

RECORDING REQUESTED BY AND RETURN TO

Clerk of the Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street, Room 105
Santa Barbara, CA 93101

SEND ANOTHER COPY TO:

Department of Housing and Community Dev.
County of Santa Barbara
105 E. Anapamu Street, Room 105
Santa Barbara, CA 93101

ATTN: Affordable Housing Division

APN(s): 075-173-003
075-173-026

AGREEMENT TO PROVIDE AFFORDABLE HOUSING

This Document Creates a Lien on Real Property

PROJECT NAME: The Loop Mixed Use Building
Planning and Development Case Number: TM 14,761 and 09TRM-00000-00002, 09DVP-00000-00021, 09CUP-00000-00024, 09CUP-0000-00035 & 09CDP-00000-00041

This Agreement to Provide Affordable Housing (hereinafter "Agreement") by and between d3 Partners, LLC, a California limited liability company (hereinafter "Developer") and the County of Santa Barbara, a political subdivision of the State of California, (hereinafter "County") is entered into on the date set forth below.

This Agreement applies to the real property generally located at 6533 and 6539 Trigo Road in Isla Vista, Santa Barbara County, California, which is more fully described in Exhibit "A" attached hereto and incorporated by this reference (hereinafter "Subject Property").

RECITALS

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

WHEREAS, Developer has received County of Santa Barbara Redevelopment Agency construction loan funds and other assistance granted to the Subject Property pursuant to a loan agreement entered into between the Redevelopment Agency and the Developer; and

WHEREAS, Developer has entered into a Regulatory Agreement with County of Santa Barbara Redevelopment Agency, which allows Developer to sell Restricted Units to qualified Low-Income Households, upon repayment of the loan in full by Developer; and

WHEREAS, it is the intent of Developer that five units within the Subject Property be leased or sold in accordance with certain affordability criteria established by the County so that they will remain affordable to Tenants or purchasers, consistent with the provisions of the Housing Element of the Comprehensive Plan of the County of Santa Barbara (herein the "Restricted Units"); and

WHEREAS, it is the intent of the parties that this Agreement will place maximum rent or sale restrictions on the Restricted Units and maximum income restrictions on potential Tenants or purchasers of Restricted Units; and

WHEREAS, the purpose of this Agreement is to assure that those Restricted Units within the Subject Property remain affordable and available for purchase or lease by Low Income households for the thirty (30) year term of this Agreement from the final Certificate of Occupancy; and

WHEREAS, the County is allowing the Restricted Units to be provided on a rental or ownership as an accommodation to the Developer.

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

I. TERMS AND ENFORCEABILITY

- A. Developer agrees to construct and thereafter to maintain five affordable units for rent or sale according to the terms of this Agreement as required by the Conditions of Approval as stated in Exhibit "B" which is incorporated by reference herein.
- B. This Agreement shall bind and the benefit hereof shall inure to the Developer, its heirs, legal representatives, executors, successors in interest and assigns, and to the County, its successors, designees, or assigns for the term of this Agreement.
- C. 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.

- D. Any purchaser, beneficiary, 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.
- E. Any lessee of the Subject Property shall be subject to the restrictions of this Agreement, by the execution of a rental agreement or lease or by taking possession of the Subject Property, 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.
- F. In order to preserve through this Agreement the affordability of the Restricted Units for persons of Low income, the Developer 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.

II. DEFINITIONS

- A. “Low-Income Household” means a household annual gross income does not exceed the maximum income levels permitted within the Low income category (at or under 80% of area median income) established by the County. The County's income categories shall be as defined in the Housing Element of the Comprehensive Plan of Santa Barbara County and periodically revised by the County.
- B. “Maximum Monthly Rent” means the maximum rents for a Rent Restricted Unit as established and periodically revised by the County Board of Supervisors as described in the Housing Element Implementation Guidelines of Santa Barbara County.
- C. “Developer” initially shall mean d3 Partners, LLC as owner of the Subject Property. Upon resale of a Restricted Unit by d3 Partners, LLC, the buyer and all subsequent buyers or transferees of such Restricted Unit shall be deemed an “Owner” of such Unit for purposes of the Grant of Preemptive Right; Resale Restriction Covenant and Option to Purchase Secured by Deed of Trust attached hereto as Exhibit “D” and shall be bound by its terms in the manner provided therein. Notwithstanding the above, in the event that the entire Subject Property, or all of the Restricted Units are sold or otherwise transferred to a single entity or person then such party will continue to be bound by the terms of this Agreement and shall be considered the “Developer” hereunder.

- D. "Restricted Unit" means a Unit with restricted occupancy and rents or purchase price pursuant to this Agreement and which has been designated as such by the Developer or as provided for herein.
- E. "Tenant" means any tenant of a Restricted Unit in the Subject Property.
- F. "Unit" means a housing unit in the Subject Property.
- G. "Subject Property" means the real property generally located at 6533 and 6539 Trigo Road in Isla Vista, Santa Barbara County, California, which is more fully described in Exhibit "A".

III. OCCUPANCY AND RENT RESTRICTIONS

- A. A total of five (5) Units in the Subject Property are designated as Restricted Units on Exhibit "C" attached hereto. The Restricted Units must be occupied by, or reserved for occupancy by, certified Low-Income Households for the thirty year term of this Agreement commencing upon the filing of a certificate of occupancy of the Subject Property. The initial applicable income levels for each Restricted Unit are described in Exhibit "C", attached hereto and incorporated herein.
- B. For a Low-Income Household occupying a Restricted Unit, 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 to Tenants, cannot exceed the Maximum Monthly Rent.
- C. The income levels and other qualifications of applicants to lease Restricted Units shall be certified by Developer thereof as conforming to the income restrictions on that Restricted Unit prior to initial occupancy. The income level and other qualifications of any tenant or lessees occupying a Restricted Unit shall be re-certified by Developer annually thereafter. Certifications and recertification may at County's option be subject to review and approval by the County's Housing and Community Development Department. Notwithstanding the above, the County reserves the right to perform certifications of eligibility and re-certifications instead of the Developer if it so elects, in which case County will provide written notice of such election to Developer. Applicants to purchase Restricted Units under Section VII below shall be certified by the County.
- D. In the event that re-certification of a household occupying a Restricted Unit indicates that the income of that household exceeds the maximum income for a Low-Income Household as determined by the Board of Supervisors, then upon the ninety (90) days notice from Developer or County to the tenant, Developer or County shall terminate the tenancy of the occupants of the Restricted Unit. Upon the vacancy of the Restricted Unit, Developer shall

rent the Restricted Unit to a qualified Low Income Household at no more than the Maximum Monthly Rent as provided for herein.

IV. LEASING THE RESTRICTED UNITS

- A. Developer agrees that no Restricted Unit within the Subject Property shall be leased except in compliance with a Tenant Selection Plan approved by the County Housing and Community Development Department or sold except in compliance with a marketing plan and lottery plan which have been approved by the Director of Housing and Community Development (hereinafter "Director") or his or her designee.
- B. Before leasing any Restricted Unit, Developer shall submit its proposed lease form to the County's Housing and Community Development Department for its review and approval. The term of the lease shall be for no less than one year unless by mutual agreement between the tenant and Developer. Subject to the possible election of the County to perform income certifications as set forth in Section III C above, Developer shall have the right to enter into Residential Leases without prior written consent by Housing and Community Development Department so long as Developer certified the income and other eligibility requirements of the household and so long as each Residential Lease is on the standard form lease delivered to and approved by Housing and Community Development Department Director 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 lessor ("Lessor") in a lawsuit brought in connection with the lease;
 2. An agreement by the tenant that Lessor may take, hold, or sell personal property of household members 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 Unit after the tenant has moved out of the Unit. In such a case, Lessor may dispose of this personal property in accordance with State law;
 3. An agreement by the tenant not to hold Lessor or Lessor's agent legally responsible for any action or failure to act, whether intentional or negligent.
 4. An agreement of the tenant that Lessor 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 or other legal costs even if the tenant wins in a court proceeding by Lessor against the tenant. The tenant however may be obligated to pay costs if the tenant loses.

- D. Developer shall include in leases for all Restricted Units provisions which provide that the household is subject to recertification annually and that the tenancy of the household shall be immediately terminated should one or more of the household's members misrepresent any material fact regarding the household's qualification as a qualifying Low-Income Household or repeatedly refuse or fail to cooperate in the recertification process.

- E. To terminate or refuse to renew tenancy, Developer must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

- F. Prior to tenancy, applicants for Restricted Units must complete, execute and deliver to Developer an Application for Certification on a form approved by County. The Developer may request additional information to supplement the application as necessary and shall consult with the County if questions are raised regarding a household'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 in Section III(C) above.

- G. To be eligible to lease a Restricted Unit, Tenants cannot own any improved residential real estate.

- H. Developer may only lease Restricted Units to qualified Tenants whose eligibility has been certified by Developer or County.

- I. In addition to executing a lease for a Restricted Unit, Developer shall require that each household leasing a Restricted Unit execute an agreement to occupy which shall require the household to occupy the Restricted Unit as the household's primary residence. Failure of Developer to enforce this requirement shall constitute a material violation of this Agreement.

- J. Developer hereby agrees to abide by the Tenant Selection Plan which must be approved by the County Housing and Community Development Department. Modifications of the Tenant Selection Plan can be made only upon the written approval of Developer and Director.

- K. Developer 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 arbitrary basis.

V. MANAGEMENT

- A. Developer is responsible for the selection of Tenants, evictions, collection of rents and deposits concerning rental of the Restricted Units in the manner set forth herein. Such management functions over the Restricted Units may be performed by or on behalf of Developer by an experienced, professional management company or organization which must be approved by the County's Housing and Community Development Department.. The County shall have no responsibility over management of the Subject Property. Developer shall submit to the County for its approval its proposed property manager pertaining to the Restricted Units. Developer may only remove and/or replace the property manager with the prior written consent of the County which shall not be unreasonably withheld.
- B. Developer shall submit its written management policies with respect to the Restricted Units to the County's Housing and Community Development Department for its review and approval which 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. Developer shall maintain records that clearly document Developer's performance of its obligations to operate the Subject Property under the terms of this Agreement. Developer shall submit any records to the County's Housing and Community Development Department within ten (10) business days of the County's request. Developer shall permit the County or its designee to enter and inspect the Restricted Units for compliance with obligations under this Agreement upon twenty-four (24) hours advance notice of such visit by the County to Developer and to Tenants of any Restricted Units.
- D. Developer shall submit to the County Housing and Community Development 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 Developer'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 in order to comply with reporting requirements of the County.

VI. ENFORCEMENT

- A. Upon any violation of the provisions of this Agreement or if false or misleading statements are made in any documents or certification submitted to the County or its agent, 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. Developer understands that County's objective in requiring this Agreement is to ensure that the Restricted Units remain affordable to eligible Low-Income households and that should Developer sell or lease or should a Tenant occupy, the Subject 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 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 Tenant, or Developer 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, Developer/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 written notification by County of non-compliance. If the tenant household's income does not qualify for letting of the Restricted Unit as required by this Agreement, then subject to Section III.D herein Developer 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 household income level allowable to rent or lease 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 qualifying Low-Income Household and a subsequent recertification reveals that such tenant no longer qualifies as a Low-Income Household, then Developer shall not be subject to any penalty under this Section VI(B)(2) so long as Developer complies with the requirements of Section III(D) above.**

Developer hereby agrees to the above liquidated damages provisions
_____ **(Developer's initials)**

3. 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, Developer 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. Developer 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 Developer is found to be 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 conditions of approval placed upon the Subject Property by the County and in addition to the remedies provided for herein it may be enforced as a violation of the conditions of approval.

VII. TRANSFER

- A. Except as otherwise provided for herein, prior to or upon the individual sale of any Unit in the Subject Property, Developer must commence marketing to sell the Restricted Units to qualified households as set forth below. Notwithstanding the above, this Section shall not apply in the event of a sale of the entire Subject Property to a single entity. In addition, if the County's Housing and Community Development Department determines that conversion of a Restricted Unit to an ownership unit would result in a hardship to a tenant, the County Department of Housing and Community Development may, but is not obligated, allow Developer to continue to rent the Restricted Unit pursuant to this Agreement.
- B. Developer agrees to have executed and recorded by the County certified purchaser the County's "Grant of Preemptive Right: Resale Restriction Covenant and Option to Purchase Secured by Deed of Trust", ("Restrictive Covenant") on the title to each Restricted Unit prior to or concurrent with the first sale of the Restricted Unit. The Restrictive Covenant places a maximum sales price on the Restricted Units and maximum income restrictions on potential buyers of Restricted Units. By executing this Agreement, Developer and County agree that all successors in interest, assignees, and beneficiaries of Restricted Units shall be bound by the terms of the Restrictive Covenant (even if they do not execute such covenant). Developer also agrees that it shall not sell Restricted Units except as allowed for in the Restrictive Covenant and this Agreement and that all purchasers must meet the County's Certification of Eligibility Guidelines except purchasers of the entire Subject Property. The individual Grant of Preemptive Right: Resale Restriction Covenant and Option to Purchase Secured by Deed of Trust shall conform to the proforma Covenant attached as

Exhibit “D” except that it may be amended by County to reflect any changes in form that have been adopted by the Department of Housing and Community Development.

- C. If units are to be sold individually as condominiums, Developer agrees that upon the close of escrow for the first sale of a Restricted Unit, an individual Grant of Preemptive Right: Resale Restriction Covenant and Option to Purchase Secured by Deed of Trust shall be executed by County and buyer and recorded against such Unit in the office of the Recorder of Santa Barbara County, California.
- D. If units are to be sold individually as condominiums, Developer agrees that prior to selling a Restricted Unit, Developer shall comply with the procedures for the sale of a Restricted Unit, as described in the Restrictive Covenant, including, but not limited to sale of the Restricted Unit for a price within the maximum sales price as established by the Santa Barbara County Board of Supervisors or as dictated by other State or Federal programs and approved by the County. Failure to comply with these requirements shall render Developer subject to the enforcement and liquidated damages provisions set forth in the Restrictive Covenant.
- E. Developer agrees that no Restricted Unit within the Subject Property shall be separately sold, offered for sale, or financed except in compliance with a marketing plan which has been approved by the Director. Developer and County further agree and acknowledge that no Restricted Unit, or any other portion of the Subject Property, shall be sold during the term (including all extensions) of the construction loan made to Developer for construction of the Subject Property.
- F. Developer is obligated to use best efforts to sell the Restricted Units to persons within the corresponding income category. Developer understands and agrees that households of and over a certain size may be given a preference for certain Restricted Units depending on bedroom size pursuant to County Policy.
- G. For each Restricted Unit sold following the sale of that Restricted Unit(s), Developer shall be released from all liability under this Agreement for any breach of the terms and conditions of this Agreement to the extent accruing following the closing date of the sale of that Restricted Unit.

VIII. ADDITIONAL PROVISIONS

- A. The County may assign its rights and delegate its duties thereunder without the consent of Developer. Upon such assignment the County shall notify Developer.
- B. Developer 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 Developer, the County, and their respective successors.

- 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 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.
- 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 project application was deemed complete.
- F. All notices required herein shall be sent by certified mail, return receipt requested, to the addresses listed below.
- G. This Agreement may be enforced by the Redevelopment Agency of the County of Santa Barbara.

To the County at:

Housing and Community Development
105 East Anapamu, Room 105
Santa Barbara, CA 93101

To Developer at:

d3 Partners, LLC
PO Box 92251
Santa Barbara, CA 93190

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 such as by devise, bequest, foreclosure on any financing, the transferee or the estate of the decedent shall be bound by the provisions of this Agreement.
- I. Developer covenants to cause to be filed for record in the office of the County Recorder of Santa Barbara County a request for any copy of any notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Subject Property, pursuant to Section 2924 (b) 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.

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

COUNTY OF SANTA BARBARA

Dated: _____

By: _____

Joni Gray, Chair
BOARD OF SUPERVISORS
(Signature must be notarized)

ATTEST:
CHANDRA L. WALLAR
CLERK OF THE BOARD

By: _____
Deputy Clerk

By: _____
Housing & Community Development

Dated: _____

DEVELOPER
d3 Partners, LLC, a California limited liability company
By: Mesa Lane Partners, LLC, a California Limited Liability Company, its Managing Member

By: _____
Neil Dipaola

(Signatures must be notarized)

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By: _____
Deputy County Counsel

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

DESCRIPTION OF PROPERTY

Lots 25, 26, and 27 of Block G of The Ocean Terrace Tract, in the County of Santa Barbara, State of California, as shown on the map filed in the office of the County Recorder of said County, in Book 15, Pages 101 through 103, inclusive, of Maps, described as a whole as follows:

Beginning at the northeast corner of said Lot 25, being a point in the southerly line of Trigo Road, 50.00 feet wide, as shown on said map;

Thence, 1st, South $00^{\circ}15'39''$ West, 99.98 feet to the southeast corner of said Lot 25;

Thence, 2nd, along the southerly line of said Lot 25, and continuing along the southerly lines of Lot 26 and Lot 27, North $89^{\circ}44'36''$ West, 200.07 feet to the southwest corner of said Lot 27;

Thence, 3rd, along the westerly line of said Lot 27, North $00^{\circ}15'35''$ East, 29.77 feet to an angle point in the boundary of said Lot 27, being a point in the southeasterly line of a 50.00 foot wide road labeled as Road Z on said map, said point also being the beginning of a non-tangent curve concave northwesterly, having a radius of 275.00 feet and a radial center which bears North $26^{\circ}46'06''$ West;

Thence, 4th, northeasterly, along the northwesterly line of said Lot 27 and along said curve, through a central angle of $23^{\circ}31'04''$, an arc distance of 112.88 feet to the northerly line of said Lot 27;

Thence, 5th, along said northerly line, and continuing along the northerly lines of said Lot 26 and Lot 25, South $89^{\circ}44'43''$ East, 112.70 feet to the point of beginning as shown in "Certificate and Declaration of Voluntary Merger," recorded June 13, 2011 as Instrument No. 0033664 of Official Records.

APN: 075-173-03 & 075-173-26

EXHIBIT “B”

**AFFORDABLE HOUSING CONDITION(S)
FOR**

The Loop Mixed Use Building;

TM 14,761 and 09TRM-00000-00002, 09DVP-00000-00021, 09CUP-00000-00024, 09CUP-0000-00035 & 09CDP-00000-00041
(PROJECT NAME AND CASE NUMBER)

34. The applicant shall provide five (5) low income dwelling units available for sale or rent at prices affordable to households earning 80% of Area Median Income (AMI) consistent with the provisions of Government Code §65915-65918 (Density Bonus) at sales prices consistent with Coastal Land Use Plan Policy 5-1 unless preempted by State Density Bonus Law. **Plan Requirements and Timing:** Prior to final map clearance the applicant shall enter into and record an *Agreement to Provide Affordable Housing*, which shall include a model *Restrictive Covenant and Preemptive Right*. The *Covenant* shall be executed and recorded by each purchaser of an affordable unit. The *Agreement* and *Covenant* 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, CHCD and County Counsel. The units shall remain affordable for a period of 30 years or longer if required by the financing, insurance or rental subsidy program used. In addition, the running of the covenant shall toll during any period of violation. If future amendments to the County Housing Element allow developers to pay fees in-lieu of constructing affordable units, and such amendments are consistent with Coastal Land Use Plan Policy 5-10 and State Density Bonus Law, the developer shall be able to utilize those amendments through an application to amend the project.

33. Affordable units shall be constructed concurrent with the construction of the market rate units. Occupancy clearance for no more than 50% of the market rate units shall be allowed prior to occupancy clearance for the affordable units. **Plan Requirements & Timing:** Prior to final map clearance, this requirement shall be included in the *Agreement to Provide Affordable Housing* and shall be printed on all grading and building plans.

EXHIBIT "C"

ADDRESS LIST OF AFFORDABLE HOUSING UNITS

For

The Loop Mixed Use Building;

TM 14,761 and 09TRM-00000-00002, 09DVP-00000-00021, 09CUP-00000-00024, 09CUP-0000-00035 & 09CDP-00000-00041

TOTAL NUMBER OF UNITS IN THE PROJECT: 25

TOTAL NUMBER OF AFFORDABLE UNITS IN THE PROJECT: 5

NUMBER OF AFFORDABLE UNITS FOR VERY LOW INCOME HOUSEHOLDS: 0

NUMBER OF AFFORDABLE UNITS FOR LOW INCOME HOUSEHOLDS: 5

NUMBER OF AFFORDABLE UNITS FOR LOWER-MODERATE INCOME HOUSEHOLDS: 0

NUMBER OF AFFORDABLE UNITS FOR UPPER-MODERATE INCOME HOUSEHOLDS: 0

	<u>Address</u>	<u>Lot & Unit #</u>	<u>Bedrooms</u>	<u>Income Level</u>
1)	<u>6539 Trigo Rd</u>	<u>311</u>	<u>1</u>	<u>Low</u>
2)	<u>6533 Trigo Rd.</u>	<u>312</u>	<u>1</u>	<u>Low</u>
3)	<u>6533 Trigo Rd.</u>	<u>313</u>	<u>1</u>	<u>Low</u>
4)	<u>6533 Trigo Rd.</u>	<u>322</u>	<u>1</u>	<u>Low</u>
5)	<u>6533 Trigo Rd.</u>	<u>323</u>	<u>Studio</u>	<u>Low</u>

EXHIBIT "D"

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

RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street
Santa Barbara, CA 93101

SEND ANOTHER COPY TO:

Housing and Community Development
County of Santa Barbara
105 East Anapamu Street, Room 105
Santa Barbara, CA 93101-2062

Attn: Affordable Housing Program

No fee per Government Code Sec. 6103

APN: _____

**GRANT OF PREEMPTIVE RIGHT:
RESALE RESTRICTION 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**

The Loop Mixed Use Building
(Project Name and Case Number)

(Address and Unit/Lot Number)

This Grant of Preemptive Right, Resale Restriction 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 County of Santa Barbara (hereinafter "County") is entered into as of this _____ day of _____, _____.

RECITALS:

WHEREAS, the County has provided development incentives to this project including reduced parking and set back and height requirements; and

WHEREAS, Seller and Owner 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 Covenant requires; and

WHEREAS, the intent of Seller 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. "Approved Institutional Lender First Deed of Trust": A County-approved First Deed of Trust made by an Institutional Lender.

B. "Approved First Deed of Trust": A deed of trust of 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.

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

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

E. "Institutional Lender": Any FDIC-insured bank or savings and loan association 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.

F. "Maximum Monthly Rent": The maximum rent that may be charged for a unit reserved for households of a designated income category 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.

Maximum Monthly Rent is only applicable when the Owner has met the hardship requirements for rental of the Property as set forth in Section IV C of this Covenant and when the Property is being leased as provided therein upon written consent of County.

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 (80% AMI)** income 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 periodically revised in consideration of the US Department of Housing and Urban Development revised income limits for Public Housing and Section 8 Programs, and median family incomes for Santa Barbara County and shall be subject to adjustment as set forth herein subject to adjustments as set forth below.

County staff or staff's 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 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 purchasers 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 purchasers, no price increase will be allowed for property improvements made by the Owner. The Owner may 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 any requirement of this Covenant.

H. "Median Annual Income": Median annual income shall be determined by reference to income figures for the Santa Barbara area as published by the U.S. Department of Housing and Urban Development (HUD). 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.

I. "Owner": (i) the current Owner as set forth above and, (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 except County-approved lenders or easement holders.

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

K. "Property". The real property located generally at _____ [address] as more particularly described in Exhibit A legal description attached and incorporated by this reference herein.

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

M. "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, life estate, leasehold, or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title.

N. "Transferee": A person who receives property being transferred.

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 30 years from the effective date of this Covenant subject to extensions of that term if the Owner violates the terms of this Covenant. In addition, the running of the 30 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, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the covenants, conditions, restrictions and limitations contained herein. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

C. Binding Effect

Any purchaser 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 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.

D. Enforceability

In order to preserve through this Covenant the affordability of the Property for persons of [Low \(80% AMI\)](#) income, the Owner for itself and all 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 of the Covenant 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 Sales 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 to the lien of an Approved Institutional Lender First Deed of Trust subject to the following conditions and limitations:

1. Limit on Amount

The amount secured by the 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 Approved Institutional Lender First Deed of Trust. The subordination of this Covenant pursuant to this Section III shall not apply to any 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 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 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 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 Civil Code. In the event the County elects to exercise such option to purchase, subsequent to a default on the 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 Civil Code for the reinstatement of a monetary default under the deed of trust.

B. Rights Under Approved Institutional Lender First Deed of Trusts

Subject to these above-stated conditions and limitations, this Covenant shall not impair the rights under an Approved Institutional Lender First Deed of Trust, to foreclose or take title to the Property pursuant to the remedies of the 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 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 Approved Institutional Lender First Deed of Trust and payment to County of any excess proceeds as set forth in Section XII.B, 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 a 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

Only Approved Institutional Lender First Deeds of Trust are subject to the subordination provisions of this section. 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 and XI below.

IV. OCCUPANCY, LEASING AND OWNERSHIP OF OTHER REAL PROPERTY

A. Property Must be Used as Owner's Principal Residence

Owner shall occupy the Property as his/her/their principal place of residence. During the time the Property is vacant while being actively offered for sale by Owner, this owner-occupancy requirement shall not apply; however, Owner may not rent the Property during such period except as set forth below. A failure to comply with this owner occupancy requirement is a material violation of this Covenant. If Owner is determined by the County to be in violation of this owner occupancy requirement, County may exercise its option to purchase the Property as set forth in Section XIV so that the Property can be resold to a qualifying household and fulfill the purpose of the County's affordable housing program.

B. Rental of Property

Owner shall not rent or lease the Property without prior written approval by the County. All requests for consent must be in writing, consent shall be consistent with the County's goal of creating, preserving, maintaining, and protecting the County's supply of affordable housing. Any lease approved by Housing and Community Development shall conform to the maximum income and rental rates established by the County Price and Income Guidelines for affordable housing adopted by the County Board of Supervisors and in effect at the time of the lease.

C. Personal Hardship Exemption

Housing and Community Development or its designee may approve modifications to these occupancy requirements and lease period restrictions if the Owner or non-occupying title-holder demonstrates personal hardship.

1. Definition

A Personal Hardship Exemption from this Covenant may be granted by Housing and Community Development (or its designee) if it is determined that one or more of the circumstances listed below will result in an economic hardship (i.e. the retention of the Property would result in a substantial and irrevocable loss of the Owner's investment in the Property) to the Owner: 1) An emergency or a long-term illness or injury requiring medical attention of the Owner or a member of the immediate family; 2) the death of a member of the Owner's immediate family; 3) an Owner or spouse's job transfer or loss of job; or 4) an economic hardship experienced by an Owner as determined by the County, based on the following: severe financial hardship to the participant resulting from unexpected illness or accident of the Owner or of a legal dependent of the Owner, loss of the Owner's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute a Personal Hardship Exemption unforeseeable emergency will depend upon the facts of each case.

2. Determination

A Personal Hardship exemption determination by Housing and Community Development shall be made within 30 days of receiving said request. A Personal Hardship Exemption may not be made to the extent that such hardship described above is or may be relieved by:

- a. Liquidation of the Owner's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- b. Reimbursement or compensation by insurance or otherwise.

3. Remedies

Upon determination by the County that a Personal Hardship exists, the following remedies may be granted:

- a. The Owner may rent the Property while it is for sale provided that the rent does not exceed the Maximum Monthly Rent for the original income category for the Property. Note: the Owner must keep the Property on the market for sale.
- b. If the Owner documents to the County a good faith effort to sell the Property for three consecutive months and the Property has not sold, he/she may offer the Property for sale to households which are in the next highest income category (e.g. a restricted lower-moderate unit may be marketed to both lower-moderate and upper-moderate income households). The restrictive covenant on the Property and its Maximum Sales Price would not be altered.

4. Submittal of Approved Rental Agreement to County

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 terms of any lease or rental agreement are amended, County shall be notified in writing. Owner shall notify County when he/she/they re-occupy the property.

D. 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

E. Modification of Ownership Requirements

The County Department of Housing and Community Development may approve modification to Item 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. As used herein "transfer" shall include any assignment or transfer of any interest in the Property, including but not limited to a fee simple interest, transfer to a trust, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title. A transfer in violation of this section shall be void 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 Department of Housing and Community Development; 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 Section XII 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 SALE OR OTHER 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 intends or is required to sell or transfer the Property.

B. Requirement to Sell to County Selected Purchaser.

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

If the County has not exercised its right to purchase the Property during the term of this Covenant pursuant to Section VI above, and if County has adopted a program requiring County selection of purchasers of affordable for-sale units, Owner shall be required to sell the Property to County as set forth below or to such County-selected purchaser for the Maximum Sales Price consistent with Sections VII, VIII, IX and X below.

C. Notice to County

If the County has not adopted a program requiring County selection of purchasers of affordable units, then anytime during the term of this Covenant when Owner intends to offer to sell, convey, or 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 its intent to sell the Property with a summary of the proposed transfer including the price and proposed transferee.

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 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. SALE OF PROPERTY TO PRIVATE PARTY

A. Owner's Right to Sell

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, Owner shall have the right to sell or transfer the Property to a Qualified Transferee. All sales of the Property by Owner to a private party shall be (hereinafter "Transferee"), subject to the terms and conditions of this Section.

B. Approval of Sale by County

1. The County Department of Housing and Community Development shall oversee the

transfer or sale of the Property to any Transferee. No transfer or sale of the Property shall occur under this Section without the prior written approval of the County Housing and Community Development Director, or the Director's designee.

2. The County Department of Housing and Community Development 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, and that the County has determined that Owner and Owner's proposed Transferee has complied with all of the requirements and provisions of this Covenant and affordable policies then current.
3. Purchasers of the Property shall complete, execute and deliver to Housing and Community Development or its designee the Home Ownership Application. The County may request additional information to supplement the application if deemed by the County to be necessary to verify the applicant's eligibility.

Purchasers shall be held liable for the accuracy of information provided. Housing and Community Development or its designee will review the complete application and shall expeditiously certify provided the purchaser meets the County's eligibility standards.

4. Owner or Transferee shall submit to the County the proposed Residential Purchase Agreement and Joint Escrow Instructions, and all other related documents that shall set forth the terms of sale or transfer of the Property. 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 or given by the Transferee to the Owner or any other person or entity, and reason such payment is made or other consideration granted.
 - c. The down payment to be paid by the Transferee
 - d. All Financing terms
 - e. The monthly payments to be paid by the Transferee in connection with the purchase and ownership of the Property, itemized for the loan, taxes, insurance, homeowners association fees, etc.
5. Transferee shall submit to the County Housing and Community Development Director, or the Director's 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 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 Transferee in conjunction with the Sale of the Property.

VIII. ELIGIBILITY OF TRANSFEE TO PURCHASE

Owner shall not sell or transfer the Property to any Transferee who does not satisfy all of the following

requirements:

- A. Each Transferee shall meet the County's then current qualification guidelines for the income category of the Property including those pertaining to household size and income.
- B. Each Transferee shall certify his/her/their intent to occupy the Property as his/her/their principal place of residence.
- C. 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 buyer by the Housing and Community Development Director for good cause.

IX. REQUIREMENTS FOR APPROVED SALE TRANSACTION

A. Price

The sale price shall not exceed the Maximum Sales Price.

B. Recordation of Replacement Covenant

Upon transfer each Owner and Transferee shall execute and cause the recordation of a new Resale Restriction 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 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 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 Sale

In the event a sale or 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 sale or transfer, the County may declare a default under this Covenant. The County shall also have the right to file action at law or in equity to force the parties to terminate and rescind the sale contract and declare the sale void notwithstanding the fact that the sale or transfer may have closed and become final as between the seller and purchaser. In any event, any costs, liabilities or obligations incurred by the seller and purchaser 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 seller and purchaser, and not by the County.

E. County Review

Within ten working days of receipt of all the completed executed documents set forth above and any additional information requested by the County, Housing and Community Development, or designee, shall notify escrow in writing that the purchaser and sales transaction qualify or fail to qualify to purchase the Property under County guidelines. If the purchaser or the sales transaction fails to qualify then execution of the sales transaction would constitute a breach of this 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 purchasers, no price adjustment or other reimbursement will generally be allowed for property improvements made by the owner. The owner may make 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 staff's 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 staff may lower the Maximum Sales Price as set forth in Section I.
3. The Owner may not require the buyer to pay any commissions or other costs of sale typically paid by sellers of residential real property. In addition, buyers cannot require owners 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 Sales 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, whether at the time of sale or at any other time. Purchase financing and refinancing may only be provided by licensed institutional lenders.

B. Requirements for Approval

1. The Owner is in full compliance with the County's affordability requirements.
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. County may review an owner's credit and may decline approval of proposed refinancing in cases where the borrower's credit is poor.
7. Financing which may result in balloon payments or negative amortization including "reverse mortgages" will not be approved.

C. Modification of Financing Requirements

The County Housing and Community Development Director or the Director's 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 Department of Housing and Community Development in writing constitutes a material default of this Covenant which at County's option 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 III above, or deed in lieu of foreclosure on any such financing, to a person who does not meet the requirements of Section VIII, 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 person a reasonable period of time, not less than 90 days, to convey the Property to an eligible purchaser 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 Sales Price and which would otherwise be payable to Owner after full satisfaction of the Approved 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 Approved Institutional Lender First Deeds 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 lenders claiming under an Approved Institutional Lender First Deed of Trust.
2. If any funds remain after the Approved Institutional First Deed of Trust lender has been paid, then to the Owner (and other lenders if applicable), up to but not to exceed the net that Owner would have received under a sale at the Maximum Sales Price.
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 sale or 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 **thirty (30) years or longer in the case of a violation, and that should Owner sell 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.

- 4. 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.**
- 5. If it is determined that false or misleading information was supplied by the Owner to the County in its eligibility certification process, the sale may be voided or County may require that the Owner sell the Property to a qualified household 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 Subject for the period of time in which the Owner's household improperly owned or occupied the Property.**
- 6. If Owner does not truthfully respond to any County surveys of property owners within 21 days of receiving such survey, Owner shall be liable to County in the amount of \$5.00 per day for each day following the twenty first (21st) 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.**
- 7. 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

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 a 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 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, the County or its assignee shall 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 under penalty of perjury, 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:
Housing and Community Development
County of Santa Barbara
105 East Anapamu Street, Room 105
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 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 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: Department of Housing and Community Development, Attn: Property Management, 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.

G. Enforcement Rights Granted to Redevelopment Agency

In addition to the County, the Redevelopment Agency of the County of Santa Barbara is hereby granted the right to enforce this Covenant.

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. I will occupy the Property as my principal residence.
- D. 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.

- E. I have not paid and will not pay any consideration to the seller, 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.
- F. 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.

PURCHASERS/OWNERS:

DATED: _____

BY: _____
Signature(s) must be notarized

DATED: _____

BY: _____
Signature(s) must be notarized

COUNTY OF SANTA BARBARA
DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT:

DATED: _____

BY: _____
Director
Signature must be notarized

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

Approved as to form:
DENNIS A. MARSHALL
COUNTY COUNSEL

DATED: _____

BY: _____
Deputy County Counsel