acquisition of the second property, in which to own both an improved Affordable Housing Property and an unimproved Free Market Property with the limitation that the twenty four month period of time is designed to allow the Owner to construct the necessary improvements on the unimproved Free Market Property, provided the Owner sells the Affordable Housing Property to a qualified Employee within the twenty four month period. Pursuant to the specific agreement between the Housing Authority and Owner,

failure to timely sell the Affordable Housing Property may result in a forced sale, including, but not limited to, the available remedies of Section 5-1305 I. IV;

iii. The Owner of an improved Free Market Property desires a period of time, not to exceed twenty four (24) months from the date of acquisition of the second property, in which to own both an improved Free Market Property and an unimproved Affordable Housing Property with the limitation that the twenty four month period of time is designed to allow the Owner to construct the necessary improvements on the unimproved Affordable Housing Property so that the property is occupied and used by the Owner as the primary residence, provided the Owner sells the improved Free Market Property within the twenty four month period. Pursuant to the specific agreement between the Housing Authority and Owner, failure to timely sell the improved Free Market Property may result in a forced sale of the Affordable Housing Property, including, but not limited to, the available remedies of Section 5-1305 I. IV; or

iv. The Owner of an unimproved Affordable Housing Property desires a period of time, not to exceed twelve (12) months from the date of acquisition of the second property, in which to own both an unimproved Affordable Housing Property and an improved Affordable Housing Property with the limitation that the twelve month period of time is designed to allow the Owner to move into the improved Affordable Housing Property and to sell the unimproved Affordable Housing Property to a qualified Employee within the twelve month period. Pursuant to the specific agreement between the Housing Authority and Owner, failure to timely sell the Affordable Housing Property may result in a forced sale of either property, including, but not limited to, the available remedies of Section 5-1305 I. IV;

V. Applications for staff exceptions to Section 5-1305 shall be reviewed and may be approved by the staff of the San Miguel Regional Housing Authority for a leave of absence for purposes of travel, schooling, temporary job assignment or other reasonable purpose not to exceed a total of twelve (12) months in any five (5) year period of time.

VI. Submission Requirements. An application for either a discretionary, administrative or staff exception 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.
- a. San Miguel Regional Housing Authority Review. Discretionary and administrative exception applications shall first be reviewed by the Staff of the San Miguel Regional Housing Authority and a recommendation shall be made to the Housing Authority. Pursuant to Section 5-1306 C. V., staff of the San Miguel Regional Housing Authority shall be the reviewing entity for staff level exceptions. Any challenge to a staff exception decision must be filed in writing with the governing Board of the Housing Authority by an affected or aggrieved party to the staff decision within 14 days of the staff decision. In reviewing the appeal, the governing Board of the Housing Authority shall consider the staff decision based on the exception requested by the applicant. The Housing Authority shall affirm the staff decision or take action as it shall deem necessary to remedy the staff decision.
 - b. Fee. Applications for discretionary or administrative exceptions shall include payment of the standard fee for One-step County Review.
 - c. Other Requirements. Any discretionary or administrative 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.
 - d. Review Standards. All applications for discretionary or

administrative exceptions 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.

- VII. 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,
 - 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.