

## AGENDA

APCHA Board Special Meeting

May 25, 2021

**2:00 PM, [ONLINE Zoom Meeting \(see instructions below\)](#)**

**For Public Comment, please see below to schedule**



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**Rules of Decorum** - APCHA Board meetings shall be conducted in a fair and impartial manner that allows the business of APCHA to be effectively undertaken. Citizens, APCHA staff and APCHA Board members alike must be allowed to state their positions in a courteous atmosphere that is free of intimidation, profanity, personal affronts, threats of violence, or the use of APCHA as a forum for politics. All remarks shall be directed to the APCHA Board as a whole, not to APCHA staff or to the public in attendance. Members of the public shall not approach the dais without first seeking and obtaining the permission of the Chairperson or presiding officer. Warnings may be given by the Chair at any time that a speaker does not conduct himself or herself in a professional and respectful manner, and anyone whose language or behavior impedes the orderly conduct of an APCHA Board meeting shall, at the discretion of the presiding officer, be barred from speaking further and may be ejected from the meeting.

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### **ONLINE Zoom Meeting:**

#### **START TIME: 2:00 PM**

[Join Meeting](#) or call: (US) +1 (669) 900 6833. Meeting ID: 865 4060 6295; Meeting password APCHA0525 (If calling in, the password is: 761566720)

2:00 PM **Call to Order, Chairperson Skippy Mesirow**

#### **ROLL CALL**

2:01 – 2:30 **Consent Calendar** (may be adopted together by a single motion)

- Approval of Resolution No. 03 (Series 2021), Approving the Settlement of Multiple Lawsuits Regarding Deed Restricted Property Located at 53 Forge Road, Aspen, Colorado

Adjourn

**NEXT MEETING: JUNE 2, 2021 via Zoom**

*NOTE: Times are approximate. Agenda items may be heard prior or after the estimated times shown.*

## MEMORANDUM

**TO:** APCHA Board of Directors  
**FROM:** Cindy Christensen, Deputy Director  
**DATE:** May 25, 2021  
**RE:** Approve Resolution No. 03 (Series of 2021), Approving the Settlement Agreement of Multiple Lawsuits Regarding Deed Restricted Property Located at 53 Forge Road, Aspen, Colorado

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Attached is Resolution No. 03 (Series of 2022), requesting authorization to enter into the attached Settlement Agreement for 53 Forge Road, Aspen, Colorado.

### RECOMMENDATION

APCHA recommends that the Board approve *Resolution No. 03 (Series of 2021), Approving the Settlement Agreement of Multiple Lawsuits Regarding Deed Restricted Property located at 53 Forge Road, Aspen, Colorado.*



**RESOLUTION NO. 03**  
(Series of 2021)

**A RESOLUTION OF THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY BOARD OF DIRECTORS APPROVING THE SETTLEMENT OF MULTIPLE LAWSUITS REGARDING DEED RESTRICTED PROPERTY LOCATED AT 53 FORGE ROAD, ASPEN, COLORADO**

**RECITALS**

1. The Aspen/Pitkin County Housing Authority (“APCHA”) is a party to multiple lawsuits with Edward L. Mulcahy, Jr., the former owner of the deed restricted property located at 53 Forge Road, Aspen, Colorado (“the Property”).

2. These lawsuits (“the Litigation”) are identified as follows:

- (a) *APCHA v. Mulcahy*, Pitkin County District Court Case No. 15CV30150;
- (b) *APCHA v. Mulcahy*, Pitkin County District Case No. 2021CV30000;
- (c) *Mulcahy, et al v. APCHA and the City of Aspen*, Pitkin County District Court Case No. 2020CV00015; and
- (d) *Mulcahy v. APCHA*, U.S. District Court Case No. 18-cv-PAB-GPG.

3. Sandy Mulcahy has been joined as a party in 2(a) above, and the City of Aspen is a party in 2(c) above. The Settlement Agreement approved by this resolution applies to any and all claims of both Sandy Mulcahy and Edward L. Mulcahy, Jr., as well as to the claims of Edward L. Mulcahy against both APCHA and City of Aspen in 2(c) above.

4. The Litigation is ongoing, and the outcome of the Litigation is uncertain.

5. In particular, although APCHA has acquired title to the Property, Sandy Mulcahy has an outstanding lien which encumbers the Property, and in addition to unpaid principal on the loan she claims accrued interest in the amount of approximately \$360,000. Settlement of the Litigation will eliminate the risk of foreclosure on the Property and the risk that APCHA would be required to pay the claim for interest on the loan. APCHA has already purchased the Property, and settlement eliminates the risk of any additional financial exposure for APCHA.

6. While APCHA has liens against Mr. Mulcahy for attorney fees incurred in the Litigation, and while APCHA also has claims for penalties against him, APCHA’s ability to collect these fees and penalties is uncertain.

7. Continuing with the Litigation will preclude APCHA from obtaining clear title to the Property for a substantial period of time, and therefore APCHA will be unable to convey the Property to a Qualified Buyer and thereby recover its substantial investment in the Property until the Litigation is concluded.



8. The approval of a settlement agreement will eliminate the costs, delays, and uncertainties of the Litigation.

9. For the reasons set forth above, the APCHA Board of Directors has determined that it is in the best interests of APCHA and the housing program to enter into a settlement on the terms and conditions set forth in the Settlement Agreement attached hereto as Exhibit A.

**NOW THEREFORE BE IT RESOLVED** by the Aspen/Pitkin County Board of Directors as follows:

1. The Settlement Agreement and Mutual Release attached hereto as Exhibit A is hereby approved.
2. APCHA's Executive Director and its attorney are hereby authorized to execute all documents necessary to effectuate the Settlement Agreement and Mutual Release.

**ADOPTED AND APPROVED THIS 25<sup>th</sup> DAY OF MAY 2021, BY THE BOARD OF DIRECTORS OF THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY AT A SPECIAL MEETING HELD MAY 25, 2021.**

ASPEN/PITKIN COUNTY HOUSING AUTHORITY

\_\_\_\_\_  
Skippy Mesirow, Chairperson

ATTEST:

\_\_\_\_\_  
Diane Foster, Acting Executive Director and Secretary

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into as of the Effective Date, defined below, by and between Aspen/Pitkin County Housing Authority (“APCHA”) on the one hand and Edward L. Mulcahy Jr. (“Mr. Mulcahy”) and Sandy Mulcahy a/k/a S M Mulcahy (“Ms. Mulcahy”) and as successor in interest to Edward L Mulcahy Sr. a/k/a E L Mulcahy on the other (collectively “the Mulcahys”). Each party hereto is hereinafter referred to individually as a “Party,” and collectively as the “Parties,” and is expressly made subject to the following recitals:

### RECITALS

A. By deed dated October 4, 2006, Mr. Mulcahy obtained title to the following described property:

LOT 1, BLOCK 1, BURLINGAME RANCH AFFORDABLE HOUSING FILING NO. 1, FINAL SUBDIVISION PLAT, according to the plat thereof filed October 10, 2005, in Plat Book 75 at Page 51, Reception No. 515999, and according to the Declaration of Covenants, Conditions and Restrictions of Burlingame Ranch Affordable Housing Subdivision, recorded at Reception No. 516002 on October 10, 2005, and according to the Burlingame Ranch Affordable Housing Design Guidelines, recorded on October 10, 2005 at Reception No. 516001, in the records of Pitkin County, Colorado, known and numbered as: 53 Forge Road, Aspen, Colorado 81611

a/k/a 53 Forge Road, Aspen, CO 81611

(the “Property”).

B. The Property is subject to an Affordable Housing Deed Restriction recorded March 7, 2006 (“Deed Restriction”), which is administered by APCHA.

C. To facilitate construction of improvements on the Property, Mr. Mulcahy allegedly received a nine hundred and seventy thousand dollar (\$970,000) loan from Ms. Mulcahy and her late husband evidenced by two promissory notes (“Notes”), which was secured by a deed of trust encumbering the Property dated February 20, 2012 (“Deed of Trust”), all of which were recorded in the Pitkin County public property records at Reception No. 597363.

D. Beginning in or around 2015, disputes arose between Mr. Mulcahy and APCHA regarding Mr. Mulcahy’s compliance with the Deed Restriction, which culminated in APCHA filing litigation styled *Aspen/Pitkin County Housing Authority v. Edward L. Mulcahy Jr. et al.*, Case No. 2015CV30150 (Pitkin Cnty. Dist Ct., Colo.) (“Primary Litigation”).

E. During the Primary Litigation, APCHA was awarded approximately eighty-five thousand dollars (\$85,000) in attorneys’ fees and other judgments, which are secured by associated judgment liens obtained by APCHA (“Liens”).

F. The Court in the Primary Litigation entered an order mandating a Court-ordered sale of the Property and approved a contract of the sale of the Property to APCA (“Contract”), which contained monetary penalties for the Mulcahys’ failure to deliver possession of the Property.

G. During closing of the Contract, and as a result of maximum sales price restrictions in the Affordable Housing Deed Restrictions, APCA paid the maximum purchase price of nine hundred ninety-five thousand dollars (\$995,000) for the Property and deposited that money into the Primary Litigation’s Court’s registry.

H. APCA, by deed dated December 8, 2020, acquired title to the Property, but the Mulcahys refused to vacate the Property.

I. APCA prosecuted an associated eviction action styled *Aspen/Pitkin County Housing Authority v. Edward L. Mulcahy Jr. et al.*, Case No. 2021CV3000 (Pitkin Cnty. Dist. Ct., Colo.) (“Eviction Action”) and, after judgment and a writ of restitution were entered in APCA’s favor, APCA obtained possession of the Property on March 16, 2021.

J. After Court ordered disbursements, there is approximately nine hundred and three thousand two hundred and twenty-eight dollars and thirty-six cents (\$903,228.36) being held in the Primary Litigation’s Court registry (“Court Registry Amounts”), which consist of nineteen thousand eight hundred seventy-four dollars (\$19,774) in supersedeas and appeal bonds posted by Mr. Mulcahy and eight hundred eighty-three thousand four hundred fifty-four thousand dollars and thirty six cents (\$883,454.36) in proceeds from APCA’s purchase of the Property.

K. Ms. Mulcahy was recently added as a party to the Primary Litigation to facilitate resolution of the Court Registry Amounts.

L. The Parties all have competing claims to the Court Registry Amounts, which will require, at the very least, extensive litigation in the Primary Litigation and may require separate lawsuits to resolve (“Priority Disputes”).

M. In addition to the Primary Litigation and the Eviction Action, Mr. Mulcahy also filed lawsuits against APCA styled *Edward L. Mulcahy Jr. et al. v. Aspen/Pitkin County Housing Authority and the City of Aspen*, Case No. 2020CV0015 (Pitkin Cnty. Dist. Ct., Colo.) and *Edward L. Mulcahy Jr. v. Aspen/Pitkin County Housing Authority* U.S. District Court, 18-cv-01918-PAB-GPG (D. Colo.) (together with the appeals in the Primary Litigation and the Eviction Action, the “Lawsuits”, and any appeals stemming from the Lawsuits, the “Appeals”).

N. The Parties want to avoid the expense, delay, inconvenience and uncertainty of litigating disputes in any way related to the Property, the Deed Restriction, the Notes, the Deed of Trust, the Liens, the Contract, the Priority Disputes, the Court Registry Amounts, the Lawsuits, and the Appeals (collectively, the “Disputes”).

O. The Parties, by this Agreement, hereby intend to settle, compromise, and release any and all rights, claims, debts, demands, liabilities, expense, damages, including punitive and exemplary damages, claims for attorneys’ fees, costs, any existing judgments and all causes of

action and appeals whatsoever, accrued or contingent, whether in equity or in law, pending or potential, that any Party hereto has against any other Party hereto as of the date of this Agreement in any way relating to the Disputes.

P. This Agreement is intended to be a “walk-away” settlement meaning that, after settlement, it is intended that APCHA will have no claims or outstanding judgments against the Mulcahys pertaining to the Disputes, and the Mulcahys will have no claims or outstanding judgments against APCHA pertaining to the Disputes. More specifically, it is the intention of this Agreement that APCHA will receive clear title to the Property by way of Ms. Mulcahy releasing her Notes and Deed of Trust on the Property; and APCHA will have no outstanding claims or judgments against the Mulcahys by way of releasing any claims it presently has against the Mulcahys, and recording or filing any satisfactions of judgment for any monetary judgments that APCHA has already obtained against either of the Mulcahys. To the extent any disputes arise over this Agreement, the Parties agree this Agreement shall be construed to effectuate this intent.

### **AGREEMENT**

In order to resolve their differences and in consideration of the covenants set-forth in this Agreement and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. SETTLEMENT CONSIDERATION.** This Agreement is in consideration of and conditioned upon the signing of this Agreement by the Parties, the fulfillment of the Parties’ obligations as outlined herein, and the mutual promises and releases contained in this Agreement.

**2. RELEASE OF COURT REGISTRY AMOUNTS.** In consideration for the covenants contained in this Agreement and within seven (7) days of the Effective Date, the Parties will cooperate to jointly file appropriate documentation with the Court in the Primary Litigation to ensure that all of the Court Registry Amounts are released to Ms. Mulcahy (“Release of Funds”).

**3. RESOLUTION OF LAWSUITS AND APPEALS.** In consideration for the covenants contained in this Agreement and within twenty-one (21) days of the Effective Date, the Parties will cooperate to jointly file appropriate documentation with the courts in the respective Lawsuits and Appeals to fully and finally resolve the Lawsuits and Appeals with each party to bear its own fees and costs, including, where appropriate, stipulated dismissal of all claims with prejudice (regardless of the presence of third parties in the Lawsuits) and stipulated satisfactions of any outstanding judgments.

**4. RELEASE OF LIENS.** In consideration for the covenants contained in this Agreement and within twenty-one (21) days of the Effective Date, APCHA will file appropriate documentation to fully and finally release any recorded judgments against either of the Mulcahys, including the Liens as specified above.

**5. RELEASE OF DEED OF TRUST.** In consideration for the covenants contained in this Agreement and within twenty-one (21) days of the Effective Date, Ms. Mulcahy will file appropriate documentation to fully and finally release the Deed of Trust and any other associated

lien on the Property attributable to her, giving APCA free and clear title to the Property.

**6. MUTUAL RELEASE.** In consideration of the foregoing, the Parties for themselves and for their successors, assigns, officers, board members, directors, subsidiaries, parent companies, related entities, counsel, elected representatives or officials, trustees, trusts, members, managers, employees, agents, representatives, related entities, affiliates, associated municipalities, predecessors, transferees, members, shareholders, successors, staff, heirs and agents (“Related Parties”), fully and finally release and forever discharge each other and each other’s Related Parties from any and all present or future causes of action, judgments, liens, indebtedness, any amount, damages, losses, claims, actions, causes of action, liabilities, attorney fees, costs, obligations and demands of any kind or nature whatsoever, irrespective of the legal theory upon which they may be based, whether in law or in equity, criminal, civil, regulatory or administrative, whether known or unknown, anticipated or unanticipated, direct or indirect, pending or potential, suspected or unsuspected, fixed or contingent, whether heretofore asserted or not, whether based upon an act or omission, whether for pecuniary or nonpecuniary losses, that the Parties have or may have against each other as of the date of this Agreement arising from or in any way relating to the Disputes, including, without limitation, the Property, the Deed Restriction, the Notes, the Deed of Trust, the Liens, the Contract, the Priority Disputes, the Court Registry Amounts, the Lawsuits, and the Appeals.

**7. ASSIGNMENT OF RIGHTS.** Each Party to this Agreement represents and warrants that it has not sold, assigned, conveyed, or otherwise transferred, prior to the final execution of this Agreement, any interest in the Disputes.

**8. VOLUNTARY AGREEMENT.** The Parties agree and understand that this Agreement has been freely and voluntarily entered into and that no representations or promises of any kind other than those contained in this Agreement have been made by any Party to induce any other Party to enter into this Agreement. The Parties have read and understand this Agreement in its entirety. The Parties acknowledge that each of them has been, or has had the opportunity to be, represented by counsel in connection with the negotiation, drafting, and execution of this Agreement.

**9. RELEASE CONSIDERATION SUFFICIENT.** Each person executing this Agreement warrants that he/she is such person and that he/she is fully competent and legally empowered to execute and deliver this Agreement on behalf of the respective Parties. Further, each Party represents that it has full authority to release the other from any and all claims released by this Agreement. The Parties further expressly warrant and represent that, before executing this Agreement, they have been fully informed of its terms, contents, conditions and effect, and no promise or representation of any kind has been made to them by any party to this Agreement or anyone acting on its behalf, except as is expressly stated in this Agreement. The Parties have relied solely and competently upon their own judgment in making this Agreement; they do so freely and voluntarily, without reservation, and fully understand that this is a full, complete and final general release.

**10. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT.** Each person executing this Agreement warrants that he/she is such person and that he/she is fully competent and legally empowered to execute and deliver this Agreement on behalf of the respective Parties. Further,

each Party represents that it has full authority to release the other from any and all claims released by this Agreement. The Parties further expressly warrant and represent that, before executing this Agreement, they have been fully informed of its terms, contents, conditions and effect, and no promise or representation of any kind has been made to them by any party to this Agreement or anyone acting on its behalf, except as is expressly stated in this Agreement. The Parties have relied solely and competently upon their own judgment in making this Agreement; they do so freely and voluntarily, without reservation, and fully understand that this is a full, complete and final release.

**11. INTERPRETATION OF AGREEMENT.** Each Party acknowledges and agrees that this Agreement shall not be deemed prepared or drafted by any one Party. The Parties acknowledge that they have participated in the preparation of this Agreement and it is understood that no provision hereof shall be construed against any party by virtue of the activities of such party or such party's legal counsel in the preparation of this Agreement. In the event of any dispute between the Parties concerning this Agreement, the Parties agree that any rule or theory of construction, to the effect that any ambiguity in the language of the Agreement is to be resolved against the drafting Party, shall not apply.

**12. GOVERNING LAW, JURISDICTION AND VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Jurisdiction and venue for any action arising out of this Agreement shall rest exclusively with the County Court or District Court for Pitkin County, Colorado, except that the Parties may agree to mediate or arbitrate any disputes that may arise in the event of any action for breach of, to enforce the provisions of, or otherwise involving, this Agreement.

**13. PARTIES TO BEAR OWN ATTORNEYS' FEES AND COSTS.** Each Party shall bear his/its own attorneys' fees and costs incurred in connection with the Disputes.

**14. COOPERATION.** The Parties agree to perform such acts and to prepare, execute, and file any documents or stipulations reasonably required to perform the covenants set forth in this Agreement, to satisfy the conditions contained in the Agreement, and to give full force and effect to this Agreement.

**15. ENTIRE AGREEMENT.** Except as otherwise set forth herein, this Agreement embodies the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings relating to the relevant subject matter addressed by this Agreement.

**16. MODIFICATION OF AGREEMENT.** No provision or term of this Agreement may be amended, modified, revoked, supplemented, waived, or otherwise changed except by written instrument duly executed by all of the Parties hereto.

**17. BINDING EFFECT.** The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the respective representatives, successors, heirs and assigns of the Parties.

**18. NO ADMISSION OF LIABILITY.** Nothing contained herein shall constitute or be

asserted as constituting an admission of liability or wrongdoing by or against any of the respective Parties. This Agreement is purely a means for the Parties to avoid the expense, delay, inconvenience, and uncertainty of litigation regarding Property, the Contract, and/or the Disputes. This Agreement shall not be offered or received in evidence in any action or proceeding in any court, administrative action, or other tribunal for any purpose other than to enforce this Agreement.

**19. NO WAIVER.** No failure by any Party to insist on the strict enforcement of any right or obligation under this Agreement during the statute of limitations relevant to such obligation shall constitute a waiver of that right or obligation unless such waiver is specifically expressed in writing. The Parties intend that no implied waivers may ever occur under this Agreement, and no course of conduct between them shall constitute an implied waiver. No waiver of any right or obligation under this Agreement shall constitute a waiver of a subsequent, similar right or obligation.

**20. TAXES.** The Parties shall be individually responsible for paying and/or reporting any and all federal, state, and local income taxes they incur as a result of the actions contemplated by this Agreement.

**21. EFFECTIVE DATE OF THIS AGREEMENT.** The Effective Date of this Agreement shall be the date upon which the last Party signs the Agreement.

**22. TIME OF ESSENCE.** The Parties understand and agree that time is of the essence in connection with all obligations set forth herein.

**23. HEADINGS AND CAPTIONS.** All headings and captions used in this Agreement are for convenience only and shall not be construed to either limit or broaden the language of this Agreement or any particular section.

**24. CONSTRUCTION AND SEVERABILITY.** The terms of this Agreement are contractual and not merely recitals. This Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to resolve completely all claims and causes of action related to the Property, the Contract, and/or the Disputes. If any provisions of this Agreement shall be determined to be invalid, void, or illegal, such provisions shall be construed and amended in a manner which would permit its enforcement consistent with the intent of this Agreement.

**25. ENFORCEMENT.** In the event that either Party takes any action to enforce the terms of this Agreement (including pre-litigation enforcement) due to the default of the other Party, the defaulting Party will be liable for all of the costs and expenses the non-defaulting Party incurs enforcing this Agreement, including, without limitation, attorneys' fees, disbursements and court costs.

**26. ELECTRONIC AND COUNTERPARTS.** This Agreement may be executed in counterparts and, as executed shall constitute one Agreement binding on all of the parties hereto notwithstanding that all said parties are not signatory to the original or same counterpart. An electronic document, pdf, facsimile, telecopy or other reproduction of this Agreement may be

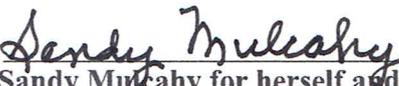
executed by the parties and shall be considered valid, binding and effective for all purposes. At the request of any party, the parties agree to execute an original of this Agreement as well as any facsimile, electronic document, telecopy or other reproduction.

**[signature page follows]**

IN WITNESS HEREOF, the Parties, individually and by and through their duly authorized representatives, have knowingly, voluntarily, and freely executed and fully reviewed this Agreement on the dates set-forth below.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Aspen/Pitkin County Housing Authority

By:  \_\_\_\_\_ Date: 5/23/2021  
Edward L. Mulcahy, Jr.

By:  \_\_\_\_\_ Date: 5/23/2021  
Sandy Mulcahy for herself and as  
successor in interest to Edward L Mulcahy Sr.  
a/k/a E L Mulcahy