

**AGENDA
OURAY CITY COUNCIL**

Monday, November 18, 2024 - 2:00 PM

**Ouray Community Center
320 6th Ave
Ouray, CO 81427**

Ouray City Council Work Session

- Changes to this agenda can be found on the bulletin board at City Hall
- Electronic copies of the Council Packet are available on the City website at www.cityofouray.com. A hard copy of the Packet is also available at the Administrative Office for interested citizens.
- Notice is hereby given that a majority or quorum of the Planning Commission, Community Economic Development Committee, Beautification Committee, Tourism Advisory Committee, and/or Parks and Recreation Committee may be present at the above noticed City Council meeting to discuss any or all of the matters on the agenda below for Council consideration

1. CALL TO ORDER
2. DISCUSSION ITEMS
 - a. Deed Restrictions Template
 - b. Affordable Housing Density Bonuses

This Form Has Important Legal Consequences and the Parties Should Consult Legal Counsel Before Signing.

DEED RESTRICTION AND COVENANT AGREEMENT
FOR OURAY WATERVIEW HOMES PUD
City of Ouray
Affordable Housing Ownership, Occupancy and Resale

THIS DEED RESTRICTION AND COVENANT AGREEMENT is entered into this _____ day of _____, 202__ (“Effective Date”) by [INSERT NAME OF PURCHASER], (“Declarant”) for the benefit of and enforceable by **OURAY HOMES, LLC**, a Colorado limited liability company with its principal place of business being 220 E. Colorado Ave., Ste 106 Telluride CO 81435, (the Grantor), and each the **CITY OF OURAY**, a Colorado home rule municipal corporation with its principal place of business being 320 6th Ave, Ouray, Colorado, 81427, and **RURAL HOMES, LLC**, a Colorado not for profit limited liability company with its principal place of business being 220 E. Colorado Ave., Ste 106 Telluride CO 81435 (together, the “Beneficiaries”). The Declarant, Grantor, and Beneficiaries are sometimes referred to herein individually as “Party” and collectively as the “Parties.”

Property Subject to Deed Restriction. The following real property (the “Housing Unit”) is hereby made subject to these Covenants:

(INSERT LOT LEGAL HERE)
County of Ouray
State of Colorado.

Commonly known as **(INSERT STREET ADDRESS HERE)**

This Housing Unit has a maximum AMI of _____%.

This Housing Unit has _____ # bedrooms and _____ # bathrooms.

The Original Purchase Price: _____.

RECITALS

WHEREAS, the Declarant is the Owner of the Housing Unit; and

WHEREAS, the Declarant on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, upon purchase or receipt of the Housing Unit, desires and agrees to comply with this DEED RESTRICTION AND COVENANT AGREEMENT (“Covenant”) and the OURAY WATERVIEW HOMES AFFORDABLE HOUSING REGULATIONS AND GUIDELINES (“Guidelines”), recorded at Reception No. _____ in the Ouray Clerk and Recorder’s office, as amended from time to time, and is incorporated herein by reference, and agrees to the restriction in the use of the Housing Unit; and

WHEREAS Grantor owns the real property being sold to Declarant and is a subsidiary of Rural Homes, LLC. It is anticipated that at some future time, Ouray Homes, LLC will no longer exist and that Rural Homes, LLC will remain beneficiaries and parties to this Covenant, along with Declarant and the City of Ouray.

WHEREAS, under this Covenant the Declarant and Beneficiaries intend, declare, and agree that the regulatory and restrictive covenants set forth herein governing the use of the Housing Unit described and provided for herein shall be and are covenants running with the land and are intended to be and shall be binding upon the Declarant and Beneficiaries; and

WHEREAS, this Covenant is intended to provide housing and assist in keeping it affordable for residents, and families, who work at a physical location primarily within the Ouray County boundary, and chose to be part of the greater Ouray County community; and

WHEREAS, Declarant understands that this property has been subsidized by the government and charitable organizations and acknowledges that it has received adequate and valuable consideration in exchange for the imposition of this Covenant upon the Housing Unit.

COVENANT

NOW, THEREFORE, in consideration of the foregoing material Recitals, the mutual covenants, restrictions, and equitable servitudes stated herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby represent and agree as follows:

1. **Covenant Runs with the Land.** These Covenants shall run with title to the Housing Unit, for benefit of, and enforceable by, each Beneficiary and their successors and assigns, and this Covenant shall bind the Beneficiaries and all subsequent Owners and Occupants of the Housing Unit. Declarant, each subsequent Owner, and any Occupant, upon acceptance of a deed or lease to the Housing Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions, and restrictions contained herein during the period of ownership or an Occupant's tenancy. Every Transfer or lease of the Housing Unit, for any purposes, shall be deemed to include and incorporate by reference, the covenants contained in this Covenant. The Beneficiaries shall hold their interest as tenants in common, except that no Beneficiary may sell, transfer or assign their interest in the Covenant without the express written permission of the other Beneficiary, and no Beneficiary shall agree to relieve any Owner or Qualified Occupant of their obligations under the Covenant without the express written consent of the other Beneficiary. If one of the Beneficiaries ceases to exist, that Beneficiary's interest in the Covenant shall be deemed to be assigned to the remaining Beneficiary.
 - 1.1 **Term.** The "Term" of this Covenant shall commence on the Effective Date and shall continue until _____ ("Expiration Date"). Said term of one hundred (100) years shall reset upon every Transfer.
 - 1.2 **Administration and Enforcement.** This Covenant shall be administered by the City of Ouray, its duly authorized designee, or by an entity hired by the City of Ouray. This Covenant shall be enforceable by the City of Ouray, its duly authorized designee, or the Beneficiaries, by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of non-complying Housing Unit Owner(s) or Occupant(s), or such other remedies and penalties as may be specified in this Covenant, including but not limited to the Schedule of Violations and Fines found in the Guidelines.
 - 1.3 **Updated Covenants.** Upon every Transfer, the transferee shall execute the most recent Covenant that has been approved by the City of Ouray at the time of Transfer.
 - 1.4 **Replacement of Prior Agreement.** If applicable, this Covenant shall supersede and replace in its entirety that certain Deed Restriction and Covenant recorded in the official records of the _____ County Clerk and Recorder on [RECORDING DATE] at Reception No. [RECORDING #].

2. **Definitions.** The Parties acknowledge and agree that the definitions contained in the OURAY WATERVIEW HOMES AFFORDABLE HOUSING REGULATIONS AND GUIDELINES (“Guidelines”) apply to this Covenant and further agree that each definition: (a) forms a portion of the basis of this Covenant; and (b) is incorporated in this Covenant. As used in this Covenant, Guidelines shall mean the most current Guidelines in effect at the time of closing on a sale or transfer of the Housing Unit or at the commencement date of a lease or other occupation agreement, as same may be amended from time to time, or its successor document.
3. **Ownership, Use, Occupancy, Rentals, and Qualification.**
- 3.1 **Ownership.** The ownership of the Housing Unit is hereby, and shall henceforth be, limited exclusively to Qualified Owner(s) as defined in the Guidelines. If the Housing Unit is owned without compliance with this Covenant, the City of Ouray or Beneficiaries shall have the right to enforcement and the remedies set forth herein, including but not limited to the rights under Section 11.
- 3.2 **Use and Occupancy.** The use and occupancy of Housing Unit is hereby, and shall henceforth be, limited exclusively to Qualified Owners or Qualified Occupant(s), and their Immediate Families.
- 3.2.1 **Home Occupation.** The Housing Unit may be used in conjunction with a Home Occupation by the Qualified Household or Qualified Occupants residing in the Housing Unit subject to the provisions of the Guidelines and local land use restrictions.
- 3.2.2 **Guests.** Guests who occupy the Housing Unit for less than thirty days during a rolling twelve (12) month basis are exempt from qualification requirements.
- 3.3 **Initial Qualification.** Qualified Entity Owners: Business Owners, Local Governments, and Special Districts are exempt from the Initial Qualifications in 3.3.1 but shall comply with all Occupancy Qualification and Rental Standards required by the Covenant and Guidelines.
- 3.3.1 **Qualified Owner:** To be eligible to purchase the Housing Unit, at least one member of the Household who is an Owner must be a Qualified Employee and meet Section 3.3.1.a, below, and all Household members must meet Section 3.3.1 b- f ., below, and as further defined in the Guidelines:
- 3.3.1.a. Meet the Minimum Work Standard physically within the Ouray County boundary for the twelve (12) months prior to purchase or provide evidence to the City of Ouray that Applicant will meet the Minimum Work Standard physically within the Ouray County boundary for the twelve (12) months following the purchase; and
- 3.3.1.b. Must meet the Earned Income Standard or has provided evidence to the City of Ouray that Applicant will meet the Earned Income Standard within the next twelve (12) months following the purchase; and
- 3.3.1.c. Must not own any interest in other Improved Residential Property(s) located within a one-hundred and fifty (150) mile radius from the Housing Unit.

- 3.3.1.d. Must not have a Net Worth that exceeds three (3) times the Initial Sales Price of the Housing Unit; and
 - 3.3.1.e. Must meet the income restrictions applicable to the Housing Unit based on the Area Median Income (AMI) percentage limit and the Housing Unit designation in the legal description, and as set forth in the Guidelines to be recorded at time of sale; and
 - 3.3.1.f. Shall occupy the Housing Unit as their sole and exclusive primary residence.
 - 3.3.1.g. Qualified Entity Owners may own no more than two (2) Housing Units at one time, unless negotiated otherwise in the original development agreement, and make them available via sale or long-term rental to Qualified Occupants pursuant to this Covenant without the Qualified Entity Owner itself meeting the above-listed requirements. Qualified Entity Owner shall not occupy or use the Unit for such Owner's own use or leave the Housing Unit vacant for more than three months in any twelve (12) month period. Any occupancy of a Unit pursuant to Section 3.4. shall meet all Household Size requirements.
 - 3.3.1.h. Businesses who are in the business of residential property management, residential property rentals, mobile home park ownership or rental and/or residential property ownership may not be certified as a Business Owner.
 - 3.3.1.i. A reasonable accommodation and exception may be requested from City of Ouray for any of these qualifications.
- 3.3.2 Qualified Occupant: To be eligible to rent the entire Housing Unit or a room in a Housing Unit, the Qualified Occupant:
- 3.3.2.a. Shall meet the above-listed requirements of Section 3.3.1 a-f.
 - 3.3.2.b. A reasonable accommodation and exception may be requested from the City of Ouray for any of these qualifications.
- 3.4 Rental of Property.** Short-term rental of the Housing Unit is prohibited. Long-term rentals may be approved as follows:
- 3.4.1 Qualified Entity Owner Units: Long-term rental is allowed subject to the provisions of the Guidelines and the terms and provisions of this Covenant. Units, owned by the Qualified Entity Owner may be rented to Qualified Occupants for a term of no less than six (6) months. All rentals must comply with the current Guidelines.
 - 3.4.2 All other Housing Units: Owner may not, except with prior written approval of the City of Ouray, and subject to the City of Ouray 's conditions of approval, rent an entire Housing Unit for any period of time. If approved, a rental shall be for no less than one (1) month. All rentals must comply with the current Guidelines.

- 3.4.3 **Roommates:** The Qualified Owner may share occupancy of a Housing Unit with non-owners on a rental basis provided Qualified Owner continues to occupy Housing Unit as his/her sole and primary residence and meets the obligations contained in this Covenant. A roommate must be certified as a Qualified Tenant Household. Short-term rentals of any kind are strictly prohibited.
- 3.4.4 **Copy of Lease:** The Housing Unit Owner shall provide to the City of Ouray a fully executed copy of the Lease or other occupancy agreement no later than seven (7) days after it is fully executed.
- 3.4.5 **No Indemnification or Waiver of Immunity:** Nothing herein shall be construed to require any of the Beneficiaries to protect or indemnify the Owner against any losses attributable to a rental including, but not limited to, non-payment of rent or damages to a Housing Unit; nor to require any of the Beneficiaries to obtain a Qualified Occupant for the Owner in the event that none is found by the Owner. In addition, nothing herein shall be construed as a waiver by any of the Beneficiaries' governmental immunity, if applicable, provided by the Colorado Governmental Immunity Act or other applicable law.
- 3.5 **Continued Qualification Compliance.** All Qualified Owners and Qualified Occupants, including multiple owners, must maintain compliance with all applicable requirements and shall maintain Qualified Household status on an on-going basis. Failure of any Owner or Occupant to do so shall constitute a violation. Any Owner or Occupant of a Housing Unit is required to comply with annual or biennial deed restriction monitoring certifying to the City of Ouray that they are in compliance with the requirements of this Covenant.
- 3.5.1 **Continuing Compliance Standards to maintain Qualified Household status:**
- 3.5.1.a At least one member of the Household must be a Qualified Employee who meets the Minimum Work Standards physically within the Ouray County.
- 3.5.1.b The Qualified Household shall meet the Earned Income Standard.
- 3.5.1.c The Qualified Household shall always occupy the Housing Unit as their Primary Residence during the ownership or rental of a Housing Unit and for at least eight (8) of every twelve (12) months on a rolling twelve (12) month basis.
- 3.5.1.d Household Net Worth shall not exceed three (3) times the Initial Sales Price of the Housing Unit.
- 3.5.1.e Household Net Income shall no longer be considered for continuing qualification for Owners.
- 3.5.1.f Tenant Household's Net Income will be considered for Tenant's continuing qualification and Tenant must continue to meet the AMI tier standard for the Housing Unit.
- 3.5.1.g Household is prohibited from ownership of other Improved Residential

Property located within a one-hundred fifty (150) mile radius from the Housing Unit, see Section 5, and as further described in the Guidelines.

4. **Restriction on Debt.** Declarant shall not incur any debt or promissory note secured by a deed of trust or other security instrument that encumbers the Housing Unit in excess of the Original Purchase Price.
5. **Ownership Interest in Other Residential Property.** At the time of application, a Household may own other improved or unimproved residential or commercial property, however, all Improved Residential Property located within a one-hundred and fifty (150) mile radius from the Housing Unit must be listed immediately for sale and sold for fair market value within one year of taking title to the Housing Unit. In the event said other Improved Residential Property has not been sold by the Owner within twelve (12) months of its listing as required hereunder, then the Owner shall immediately list the Housing Unit for sale, pursuant to Section 7.1. a Qualified Entity Owner, qualified under Section 3.3.1 g-i, is exempt from this restriction.
6. **Income and Household Size Restrictions.** The applicable Income Eligibility Tier, which defines household income and household size restrictions, in compliance with this Covenant and as set forth in the Guidelines, Appendix A, will apply to Declarant, Qualified Occupants and future purchasers. If Declarant's Household size falls below the minimum required, Declarant shall rent a room to a Qualified Tenant pursuant to §3.4, above.
7. **Transfer of Property:** Transfers of the Housing Unit are subject to this section unless excepted under Section 7.2, below.
 - 7.1 **Requirements.** Declarant may sell the Housing Unit to a Qualified Owner, pursuant to the Guidelines, to the terms and provisions of this Covenant, and to the following:
 - 7.1.1 **Notice of Intent to Sell:** Declarant or Owner must deliver a written notice of its intent to sell the Housing Unit ("Notice of Intent to Sell") to the Beneficiaries prior to offering the Housing Unit for sale.
 - 7.1.2 **Right of First Refusal:** The Right of First Refusal to purchase shall first be provided to Beneficiaries pursuant to the Guidelines and Section 7.4, below.
 - 7.1.3 **Qualification of Prospective Buyer:** To proceed to the closing of the sale of the Housing Unit ("Closing"), the City of Ouray must have first certified in writing that the prospective buyer is a Qualified Owner pursuant to the Guidelines and to the terms and provisions of this Covenant.
 - 7.1.4 **Void Transfer:** In the event the Housing Unit is sold and/or transferred without compliance with this Covenant, such sale and/or transfer shall be wholly null and void and shall confer no title whatsoever upon the purported buyer.
 - 7.1.5 **Date of Notice:** For purposes of this Covenant, "date of Owner's Notice of Intent to Sell" shall be the date on which written Notice of Intent to Sell is delivered to the City of Ouray.
 - 7.1.6 **Administration Fees:** At the time of purchase, Declarant must pay any Covenant administration fees due according to the Guidelines. Such fees shall be paid by

Declarant to the City of Ouray out of Declarant's proceeds of the sale of the Housing Unit and may not be added to the price of the Housing Unit or passed onto the buyer.

7.1.7 City of Ouray Made Whole: No transfer of a Housing Unit shall occur unless and until each encumbrance, debt or liability owed by the Declarant to any of the Beneficiaries is fully satisfied, including any fees and violation fines.

7.2 Transfer Exception. If reviewed and approved in writing by the City of Ouray prior to transfer, the following occurrences are exceptions to the definition of Transfer, provided that the new Owner, other than an estate, shall use the Housing Unit as their principal residence:

7.2.1 A transfer resulting from the death of a Qualified Owner where the transfer is to the spouse or domestic partner or co-owner, who is also a Qualified Owner.

7.2.2 A transfer resulting from the death of an Owner through a bequest or by intestate succession to a child of Qualified Owner who is certified as a Qualified Owner.

7.2.3 A transfer resulting from a decree of dissolution of marriage or legal separation or from a settlement incidental to such a decree by which a transfer is made to a spouse who is also a Qualified Owner.

7.3 Maximum Sale Price. The Original Purchase Price ("OPP") of the Housing Unit shall be the basis for calculating the Maximum Sale Price ("MSP") in accordance with this Covenant and the Guidelines in effect at the time of listing the Housing Unit for re-sale.

7.3.1 The Housing Unit shall meet the Minimum Resale Standards, defined in Section 7.3.4, below, to sell at MSP.

7.3.2 The MSP of a Housing Unit shall be limited to be no more than the following calculation:

The MSP may not exceed the sum of: (i) the OPP paid by the Owner for the Housing Unit, plus: (ii) an increase of three percent (3%) of such OPP per year compounded annually (prorated at the rate of 0.25 percent for each whole month, but not compounded annually) from the date of the Owner's purchase of the Housing Unit to the date of the Owner's Notice of Intent to Sell the Housing Unit; plus (iii) an amount equal to any special improvement district assessments, if applicable and not transferable, paid by the Seller during the Seller's ownership of the Housing Unit; (iv) the cost of Permitted Capital Improvements made to the Housing Unit by the Owner as set forth in Section 7.3.3, less the amount required to bring the Housing Unit up to the Minimum Resale Standards, if any.

7.3.3 Permitted Capital Improvements: The amount of Permitted Capital Improvements allowed to be added to the MSP shall not exceed ten per cent (10%) of the original purchase price provided that:

7.3.3.a. Improvements are pre-approved by City of Ouray prior to commencement of any work or installation, and

7.3.3.b Proof of homeowners' association, if any, approval is provided to HA prior to commencement of work, and.

- 7.3.3.c Improvements are properly permitted and inspected by the local Building Official, if applicable.
 - 7.3.3.b. Improvements are documented by Declarant and submitted to City of Ouray within three months of completion.
 - 7.3.3.c. The depreciation of Permitted Capital Improvements calculated from the schedule in the Marshall Swift Residential Handbook or any other approved handbook in effect at the time of calculation of MSP, shall be subtracted from the cost of the improvement; and
 - 7.3.3.d. Any other reasonable costs allowed by City of Ouray pursuant to the Guidelines in effect on the date of Owner's Notice of Intent to Sell may be added to the MSP.
 - 7.3.3.e. The 10% limitation on Permitted Capital Improvements shall reset every ten (10) years of continued ownership of the Housing Unit.
- 7.3.4 **Minimum Resale Standards:** Pursuant to the Guidelines, Section 6.8.2, each Owner shall be responsible for ensuring that at the Transfer of his or her Housing Unit, the same is clean, the appliances are in working order, and that there are no health or safety violations regarding the Housing Unit. Seller's Property Disclosure form and Seller's Listing Checklist shall be completed and submitted prior to listing a unit for sale.
- 7.3.4.a If a Housing Unit does not meet Minimum Resale Standards, the City of Ouray may, at its discretion, require that the cost of necessary repairs be deducted from the closing sale price, or that Seller place into escrow the funds necessary to ensure satisfactory repairs. Any escrow balance remaining after necessary repairs are satisfactorily made shall be returned to Seller.
- 7.3.5 **Assumption of Costs:** No Declarant shall permit any prospective purchaser to assume any or all of the Declarant's closing costs. No Declarant shall accept anything of value from a prospective purchaser except for the MSP before, during or after closing of the transfer of the Housing Unit.
- 7.3.6 **Caveat:** Nothing in this Covenant represents or guarantees that the Housing Unit will be re-sold at an amount equal to the MSP. Depending upon conditions affecting the real estate market, the Housing Unit may be re-sold for less than the MSP.
- 7.4 Beneficiaries Right to Acquire Ownership.** The initial Declarant and each subsequent Owner shall not transfer any Housing Unit without first offering the same to each of the Beneficiaries for purchase. Each of the Beneficiaries shall have a right to purchase the Housing Unit as follows:
- 7.4.1 Upon Owner's Notice of Intent to Sell as set forth in Section 7.1.1, or upon exercise of Notice of Election to Require Sale as defined in Section 10.3, or if an Owner receives any offer to purchase or tenders any offer of sale for the Housing Unit, either of the Beneficiaries, or their successors, shall have the Right of First Refusal to purchase ("ROFR") the Housing Unit for the offered sales price or MSP. This ROFR shall be triggered at each submittal of a Notice of Intent to Sell.
 - 7.4.2 Each of the Beneficiaries shall exercise its ROFR by executing a written and binding commitment to purchase ("Notice of Purchase") the Housing Unit to Owner and the

other Beneficiaries within thirty (30) days after each of the Beneficiaries receives written Notice of Intent to Sell by Owner. A Party exercising the ROFR shall deposit a non-refundable deposit of 5% of the MSP in escrow for the benefit of the Seller contemporaneously with the exercise of said right. The commitment to buy shall set a closing date within sixty (60) days of delivery of Notice of Purchase.

- 7.4.3 Each of the Beneficiaries shall have the right to inspect the Housing Unit prior to exercising its ROFR.
- 7.4.4 In the event more than one Beneficiary wishes to exercise the ROFR, the priority shall first go to the Grantor, then to the City of Ouray, and then to the Rural Homes, LLC or their successors in interest, if applicable.
- 7.4.5 In the event the Beneficiaries do not execute a written and binding commitment to purchase the Unit within said thirty (30) day period, this ROFR shall expire.
- 7.4.6 The ROFR shall be in full force and effect from the date of initial sale in perpetuity. Any sale or attempted transfer of the Housing Unit effected without first giving each of the Beneficiaries the right of first refusal described above shall be wholly null and void and shall confer no title whatsoever upon the purported buyer.

8. **No Creation of Additional Unit.** In no event shall Declarant create an additional "Dwelling Unit" as defined in the applicable OLUC, in or as part of the Housing Unit unless authorized by the City of Ouray in writing and allowed by the zone district and subject to all local building and planning codes and permissions.

9. **No Alteration of Housing Unit.** The Housing Unit shall not be altered, demolished, partially demolished, released from these covenants, or relocated, unless and except in compliance with the Guidelines and the applicable OLUC provisions in effect at the time of the application for alteration, demolition, release, or relocation.

10. **Foreclosure**

10.1 **Default.** It shall be a breach of this Covenant for Declarant to default in the payments or other obligations due or to be performed under a promissory note secured by deed of trust encumbering a Housing Unit. The Declarant hereby agrees to notify the Beneficiaries, in writing, of any notification Declarant receives 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 deed of trust, as described herein, within five (5) calendar days of Declarant's notification from lender, or its assigns, of said default or past due payments.

10.2 **Right to Cure Default.**

10.2.1 Upon receipt of notice as provided herein, each of the Beneficiaries shall have the right, in its sole discretion, to cure the default or any portion thereof ("Curing Party"). In such event, the Declarant shall be personally liable to the Curing Party for past due payments made by the Curing Party, together with interest thereon at the rate specified in the promissory note secured by the deed of trust, plus one (1) percent, and all actual expenses the Curing Party incurred in curing the default.

10.2.2 In the event the Declarant does not repay the Curing Party within sixty (60) days of notice that the Curing Party has cured the Declarant's default, the Declarant agrees that the Curing Party shall be entitled to a lien against the Housing Unit to secure payment of such amounts. Such a lien may be evidenced by a notice of lien setting the amounts due and rate of interest accruing thereon, and such notice of lien may be recorded in the real property records of Town, until such lien is paid and discharged. The Curing Party shall have the additional right to bring an action to foreclose on the Housing Unit for the payment of the lien set forth in Section 12.6.

10.3 Right to Require Sale.

10.3.1 Upon default of Declarant, each of the Beneficiaries shall have the right to require Declarant to sell the Housing Unit to avoid the commencement of any adverse proceedings against the Housing Unit by providing Declarant written notice of City of Ouray's decision to exercise such right ("Notice of Election to Require Sale").

10.3.2 Upon receipt of a Notice of Election to Require Sale by any Qualified Holders, as defined in C.R.S. § 38-38-100.3(20), or mortgage brokers licensed by the Colorado Division of Real Estate pursuant to C.R.S. § 12-61-901 et. seq., Declarant shall immediately offer the Housing Unit for sale according to the provisions of Section 7.

10.4 Non-Qualified Owner in Event of Foreclosure. In the event of a foreclosure on a promissory note secured by a first deed of trust on the Housing Unit or the acceptance by the holder of such note and deed of trust ("Holder") is issued a public trustee's deed for the Housing Unit or records a deed in lieu of foreclosure for the Housing Unit, this Covenant shall remain in full force and effect and Holder shall be considered a non-Qualified Owner.

11. Obligation to Maintain Homeowner's Insurance. Deed-restricted housing with public and private subsidies means that the cost to build homes is greater than the sales price. Owners shall obtain full replacement cost coverage through an insurance provider licensed with and compliant with the Colorado Department of Regulatory Agencies which will repair or replace the home in the event of damage or destruction.

11.1 Request for Insurance Coverage Certificate. Owner may be required to verify compliance with §11, above at any time and is required to respond within seven (7) days.

11.2 Failure to maintain adequate Homeowner's Insurance shall be considered a material breach of this Covenant.

12. Default/Breach

12.1 Right to Inspect. In the event the City of Ouray has or the Beneficiaries have reasonable cause to believe a Declarant is violating the provisions of this Covenant, that entity, through its authorized representatives, may inspect the Housing Unit between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, after providing the Declarant with no less than twenty-four (24) hours written notice; Declarant has the right to be present.

12.2 Notice of Violation. The City of Ouray shall send a Notice of Violation ("NOV") to the Declarant detailing the nature of the violation and allowing the Declarant fourteen (14) days to determine the merits of the allegations, or to correct the violation. The NOV shall advise the

alleged violator of the fines associated with each alleged violation as required by the Schedule of Violations and Fines, Appendix E of the Guidelines, and any additional opportunity to cure before the fines or consequences escalate. In the event the Declarant disagrees with the allegation of violation of the Covenant or the Guidelines, the Declarant may request, in writing, a hearing before the City of Ouray or its designated hearing officer, who shall have absolute discretion to determine the appropriate action to be taken to either remedy the violation or to require Declarant to sell the Housing Unit. If the Declarant does not request a hearing and the violation is not cured within the fourteen-day period, the Declarant and/or Occupant shall be considered in violation of this Covenant, and fines shall continue to accrue until the violation is cured or the maximum fine has been reached. Failure to request a hearing shall constitute the failure to exhaust administrative remedies for the purpose of judicial review.

- 12.3 Hearing Before the City of Ouray.** Whenever this Covenant provides for a hearing before the City of Ouray, such hearing shall be scheduled by the City of Ouray within twenty-one (21) days of the date of receipt of a written request for a hearing. At any such hearing, the Declarant or other aggrieved party may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made, and the decision of the City of Ouray shall be a final decision, subject to judicial review.
- 12.4 Reservation of Remedies.** There is hereby reserved to the parties hereto any and all remedies provided by law for breach of this Covenant or any of its terms. In the event the Parties resort to litigation with respect to any or all provisions of this Covenant, the prevailing party shall be awarded its damages, expenses, and costs, including reasonable attorney's fees.
- 12.5 Sale Without Compliance.** In the event the Housing Unit is sold and/or conveyed without compliance with the terms of this Covenant, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of the Housing Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, even without reference therein to this Covenant.
- 12.6 Failure to Cure.** In the event a Declarant fails to cure any breach of this Covenant, each of the Beneficiaries may resort to any and all available legal or equitable actions, including but not limited to specific performance of this Covenant, a mandatory injunction requiring the sale of the Housing Unit by Declarant, and/or an injunction against future sale(s) in violation of this Covenant.
- 12.7 Violation Fixes Resale Price.** In the event of a breach of any of the terms or conditions contained herein by Declarant, his or her heirs, successors or assigns, the Declarant's MSP of the Property shall, upon the date of such breach as determined by the City of Ouray, automatically cease to increase as set out in Section 7.3 and shall remain fixed until the date of cure of said breach.

13. General Provisions

- 13.1 Enforcement of Covenant.** This Covenant shall constitute covenants running with the land and Housing Unit as a burden thereon, for the benefit of each of the Beneficiaries and/or its respective successors and assigns, as applicable, and who may enforce the covenants and compel compliance therewith. Enforcement by any appropriate legal action may include, but is not limited to specific performance injunction, reversion, damages, or eviction of noncomplying Declarants and/or Occupants.

- 13.2 Equal Housing Opportunity.** Pursuant to the Fair Housing Act and public policy, the City of Ouray shall not discriminate on the basis of race, creed, color, sex, national origin, familial status, disability, sexual orientation, or gender identity in the lease, sale, use or occupancy of the Housing Unit.
- 13.3 Waiver of Exemptions.** Every Declarant, by taking title to a Housing Unit, shall be deemed to have subordinated to this Covenant any and all right of homestead and any other exemption in, or with respect to, such Housing Unit under state or federal law presently existing or hereafter enacted.
- 13.4 Notices.** Any notice, consent, approval, or request which is required to be given by any party hereunder shall be given by personal delivery, by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to the address provided herein or to the address of the Declarant. The Declarant shall advise the Housing Agency of any change in address, in writing. Mailing requirements may be waived by consent of the Parties and acknowledgment of delivery by email or regular mail.

To Beneficiaries: City Administrator
City of Ouray
320 6th Avenue
PO Box 468
Ouray, CO 81427
Telephone: 970-325-7078
Email:

Rural Homes, LLC and Ouray Homes, LLC
PO Box 4222
Telluride, CO 81435
Telephone: 970-728-8717
Email:

To Declarant: INSERT VALID MAILING and EMAIL ADDRESS

- 13.5 Severability.** Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of this Covenant shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remaining provisions of this Covenant.
- 13.6 Choice of Law and Venue.** This Covenant and each related document is governed and construed in accordance with the laws of the State of Colorado and action shall be commenced in Ouray County, Colorado.
- 13.7 Successors.** Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors, and assigns of the parties.

Witness my hand and official seal.
My commission expires:

Notary Public

DECLARANT

[NAME]

State of Colorado)
) ss.
County of _____)

The foregoing Deed Restriction and Covenant for Ouray Waterview Homes PUD has been acknowledged before me this _____ day of _____, 20 __, by [NAME].

Witness my hand and official seal.
My commission expires:

Notary Public