

NO FEE DOCUMENT PURSUANT TO  
GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY AND RETURN TO

Community Services Department  
Housing and Community Development Division  
County of Santa Barbara  
123 E. Anapamu Street, Room 202  
Santa Barbara, CA 93101

ATTN: HCD/Property Management

---

APN(s): 073-090-072, and 073-090-073

AGREEMENT TO PROVIDE AFFORDABLE HOUSING  
AND RENTAL RESTRICTIVE COVENANT  
AND PREEMPTIVE RIGHT

**This Document Creates a Lien on Real Property**

PROJECT NAME:

**OCEAN MEADOWS RESIDENTIAL DEVELOPMENT;**

PLANNING AND DEVELOPMENT CASE NUMBER:

**19DVP-00000-0002**

This Agreement to Provide Affordable Housing and Rental Restrictive Covenant and Preemptive Right (hereinafter "Agreement") by and between Ocean Meadows Investors, LLC (hereinafter "Developer"), the County of Santa Barbara, a political subdivision of the State of California, (hereinafter "County") and Ocean Meadows Investors, LLC (hereinafter "Owner"), is entered into on the date set forth below.

**RECITALS**

WHEREAS, Developer proposes to develop a residential development consisting of thirty-eight (38) units as described in Project Case Number 19DVP-00000-0002 to be called the Ocean Meadows (the "Project"). Developer proposes to develop the Project on property owned by the Owner and further identified as Assessor Parcel Numbers 073-090-072, and 073-090-073, located within the 2nd Supervisorial District, and is more fully described in Exhibit "A" attached hereto and made a part hereof for all purposes (the "Subject Property"); and

WHEREAS, the County has determined that the granting of approval for 19DVP-00000-0002 requires as Project Conditions of Approval that Owner and Developer provide affordable housing; and

WHEREAS, the Project Conditions of Approval require Owner and Developer to enter into and record an Agreement to Provide Affordable Housing and Rental Restrictive Covenant and Preemptive Right; and

WHEREAS, for purposes of this Agreement, all references to Owner shall also include Developer; and

WHEREAS, pursuant to State Density Bonus Law (Cal. Gov't Code Sec. 65915 et seq.) Owner has received incentives in return for providing affordable housing units; and

WHEREAS, it is the intent of Owner that six (6) units within the Subject Property be leased in accordance with certain affordability criteria established by the County so that it will remain affordable to Tenants, consistent with the provisions of State Density Bonus Law, the Housing Element of the Comprehensive Plan of the County of Santa Barbara, and the Project Conditions of Approval (herein the "Restricted Unit(s)"); and

WHEREAS, it is the intent of the parties that this Agreement will place maximum rent restrictions on the Restricted Units and maximum income restrictions on Tenants eligible for the Restricted Units; and

WHEREAS, this Agreement to Provide Affordable Housing and Rental Restrictive Covenant and Preemptive Right must be recorded prior to Map Recordation and satisfies the Project Conditions of Approval No. 47; and

WHEREAS, the purpose of this Agreement is to assure that the Restricted Units within the Subject Property remain affordable and available for lease by Low Income Households (up to 60% of the area median income) for the fifty-five (55) year term of this Agreement from the date of filing of the Certificate of Occupancy for the Subject Property.

NOW, THEREFORE, in consideration of the benefits received by the parties, the parties hereto agree as follows:

I. TERMS AND ENFORCEABILITY

- A. Owner agrees to construct and thereafter to maintain six (6) Restricted Units for rent to Low Income Households, as defined as those households earning up to 60% of area median income, pursuant to the Project Conditions of Approval, including, but not limited to, Project Conditions of Approval No. 47, which is set forth in Exhibit "B" attached hereto and incorporated herein by this reference (the "Restricted Unit(s)").

- B. The Restrictive Covenant shall cease and be of no further force and effect without further action of any party following the 55-year term of this Agreement commencing on the filing of a Certificate of Occupancy for the subject property, except that the running of the 55-year term shall be tolled during any period in which Owner is in violation of this Agreement.
- C. Owner shall construct six (6) Restricted Units, concurrent with the construction of the market rate units in each phase of development. Occupancy clearance for no more than 50% of the market rate units in a given phase shall be allowed prior to occupancy clearance for the Restricted Unit for that same phase of development.
- D. This Agreement shall bind and the benefit hereof shall inure to the Owner, its heirs, legal representatives, executors, trustees, successors in interest and assigns, regardless of how their interest in the Subject Property was acquired, and to the County, its successors, designees, or assigns for the term of this Agreement. Upon transfer of the Subject Property, the benefits and restrictions of this Agreement shall run with the land
- E. The Subject Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the covenants, conditions, restrictions and limitations set forth herein. All of the herein stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.
- F. Any purchaser, beneficiary, trustee, successor in interest or assignee of the Subject Property or of any portion of or interest in the Subject Property, no matter how that interest is acquired, shall be deemed to have taken title with knowledge of this Agreement, and to have personally covenanted, consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.
- G. Each lessee of a Restricted Unit shall be subject to the restrictions of this Agreement, by the execution of a rental agreement or lease or by taking possession of a Restricted Unit, whichever occurs first, and shall also be deemed to have knowledge of this Agreement, and to have personally covenanted, consented to, and accepted the covenants, conditions, restrictions, and limitations set forth herein.
- H. In order to preserve through this Agreement, the affordability of the Restricted Units for Low Income Households, Owner for itself and all successors in interest, assignees and beneficiaries hereby grants and assigns to the County the right to review and enforce compliance with this Agreement, and in furtherance of this right, grants to the County liquidated damages, described under Section VI. (B) of this Agreement.
- I. In addition to the requirements set forth above, the prospective Tenant(s) of the Restricted Units shall meet County income eligibility requirements for the Low-

Income category (up to 60% AMI). Eligibility of prospective Tenants shall be determined by the County Community Services Department (CSD) or its designee; however, CSD may choose to authorize the Owner to conduct income certifications at the discretion of CSD subject to review and monitoring by CSD, according to the County Affordable Housing income requirements and Administrative Guidelines in effect at the time of lease, including, but not limited to, income certification. All prospective Tenants of the Restricted Units shall execute an agreement to occupy the unit as their primary residence. The maximum rental rates for the Restricted Units shall not exceed the maximum levels established and updated annually by the County of Santa Barbara's Housing and Community Development division, consistent with the provisions of the County of Santa Barbara Housing Element and state law, including, but not limited to, California Government Code sections 65915 through 65918, inclusive.

- J. The parties recognize that this Agreement is being executed and recorded prior to the Restricted Units being identified by address and Assessor's Parcel Number (APN). The Owner agrees to record an Addendum that shall include an updated Exhibit C to finally identify the address and APN of each Restricted Unit subject to the approval of the Director of Community Services Department (hereinafter "Director") or his or her designee.
- K. The Restricted Unit shall be functionally equivalent and of similar quality to the market rate units.

## II. DEFINITIONS

- A. "Developer" shall mean OCEAN MEADOWS INVESTORS, LLC and its successors, designees, assigns, representatives, agents, affiliates, and subsidiaries.
- B. "Maximum Monthly Rent" means the maximum rent for the Restricted Unit as established and periodically revised by the County's Housing and Community Development division. The maximum rents are reduced in accordance with the County Housing Authority utility allowance for Section 8 housing which is updated annually, See [www.hasbarco.org](http://www.hasbarco.org) for current figures.
- C. "Owner" initially shall mean Ocean Meadows Investors, LLC and any subsequent purchaser, devisee, grantee, holder, successor in interest, assignee, beneficiary, heir, legal representative, executor or trustee holding, claiming or asserting a claim of title to the Subject Property or any portion of or interest in the Subject Property, and as set forth above, for purposes of this Agreement, shall also include Developer.
- D. "Restricted Unit" means a Unit or Units with restricted occupancy and rents pursuant to this Agreement as provided for herein. Restricted Unit may be used in a singular or plural context and shall mean to include all of the required restricted units as identified herein.

- E. "Subject Property" means the real property located at APN #'s 073-090-072, and 073-090-073 in Santa Barbara County, California, which is more fully described in Exhibit "A".
- F. "Tenant" means any tenant or occupant of a Restricted Unit in the Subject Property.
- G. "Unit" means a housing unit in the Subject Property.
- H. "Low- Income Household" means a household whose annual gross income does not exceed the maximum income levels permitted within the Low-Income category as established and periodically revised by the County (at or below 60% of area median income).
- I. "Area Median Income" means the median household income of a geographic area as established by the State of California's Department of Housing and Community Development, pursuant to Health & Safety Code 50093(c).

### III. OCCUPANCY AND RENT RESTRICTIONS

- A. A total of SIX (6) Units in the Subject Property shall be designated as Restricted Units set forth on Exhibit "C" attached hereto and incorporated herein by this reference. The Restricted Unit must be occupied by, or reserved for occupancy by, certified Low-Income Households for the FIFTY-FIVE (55) year term of this Agreement commencing upon the filing of a certificate of occupancy of the Subject Property. The initial applicable income level for the Restricted Units is described in Exhibit "C", attached hereto and incorporated herein.
- B. For the Restricted Units, the total rent charged inclusive of all fees and charges, including utilities or a utility allowance if utilities are not included in rent, and including all services charged by Owner to Tenants, cannot exceed the Maximum Monthly Rent.
- C. The income levels and other qualifications of applicants to lease as Tenants of a Restricted Unit shall be certified by the County Community Services Department (CSD) or its designee. The income level and other qualifications of each Tenant occupying a Restricted Unit shall be re-certified by the County Community Services Department (CSD) or its designee, annually thereafter. In accordance with Section I (I) of this Agreement, CSD may choose to authorize the Owner to conduct income certifications and re-certifications at the discretion of CSD subject to review and monitoring by CSD, according to the County Affordable Housing income requirements and Administrative Guidelines in effect at the time of lease, including, but not limited to, income certification.
- D. In the event that re-certification of a Tenant occupying the Restricted Unit indicates that the household income exceeds the County's maximum income limit for a Low-Income

Household (up to 60% AMI), then upon the ninety (90) day notice from Owner to the Tenant, Owner shall terminate the tenancy of the Tenants of the Restricted Unit. Director of Community Services Department has reviewed and approved the proposed lease addendum allowing for this 90-day lease termination. Upon the vacancy of the Restricted Unit, Owner shall rent the Restricted Unit to a qualified Low-Income Household at no more than the Maximum Monthly Rent as provided for herein.

- E. Owner may transfer ownership of the Restricted Unit to another person(s) or entity(s) as part of and in conjunction with the transfer of the entire Subject Property or transfer the Restricted Unit to any person(s) or entity(s), provided that such transferee(s) shall be subject to all of the terms of this Agreement.

#### IV. LEASING THE RESTRICTED UNITS

- A. Owner agrees that the Restricted Units shall be leased in compliance with the Tenant Selection Plan that has been approved by the Director of Community Services Department (hereinafter "Director") or his or her designee.
- B. Owner has submitted its proposed lease form and all potential addenda to the Director of Community Services Department or his or her designee, which has been reviewed and approved. The term of the lease shall be for no less than one year unless by mutual agreement between the Tenant and Owner. Subject to the election of the County to perform income certifications as set forth in Section III.C above, Owner shall have the right to enter into residential leases without prior written consent by the Community Services Department so long as Owner certified the income and other eligibility requirements of the Tenant(s) and so long as each residential lease is on the standard form lease that was approved by Community Services Department without modification.
- C. The lease may not contain any of the following provisions:
  - 1. An agreement by the Tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;
  - 2. An agreement by the Tenant that Owner may take, hold, or sell Tenant's personal property without notice to the Tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the Restricted Unit after the Tenant has moved out of the Restricted Unit. In such a case, Owner may dispose of this personal property in accordance with the laws of the State of California;
  - 3. An agreement by the Tenant not to hold Owner or Owner's agent legally responsible for any action or failure to act, whether intentional or negligent;

4. An agreement of the Tenant that Owner may institute a lawsuit without notice to Tenant;
  5. An agreement by the Tenant to waive any right to a trial by jury;
  6. An agreement by the Tenant to waive the Tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease; or
  7. An agreement by the Tenant to pay attorney's fees except if the Tenant has provided false or misleading household income information that the Owner could not have discovered despite the Owner's due diligence and good faith in reviewing, investigating and confirming such information.
- D. Owner shall include in leases for the Restricted Units provisions which provide that the Tenant's household income is subject to recertification annually and that the tenancy of the Tenant shall be immediately terminated should one or more of the Tenants misrepresent any material fact regarding the Tenant's qualification as a qualifying Low-Income Household or refuse or fail to cooperate in the recertification process.
- E. Owner shall comply with all applicable State and local laws in terminating or refusing to renew a Tenant's lease.
- F. Prior to tenancy, prospective Tenants of the Restricted Units must complete, execute and deliver to Owner an Application for Certification on a form approved by County. Owner may request additional information to supplement the application as necessary and shall consult with the County if questions are raised regarding a prospective Tenant's eligibility. Notwithstanding the above, the County may elect to take over certifications of eligibility of applicants during the term of this Agreement as provided for in Section III.C above.
- G. To be eligible to lease a Restricted Unit, Tenants cannot own any improved residential real estate.
- H. Owner may only lease the Restricted Units to Tenants whose eligibility has been certified to be qualified as Low-Income Households.
- I. In addition to executing a lease for a Restricted Unit, Owner shall require that each Tenant leasing a Restricted Unit execute an agreement to occupy which shall require the Tenant to occupy the Restricted Unit as the Tenant's primary residence ("Intent to Reside"). Failure of Owner to enforce this requirement shall constitute a material violation of this Agreement.
- J. Owner hereby agrees to abide by the Tenant Selection Plan that must be approved by the Director of the County Community Services Department or his or her designee. Modifications of the Tenant Selection Plan can be made only upon the written approval of Owner and the Director of the County Community Services Department or his or her designee.

- K. Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease or rental of the Restricted Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or any other basis prohibited by law.
- L. Owner agrees that the Restricted Unit shall be leased, at a minimum, in compliance with the marketing plan that has been approved by the Director of Community Services Department, or his or her designee. This approved marketing plan for the advertising and lease of the Restricted Units is attached hereto as Exhibit "D" and by reference made a part of this Agreement as though set forth herein. The marketing plan shall represent the minimum effort used by Owner to market the Restricted Unit. Owner agrees to abide by the Lottery Plan attached hereto as Exhibit "E" and by reference made a part of this Agreement as though set forth in full herein. The Lottery Plan shall only apply to the initial rental of the Restricted Unit.
- V. MANAGEMENT
- A. Owner is responsible for the selection of Tenants, evictions, collection of rents and deposits concerning rental of the Restricted Unit in the manner set forth herein. Such management functions over the Restricted Units may be performed by or on behalf of Owner by an experienced, professional management company or organization which must be approved by the County's Community Services Department, however Cardinal Group Management Midwest Inc. has been pre-approved by the Community Services Department. The County shall have no responsibility over management of the Restricted Units. Owner shall submit to the County for County's approval Owner's proposed designation of a property manager pertaining to the Restricted Units, which approval shall not be unreasonably withheld. Subject to approval by the Director of the Community Services Department or his or her designee, Owner may replace the property manager at any time with a qualifying professional management company, the approval of which shall not be unreasonably withheld by the County.
- B. Owner shall submit its written management policies with respect to the Restricted Units to the Director of the County's Community Services Department or his or her designee for his or her review and approval, which approval shall not be unreasonably withheld, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.
- C. Owner shall maintain records that clearly document Owner's performance of its obligations under the terms of this Agreement. Owner shall submit all records to the County's Community Services Department within thirty (30) days of the County's request. Owner shall permit the County or its designee to enter and inspect the Restricted Unit for compliance with Owner's obligations under this Agreement upon twenty-four (24) hours



advance notice of such visit by the County to Owner and to Tenants of the Restricted Unit(s).

- D. Owner shall submit to the County's Community Services Department (i) not later than March 1st of each year, a report for the preceding period of January 1st through December 31st, showing the necessary information to allow the County to determine Owner's compliance with the Agreement, and (ii) within thirty (30) days after receipt of a written request, any other information or completed forms requested by the County that demonstrate Owner's compliance with the Agreement.

## VI. ENFORCEMENT

- A. Upon any material violation of the provisions of this Agreement or if any materially false or misleading statements are made in any document or certification submitted to the County, the County may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed letting, sale, or transfer in violation of this Agreement, or for any such other relief as may be appropriate.

- B. Owner understands that County's objective in requiring this Agreement is to ensure that the Restricted Unit remain affordable to eligible Low-Income Households and that should Owner lease or should a Tenant occupy a Restricted Unit(s) in violation of the requirements set forth herein the public interest would be prejudiced and the County would thereby be damaged. The parties agree that it is impracticable and extremely difficult to fix the extent of actual damages to County from such a breach. However, the parties have made reasonable efforts to establish fairly the amount of compensation for certain types of breach described below and agree that a fair and reasonable amount owing to the County for such types of breach by the Owner as liquidated damages would be as follows:

1. **If a Restricted Unit in the Subject Property is rented or leased for an amount in excess of the Maximum Monthly Rent permitted under this Agreement, Owner shall be liable to the County for damages in an amount equal to twice the difference between the actual monthly rent and the allowable Maximum Monthly Rent multiplied by the number of months that the Restricted Unit has been leased in violation of the Agreement.**
2. **If a Restricted Unit is rented or leased to a Tenant whose household income and other qualifications has not been certified as provided for herein, the required certification set forth in Section III shall be completed within thirty (30) days of notification of non-compliance. If the Tenant's household income does not qualify for letting of the Restricted Unit as required by this Agreement, then in addition to Owner's obligation under Section III.(D) herein, Owner shall be**

**assessed liquidated damages in the amount of three times the difference between the Tenant's gross monthly household income and one twelfth of the County's maximum annual household income level for Very Low Income households that is allowed for rent or lease of the Restricted Unit in effect at the time the Restricted is rented or leased multiplied by the number of months that the Restricted Unit has been so leased. Conversely, if any Tenant of a Restricted Unit is initially certified as a qualifying Low-Income Household and a subsequent recertification reveals that such Tenant no longer qualifies as a Low-Income Household, then Owner shall not be subject to any penalty under this Section VI(B)(2) so long as Owner complies with the requirements of Section III(D) above. Notwithstanding the foregoing, liquidated damages for Owner shall not apply if it is the Tenant that has provided false or misleading household income information and the Owner and property manager have conducted due diligence and acted in good faith in reviewing such information.**

3. If a Restricted Unit in the Subject Property is left vacant without efforts made to lease the unit, Owner shall be liable to the County for damages in an amount equal to twice the allowable Maximum Monthly Rent multiplied by the number of months that the Restricted Unit has been left vacant in violation of the Agreement.

**Owner hereby agrees to the above liquidated damages provisions**

JP (Owner's initials)

4. These remedies shall be cumulative to all other rights and remedies the County may have.
- C. In addition to any other remedies the County may have, Owner hereby grants, transfers and assigns to the County the right to receive the rents due or collected during the entire period a Restricted Unit is rented in violation of this Agreement. Owner also assigns to the County the right to collect and/or compromise such rents, in whole or in part, and/or to enforce the payment of all or any part thereof as the County may deem proper.
  - D. The running of the term of this Agreement shall be tolled during any period in which Owner is in violation of this Agreement.
  - E. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.
  - F. A violation of this Agreement constitutes a violation of the Project Conditions of Approval placed upon the Subject Property by the County, and in addition to the

remedies provided for herein, a violation of this Agreement may be enforced as a violation of the Project Conditions of Approval.

VII. ADDITIONAL PROVISIONS

- A. The County may assign its rights and delegate its duties thereunder without the consent of Owner. Upon such assignment the County shall notify Owner.
- B. Owner and County covenant that they have not and will not execute any other agreement or covenant with provisions contradictory to or in opposition to the provisions hereof, and that in any event this Agreement is controlling as to the rights and obligations between Owner, the County, and their respective successors without regard to whether such other agreement or covenant is executed before or after this Agreement.
- C. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- D. The terms of this Agreement shall be interpreted under the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.
- E. The terms of this Agreement shall be interpreted in a manner that is consistent with the County Housing Element and Housing Element Implementation Guidelines which were in effect when the County Board of Supervisors approved the Project and the Project Conditions of Approval.
- F. All notices required herein shall be sent by certified mail, return receipt requested, to the addresses listed below.

To the County at:

Community Services Department  
Housing and Community Development Division  
123 E. Anapamu St. #202  
Santa Barbara, CA 93101

To Developer at:

OCEAN MEADOWS INVESTORS, LLC  
4100 E Mississippi Ave, Suite 1200  
Denver, CO 80246  
ATTN: Catherine Stanton \_\_\_\_\_

To Owner at:

OCEAN MEADOWS INVESTORS, LLC  
4100 E Mississippi Ave, Suite 1200  
Denver, CO 80246  
Attn: Catherine Stanton \_\_\_\_\_

or such other addresses that the parties may subsequently provide in writing.

- H. In the event of a transfer of the Subject Property by operation of law, including, but not limited to, by devise, bequest, or foreclosure on any financing, the transferee or the estate of the decedent shall be bound by the provisions of this Agreement.
- I. Owner covenants to cause to be filed for record in the office of the County Recorder of Santa Barbara County a Request for a copy of any Notice of Default and a copy of any Notice of Sale be recorded with the original and all subsequent deeds of trust or mortgage with power of sale encumbering the Subject Property, pursuant to Section 2924b of the Civil Code of the State of California. The request shall specify that any notice shall be mailed to the address for the County set forth above.
- J. In addition, in the event of any transfer of ownership of a Restricted Unit, a Grant of Preemptive Right and Resale Restrictive Covenant attached hereto and incorporated herein by reference as Exhibit "F" shall be recorded with the original and all subsequent deeds at the time of each transfer of the Restrictive Unit.
- K. Owner shall defend, indemnify and save harmless the County, its officers, officials, agents and employees from any and all claims, demands, damages, losses, costs, expenses (including attorney fees), judgments or liabilities arising out of, related to, or in connection with this Agreement or occasioned by the performance or non-performance or attempted performance of the provisions hereof, including, but not limited to, any act or omission to act on the part of the Owner or its agents, officers, representatives, or employees, except those claims, demands, damages, costs, expenses (including attorney fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the County.
- L. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons or firms represented or purported to be represented by such entities, persons or firms, and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with.
- M. This County Agreement to Provide Affordable Housing may be executed in any number of counterparts, each of which is an original and all of which taken together form one single document.

*(Signatures appear on the following page. No further text appears on this page.)*

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date appearing below.

**COUNTY OF SANTA BARBARA**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Das Williams, Chair  
BOARD OF SUPERVISORS  
(Signature must be notarized)

**ATTEST:  
MONA MIYASATO  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD**

**DEVELOPER**

By: \_\_\_\_\_  
Deputy Clerk

By: James Eric Frank  
Name: JAMES ERIC FRANK  
(Signatures must be notarized)

Dated: \_\_\_\_\_

**OWNER**

**APPROVED AS TO FORM:**

By: James Eric Frank  
Name: JAMES ERIC FRANK  
Title: MANAGER  
(Signatures must be notarized)

**RACHEL VAN MULLEM  
COUNTY COUNSEL**

By: Lauren Wideman  
DocuSigned by:  
0F4649822C84458  
Lauren Wideman, Deputy County Counsel

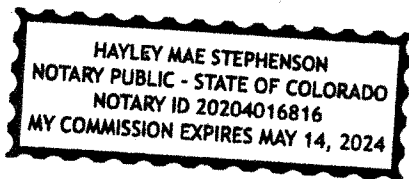
# COLORADO NOTARY ACKNOWLEDGMENT

State of Colorado

County of Denver

The foregoing instrument was acknowledged before me this November 8, 2023 (date)  
by James Eric Frank (name of person acknowledged).

(Seal)



  
(Notary's Official Signature)

My Commission Expires: May 14, 2024

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF**

**PROPERTY**

PARCEL ONE (APN: 073-090-072)

PARCEL 2 OF PARCEL MAP NO. 14,784, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 64, PAGES 20 THROUGH 25 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THERE FROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND OTHER MINERALS AND MINERAL RIGHTS IN AND BENEATH SAID LAND, WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF SAID LAND AND ANY PORTION OF THE SUBSURFACE THEREOF TO A DEPTH OF 500 FEET BELOW SAID SURFACE, AS GRANTED AND RESERVED IN DEEDS RECORDED MARCH 14, 1957 AND NOVEMBER 1, 1965 IN BOOK 1435, PAGE 85 AND BOOK 2127, PAGE 104, RESPECTIVELY OF OFFICIAL RECORDS.

PARCEL ONE (APN: 073-090-073)

PARCEL 3 OF PARCEL MAP NO. 14,784, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 64, PAGES 20 THROUGH 25 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

## EXHIBIT "B"

AFFORDABLE HOUSING CONDITION(S)  
FOR  
**OCEAN MEADOWS RESIDENTIAL DEVELOPMENT;**  
19DVP-00000-0002  
(PROJECT NAME AND CASE NUMBER)

**47. Hous-Density Bonus for Sale or Rent:** Consistent with the Owner/Applicant's Project Description, the Owner/Applicant shall provide 6 low income dwelling units (21% of project base density units ([28]) available for sale or rent at prices affordable to households earning 60% of Area Median Income (AMI) adjusted for family size and revised annually consistent with the provisions of Government Code § 65915-65918 (Density Bonus). Prior to final map clearance the applicant shall enter into and record an Agreement to Provide Affordable Housing (Agreement), which shall include a model Restrictive Covenant and Preemptive Right. The Covenant shall be executed and recorded by each purchaser of an affordable unit and shall be based on the County's model documents, as they may be amended from time to time, and subject to the review and approval of P&D, HCD and County Counsel. The agreements shall specify that the units must be priced affordable to households earning 60% of AMI adjusted for family size and revised annually consistent with Government Code § 65915-65918. The Agreement and Covenant shall include provisions describing marketing and lottery requirements for the initial sale/rental of unit; requiring income eligibility of prospective buyers/renter to be determined by the county or its designee (currently HCD); requiring prospective buyers/renter of the affordable unit to sign an Intent to Reside statement/requiring a Notice of Default and Notice of Sale, as well as the Covenant, be recorded with the original and all subsequent deeds, and stating that the maximum sales/rental rate for the affordable unit shall not exceed the maximum levels established by the Board of Supervisors, consistent with the provisions of the Housing Element and State law. No ZCI for development on Lots 2 or 3 shall be approved until recordation of final maps for both 19TRM-00000-00002 and -00003. Affordable units shall be constructed concurrent with the construction of the market rate units in each phase of development. Zoning Clearance for subdivision/grading improvements of Lot 3 shall be approved prior to or concurrently with ZCI approval for subdivision/grading improvements of Lot 2. ZCI approval for no more than 50% of the market rate units in a given phase shall be allowed prior to occupancy clearance for the affordable units for that same phase.

**PLAN REQUIREMENTS/TIMING:** Prior to final map clearance the applicant shall enter into and record the Agreement, which shall include a County-approved Restrictive Covenant and Preemptive Right as described herein. The Agreement shall be entered into and recorded prior to Final Map Clearance and P&D staff shall obtain written HCD approval and confirmation of the executed and recorded Agreement prior to final map clearance. The Covenant shall be executed and recorded by each purchaser of an affordable unit. The Agreement and Covenant shall be based on the review and approval of P&D, HCD and County Counsel. The units shall remain affordable for a period of 55 years or longer if required by the financing, insurance or rental subsidy program used. The term of the Agreement and Covenant shall begin on either the date of occupancy certification or initial sale or lease, as determined by P&D. The running of the covenant shall toll during any period of violation. If, prior to execution of a final Agreement, future amendments to the County Housing Element allow developers to satisfy the affordable housing requirements in an alternate way, and such amendments are consistent with State Density Bonus Law, the developer shall be able to utilize those amendments. The Agreement shall be printed on all grading/building plans. **MONITORING:** ZCI for Lot 3 subdivision improvements shall be approved prior to or concurrently with ZCI Approval for Lot 2 subdivision improvements. ZCI approval for no more than 50% of the market rate units in a given phase shall be allowed prior to occupancy clearance for the affordable units for that same phase.



EXHIBIT "C"

ADDRESS LIST OF AFFORDABLE HOUSING UNITS  
For  
**OCEAN MEADOWS RESIDENTIAL DEVELOPMENT**

19DVP-00000-00002

TOTAL NUMBER OF RESIDENTIAL UNITS IN THE PROJECT: 38  
TOTAL NUMBER OF RESTRICTED UNITS IN THE PROJECT: 6  
NUMBER OF AFFORDABLE UNITS FOR 60% INCOME HOUSEHOLDS: 6

	<u>Address</u>	<u>Unit #</u>	<u>Bedrooms</u>	<u>Income Level</u>
1)	_____	_____	<u>2</u>	<u>60% AMI</u>
2)	_____	_____	<u>2</u>	<u>60% AMI</u>
3)	_____	_____	<u>2</u>	<u>60% AMI</u>
4)	_____	_____	<u>2</u>	<u>60% AMI</u>
5)	_____	_____	<u>2</u>	<u>60% AMI</u>
6)	_____	_____	<u>2</u>	<u>60% AMI</u>

*EXHIBIT D*  
MARKETING PLAN FOR  
OCEAN MEADOWS RESIDENTIAL DEVELOPMENT  
**Project Case Nos. 19DVP-00000-00002**

- A. After the Agreement to Provide Affordable Housing and Rental Restrictive Covenant and Preemptive Right has been recorded for the Project, the Housing and Community Development Division will make the Restricted Unit publicly available to the interested persons on the Affordable Housing notification lists by including the Project's name, location, number of Restricted Units, qualifying income, other qualifications and the Owner or his/her/its representative's phone number.
- B. Owner will advertise the Project in, at least, one newspaper of general circulation and, at least, one Spanish-language newspaper or radio station which circulates or broadcasts in the area of this Project. Each newspaper must include the official "Equal Housing Opportunity" logo and each radio advertisement must incorporate the statement "Equal housing opportunity".

The Agreement to Provide Affordable Housing and Rental Restrictive Covenant and Preemptive Right binds the Owner to this Marketing Plan. If the Owner determines that changes may be necessary after the Agreement has been recorded, Owner must contact Housing and Community Development regarding these changes and must receive approval of the revised Marketing Plan from the Director of Community Services, or his or her designee.

- C. Project advertising shall conform to the requirements of the California Fair Housing and Employment Act (FEHA) – California Government Code sections 12900 - 12996. Advertisements for the Project shall state that a lottery will be conducted if the number of interested persons exceeds the number of Restricted Units available. The name and telephone number of the person to contact to obtain additional information regarding income requirements and rental restrictions shall also be provided in the advertisement. Owner shall provide Housing and Community Development with a copy of the publicized advertisement.
- D. Owner shall do the following minimum marketing for the identified Restricted Unit:
1. Owner shall run at least one advertisement in the real estate section of the Santa Barbara News Press and one Spanish language newspaper or radio station which circulates or broadcasts in the area of this Project at least one time per week for six weeks or such additional time as specified in paragraph C of Exhibit D. At a minimum, the advertisement shall be placed in the Sunday Real Estate section.
  2. Owner will have a phone number identified at which inquiries concerning the Restricted Unit can be made. A phone-recording device will be included on the phone when it is not being directly answered.
  3. Information sheets will be available to prospective Tenants of the Restricted Unit identifying the level of affordability for the Restricted Unit, qualifying income levels, an explanation of the income certification process, rental restrictions, floor plans, a site plan indicating the location of available Restricted Unit, and time within which each person must be qualified as a Tenant.
  4. The Restricted Unit will be leased to the parties identified and certified according to County Affordable Housing income requirements and Administrative Guidelines currently in effect at the time of lease.

**EXHIBIT E**

**LOTTERY PLAN FOR INITIAL RENTAL  
FOR  
OCEAN MEADOWS RESIDENTIAL DEVELOPMENT**

**Project Case Nos. 19DVP-00000-00002**

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- A. Owner shall publish an advertisement consistent with the terms of the Marketing Plan in a newspaper of general circulation in the County. At the time a prospect expresses interest in renting a Restricted Unit, Owner or the Owner's representative shall provide an informational packet describing income qualifications, the lottery process and expected timing, County Income and Price Guidelines, County Income Certification Guidelines and Application, and rental restrictions. *(This information packet shall be developed in conjunction with Housing and Community Development or its designee.)*
- B. Consistent with the California Fair Housing and Employment Act (FEHA) – California Government Code sections 12900 - 12996, the Owner shall not restrict applicants on the basis of race, color, religion, national origin, gender, age, familial status, or handicap, or any other basis prohibited by law.
- C. Owner shall provide a dated receipt to prospective Tenants who have completed a Lottery Application. This receipt shall correspond to the number of the applicant on the lottery list.
- D. During the marketing period, Owner shall maintain a list of prospective Tenants. The following information should be included on the list:
1. Name
  2. Receipt Number and Date Issued
- E. Owner shall accept completed Lottery Applications from applicants for a minimum of 15 days **or until the number of applicants is at least three times the number of Restricted Units available**, whichever occurs later. However, the acceptance of names shall not be required to continue for more than 90 days.
- F. All names of applicants with completed Lottery Applications shall be included in the lottery except for exceptions outlined in the HCD administration manual.
- G. Housing and Community Development (HCD) shall conduct the lottery by randomly computer-ranking the names on the initial list which includes all applicants with completed Lottery Applications. Lottery results shall be made publicly available at the Owner's sales office, the office of the Community Services Department and on the Housing and Community Development website.
- H. Owner will contact the top lottery ranked applicants ("lottery selected applicants") equal to the number of Restricted Units available, who will be required to complete an Income Certification application. Owner will instruct applicants to return the Income Certification applications within three weeks of Lottery. Late Income Certification applications will not be accepted and Owner will continue contacting the next Lottery ranked applicant in the ranked order.

- I. Owner will certify Lottery applicants in the order of their Lottery standing. When applicants are deemed certified they are eligible to rent the Restricted Unit. Thereafter as any of those applicants drop out or are unable to qualify, Owner will continue contacting other Lottery ranked applicants in the ranked order.
- J. Owner will notify certified applicants of their income certification by mail. A copy of the Income Certification will be provided to HCD. Owner's sales staff shall contact the income certified applicant to enter into a lease contract.
- K. Certified applicants shall then be eligible to lease the Restricted Unit, as follows: Within five working days after the lottery results are posted, lottery selected applicants shall confirm an appointment with the Owner to lease the Restricted Unit which appointments shall begin on the day following the fifth working day. The Owner shall set up consecutive appointment slots ("initial slots") for the lottery selected applicants in order of their lottery ranking. If the lottery selected applicant is unable to attend his/her initial slot appointment, then the Owner may make the slot available to any other lottery selected applicant, and the party who is unable to attend his/her initial slot appointment shall have the opportunity to fill the next available initial slot appointment. If the Restricted Unit is available at the end of the time period for all initial lottery slot appointments, then the Owner may proceed down the list of ranked applicants and offer appointment slots to them in order of their ranking. Any lottery selected applicant who fails to fill an initial slot by the time of the last initial slot shall not be disqualified, but shall have the opportunity to fill the next available appointment slot.
- L. Failure to meet the time lines described in Section K will not disqualify an applicant, but the Owner may then allow the next ranked applicant to lease the Restricted Unit.
- M. If an applicant has not completed a lease agreement for the Restricted Unit within 90 days of income certification, a new certification application must be submitted.
- N. If an applicant declares that he or she is no longer interested in leasing the Restricted Unit, the next ranked applicant shall become eligible.
- O. If the list of ranked applicants is exhausted, Owner may thereafter negotiate with subsequent prospects on a first come-first served basis.

**EXHIBIT F  
GRANT OF PREEMPTIVE RIGHT  
RESALE RESTRICTION COVENANT  
AND OPTION TO PURCHASE  
SECURED BY DEED OF TRUST**

(To be used in the event Restricted Unit is transferred to owner resident)

RECORDING REQUESTED BY AND RETURN TO:

Community Services Department  
Housing and Community Development Division  
County of Santa Barbara  
123 East Anapamu Street, Room 202  
Santa Barbara, CA 93101-2062

Attn: Property Management

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No fee per Government Code Sec. 6103

APN: xxx-xxx-xxx

**GRANT OF PREEMPTIVE RIGHT:  
RESALE RESTRICTIVE COVENANT  
AND OPTION TO PURCHASE  
SECURED BY DEED OF TRUST**

This document creates a lien on real property and grants  
**the County an option to purchase the real property**

**OCEAN MEADOWS RESIDENTIAL DEVELOPMENT**  
**19DVP-00000-0002**

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(Property Address)

This Grant of Preemptive Right, Resale Restrictive Covenant and Option to Purchase Secured by Deed of Trust  
(hereinafter "Covenant") by and between \_\_\_\_\_ (hereinafter "Owner")

and the County of Santa Barbara, a political subdivision of the State of California (hereinafter "County"), is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**RECITALS:**

WHEREAS, the County of Santa Barbara ("County") has provided development incentives to this project (such as allowing development at greater density than County zoning allows in the absence of a special permit, or other incentives); and,

WHEREAS Owner (collectively referred to together with the County as the "Parties") have benefited from these development incentives through the opportunity to purchase the Property at a price substantially below fair market value; and,

WHEREAS, the intent of the County in providing these development incentives is to preserve the affordability of the Property for persons with incomes within a specified range and,

WHEREAS, subsequent Owners will benefit from the limitation on the purchase price of the Property which this Grant of Preemptive Right: Resale Restrictive Covenant and Option to Purchase Secured by Deed of Trust (this "Covenant") requires; and,

WHEREAS, the intent of Parties is to preserve through this Covenant the affordability of the Property for persons with incomes within a specified range and to assign to the County the right to enforce compliance with this Covenant;

NOW, THEREFORE, in consideration of the benefits received by the Parties, the Parties agree as follows:

**I. DEFINITIONS**

A. "Owner": (i) \_\_\_\_\_, (ii) any subsequent purchaser (whether an occupant purchaser or non-occupant titleholder), devisee, successor trustee, transferee, or grantee of an owner or subsequent purchaser, or (iii) any other holder of title to the Property or any portion thereof or interest in the Property. Owner does not include the Institutional Lender holding the Institutional Lender First Deed of Trust or easement holders.

B. "Encumber" or "Encumbrance": Shall include any mortgage, deed of trust, lien, security agreement or other instrument intended to secure an obligation or indebtedness.

C. "First Deed of Trust": A deed of trust which is recorded in first position, senior to any other deeds of trust against the Property, and which is made for purchase money financing or for other financing and which has been approved by the County in writing.

D. "Institutional Lender": Any FDIC-insured bank which is licensed to engage in the business of providing mortgage financing (purchase money or refinance) for residential real property or the United States Department of Housing and Urban Development.

E. "Institutional Lender First Deed of Trust": A First Deed of Trust made by an Institutional Lender.

F. "Household": All those persons - related or unrelated - who occupy a single housing unit.

G. "Maximum Sales Price": The Maximum Sales Price is the highest price that an Owner is allowed pursuant to this Covenant to resell the Property for, inclusive of real estate commissions and closing costs, so as to be affordable to **Low-Income (60% Area Median Income (AMI))** households. The base maximum sales price shall be set by the County Board of Supervisors based upon the formula in effect at the time the subdivision application for the Project was deemed complete, and shall be established and updated annually by the County of Santa Barbara's Housing and Community

Development division, consistent with the provisions of the County of Santa Barbara Housing Element and State law, including, but not limited to, California Government Code sections 65915 through 65918.

County staff or designee shall be afforded reasonable opportunity to inspect the Property for damage or deferred maintenance. The Maximum Sales Price shall be decreased by any amount necessary to repair damages and undertake deferred maintenance, if any, and to put the Property in a good and salable condition as reasonably determined by Housing and Community Development staff. In no event shall the Maximum Sales Price be adjusted by Housing and Community Development staff below the total amount of all liens from County-approved financing on the Property.

The Maximum Sales Price has been set to include allowance for a real estate sales commission and closing costs, and Owner may not require subsequent Owners of the Property to pay any commissions or other costs of sale typically paid by sellers of residential real property or to purchase items of personal property or services in conjunction with the purchase of the Property.

To help assure continued affordability to subsequent Owners, no price increase will be allowed for property improvements made by the Owner. The Owner is of course free to make legal improvements, but will not be compensated for any improvements made upon the sale of the Property.

No increase whatsoever shall be allowed for the period during such time, if any, that Owner was in violation of this Covenant.

H. "Maximum Monthly Rent": The maximum rent that may be charged for the Property as a unit reserved for Low Income households as established and periodically revised by the County Board of Supervisors. These monthly rates are determined as described in the Housing Element, Implementation Guidelines, or as otherwise dictated by applicable state or federal programs.

I. "Median Annual Income": Median annual income shall be determined by reference to income figures for the Santa Barbara area as published by the State of California Housing and Community Development Department. In the event such income figures are no longer published, or have not been updated for a period of at least eighteen (18) months, the County may use or develop such other reasonable and comparable substitute figures as it may choose.

J. "Principal place of residence": The place where a person or persons reside on a full-time basis.

K. "Residential Real Estate": Real property including developed or undeveloped residentially-zoned land, mobile homes and manufactured housing.

L. "Transfer": Any sale, assignment, or transfer, either voluntary or involuntary, or by operation of law, whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise, of any interest in the Property, including but not limited to, a fee simple interest, joint tenancy, tenancy in common, life estate, leasehold, or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title.

M. "Qualified Transferee": A person who receives property being Transferred pursuant to Sections VII, VIII, and IX of this Covenant.

## **II. TERM AND ENFORCEABILITY**

### **A. Term**

This Covenant shall bind and the benefit hereof shall inure to the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the County, its successors, designees, or assigns until **45 years** from the effective date of this Covenant subject to extensions of that term if the Owner violates the terms of this Covenant. If the

Owner occupies the Property for the full term in compliance with this Covenant, this Covenant shall expire at the end of the **45 year** term and upon such expiration, the Owner may sell the Property to any buyer for any price. Notwithstanding the above, if the Owner sells the Property during the term of this Covenant, the Owner will be required to sign and record a new Covenant that will begin a new **45 year term up to a maximum period of 90 years from (DATE OF CERTIFICATE OF OCCUPANCY FILING)**. This requirement will continue for each new Owner of the Property up to the 90-year limitation. In addition, the running of the 45-year period shall be tolled during any time that the Owner is found by the County to be in violation of this Covenant..

#### **B. Covenants Running With the Land; Equitable Servitude**

The Property is held and hereafter shall be held, Transferred, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the covenants, conditions, restrictions and limitations contained herein and in that document entitled "Agreement to Provide Affordable Housing and Rental Restrictive Covenant and Preemptive Right" recorded on \_\_\_\_\_, as Instrument No. \_\_\_\_\_, in the office of the Recorder of Santa Barbara County, California (collectively the "Agreement to Provide"). All of the herein-stated covenants, conditions, restrictions and limitations and Agreement to Provide Affordable Housing and Rental Restrictive Covenant and Preemptive Right are intended to constitute both equitable servitudes and covenants running with the land. In the event of a conflict between the terms of the Agreement to Provide and Rental Restrictive Covenant and Preemptive Right and the terms of this Covenant, the terms of this Covenant shall prevail unless specifically indicated otherwise.

#### **C. Binding Effect**

Any Owner of the Property or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Owner or from any subsequent Owner of the Property, or by the signing of a contract or agreement to purchase or occupy the same, shall, by the acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein and in the Agreement to Provide and Rental Restrictive Covenant and Preemptive Right.

#### **D. Enforceability**

In order to preserve through this Covenant the affordability of the Property for persons of **Low-income (60% AMI)** income, the Owner for itself and all of his or her heirs, legal representatives, executors, successors and assigns, hereby grants and assigns to the County the right to review and enforce compliance with this Covenant, and in furtherance of this right, grants to the County an Assignment of Rents, described under Section XIII of this Covenant, and an Option to Purchase the Property, described under Sections III and XIV of this Covenant, the right to collect liquidated damages for certain violations as described in Section XIII and assigns to the County any proceeds payable to the Owner from a foreclosure or deed in lieu of foreclosure in excess of the Maximum Sale Price, as described in Section XII.B of this Covenant.

### **III. DEED OF TRUST: SUBORDINATION; DEFAULT; NOTICE TO COUNTY; RIGHT TO CURE**

#### **A. Subordination**

This Covenant shall be subject and subordinate solely to the lien of a County-approved Institutional Lender First Deed of Trust subject to the following conditions and limitations:

##### **1. Limit on Amount**

The amount secured by the County-approved Institutional Lender First Deed of Trust shall not exceed 95% of the purchase price paid by Owner plus any late fees and charges as may be permitted under the County-



approved Institutional Lender First Deed of Trust. This covenant will not be subordinate to a County-approved Institutional Lender First Deed of Trust that exceeds such amount.

## **2. Default; Right to Cure**

In the event of default under any deed of trust, including the County-approved Institutional Lender First Deed of Trust, the County shall have the same right as the Owner to cure the default and redeem the Property prior to foreclosure sale. Such redemption shall be subject to the same fees, charges and penalties which would otherwise be assessed against the Owner. Nothing herein shall be construed as creating an obligation on the part of the County to cure any such default nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

## **3. Right to Exercise Option**

Any default under a deed of trust, including the County-approved Institutional Lender First Deed of Trust, shall trigger the County's right to exercise its option to purchase the Property, as described more fully in Section XIV below, and the County may exercise its option to purchase the Property pursuant to such provisions.

## **4. Request for Notice of Default**

The holder of the County-approved Institutional First Deed of Trust shall be under no obligation to provide notice of default to the County other than as required pursuant to a duly filed request for notice of default under Section 2924b of the California Civil Code. In the event the County elects to exercise such option to purchase, subsequent to a default on the County-approved Institutional First Deed of Trust, and notwithstanding any language contained herein to the contrary with regard to the rights of the County, the County must complete such purchase no later than the end of the period established by Section 2924c of the California Civil Code for the reinstatement of a monetary default under the deed of trust.

## **B. Rights Under County-approved Institutional Lender First Deed of Trusts**

Subject to these above-stated conditions and limitations, this Covenant shall not impair the rights of an Institutional Lender under a County-approved Institutional Lender First Deed of Trust, to foreclose or take title to the Property pursuant to the remedies of the County-approved Institutional Lender First Deed of Trust, or accept a deed in lieu of foreclosure in the event of default by a trustor under the County-approved Institutional Lender First Deed of Trust. Subsequent to the Institutional Lender or its successors and assigns acquiring title through foreclosure sale or accepting a deed in lieu of foreclosure under such County-approved Institutional Lender First Deed of Trust, this Covenant shall be terminated and of no further force or effect as an encumbrance against the Property (or any owners, tenants or encumbrancers in the chain of title), and the Institutional Lender or subsequent transferee may sell the Property to any purchaser at any price or lease the Property to any tenant at any rental amount, without thereafter being subject to this Covenant. At the request of an Institutional Lender or its title insurer, County will execute a recordable instrument to confirm the termination of this Covenant.

## **C. Covenant Not Subordinate to Any Other Deeds of Trust**

This Covenant shall be subordinate solely to a County-approved Institutional Lender First Deed of Trust. All other deeds of trust recorded against the Property shall be subject to all of the terms and limitations of this Covenant including, but not limited to the County's option to purchase the Property for the Maximum Sales Price.

**D. Notice to County by Owner**

Prior to recordation, Owner shall notify County of any deed of trust, financing instrument or mortgage to be recorded against the Property, and shall provide the County with the information needed by the County to record a Request for Notice of Default. Note that the County's written approval of any financing is required under Sections V., IX. and XI. below.

**IV. LEASING AND OWNERSHIP OF OTHER REAL PROPERTY**

**A. Submittal of Approved Rental Agreement to County**

Owner shall submit to the County the lease or rental agreement for review and approval. As soon as possible after Owner has requested and obtained the County's written approval to rent the Property, Owner shall provide a copy of the lease or rental agreement, the names of the renters, the rent being charged, and the new temporary address of the Owner. If the Owner seeks to amend the terms of any lease or rental agreement, Owner shall notify County in writing prior to any amendments to the lease or rental agreement for the County's review and approval. Owner shall notify County when he/she/they re-occupy the Property.

**B. No Ownership of Other Residential Real Estate**

Owner may NOT have any form of ownership or ownership interest in whole or in part, (including long-term leaseholds, partnership, limited partnership or limited liability ownership) in or to any other Residential Real Estate as defined herein, concurrently with the ownership of this Property.

**C. Modification of Ownership Requirements**

The County Housing and Community Development Division may approve modification to IV.D above if Owner demonstrates need or other good cause. Ownership of any other residential real estate in whole or in part without written approval by the County violates this Covenant, and will result in default and remedies as described in this Covenant.

**V. REQUIREMENTS FOR COUNTY APPROVAL OF TRANSFER, REFINANCE OR OTHER ENCUMBRANCE**

**A. Approval of All Proposed Transfers, Financing, Refinancing Required**

Except as provided in Section III above and Section V.B below, the Property shall not be Transferred, financed, refinanced, or otherwise encumbered in any way without the prior written approval of the County. A Transfer in violation of this Section V shall be voidable and may subject the Owner to cumulative remedies set forth in Section XIII of this Covenant. In addition, the running of the term of this Covenant shall be tolled during any period wherein the Property has been Transferred in violation of this provision.

**B. Exceptions**

The following Transfers are exceptions to the requirements of Section V.A above and do not require prior written approval by the County Housing and Community Development Division; however, Owner is required to notify the County in writing upon any of the following Transfers and such Transfers may trigger resale obligations as set forth in Sections IX.D and XII.A., below:

**1. Death**

A transfer resulting from the death of an Owner where the Property is Transferred to the spouse who was a co-owner prior to the Transfer.

**2. Marriage**

A Transfer by an Owner where the Owner's spouse becomes the co-Owner of the Property.

**3. Divorce**

A transfer resulting from a decree of dissolution of a marriage or legal separation from a property settlement agreement incidental to such a decree by which a spouse who is an Owner become the sole Owner of the Property.

**VI. COUNTY OPTION TO PURCHASE UPON PROPOSED TRANSFER**

**A. Grant of Option and Right of First Refusal**

In consideration of the benefits received by Owner, Owner hereby grants to the County, and the County hereby accepts an Option to Purchase, which the County may exercise anytime Owner lists, offers or otherwise makes the Property available for a potential Transfer.

**B. Notice to County**

Anytime during the term of this Covenant when Owner intends to offer to Transfer the Property or any portion thereof, Owner shall give to the County written notice at the address and in the manner specified in Section XVI.E below of Owner's intent to Transfer the Subject Property. The notice shall specify the Owner's proposed asking price for the Property which asking price shall be equal to or below the Maximum Sales Price.

**C. Exercise of County Option**

The County Option may be exercised by County at the times and on the conditions set forth below:

1. The County shall have 30 days after receipt of written notice from Owner to respond in writing to Owner of the County's intent to exercise its Option to Purchase.
2. The County shall have an additional 45 days to purchase the Property at up to or not to exceed the Maximum Sales Price. The length of any delays caused by Owner or Owner's agents shall extend such time. Owner shall be responsible for all costs and provide all reports as is customary for sellers of residential property in Santa Barbara, including title insurance, zoning inspection, termite report and any other maintenance repairs as disclosed by property and/or termite inspection report(s).

**D. Term of Option**

The term of the County Option shall be from the date of recording of this Covenant until the expiration of the term of this Covenant as set forth in Section II above.

## **VII. TRANSFER OF PROPERTY TO PRIVATE PARTY**

### **A. County Option to Select Purchaser**

County may adopt a program whereby the County selects purchasers of affordable units whose owners have notified County of their intent to Transfer. If the County has adopted such a program, then the Owner shall be required to Transfer the Property pursuant to the program.

If the County has not exercised its Option to purchase the Property during the term of this Covenant pursuant to Sections III, VI and/or XIV, and if County has adopted a program requiring County selection of purchasers of affordable for-sale units, Owner shall be required to Transfer the Property to such County-selected purchaser for the Maximum Sales Price consistent with this Section and sections VIII, IX and X below.

### **B. Owner's Right to Transfer**

If the County has not adopted a program requiring County selection of purchasers for affordable for-sale units and County has not exercised its Option to Purchase pursuant to Sections III, VI and/or XIV, this Section VII.B shall take effect and Owner shall have the right to Transfer the Property to a Qualified Transferee (hereinafter "Qualified Transferee"), subject to the terms and conditions of this Section and in Sections VIII, IX and X.

### **C. Approval of Transfer by County**

1. The County Housing and Community Development Division shall oversee the Transfer of the Property to any Qualified Transferee. No Transfer of the Property shall occur under this Section without the prior written approval of the County Housing and Community Development, or designee.
2. The County Housing and Community Development Division may approve a proposed Transfer of the Property provided that Owner is not in default under this Covenant, and that the County does not elect to exercise its Option to Purchase under Sections III, VI and/or XIV, and that the County has determined that Owner and Owner's proposed Qualified Transferees both have complied with all of the requirements and provisions of this Covenant and affordable policies then current.
3. Qualified Transferees of the Property shall complete, execute and deliver to Housing and Community Development Division or its designee the Application for Eligibility Certification. The County may request additional information to supplement the application if deemed by the County to be necessary to verify the Qualified Transferees' income.

Qualified Transferees shall be held liable for the accuracy of information provided. The Housing and Community Development Division or its designee will review the complete application and shall determine whether the Qualified Transferees meet the County's eligibility standards.

4. Owner or the Qualified Transferee shall submit to the County the proposed sales contract, escrow instructions, and all other related documents that shall set forth the terms of Transfer of the Property. The sales contract shall incorporate information including, but not limited to the following:
  - a. Sales Price
  - b. All other amounts of money or other consideration, if any, concerning the Property to be paid by the Qualified Transferee to the Owner or any other person or entity, and reason such payment is made.
  - c. The down payment to be paid by the Qualified Transferee

- d. Financing terms
  - e. The monthly payments to be paid by the Qualified Transferee in connection with the purchase and ownership of the Property, itemized for taxes, insurance, and homeowners association fees.
5. Qualified Transferee shall submit to the County Housing and Community Development, or designee, information including, but not limited to the following:
- a. Documents to Support Identification
  - b. Documents to Support Residency
  - c. Documents to Support Income and Assets
  - d. Documents to Support Savings and Recent Bank Activity
  - e. Documents to Support Current Debts
  - f. Documents to Support Loan Terms and Provisions
6. The information provided shall be used by the County to determine the eligibility of the Qualified Transferee.
7. The County reserves the right to collect a reasonable fee to cover the County's costs of verifying information and administering its rights and obligations under this Covenant.
8. No goods or services shall be sold by Owner to the Qualified Transferee in conjunction with the Transfer of the Property.

#### **VIII. ELIGIBILITY OF QUALIFIED TRANSFEREE TO PURCHASE**

Owner shall not Transfer the Property to any Qualified Transferee who does not satisfy all of the following requirements:

- A.** Each Qualified Transferee of the Property shall meet the County's then current qualification guidelines for Low-Income Households including those pertaining to household size and income.
- B.** Qualified Transferee(s) shall not own other residential real estate (as defined herein) at the time of application and during the three years prior to purchase of this Property. This prohibition may be waived for a particular Qualified Transferee by Housing and Community Development for good cause.

#### **IX. REQUIREMENTS FOR APPROVED TRANSFER TRANSACTION**

##### **A. Price**

The sale price shall not exceed the Maximum Sales Price.

##### **B. Recordation of Replacement Covenant**

Upon Transfer each Owner and Qualified Transferee shall execute and cause the recordation of a new Resale Restrictive Covenant and Option to Purchase ("Replacement Covenant") which shall replace this Covenant and be substantially

similar to this Covenant. The Replacement Covenant shall contain revisions to reflect any changes to the County's adopted affordability policies.

**C. Escrow Documents**

Each Owner and Qualified Transferee shall approve and sign the County's instructions to escrow regarding the requirements of this Covenant and County financing, if any. At least 10 business days prior to scheduled close of escrow, Owner and Qualified Transferee shall provide the County with a copy of the final sales contract, estimated final settlement statement, signed escrow instructions, and any other document that the County may reasonably request.

**D. Unapproved or Fraudulent Transfer**

In the event Transfer is made in violation of the terms of this Covenant or false or misleading statements are made in any documents or application submitted to the County for its approval of the Transfer, the County may declare a default under this Covenant. The County shall also have the right to file actions at law or in equity to force the parties to terminate and rescind the Transfer contract and declare the Transfer void notwithstanding the fact that the Transfer may have closed and become final as between the Owner and Qualified Transferee. In any event, any costs, liabilities or obligations incurred by the Owner and Qualified Transferee for the return of any moneys paid or received in violation hereunder or for any costs and legal expenses incurred by County in the enforcement of this Covenant, shall be borne by the Owner and Qualified Transferee, and not by the County.

**E. County Review**

As soon as possible after the County has received all completed executed documents set forth above and any additional information received by the County, the Housing and Community Development Division, or designee, shall notify escrow in writing that the Qualified Transferee and Transfer qualify or fail to qualify to purchase the Property under County guidelines. If the Qualified Transferee or the Transfer fails to qualify then execution of the Transfer transaction would constitute a breach of this Covenant and may subject the Owner to the County's cumulative remedies as set forth in Section XIII of this Covenant.

**F. Marketing and Lottery**

Owner agrees that, with respect to the first sale of each Restricted Unit, no Restricted Unit within the Subject Property shall be sold, offered for sale, leased or financed except, at a minimum, in compliance with the marketing plan that has been approved by the Director of Community Services Department, or his or her designee (hereinafter "DIRECTOR"). This marketing plan, approved by the DIRECTOR for the advertising and sale of the Restricted Units, is attached hereto as Exhibit "C" and by reference made a part of this Agreement as though set forth in full herein. The marketing plan shall represent the minimum effort used by Owner to market Restricted Units. Owner agrees to abide by the Lottery Plan attached hereto as Exhibit "D" and by reference made a part of this Agreement as though set forth in full herein. All subsequent sales or transfers shall be in accordance with the transfer provisions of the Restrictive Covenant.

**X. RESALE PRICE CALCULATION**

**A. Resale Price**

The sale price of the Property shall not exceed the Maximum Sales Price.

**B. No Adjustment for Owner Improvements**

To help assure continued affordability to subsequent Owners, no price adjustment or other reimbursement will generally be allowed for Property improvements made by the Owner. The Owner may make legal and permitted improvements (with the exception of adding bedrooms) for the Owner's benefit and enjoyment, but will not be compensated for such improvements upon sale of the Property.

### **C. Other Requirements and Conditions**

1. No price increase whatsoever shall be allowed during such time, if any, that Owner was in violation of any requirement of this Covenant.
2. County staff or designee shall be afforded reasonable opportunity to inspect the Property for damage or deferred maintenance. If the Property is damaged or if there is substantial deferred maintenance, Housing and Community Development Division staff may lower the Maximum Sale Price as set forth in Section I.
3. The Owner may not require the Qualified Transferees to pay any commissions or other costs of sale typically paid by sellers of residential real property. In addition, Owners cannot require Qualified Transferees to pay real estate commissions for transactions in which the Owner listed the Property without a realtor and did not engage the services of a realtor to complete or assist in the transaction.
4. At any given time, Maximum Sale Price may be greater than the fair market value of the Property and there is no guarantee or assurance that the Owner will be able to sell the Property for the Maximum Sales Price. There is no minimum price that is guaranteed.

## **XI. REQUIREMENTS FOR COUNTY APPROVAL OF FINANCING OR REFINANCING**

### **A. Approval by County**

The terms of all financing secured by the Property must be approved by the County in writing before the time of Transfer or before any financing or refinancing. Purchase financing and refinancing may only be provided by licensed Institutional Lenders.

### **B. Requirements for Approval**

1. The Owner is in full compliance with this Covenant.
2. The terms of the new loan are more favorable than the old loan.
3. Owner's total secured loans-to-value ratio does not exceed 95%.
4. The debt payment-to-income ratio will not be higher than it was upon Owner's purchase of the Property.
5. No additional cash is taken out other than reasonable loan costs unless approved in advance by the County in writing.
6. Financing which may result in balloon payments or negative amortization including "reverse mortgages" will not be approved.

### **C. Modification of Financing Requirements**

The County Director of the Community Services Department or designee may approve modifications to subsection B above if Owner demonstrates need or other good cause.

### **D. Unapproved Financing**

Securing any financing against the Property that has not been approved by the County Housing and Community Development Division in writing constitutes a material default of this Covenant which will trigger the County's option to purchase the Property as set forth in Section XIV below.

## **XII. BEQUEST OR FORECLOSURE, INSURANCE AND CONDEMNATION**

### **A. Transfers by Operation of Law**

In the event of a Transfer of the Property by operation of law such as by devise, bequest, foreclosure on any financing not exempted under Section V.B above, or deed in lieu of foreclosure on any such financing, to any transferee who is not a Qualified Transferee, the transferee or the estate of the decedent shall be bound by the provisions of this Covenant; however, the County shall not declare a default before allowing such Transferee a reasonable period of time, not less than 90 days, to Transfer the Property to a Qualified Transferee in conformance with all of the provisions of this Covenant, including the Maximum Sales Price.

### **B. Excess Foreclosure Funds Payable to County**

In the event that the Property is Transferred through foreclosure, a deed in lieu of foreclosure or a trustee's deed upon sale, a default in a contract of sale, or through any other means, for the purpose of curing or preventing the default by Owner on a loan or obligation, any amount of the sale price which is over and above the Maximum Sale Price and which would otherwise be payable to Owner after full satisfaction of the Institutional Lender First Deed of Trust loan and costs, shall be due and owing to the County. However, this Covenant will continue in full force and effect to bind the Property except after foreclosures of an Institutional Lender First Deed of Trust.

### **C. Insurance Proceeds**

Any hazard insurance proceeds received by the Owner which are not used to repair or rebuild the Property, and any condemnation award collected by the Owner, shall be distributed as follows:

1. First, to an Institutional Lender claiming under an Institutional Lender First Deed of Trust.
2. Second to any other lenders and to Owner but only up to a combined amount (including a loan of an Institutional Lender First Deed of Trust) of the Maximum Sales Price, all as according to the recording priority of their deeds of trust against the Property and as otherwise provided by law.
3. If any funds remain after the Owner has been paid, the remainder shall be paid to the County.

## **XIII. DEFAULTS AND REMEDIES: ASSIGNMENT OF RENTS**

### **A. Notice of Default**

Upon any violation of the provisions of this Covenant the County may declare a default under this Covenant by delivering written notice thereof to the Owner. Upon the declaration of a default the County may purchase the Property as set forth in Section XIV or apply to a court of competent jurisdiction for specific performance of the Covenant, for an injunction prohibiting a proposed Transfer in violation of this Covenant, for a declaration that the prohibited Transfer violates this Covenant and is, therefore, void, assess liquidated damages as set forth in Section XIII.D., or for any such other relief as may be appropriate.

### **B. Assignment of Rents**

Owner hereby assigns to County the right to receive the rents due or collected during the entire period the Property is occupied in violation of any of the terms of this Covenant.

### **C. Remedies Not Exclusive**

The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.



**D. Liquidated Damages**

Owner understands that the County's objective in requiring this Covenant is to ensure that the Property remains affordable for a period of forty five (45) years or longer in the event of unapproved or fraudulent Transfers or in the case of a violation, and that should Owner Transfer the Property in violation of the requirements set forth herein, the public interest would be prejudiced and the County would thereby be damaged. The parties agree that it is impracticable and extremely difficult to fix the extent of actual damages to County from such a breach. However, the parties have made reasonable efforts to establish fairly the amount of compensation and agree that a fair and reasonable amount owing to the County for such a breach by the Owner as liquidated damages would be as follows:

Note: Liquidated damages for multiple violations are cumulative.

1. If Property is rented in violation of this Covenant, the Owner shall be liable to the County for damages in an amount equal to the total amount of rent collected.
2. If it is determined that false or misleading information was supplied by the Owner to the County in its eligibility certification process, the Transfer may be voided or County may require that the Owner Transfer the Property to a Qualified Transferee in compliance with the terms of this Covenant. In addition, Owner shall be liable to the County for an amount equal to the Maximum Monthly Rent for the Property for the period of time in which the Owner improperly owned or occupied the Property.
3. If Owner does not truthfully respond to any County surveys of property owners within 30 days of receiving such survey, Owner shall be liable to County in the amount of \$5.00 per day for each day following the thirty first (31<sup>st</sup>) day after Owner received the survey until it is completed and returned to the County or the County's authorized agent. This amount represents the County's reasonable additional costs of administering the survey.
4. The amounts stated above shall be in addition to any fines and penalties that may be owed under applicable County ordinances.

Owner hereby agrees to the above liquidated damages provisions \_\_\_\_\_  
(Owner's initials)

**XIV. PURCHASE OPTION UPON DEFAULT**

**A. Option to Purchase Upon Default**

In addition to the remedies provided the County elsewhere in this Covenant, Owner hereby grants to the County the option to purchase the Property effective upon the declaration of Notice of Default.

The option to purchase may be exercised upon a default under this Covenant or upon default under any notes Owner has executed in favor of the County, or any deed of trust, or any other lien, including a judgment, tax or Homeowner's Association lien, recorded against the Property. The County shall have thirty (30) days after declaring a default or receiving notice that a default is declared on any other obligation secured by this Property, whichever occurs first in time, to notify the Owner of its decision to exercise its option to purchase. Not later than sixty (60) days after the certified mailing

of the notice to exercise its option, and within the time period otherwise established by Section 2924c of the California Civil Code, the County or its assignee may purchase the Property for the following option price:

The lesser of the following:

1. The Maximum Sales Price calculated as of the date of violation or default less six percent (6%) to cover the County's resale costs, and less the amount necessary to repair any damage and correct deferred maintenance as reasonably determined by the County;

or

2. The appraised value of the Property as determined by a state licensed appraiser approved by Owner and County, less six percent (6%) to cover the County's resale costs;

Notwithstanding the above, the option price shall not be less than the amount necessary to pay the balance due on any County-approved financing.

## XV. COUNTY REQUIREMENTS AND AUTHORIZATIONS FROM OWNER

### A. County Requirements from Owner Regarding Compliance Monitoring

#### 1. Annual Surveys.

a. Upon written request by County, Owner shall submit an Annual Survey, signed by Owner, which may include, but is not limited to Owner's statement that Owner has occupied the Property and complied with all provisions of this Covenant, or includes Owner's explanation of any financing, occupancy or other violation of any provision of this Covenant.

b. The Annual Survey required under this Section shall be mailed or delivered as follows:

Community Services Department  
Housing and Community Development Division  
County of Santa Barbara  
123 East Anapamu Street, Room 202  
Santa Barbara, CA 93101-2062

or to such other person or address designated by the County.

c. Failure to provide a report within 30 days of the specified date, or any misrepresentations on the report, shall constitute a material default under this Covenant subject to the enforcement provisions of Sections XIII and XIV.

#### 2. Audits.

By signing this Covenant Owner covenants for itself and all of his or her heirs, legal representatives, executors, successors and assigns that, for the term of this Covenant, the County may audit their household for the purpose of evaluation or re-evaluating their eligibility for purchase of the Property and for compliance with the terms of this Covenant including, but not limited to the Owner Occupancy and income requirements and refinancing restrictions set forth herein. Owner for itself and all of his or her heirs, legal representatives, executors, successors and assigns agrees to assist and cooperate with the County in any such audit. Such assistance and cooperation shall include, but not be limited to promptly supplying any information reasonably requested by County including tax returns, utility bills, bank statements and employment records and signing any reasonably requested release of information forms. Owner hereby consents to and grants County the right to conduct financial background investigations including, but not limited to credit checks during the term of the Covenant. If upon such audit it is determined that Owner supplied false or misleading information to the County, Owner's purchase of the Property may be voided at County's option and Owner shall be subject to the enforcement provisions set forth in Section XIII and XIV of this Covenant.

**B. Owner's Continuing Authorizations to County**

**1. Right of County to Inspect Property**

Owner shall permit County staff the right to enter and inspect the Property during normal business hours upon at least 72-hours advance notice to Owner. An Owner's refusal to permit inspection will be a default under the Covenant.

**2. Right of County to obtain status of Owner's loans.**

Owner authorizes County to contact Owner's lender or lenders to obtain current loan status and loan information at any time without further written authorization from Owner.

**XVI. ADDITIONAL PROVISIONS**

**A. Assignment**

The County may assign its rights and delegate its duties hereunder without the consent of Owner. Upon such assignment the County shall notify the Owner.

**B. Purchase of Other Residential Real Estate**

The Owner covenants that they have not and will not execute any other agreement to purchase or purchase any other Residential Real Property during their ownership of the Property.

**C. Severability**

If any one or more of the provisions contained in this Covenant shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Covenant and this Covenant be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**D. Choice of Law; Venue**

The terms of this Covenant shall be interpreted under the laws of the State of California.

**E. Notices**

All notices required herein shall be sent by certified mail, return receipt requested, to the Owner at the address of the Property and to the County at: Community Services Department, Housing and Community Development Division, Attn: Housing Programs, County of Santa Barbara, 105 East Anapamu Street, Room 105, Santa Barbara, CA 93101, or such other address that the County may subsequently provide in writing to the Owner.

**F. Recordation of Request for Notice of Default, Request for Notice of Delinquency**

Owner agrees to permit the County to record a Request for Notice of Default and a Request for Notice of Delinquency at any time.

**XVIII. DECLARATION OF EACH OWNER**

**A.** The financial and other information provided by me is true and complete.

**B.** I have received a copy of this Covenant and agree to comply with the all of the requirements of this Covenant.

**C.** No persons or entity will be on title to the Property other than as listed below as Occupant Purchasers or Non-Occupant Title-holders. I understand that the County must give its approval in writing before anyone else may be listed on the title.

- D. I have not paid and will not pay any consideration to anyone, or any real estate commissions, or any costs normally paid by sellers, except as already disclosed in the purchase contract and escrow instructions which have been delivered to and approved by the County.
  
- E. I understand that any false statements or misrepresentations to the County in this transaction will constitute a default under this Covenant, and may constitute fraud.

*(Signatures appear on the following page. No further text appears on this page.)*

IN WITNESS WHEREOF, the Parties have executed this Covenant as of the date written below.

OWNERS:

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

(Signature(s) must be notarized)

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

(Signature(s) must be notarized)

COUNTY OF SANTA BARBARA  
COMMUNITY SERVICES DEPARTMENT  
HOUSING AND COMMUNITY DEVELOPMENT DIVISION

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Deputy Director  
(Signature must be notarized)

NOTE: This Covenant will be recorded; a notary must acknowledge the signature of the parties.

Approved as to form:  
RACHEL VAN MULLEM  
COUNTY COUNSEL

BY: \_\_\_\_\_  
Deputy County Counsel

**EXHIBIT A**  
Legal Description

**Legal Description**

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APN: XXX-XXX-XXX

**EXHIBIT B**  
(Deed of Trust with Assignment of Rents)

RECORDING REQUESTED BY AND RETURN TO:

Community Services Department  
Housing and Community Development Division  
Attn: Affordable Housing Program  
County of Santa Barbara  
123 East Anapamu St, #202  
Santa Barbara, CA 93101-2062

NO FEE DOCUMENT PURSUANT TO  
GOVERNMENT CODE SECTION 27383

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**APN:** xxx-xxx-xxx

**DEED OF TRUST WITH  
ASSIGNMENT OF RENTS**

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS (“Deed of Trust”) is made as of this \_\_\_th day of \_\_\_\_\_, 2023 by \_\_\_\_\_ (“Trustor”), to \_\_\_\_\_, as trustee (“Trustee”), for the benefit of the County of Santa Barbara, a public body corporate and politic (“Beneficiary”).

**GRANT IN TRUST**

**1. GRANT.** Trustor, hereby irrevocably grants and conveys to Trustee, **IN TRUST, WITH POWER OF SALE**, for the benefit and security of Beneficiary, all of Trustor’s interest in the property located at **SUBJECT PROPERTY ADDRESS** in an unincorporated area of Santa Barbara County, California, as more particularly described in Exhibit A, incorporated herein by this reference (the “Property”); the Property is a condominium unit in that certain common interest development commonly known as the **PROJECT NAME**.

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property; all buildings, structures, fixtures, improvements, signs, and landscaping now or hereafter erected or located on the Property, together with rents, issues and profits.

All of the foregoing, together with the Property, is herein referred to as the "Security."

### **OBLIGATIONS SECURED**

**2. OBLIGATIONS.** Trustor makes this grant for the purpose of securing the following obligations:

- A. That certain GRANT OF PREEMPTIVE RIGHT RESALE RESTRICTIVE COVENANT AND OPTION TO PURCHASE SECURED BY DEED OF TRUST ("Covenant") made by Trustor, to order of Beneficiary and extensions and renewals *thereof*; and
- B. Payment of any sums advanced by Beneficiary to protect the security and priority of this Deed of Trust; and
- C. Any liquidated damages accruing to Beneficiary under Covenant.

**3. ENFORCEMENT.** Upon the happening of a default under the Grant of Preemptive Right Resale Restrictive Covenant and Option to Purchase Secured by Deed of Trust recorded \_\_\_\_\_ as instrument number \_\_\_\_\_, Beneficiary may, in addition to OTHER rights and remedies permitted by the Covenant, this Deed of Trust, or applicable law: (a) enter upon, take possession of, and manage the Security, either in person as a mortgagee-in-possession, by agent, or by a receiver appointed by a court, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Security, (b) collect all Rents, including those past due and unpaid, and apply the same to pay for the costs and expenses of operation of the Security, including attorneys' fees, and pay off any indebtedness secured by this Deed of Trust, all in such order as Beneficiary may determine.

**4. APPOINTMENT OF A RECEIVER.** In any action to enforce this assignment, Beneficiary may apply for the appointment of a receiver to take possession of the Security and take whatever measures are necessary to preserve and manage the Security for the benefit of Beneficiary and the public interest. Trustor hereby consents to the appointment of a receiver. The receiver shall have all of the authority over the Security that Beneficiary would have if Beneficiary took possession of the Security under this assignment as a mortgagee-in-possession, including the right to collect and apply Rents.

**5. NO WAIVER OF POWER OF SALE.** The entering upon and taking possession of the Security and the collection of Rents shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or notice of default and, notwithstanding the continuance in possession of the Security or the collection and application of Rents, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.



## RIGHTS AND OBLIGATIONS OF TRUSTOR

**6. PERFORMANCE OF SECURED OBLIGATION.** Trustor shall promptly perform each obligation secured by this Deed of Trust in accordance with the Covenant.

**7. FORECLOSURE BY INSTITUTIONAL LENDER.** If the Security is foreclosed upon by an Institutional Lender which is the maker of a loan secured by a First Deed of Trust; and the Security is transferred through a trustee's sale, judicial *foreclosure* or deed in *lieu of* foreclosure by an Institutional Lender on a First Deed of Trust, Trustor shall promptly pay to Beneficiary the amount of surplus to which Beneficiary is entitled pursuant to Section \_\_\_ of the Covenant.

**8. MAINTENANCE OF THE SECURITY.** The Declaration of Covenants, Conditions and Restrictions, ("CC&Rs") recorded against the Security in the Official Records of Santa Barbara County, California provides that the Owners' Association ("Association") shall among other things provide exterior maintenance and repair of all condominiums in the common interest development. To the extent that the Association is not obligated to, or does not, maintain the Security under the CC&Rs, Trustor shall, at the Trustor's own expense, maintain and preserve the Security or cause the Security to be maintained and preserved in good condition, in good repair, and in a decent, safe, sanitary, habitable and tenantable condition. Trustor shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Security. Trustor shall not commit or permit waste on or to the Security. Trustor shall not abandon the Security. Beneficiary shall have no responsibility over maintenance of the Security.

**9. LIENS, ENCUMBRANCES, AND CHARGES.** Except for purchase money loans, Trustor shall discharge any lien or encumbrance not approved by Beneficiary in writing that may attain priority over *this* Deed of Trust.

**10. DEFENSE AND NOTICE OF CLAIMS AND ACTIONS.** Trustor shall appear in and defend, at its own expense, any action or proceeding purporting to affect the Security and/or the rights of Beneficiary. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding and of any condemnation offer or action with respect to the Security upon Trustor's receipt of notice thereof.

**11. SUITS TO PROTECT THE SECURITY.** Beneficiary shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Security or the rights of Beneficiary, (b) to preserve or protect its interest in the Security and in the Rents, and (c) to restrain the enforcement of or compliance with any governmental legislation, regulation, or order, if the enforcement of or compliance with such legislation, regulation, or order would impair the Security or be prejudicial to the interest of Beneficiary.

**12. DAMAGE TO SECURITY.** Trustor shall give Beneficiary and Trustee prompt notice in writing of any damage to the Security. Beneficiary acknowledges that Article IX of the CC&Rs provides the mechanism by which a decision shall be made to repair or rebuild a damaged condominium unit and for payment of the expense of such rebuilding and repair.

**13. TITLE.** Trustor warrants that Trustor lawfully has legal title to the Security.

**14. GRANTING OF EASEMENTS.** Trustor may not grant easements, licenses, rights- of-way or other rights or privileges in the nature of easements **with** respect to the Security except those required or desirable for installation and maintenance of public utilities including water, gas, electricity, sewer, cable television, telephone, or those required by law. Beneficiary acknowledges that certain easements have been granted with respect to the Security to other condominium owners in the Project and to the Association.

**15. TAXES AND LEVIES.** Trustor shall pay prior to delinquency, all taxes, fees, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien *affecting* the Security. However, Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any contested liabilities. In the event that Trustor fails to pay any of the foregoing items, Beneficiary may, but shall be under no obligation to, pay the same, after Beneficiary has notified Trustor of such failure to pay and Trustor fails to fully pay such items within seven business days after receipt of such notice. *Any* amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of interest as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

**16. CONDEMNATION.** Subject to the rights of any senior lienholders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of taking all or any part of or interest in the Security under assertion of the power of eminent domain (“Funds”) distributed to Trustor pursuant to Article X of the CC&Rs are hereby assigned to and shall be paid to Beneficiary. Beneficiary is authorized (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as Beneficiary shall determine at its sole option. All or any part of the amounts so collected and recovered by Beneficiary may be released to Trustor upon such conditions as Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust.

Notwithstanding anything to the contrary set forth herein, Beneficiary shall, prior to the application of the Funds or any portion thereof to the indebtedness or other obligations, apply such portion of the funds as is reasonable and necessary to repair and preserve the value, marketability and rentability of the Security.

**17. ACCELERATION ON TRANSFER OF SECURITY; ASSUMPTION.** In the event that Trustor, without the prior written consent of the Beneficiary, sells, agrees to sell, transfers, or conveys its interest in the Security or any part thereof or interest therein, Beneficiary may at its option declare all sums secured by this Deed of Trust to be immediately due and payable.

**18. RECONVEYANCE BY TRUSTEE.** This trust is intended to continue for the entire term of the Covenant. At the end of the term of the Covenant, upon written request of Beneficiary and upon payment by Trustor of Trustee's reasonable fees, Trustee shall re-convey the Security to Trustor, or to the person or persons legally entitled thereto.

### **DEFAULT AND REMEDIES**

**19. EVENTS OF DEFAULT.** A default of a material term of the Covenant shall also constitute an Event of Default under this Deed of Trust.

**20. ACCELERATION OF MATURITY.** Upon the happening of an Event of Default Beneficiary may declare this Deed of Trust immediately due and payable.

**21. BENEFICIARY'S REMEDIES.** Upon the happening of an Event of Default Beneficiary may proceed with any or all of the following remedies:

- A. Declare any and all sums advanced by Beneficiary to protect the security and priority of this Deed of Trust immediately due and payable by Trustor;
- B. Enforce the assignment of rents and right to possession as provided for in this Deed of Trust, and/or seek appointment of a receiver to take over possession of the Security and collect Rents;
- C. Cure any Monetary Default secured by the Property and add the amount of such payment to the amount owing to beneficiary;
- D. Commence an action to foreclose this Deed of Trust pursuant to California Code of Civil Procedure Section 725a et seq. as amended, and/or seek appointment of a receiver from a court of competent jurisdiction with the authority to protect Beneficiary's interests in the Security;

E. Deliver to Trustee a written declaration of Default and demand for sale, and a written Notice of Default and election to cause Trustor's interest in the Security to be sold and exercise its power of sale as provided for below; or

F. Pursue any other rights and remedies allowed at law or in equity.

**22. FORECLOSURE BY POWER OF SALE.** Should Beneficiary elect to foreclose by exercise of the power of sale contained in this Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust, and such receipts and evidence of any expenditures made or of liquidated damages accruing in favor of Beneficiary under the Covenant that are additionally secured hereby as Trustee may require.

Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser its deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee, or Beneficiary, may purchase at the sale.

Trustee may postpone the sale of all or any portion of the property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

**23. APPLICATION OF SALE PROCEEDS.** After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale as follows: first, to the payment of all sums then secured by this Deed of Trust, in such order and amounts as Beneficiary in its sole discretion determines; and second, the remainder, if any, to the person or persons legally entitled thereto.

**24. REMEDIES CUMULATIVE.** No right, power or remedy conferred upon or reserved to Beneficiary by this Deed of Trust is intended to be exclusive of any other rights, powers or remedies, but each such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

**25. SUBORDINATION.** The terms and conditions of this Deed of Trust are and shall be subordinate to the terms and conditions of the CC&Rs. In addition, the terms and conditions of this Deed of Trust are and shall be subordinate to the liens, rights, duties and obligations of an Institutional Lender which is the maker of a purchase money loan secured by a deed of trust recorded in first position or a loan for refinancing of the

Property that has been approved by the County and that is secured by a deed of trust recorded in first position.

The provisions of this Deed of Trust shall not impair the rights of an Institutional Lender with a loan on the Property meeting the requirements set forth above, to:

1. Foreclose or take title to the Property pursuant to the remedies in the Institutional Lender's deed of trust; or
2. Accept a deed or assignment in lieu of foreclosure in the event of default by a trustor; or
3. Sell or lease the Property to any person at any price, subsequent to exercising its rights under the Institutional Lender's deed of trust.

**GENERAL PROVISIONS**

**26. GOVERNING LAW.** This Deed of Trust shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

**27. STATEMENT OF OBLIGATION.** Beneficiary may collect a fee not to exceed the maximum allowable under applicable law for furnishing a statement of obligations as provided in the California Civil Code.

**28. CONSENTS AND APPROVALS.** Any consent or approval of Beneficiary required under this Deed of Trust shall not be unreasonably withheld.

**29. TIME.** Time is of the essence in this Deed of Trust.

**30. NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between Trustor and Beneficiary shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Trustor and Beneficiary as follows:

**BENEFICIARY:** County of Santa Barbara  
123 E. Anapamu Street #202  
Santa Barbara, CA 93101  
Attn: Property Management



TRUSTOR:

BY: \_\_\_\_\_  
OWNER

BY: \_\_\_\_\_  
OWNER

(Signature(s) must be notarized)

**EXHIBIT A**  
Legal Description



**EXHIBIT C**  
**MARKETING PLAN**  
**FOR**  
**OCEAN MEADOWS**  
**Project Case Nos. 19DVP-00000-0002**

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- A. After the Agreement to Provide Workforce Housing has been recorded for the Project, the Housing and Community Development Division will make the Restricted Units publicly available to the interested persons on the Affordable Housing notification lists by including the Project's name, location, number of Restricted Units, qualifying income, other qualifications and the Owner's or his/her/its representative's phone number.
- B. Owner will advertise the Project in, at least, one newspaper of general circulation and, at least, one Spanish-language newspaper or radio station which circulates or broadcasts in the area of this Project. Each newspaper must include the official "Equal Housing Opportunity" logo and each radio advertisement must incorporate the statement "Equal housing opportunity".

The Agreement to Provide Affordable Housing and Rental Restrictive Covenant binds the Owner to this Marketing Plan. If the Owner determines that changes may be necessary after the Agreement has been recorded, Owner must contact Housing and Community Development regarding these changes and must receive approval of the revised Marketing Plan from the Director of Community Services, or his or her designee. The Marketing Plan applies only for the first sale of the Restricted Unit.

- C. Project advertising shall conform to the requirements of the California Fair Housing and Employment Act (FEHA) – California Government Code sections 12900 - 12996. Advertisements for the Project shall state that a lottery will be conducted if the number of interested persons exceeds the number of Restricted Units available. The name and telephone number of the person to contact to participate in the lottery and to obtain additional information regarding income requirements and resale restrictions shall also be provided in the advertisement. The advertisement shall clearly state the deadline for inclusion in the lottery. Owner shall provide Housing and Community Development with a copy of the publicized advertisement.
- D. Owner shall do the following minimum marketing for the identified Restricted Units
1. Owner shall run at least one advertisement in the real estate section of the Santa Barbara News Press and one Spanish language newspaper or radio station which circulates or broadcasts in the area of this Project at least one time per week for six weeks or such additional time as specified in paragraph C of Exhibit C. At a minimum, the advertisement shall be placed in the Sunday Real Estate section. The advertisements shall be coordinated with the time period that the lottery list is open.
  2. During the time period that the lottery is open, Owner will have a phone number identified at which inquiries concerning the Restricted Units can be made. A phone-recording device will be included on the phone when it is not being directly answered.

3. During the time period that the lottery is open, information sheets will be available to prospective purchasers of the Restricted Units identifying the level of affordability for the Restricted Units, qualifying income levels, an explanation of the income certification process, resale restrictions, floor plans, a site plan indicating the location of available Restricted Units, first-time homebuyers guides and other information concerning time of sale, time within which each person must be qualified as a purchaser, etc. Owner shall also have Lottery applications available to prospective buyers.
4. The prospective purchasers of Restricted Units will be identified in a list collected by the Owner and given to the Community Services Department Housing and Community Development Division for the purpose of implementing the lottery pursuant to the requirements set forth in the Agreement to Provide Workforce Housing and all exhibits thereto, including, but not limited to, the Lottery Plan.
5. The Restricted Unit will be sold to the parties identified and certified according to the requirements set forth in the Agreement to Provide Affordable Housing and Rental Restrictive Covenant and all exhibits attached thereto.

**EXHIBIT D**  
**LOTTERY PLAN**  
**FOR**  
**OCEAN MEADOWS**

**Project Case Nos. 19DVP-00000-0002**

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- A. Owner shall publish an advertisement consistent with the terms of the Marketing Plan in a newspaper of general circulation in the County. At the time a prospect expresses interest in purchasing the Restricted Unit, Owner or the Owner's representative shall provide an informational packet describing income qualifications, the lottery process and expected timing, County Income and Price Guidelines, County Income Certification Guidelines and Application, resale restrictions and the names of lenders providing no cost loan approval. *(This information packet shall be developed in conjunction with Housing and Community Development or its designee.)*
- B. Consistent with the California Fair Housing and Employment Act (FEHA) – California Government Code sections 12900 - 12996, the Owner shall not restrict applicants on the basis of race, color, religion, national origin, gender, age, familial status, or handicap.
- C. Owner shall provide a dated receipt to prospective buyers who have completed a Lottery Application. This receipt shall correspond to the number of the applicant on the lottery list.
- D. During the marketing period, Owner shall maintain a list of prospective buyers. The following information should be included on the list:
1. Name
  2. Receipt Number and Date Issued
- E. Owner shall accept completed Lottery Applications from applicants for a minimum of 15 days **or until the number of applicants is at least three times the number of Restricted Units available**, whichever occurs later. However, the acceptance of names shall not be required to continue for more than 90 days.
- F. All names of applicants with completed Lottery Applications shall be included in the lottery except for exceptions outlined in the HCD administration manual.
- G. Housing and Community Development (HCD) shall conduct the lottery by randomly computer-ranking the names on the initial list which includes all applicants with completed Lottery Applications. Lottery results shall be made publicly available at the Owner's sales office, the office of the Community Services Department and on the Housing and Community Development website.
- H. Housing and Community Development will contact the top lottery ranked applicants ("lottery selected applicants") equal to the number of Restricted Units available, who will be required to complete an Income Certification application. Housing and Community Development will instruct applicants to return the Income

Certification applications within three weeks of Lottery. Late Income Certification applications will not be accepted and HCD will continue contacting the next Lottery ranked applicant in the ranked order.

- I. Housing and Community Development will certify Lottery applicants in the order of their Lottery standing. When applicants are deemed certified they are eligible to purchase a unit. Thereafter as any of those applicants drop out or are unable to obtain financing, HCD will continue contacting other Lottery ranked applicants in the ranked order.
- J. HCD will notify certified applicants of their income certification by mail. A copy of the Income Certification will be provided to the Owner so the Owner's sales staff can contact the income certified applicant to enter into a sales contract.
- K. Certified applicants shall then be eligible to select the Restricted Unit from the Restricted Unit available, as follows: Within five working days after the lottery results are posted, lottery selected applicants shall confirm an appointment with the sales agent to select their Restricted Unit which appointments shall begin on the day following the fifth working day. The sales agent shall set up consecutive appointment slots ("initial slots") for the lottery selected applicants in order of their lottery ranking. If the lottery selected applicant is unable to attend his/her initial slot appointment, then the sales agent may make the slot available to any other lottery selected applicant, and the party who is unable to attend his/her initial slot appointment shall have the opportunity to fill the next available initial slot appointment.
- L. If there are Restricted Units available at the end of the time period for all initial lottery slot appointments, then the sales agent may proceed down the list of ranked applicants and offer appointment slots to them in order of their ranking. Any lottery selected applicant who fails to fill an initial slot by the time of the last initial slot shall not be disqualified, but shall have the opportunity to fill the next available appointment slot. During an applicant's appointment, said applicant shall reserve a Restricted Unit under a Department of Real Estate (DRE) pink report or open escrow under a DRE white report, as applicable. The escrow period must be for at least thirty days after income certification, unless the applicant waives the thirty-day requirement.
- M. Failure to meet the time lines described in Section K will not disqualify an applicant, but the Owner may then allow the next ranked applicant to select their Restricted Unit and enter escrow.
- N. If an applicant has not completed a purchase contract for a Restricted Unit within 90 days of income certification, a new certification application must be submitted.
- O. If an applicant declares that he or she is no longer interested in purchasing a Restricted Unit the next ranked applicant shall become eligible.
- P. If the list of ranked applicants is exhausted, Owner may thereafter negotiate with subsequent prospects on a first come-first served basis.
- Q. This Lottery Plan only applies to the first sale of each Restricted Unit.

