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**FIRST AMENDMENT TO THE
DEED RESTRICTION AGREEMENT FOR THE
OCCUPANCY AND RESALE OF MILLER RANCH HOUSING**

THIS FIRST AMENDMENT (hereinafter "First Amendment") to the Deed Restriction Agreement for the Occupancy and Resale of Miller Ranch Housing is made this 5 day of December, 2004, by and between the **Berry Creek Limited Liability Company** (hereinafter "Berry Creek, LLC") and **Eagle County, Colorado**, a body corporate and politic (hereinafter "County").

WITNESSETH:

WHEREAS, Berry Creek, LLC and County entered into a Deed Restriction Agreement for the Occupancy and Resale of Miller Ranch Housing dated September 30, 2003 which is recorded at Reception No. 855028 in the records of the Eagle County Clerk and Recorder (hereinafter "Deed Restriction Agreement").

WHEREAS, Paragraph 36 of the Deed Restriction Agreement provides that any modifications to the Deed Restriction Agreement "shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of Eagle County, Colorado. Notwithstanding the foregoing, the County reserves the right to amend this Agreement unilaterally where deemed necessary to effectuate the purpose and intent of this Agreement, and where such unilateral action does not materially impair the Owner's rights nor any lender's rights under this Agreement."

WHEREAS, Berry Creek, LLC and County desire to amend the Deed Restriction Agreement for the sole purpose of restating and supplementing the legal description to reflect re-subdivisions and amended plats which are now of record with the Eagle County Clerk and Recorder.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises set forth herein and in the Deed Restriction Agreement, the parties agree to restate and supplement the legal description to the Deed Restriction Agreement as follows:

1. The legal description attached to the Deed Restriction Agreement is hereby restated and supplemented as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.

2. Such restated and supplemental legal description does not alter any substantive rights of owners or lenders under the Deed Restriction Agreement.

3. The property identified on Exhibit "A" to this First Amendment to the

Deed Restriction Agreement for the Occupancy and Resale of Miller Ranch Housing is hereby subject to all of the terms and conditions of the Deed Restriction Agreement recorded at Reception No 855028 in the real property records of the Clerk and Recorder of Eagle County, Colorado.

4. Except as herein expressly amended, all terms and conditions of the Deed Restriction Agreement shall remain in full force and effect and are hereby ratified and confirmed in all respects as of the date hereof.

5. This amendment shall be binding upon the parties hereto, their heirs, executors, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Deed Restriction Agreement for the Occupancy and Resale of Miller Ranch Housing.

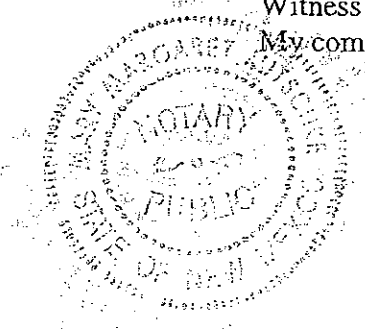
BERRY CREEK LIMITED LIABILITY COMPANY

By: Kenneth Beck Title: Associate Manager, ASW Realty Partners LLC, Manager

STATE OF NEW MEXICO)) ss: COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 1st day of Dec., 2004, by Kenneth Beck as Associate Manager of ASW Realty Partners LLC, Manager of Berry Creek Limited Liability Company.

Witness my hand and official seal, My commission expires: 5/2/05



Mary Margaret Pritchett Notary Public

COUNTY OF EAGLE, STATE OF COLORADO By and Through Its Board of County Commissioners

By: Michael L. Gallagher Michael L. Gallagher, Chairman Pro Tem

ATTEST: Teak J. Simonton Deputy Clerk Teak J. Simonton, Clerk to the Board Of County Commissioners



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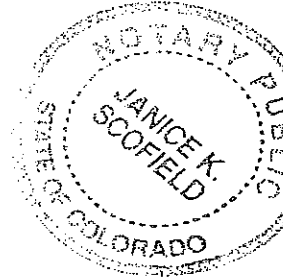
STATE OF COLORADO)
) ss:
COUNTY OF EAGLE)

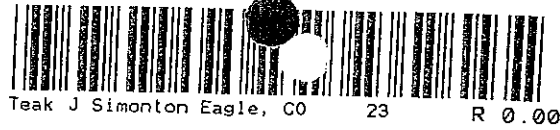
The foregoing instrument was acknowledged before me this 7th day of December, 2004 by Michael L. Gallagher, as Chairman Pro Tem and Teak J. Simonton as Clerk to the Board of County Commissioners.

Witness my hand and official seal.

My commission expires: 2-8-06

Janice K. Scofield
Notary Public





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EXHIBIT A
**To First Amendment to Deed Restriction Agreement for the Occupancy
and Resale of Miller Ranch Housing**

LEGAL DESCRIPTION

THE FOLLOWING REAL PROPERTY SHALL BE SUBJECT TO THE DEED RESTRICTION AGREEMENT FOR THE OCCUPANCY AND RESALE OF MILLER RANCH HOUSING RECORDED AT RECEPTION NUMBER 855028 IN THE REAL PROPERTY RECORDS OF THE CLERK AND RECORDER OF EAGLE COUNTY, COLORADO

A parcel of land situated in Section 4, Township 5 South, Range 82 West, of the Sixth Principal Meridian, County of Eagle, State of Colorado, being more particularly described as follows:

All that portion of Miller Ranch, A Resubdivision of Tract D, Berry Creek/Miller Ranch PUD as recorded in the Office of the Clerk and Recorder at Reception No. 820378, excepting the following ten parcels; 1.) Parcel 1, 2.) Parcel 2, 3.) Parcel 3, 4.) Parcel 5, 5.) Parcel 6, 6.) Parcel 11, 7.) Parcel 12, 8.) Parcel 14, 9.) Tract A, 10.) All Road Right-of-Ways.

Including all that portion of Miller Ranch Filing 2, A Resubdivision of Tract A, and Parcel 14, Miller Ranch as recorded in the Office of the Clerk and Recorder at Reception No. 854785, excepting the following six parcels; 1.) Parcel 4, 2.) Parcel 7, 3.) Parcel 8, 4.) Parcel 13, 5.) Parcel 14, 6.) All Road Right-of-Ways.

Including all that portion of Miller Ranch Parcel 10, A Re-Plat of Parcel 10, Miller Ranch as recorded in the Office of the Clerk and Recorder at Reception No. 834260.

Including all that portion of Miller Ranch Parcel 10A and Parcel 10B, A Resubdivision of Miller Ranch Parcel 10 as recorded in the Office of the Clerk and Recorder at Reception No. 878613.

Including all that portion of Miller Ranch Mill Lofts-Phase 1, Parcel 10A, Miller Ranch as recorded in the Office of the Clerk and Recorder at Reception No. 878617.

Including all that portion of Miller Ranch Filing 2 as shown on the Amended Final Plat Miller Ranch Filing 2, A Resubdivision of Miller Ranch Filing 2 as recorded in the Office of the Clerk and Recorder at Reception No. 888021, excepting the following six parcels; 1.) Parcel 4, 2.) Parcel 7, 3.) Parcel 8, 4.) Parcel 13, 5.) Parcel 14, 6.) All Road Right-of-Ways.

Including all that portion of Miller Ranch Mill Lofts-Phase 2, Parcel 10B, Miller Ranch Parcel 10A and Parcel 10B as recorded in the Office of the Clerk and Recorder at Reception No. 889083.

**DEED RESTRICTION AGREEMENT
FOR THE OCCUPANCY AND RESALE OF
MILLER RANCH HOUSING**

THIS DEED RESTRICTION AGREEMENT FOR OCCUPANCY AND RESALE OF MILLER RANCH HOUSING (the "Agreement") is made and entered into this 30th day of September 2003, by Berry Creek Limited Liability Company, (hereinafter "Berry Creek, LLC") and Eagle County, Colorado, a body corporate and politic, (hereinafter "County"), for the benefit of the parties who together are collectively referred to as "Declarant" and to be enforced by the County.

WITNESSETH:

WHEREAS, County owns the real property described in Exhibit "A" attached hereto and incorporated herein. For purposes of the Agreement, the real property and all dwellings, appurtenances, improvements and fixtures associated therewith shall hereinafter be referred to as the "Property"; and

WHEREAS, Berry Creek, LLC is the developer of improvements currently on and planned for the Property; and

WHEREAS, there is a need for affordable housing for residents of the County and this Agreement restricting the acquisition and transfer of the Property to "Qualified Buyers" supports the health, safety and welfare of the citizens of the County; and

WHEREAS, Declarant agrees to restrict the acquisition or transfer of the Property to Qualified Buyers as that term is defined in this Agreement and the Miller Ranch Housing Guidelines. In addition, the Declarant agrees that this Agreement shall constitute a resale agreement setting forth the maximum sales price for which the Property may be sold ("Maximum Sales Price"), the amount of appreciation and the terms and provisions controlling the resale of the Property. Finally, by this Agreement, Declarant agrees to restrict the Property against use and occupancy inconsistent with this Agreement and the Miller Ranch Housing Guidelines.

NOW, THEREFORE, for value received, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby represents, covenants and agrees as follows:

1. "Qualified Buyers" are natural persons meeting the requirements as determined by the County and as set forth in the Miller Ranch Housing Guidelines, or its substitute, as adopted from time to time by the County, or its successor or designee.
2. "Owner" is a person or persons who is/are a Qualified Buyer who acquires an ownership interest in the Property in compliance with the terms and provisions of this Agreement; it being understood that such person or persons shall be deemed an "Owner" hereunder only during the period of his, her or their ownership interest in the Property and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

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3. "Unit" is any of the units which comprise the Property including but not limited to condominiums, townhomes, duplexes and single family homes. "Unit" shall not include the community center and day care facility which may be located on the Property and said center and day care facility shall not be subject to this Agreement or the Miller Ranch Housing Guidelines.

4. The use and occupancy of the Property shall henceforth be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers and their families as set forth herein and in the most current Miller Ranch Housing Guidelines.

It is understood and agreed by the parties that notwithstanding the foregoing, Units may be held by County in the event of foreclosure or as permitted by this Agreement and the most current Guidelines; and Units may be held from time to time by certain districts or governmental entities as permitted under a separate intergovernmental agreement with County.

Further, it is understood and agreed by the parties that notwithstanding the foregoing, in certain limited situations, upon special review and approval, title to Units may be held in a trust for the benefit of a natural person who is a Qualified Buyer. The most current Miller Ranch Housing Guidelines set forth the specific rules and regulations authorizing such ownership.

5. An Owner, in connection with the purchase of this Property or Unit, must:

(A) occupy any Unit within this Property as his or her sole place of residence during the time that such unit is owned; and

(B) not engage in any business activity on or in such Unit, other than permitted in that zone district or by applicable ordinance; and

(C) sell or otherwise transfer such Unit only in accordance with this Agreement and the most current Miller Ranch Housing Guidelines; and

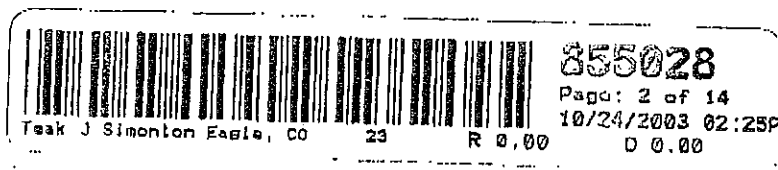
(D) not sell or otherwise transfer such Unit for use in a trade or business; and

(E) not permit any use or occupancy of such Unit except in compliance with this Agreement and the most current Miller Ranch Housing Guidelines.

6. All obligations recorded of record against the Property and subsequent to this Agreement shall be subordinate to the terms hereof.

7. Breach of Agreement

(A) Owner shall not default in payment or other obligations due or to be performed under a promissory note secured by a first deed of trust encumbering the Property or a Unit. Owner must notify the County, in writing of any notification received from a lender,

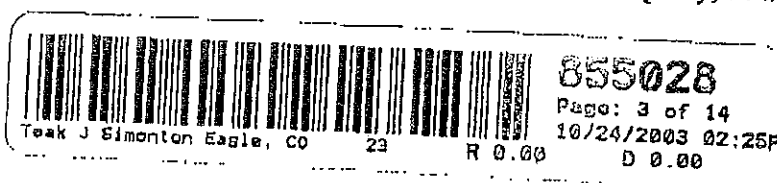


or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a first deed of trust, as described herein, within five calendar days of Owner's notification from lender, or its assigns, of said default or past due payments.

(B) Upon notification from Owner, as provided above, or other notice of such default, the County may in its sole discretion offer loan counseling or distressed loan services to the Owner, if any of these services are available, and County is entitled to require the Owner to sell the Property or a Unit to avoid the commencement or continuance of any foreclosure proceeding against the Property or a Unit. In the event that the County determines that sale of the Property or a Unit is necessary to avoid the foreclosure process, County may require and Owner shall immediately execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission with the County, providing for a 30-day listing period. At that time, the Owner shall deposit with the County an amount equal to one half percent ($\frac{1}{2}\%$) of the estimated value of the Unit. In the event that Owner is unable to pay the one half percent ($\frac{1}{2}\%$) at the time of listing, the same shall be paid at the time of closing. If a sales contract has not been executed within the initial 30-day period, the Owner shall extend the listing period for an additional 180 days, provided such extension does not conflict with the statutory rights of any secured creditors. The County shall promptly advertise the Property for sale by competitive bid to Qualified Buyers. At the time of closing the Owner shall pay to the County in addition to the one half percent ($\frac{1}{2}\%$) paid at the time of listing an additional one and one-half percent ($1\frac{1}{2}\%$), for a maximum fee of two percent (2%) of the actual sales price. In the event of a listing of the Property pursuant to this Paragraph 7, the County is entitled to require the Owner to accept the highest of any qualified bids which satisfies the Owner's financial or other obligations due under the promissory note secured by a first deed of trust and deed of trust in favor of the County as described herein, and to sell the Property to such qualified bidder. County may in its sole discretion elect to purchase a Unit under this paragraph 7 for rental to a Qualified Person or sale to Qualified Buyers.

(C) Upon receipt of notice as provided in paragraphs 7a and 7b, the County shall have the right, in its sole discretion, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to the County for past due payments made by the County together with interest thereon at the rate specified in the promissory note secured by the deed of trust, plus one percent (1%) in addition to the interest rate identified in the promissory note and all actual expenses of the County incurred in curing the default. The Owner shall be required by the County to execute a promissory note on commercially reasonable terms acceptable to County and secured by deed of trust encumbering the Property in favor of the County for the amounts expended by the County as specified herein, including future advances made for such purposes. County shall be entitled to all rights and remedies under the deed of trust including the right of foreclosure. The Owner may cure the default and satisfy its obligation to the County under this subparagraph at any time prior to execution of a contract for sale, upon such reasonable terms as specified by the County. Otherwise, Owner's indebtedness to the County shall be satisfied from the Owner's proceeds at closing.

8. This Agreement shall constitute covenants running with the Property, as a burden thereon.



for the benefit of, and shall be specifically enforceable by Eagle County, Colorado and its Board of County Commissioners, and their respective successors and assigns, as applicable, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction of non-complying owners and/or occupants.

9. In the event that an Owner desires to sell the Property or Unit, the Owner shall comply with and follow the procedures set forth in this Agreement and the most current Miller Ranch Housing Guidelines.

10. Maximum Sales Price. In no event shall the Property or a Unit be sold for an amount ("Maximum Sales Price") in excess of Owner's purchase price plus the percentage increase per year (compounded annually) of the average wage for Eagle County as determined by the Colorado Department of Labor and Employment.

(A) In the event that an Owner owns the Property or a Unit for only a portion of any year, the percentage increase shall be prorated quarterly and the Owner shall be given credit through the quarter in which the sale occurs.

(B) If the percentage increase in the average wage for Eagle County as determined by the Colorado Department of Labor and Employment is greater than 6% in a given year, the percentage increase which an Owner may claim for purposes of determining Maximum Sales Price shall be 6% for that year.

(C) If the percentage increase in the average wage for Eagle County as determined by the Colorado Department of Labor and Employment is less than 3% in a given year, then the percentage increase which an Owner may claim for purposes of determining Maximum Sales Price shall be 3% for that year.

(D) The parties agree that there may be a delay in the publication of statistics from the Colorado Department of Labor and Employment. Therefore, the calculation of Maximum Sales Price shall be based upon the most current available data. If data for the year of sale is not available then the Owner shall rely on the most current year's data that is available for purposes of calculating the Maximum Sales Price.

(E) In the event that the Colorado Department of Labor and Employment no longer publishes the average wage for Eagle County, the Eagle County Board of County Commissioners shall identify a similar indicator from a reliable source and shall provide notice to all Owners of the change.

(F) Sample calculations and additional information concerning the Maximum Sales Price appear in the Miller Ranch Housing Guidelines.



NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY EAGLE COUNTY OR BERRY CREEK LIMITED LIABILITY COMPANY THAT ON RESALE THE OWNER SHALL OBTAIN A PARTICULAR PRICE INCLUDING BUT NOT LIMITED TO THE MAXIMUM SALES PRICE.

11. Computation of Maximum Sales Price:

(A) For the purpose of determining the Maximum Sales Price in accordance with this Section, the Owner may add to the amount specified in Paragraph 10 above, the cost of Permitted Capital Improvements as set forth in the most current Miller Ranch Housing Guidelines.

(B) Permitted Capital Improvements shall not increase the owner's base purchase price.

(C) For the purpose of determining the Maximum Sales Price in accordance with this Section, the Owner may also add to the amounts specified in paragraphs 10 and 11a, the cost of any permanent improvements constructed or installed as a result of any requirement imposed by any government agency or special assessment by a homeowners association for such permanent improvements, provided that written certification as required by the Miller Ranch Housing Guidelines is provided to the County.

(D) In addition to the items identified in paragraphs 10 and 11 hereof an Owner may add actual sales costs as identified in the most current Miller Ranch Housing Guidelines to the Maximum Sales Price.

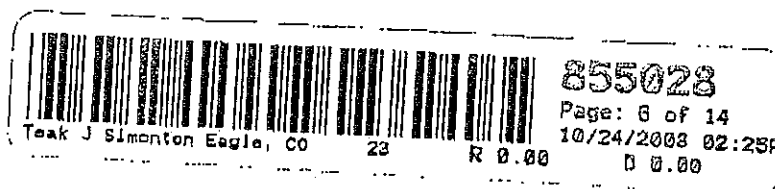
12. Owner shall not permit any prospective buyer to assume any or all of the Owner's customary closing costs nor accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer.

13. The Property and all Units shall be utilized only as the exclusive and permanent place of residence of an Owner. A permanent residence shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of absence. In determining what is a permanent residence, the County shall take the following circumstances relating to the Owner of the residence into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse and children, if any, location of personal and real property, and motor vehicle registration.

14. Owner may not, except with prior written approval of the County and subject to the most current Miller Ranch Housing Guidelines, rent the Property or Unit for any period of time.

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- 15. In the event that title vests in a non-qualified buyer or non-qualified transferee the terms of this Agreement and the most current Miller Ranch Housing Guidelines which may require sale or other relief shall govern.
- 16. **IN NO EVENT SHALL THE OWNER CREATE AN ADDITIONAL DWELLING UNIT AS DEFINED IN THE EAGLE COUNTY LAND USE REGULATIONS, IN OR ON THE PROPERTY.**
- 17. **NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE EAGLE COUNTY TO PROTECT OR INDEMNIFY THE OWNER AGAINST ANY LOSSES ATTRIBUTABLE TO THE RENTAL, INCLUDING (NOT BY WAY OF LIMITATION) NON-PAYMENT OF RENT OR DAMAGE TO THE PREMISES; NOR TO REQUIRE THE COUNTY TO OBTAIN A QUALIFIED TENANT FOR THE OWNER IN THE EVENT THAT NONE IS FOUND BY THE OWNER.**
- 18. In the event the County after a hearing before the Eagle County Board of County Commissioners (or other entity it may designate) has cause to believe an Owner is violating the provisions of this Agreement and the most current Miller Ranch Housing Guidelines, the County by its authorized representatives may inspect the Property or Unit between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday upon no less than 24 hours written notice to Owner to investigate such violation. For purposes of this paragraph only, notice of hearing or inspection to Owner shall be provided by posting notice on the front door of the Unit a minimum of 24 hours in advance of the hearing or inspection.
- 19. In the event a violation of this Agreement is discovered County may follow the procedures set forth in the most current Miller Ranch Housing Guidelines, as amended from time to time.
- 20. If the County, in its sole discretion, determines that there has been a violation of this Agreement or the Miller Ranch Housing Guidelines, the Owner of the Property or Unit shall be found to be in non-compliance by County. Penalties which the County may assess against the Owner include, but shall not be limited to, eliminating resale gain, requiring sale of the Property or Unit, assessing penalties and seeking remedies set forth in the Eagle County Land Use Regulations or the most current Miller Ranch Housing Guidelines.
- 21. There is hereby reserved to the parties hereto any and all remedies provided by law for breach of this Agreement or any of its terms. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorney fees.
- 22. In the event the Property or Unit is sold and/or conveyed without compliance herewith, 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 Property or Unit, for all purposes, shall be deemed to include and incorporate by this reference, the covenants herein contained, even without reference therein to this Agreement.

- 23. In the event that the Owner fails to cure any breach of this Agreement or the Miller Ranch Housing Guidelines the County may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement, a mandatory injunction or require the sale of the Property or Unit by Owner. The costs of such sale shall be taxed against the proceeds of the sale with the balance being paid to the Owner.
- 24. In the event of a breach of any of the terms or conditions contained herein by the Owner, his or her heirs, successors or assigns, the Maximum Sales Price of the Property or Unit as set forth in Paragraph 10 of this Agreement shall, upon the date of such breach as determined by the County cease to increase, and shall remain fixed until the date of cure of said breach.
- 25. The County pursuant to the Option to Buy which is attached hereto and incorporated herein as Exhibit "B" shall release and waive its ability to enforce this Agreement only in the event of a foreclosure or acceptance of a deed in lieu of foreclosure by the holder (including assigns of the holder) of a promissory note secured by a first deed of trust on a Unit, provided however, that prior to such release or waiver County shall have the option to buy the Unit within thirty (30) days after the issuance of a public trustee's deed or deed in lieu of foreclosure to the holder as more fully set forth in Exhibit "B."

It is specifically agreed that nothing contained herein shall require County to release and waive its ability to enforce this Agreement in the event of foreclosure of a lien secured in second or subsequent position.

In the event that the County or its assigns exercises the Option to Buy and acquires title to a Unit as set forth in Exhibit "B," the County or its assigns may thereafter sell the Unit to Qualified Buyers as that term is defined herein, or rent the Property or Unit in accordance with the terms of the most current Miller Ranch Housing Guidelines until such time that the Property or Unit can be sold to a Qualified Buyer.

- 26. Notices. Any notice, consent or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement.

Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:



To Berry Creek Limited
Liability Company:

Mr. Ken Beck
401 Paseo De Peralta
Santa Fe, NM 87501

To Eagle County:

Eagle County Housing Department
Post Office Box 179
Eagle, CO 81631-0179

And

Eagle County Attorney
Post Office Box 850
Eagle, CO 81631

To Owner: To be determined by a later recorded memorandum encumbering each individual Property or Unit.

- 27. Exhibits. All exhibits attached hereto (Exhibits "A" and "B") are incorporated herein and by this reference made a part hereof.
- 28. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such a manner as to be valid under applicable law; but 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 the remaining provisions of such documents.
- 29. Choice of Law. This Agreement and each and every related document is to be governed and construed in accordance with the laws of the State of Colorado.
- 30. 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.
- 31. Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
- 32. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.
- 33. Gender and Number. Whenever the context so required herein, 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.



- 34. Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.
- 35. Further Actions. The parties to this Agreement 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 agreement or any agreement or document relating hereto or entered into in connection herewith.
- 36. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of Eagle County, Colorado. Notwithstanding the foregoing, the County reserves the right to amend this Agreement unilaterally where deemed necessary to effectuate the purpose and intent of this Agreement, and where such unilateral action does not materially impair the Owner's rights nor any lender's rights under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year above first written.

BERRY CREEK LIMITED LIABILITY COMPANY:

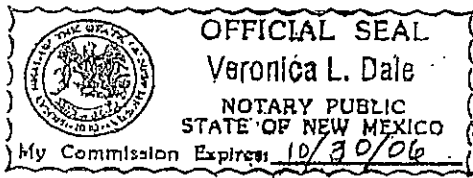
By: Kenneth Beck
Title: ASSOCIATE MANAGER

STATE OF New Mexico)
)ss:
COUNTY OF Santa Fe)

The foregoing instrument was acknowledged before me this 29th day of Sept. 2003, by Kenneth Beck

Witness my hand and official seal.

My commission expires: 10-30-06



[Signature]
Notary Public

ACCEPTANCE BY EAGLE COUNTY

The Foregoing Deed Restriction Agreement for the Occupancy and Resale of Miller Ranch Housing and its terms are hereby adopted and declared by Eagle County.

EAGLE COUNTY, COLORADO
A body corporate and politic by and through its
Board of County Commissioners

By: [Signature]
Michael L. Gallagher, Chairman



[Signature]

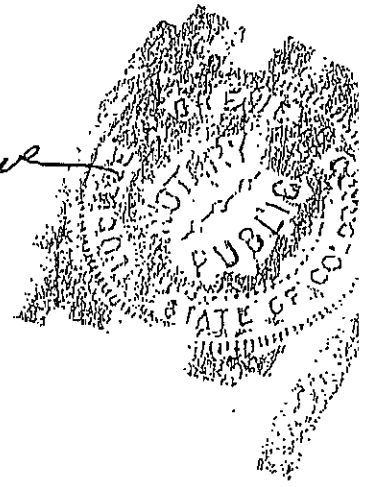
STATE OF COLORADO)
) ss:
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 30th day of September, 2003, by Michael L. Gallagher, Chairman Eagle County Board of County Commissioners.

Witness my hand and official seal.

My commission expires: 6/12/06

[Signature]
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION

THE FOLLOWING REAL PROPERTY SHALL BE SUBJECT TO THE DEED RESTRICTION AGREEMENT FOR THE OCCUPANCY AND RESALE OF MILLER RANCH HOUSING

A parcel of land situated in Section 4, Township 5 South, Range 82 West, of the Sixth Principal Meridian, County of Eagle, State of Colorado, being more particularly described as follows:

All that portion of Miller Ranch, A Resubdivision of Tract D, Berry Creek / Miller Ranch PUD as recorded in the Office of the Clerk and Recorder at Reception No. 820378, excepting the following ten parcels; 1.) Parcel 1, 2.) Parcel 2, 3.) Parcel 3, 4.) Parcel 5, 5.) Parcel 6, 6.) Parcel 11, 7.) Parcel 12, 8.) Parcel 14, 9.) Tract A 10.) All Road Right-of-Ways.

Including all that portion of Miller Ranch Filing 2, A Resubdivision of Tract A, and Parcel 14, Miller Ranch as recorded in the Office of the Clerk and Recorder at Reception No. 854785, excepting the following six parcels; 1.) Parcel 4, 2.) Parcel 7, 3.) Parcel 8, 4.) Parcel 13, 5.) Parcel 14, 6.) All Road Right-of-Ways.

Including all that portion of Miller Ranch Parcel 10, A Re-Plat of Parcel 10, Miller Ranch as recorded in the Office of the Clerk and Recorder at Reception No. 834260.

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**EXHIBIT "B"
OPTION TO BUY**

In the event of a foreclosure or acceptance of a deed in lieu of foreclosure by the holder (including assigns of the holder) of the promissory note secured by a first deed of trust on a Unit within Miller Ranch Housing (hereinafter "the Property"), and subject to the issuance of a public trustee's deed to the holder following the expiration of all statutory redemption rights, or issuance of a deed in lieu of foreclosure to the holder, Eagle County (the "County") or its assigns shall have the option to purchase the Property which shall be exercised in the following manner:

A. Notice.

The Owner and the holder shall give such notice to the County as is required by law in the foreclosure proceeding.

Said notice shall be sent by certified mail, return receipt requested, and addressed as follows:

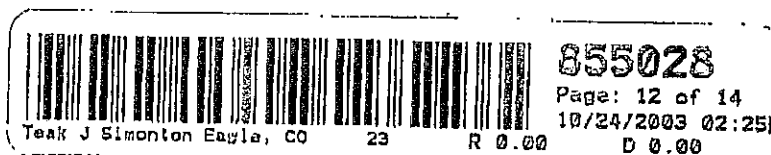
Housing Department
Eagle County
Post Office Box 179
Eagle, CO 81631

B. Option to Purchase.

The County or its assigns shall have 30 days after issuance of the public trustee's deed or deed in lieu of foreclosure in which to exercise this Option to Buy. In the event of a deed in lieu of foreclosure County may exercise the Option to Buy by tendering to the holder or its assigns, in cash or certified funds, an amount equal to the amount due on the note and any additional reasonable costs incurred by the holder during the option period. In the event of foreclosure and issuance of a public trustee's deed, County may exercise the Option to Buy by tendering to the holder or its assigns, in cash or certified funds, the redemption price which would have been required of the borrower or any person who might be liable upon a deficiency on the last day of the statutory redemption period(s) and any additional reasonable costs incurred by the holder during the option period which are directly related to the foreclosure.

C. Title.

Upon receipt of the option price, the holder shall deliver to the County or its assignee a special warranty deed, conveying the property to the County or its assignee. The holder shall convey only such title as it received through the public trustee's deed or deed in lieu of foreclosure and shall not create or participate in the creation of any additional liens or encumbrances against the Property following issuance of the public trustees' deed to the holder. The holder shall not be liable for any of the costs of conveyance to the County or its assignee.



D. Release.

Upon issuance of a public trustee's deed or deed in lieu of foreclosure to the holder of a note secured by a first deed of trust (the "Holder"); the County or its assigns shall have thirty (30) days in which to exercise the option to purchase as set forth herein by notifying the Holder in writing of its intent to exercise the option.

In the event that the County does not notify the Holder in writing of its intent to exercise the option to purchase as set forth herein, the County's option to purchase and the Deed Restriction Agreement for the Occupancy and Resale of Miller Ranch Housing recorded at Reception Number _____ in the records of the Clerk and Recorder of Eagle County, Colorado shall be automatically released only with respect to the unit which is the subject of foreclosure as of the thirty-first day after the issuance of such public trustee's deed or deed in lieu of foreclosure. The Holder shall not be required to take any affirmative action to obtain such release.

It is the intent of the County that the option to purchase and the referenced Deed Restriction Agreement be terminated automatically upon the failure of the County to provide written notice of its intent to exercise its option to purchase to the Holder, whether such failure is intentional or unintentional, and that such termination will be effected without the necessity of any affirmative action on the part of the Holder and without the necessity of filing a release of such Deed Restriction Agreement or option of public record.

It is agreed that this section D shall not result in a release of the Deed Restriction Agreement from any units which are not the subject of foreclosure and nothing contained herein shall require County to release and waive its ability to enforce this Agreement in the event of foreclosure of a lien secured in second or subsequent position.

E. Perpetuities Savings Clause.

If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Option to Buy shall be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Board of County Commissioners of Eagle County, Eagle, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

F. Successors and Assigns.


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 hereto.

G. Modifications.

The parties hereto agree that any modification to this Option to Purchase shall be effective



only when made by writings signed by all parties and recorded with the Clerk and Recorder of Eagle County, Colorado.

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Teak J Simonton Eagle, CO		29 R 0.00 D 0.00
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