

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (“Agreement”) is made by and between the Board of County Commissioners of Archuleta County (the “County”) and David and Heather Montoya (the “Montoyas”), whose address is 246 Echo Creek Drive, Pagosa Springs, CO 81147 (the “Property”). The County and the Montoyas may collectively be referred to as the “Parties” or individually as “Party.” This Agreement is effective on the date of the last signature of the Parties on this Agreement.

EXPLANATORY STATEMENT

This Agreement is made in contemplation of the following facts and circumstances:

- I. The Montoyas are the Defendants in Archuleta County District Court Case No. 2018CV30048 (the “Lawsuit”). In the Lawsuit, on August 6, 2018, the District Court granted a Default Judgment against the Montoyas, ordering them to cease and desist from operating a home occupation on the Property, and from the storing of vehicles and other items outdoors on the Property. The Default Judgment also awarded attorney’s fees to the County in an amount to be later determined.
- II. On March 11, 2019, the Court entered judgment against the Montoyas in the amount of \$7,400.00, of which \$2,400.00 was to be immediately paid to the County. The remaining \$5,000.00 was deferred to allow the Montoyas 180 days to bring the Property into compliance.
- III. On April 25, 2019, the Court entered judgment against the Montoyas in the amount of \$5,000.00 plus \$100.00 per day in penalties and fines.
- IV. To date, the Montoyas owe the County in excess of \$75,000.00 in fines and penalties.
- V. On January 11, 2021, the County filed Archuleta County District Court Case No. 2021CV30002 (“Foreclosure Lawsuit”) to foreclose on the judicial liens filed against the Montoya’s Property for the penalties and fines owed from the Lawsuit.
- VI. The Parties desire to settle and resolve the Lawsuit and the Foreclosure Lawsuit by entering into this Agreement pursuant to the terms set forth herein.

AGREEMENT

Now therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Montoyas agree as follows:

1. **Consideration:** By this Agreement, the Montoyas shall pay to the County the amount of ten thousand dollars (\$10,000.00) in twenty-four (24) monthly payments of \$416.67, which shall be due and payable on the 1st day of each month and shall commence on the 1st day of the month following the execution of this Agreement by the Parties. If the first day of the month falls on a Saturday, Sunday

or a Holiday observed by the County, the payment shall be due upon the next business day the County is open for normal operations. If payment is not made within five (5) days of the first of the month, a late fee of \$25.00 per day shall accrue for each day payment is not made. If a payment is not made within thirty (30) days from the first of the month, such non-payment shall be a breach of this Agreement. Upon payment by the Montoyas of the full amount of \$10,000.00, the County shall not pursue and shall release the Montoyas from any liability for the attorney's fees, penalties and fines awarded in the Lawsuit, which are in excess of \$75,000.00. The Parties further agree to fully cooperate to execute any documents to effectuate this Agreement.

2. **Remedial Actions:** By this Agreement, the Montoyas shall complete the following remedial actions within the time frames specified:

- a. By no later than thirty (30) days following the effective date of this Agreement, the Montoyas will remove all the Wrecked, Dismantled or Inoperative Vehicles from the Property, or store them in an enclosed garage or similar enclosed structure.
 - i. For purposes of this Agreement, Wrecked, Dismantled or Inoperative Vehicles are defined as: 1) any vehicle (including but not limited to cars, trucks, motorcycles, airplanes, motor homes, off-highway vehicles (OHVs), recreational vehicles, trailers, or water craft (on or off its hauler)), or any significant collection of vehicle parts, which are incapable of movement or being hauled by the means for which they were designed with its own power or otherwise and will remain so without major repair or assembly; or, 2) any such vehicle that does not have all the required licenses and registrations from the state of Colorado and/or Archuleta County to be driven, hauled, operated or ridden legally on the county, town or state roadways, off-road areas or on any waterways or in the air.
- b. By no later than ninety (90) days following the effective date of this Agreement, the Montoyas shall flatten the dirt track around the Property, reseed it, and cover it with hay or straw, and water it as necessary to restore the natural ground cover and to remediate the dust hazard caused by the dirt track.

3. **Prohibited Activities:** By this Agreement, the Montoyas shall immediately cease any and all of the following activities on the Property:

- a. Operating any type of business of any kind including but not limited to any auto repair, salvage or parts business at or from the Property;
- b. Transporting to, placing, or storing on the Property any Wrecked, Dismantled or Inoperative Vehicles, as defined herein, unless they are stored within an enclosed garage or similar enclosed structure;
- c. Parking or storing any construction, commercial or heavy equipment on the Property unless such equipment is actively being used for construction purposes on the Property;

- d. Storing more than one (1) motorhome, campervan, caravan, fifth-wheel trailer, popup camper, truck camper, travel trailer or other similar recreational vehicle;
- e. Allowing the use of any motorhome, campervan, caravan, fifth-wheel trailer, popup camper, truck camper, travel trailer or other similar recreational vehicle as a short-term or long-term dwelling unit for any person without first obtaining the required permit from the Archuleta County Planning Department and without limiting such use to 120 days in any calendar year;
- f. Operating any type of motorized vehicle (electric or otherwise) on the Property except for the use of the driveway on the Property for purposes of ingress and egress and for the routine maintenance and upkeep of the Property (e.g. mowing the lawn, snow plowing the driveway and other similar activities);
- g. Storing or accumulating of any debris, garbage or trash; and,
- h. Engaging in any activity that is in violation of the County's land use regulations or ordinances.

4. **Release of the Montoyas:** Upon execution of this Agreement, the County for itself, and any elected officials (current and former), employees (current and former), partners, agents, heirs, representatives, successors, and assigns, releases and forever discharges the Montoyas, their family members, agents, employees, attorneys, shareholders, officers, directors, heirs, representatives, successors, assigns, and insurers from the fines and penalties due and owing to the County from the Lawsuit and the claims asserted by the County in the Foreclosure Lawsuit. However, this Release by the County along with this entire Agreement is null and void and the full amount of the fines and penalties in the amount of \$75,000.00 shall be due and owing immediately if the Montoyas fail to comply with the terms and conditions of this Agreement and the rules, regulations and ordinances duly adopted by the County.

5. **Release of County:** Upon execution of this Agreement, the Montoyas for themselves, and any family members, partners, agents, heirs, representatives, successors, and assigns, release and forever discharge the County, its elected officials (current and former), agents, employees (current and former), attorneys (current and former), shareholders, officers, directors, heirs, representatives, successors, assigns, and insurers from any and all claims, demands, obligations, damages and causes of action, in law or equity, known or unknown, that the Montoyas may now have or that might subsequently accrue regarding, related to or arising from the subject matter of the Lawsuit and/or Foreclosure Lawsuit.

6. **Accord and Satisfaction:** The Parties expressly agree that this Agreement is a full accord and satisfaction of any and all claims the Parties might have against each other regarding, related to or arising from the subject matter of the Lawsuit and the Foreclosure Lawsuit, subject to the terms and conditions stated herein.

7. **No Admission of Liability:** It is understood and agreed by the parties to this Agreement that this Agreement is not to be construed as an admission of liability, wrongdoing, or improper conduct on the part of any person or entity released. Any and all liability and wrongful or improper conduct is

hereby expressly denied, and no Party shall represent or suggest the contrary to any other person.

8. **Authority:** Each Party to this Agreement expressly represents and warrants, each to the other, that each Party has authority to enter into this Agreement, and that no Party has sold, assigned, subrogated, granted or transferred to any other person, any claim, action, demand or cause of action encompassed by this Agreement. The warranties contained in this paragraph are contractual, and not mere recitals, and shall survive the closing of this Agreement.

9. **Breach:** This Agreement shall be deemed breached, and a cause of action accrued thereon immediately upon the commencement of any action or administrative proceeding or assertion of any such claim as a defense to an action, based upon any claim, counterclaim, demand, action, or cause of action settled or released by this Agreement. In any such action or administrative proceeding, this Agreement may be pled as a defense, or by way of counterclaim or cross-claim, and shall be admissible in evidence without any foundation testimony. This Agreement shall also be deemed breached in the event of failure by the Montoyas to comply with any term, condition or covenant contained in this Agreement. In the event of such breach, the County reserves all of its legal rights to pursue the full judgment amount awarded to the County in Archuleta County District Court Case No. 2018CV30048.

10. **Attorney Fees in the Event of Breach:** Any non-breaching Party to this Agreement shall be entitled to recover from the breaching Party all attorneys' fees and costs incurred as a result of any breach of this Agreement.

11. **Acceptance of Terms of This Agreement:** The Parties have read this Agreement, and their signatures below indicate their acceptance of the terms of this Agreement. The Parties each acknowledge that: (i) they are executing this Agreement in reliance solely upon their own judgment, belief and knowledge and upon the advice of their legal counsel, if sought; (ii) no promise, inducement or agreement not contained herein has been made to any Party by any other Party, or person acting on his, her or its behalf; (iii) the terms and conditions contained herein are contractual and not mere recitals; and (iv) this Agreement contains the entire agreement between the Parties hereto, replacing any and all prior agreements relating to the subject matter hereof.

12. **Modification:** This Agreement may be changed, amended, or terminated, only by a similar written instrument executed by all Parties to be bound thereby.

13. **Governing Law:** This Agreement and any subsequent changes to it shall be construed under and governed by the laws of the State of Colorado.

14. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties' heirs, personal representatives, executors, trustees, agents, successors and assigns.

15. **Severability:** If any provision of this Agreement is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable, and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full

force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such unlawful, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible and legal, valid and enforceable. This Agreement shall be broadly construed to reflect the intent of the Parties hereto.

16. **Counterparts:** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same written instrument. Signatures transmitted by facsimile or scanned electronic copy shall also be deemed the same as an original signature.

17. **Drafting:** This Agreement shall not be construed against either Party because their attorney acted as scrivener in drafting this Agreement.

IN WITNESS WHEREOF the Parties execute this Agreement.


THE MONTOYAS


David Montoya

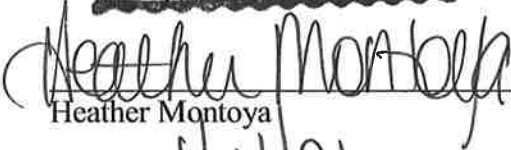
Dated: 4-14-21

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

The foregoing instrument was acknowledged before me this 14th day of April, 2021, by David Montoya in my hand and official seal.




Notary Public

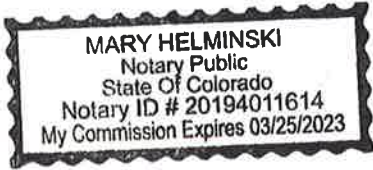

Heather Montoya

Dated: 4/14/21

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

The foregoing instrument was acknowledged before me this 14th day of April, 2021, by Heather Montoya. Witness my hand and official seal.

My commission expires:




Notary Public

BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY,
STATE OF COLORADO

By: Alvin Schaaf
Its: Chair

Dated: _____

ATTEST:

Kristy Archuleta
Archuleta County Clerk & Recorder