

**ATTACHMENT D**

**RECORDING REQUESTED BY AND RETURN TO:**

Community Services Department  
Housing and Community Development Division  
123 E. Anapamu Street, 2<sup>nd</sup> floor  
Santa Barbara, CA 93101

Attn: Affordable Housing Program

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No fee per Government Code Sec. 6103  
APN: 103-630-008

**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**

**Orcutt Bluffs**  
(Project Name)

**217 Rice Ranch Road, Santa Maria, CA 93455**  
(Address)

This Grant of Preemptive Right: Resale Restrictive Covenant and Option to Purchase Secured By Deed of Trust (this "Covenant") between \_\_\_\_\_ (hereinafter "Owner") and the County of Santa Barbara, a body politic (hereinafter "County") is entered into on the date set forth below.

This Covenant applies to the real property commonly known as 217 Rice Ranch Road, Santa Maria, CA 93455, which is fully described in Attachment A attached and incorporated by this reference herein (hereinafter "Property").

**RECITALS:**

WHEREAS, the Property is encumbered by an "Agreement to Provide Affordable Housing" recorded as instrument number 94-068861 in the Official Records of the County of Santa Barbara County on September 7, 1994, and an "Agreement for Assumption of Resale Restrictive Covenant" recorded as instrument number 2002-0018372 in the Official Records of the County of Santa Barbara County on February 26, 2002 (collectively, the "Affordability Restrictions");

WHEREAS, the "Agreement to Provide Affordable Housing" was recorded against the Rice Ranch Property in 1994 in order to satisfy the County's requirement for the provision of affordable housing, which the County imposed as a condition of approval for the development of a residential project known as Lorraine Estates;

WHEREAS, the Affordability Restrictions make general reference to certain minimal resale restrictions that limit, for a period of 30 years, the Property's resale to a maximum sales price established by the County's Board of Supervisors;

WHEREAS, on or about May 9, 2007, in order to preserve the availability of housing affordable to very low, low, and moderate income and workforce families, the County Chief Executive Office purchased the Rice Ranch Property on behalf of the County of Santa Barbara in accordance with authority conferred by County of Santa Barbara Ordinance 4637, which was passed and adopted on January 16, 2007 in accordance with California Government

Code Section 25350.60;

WHEREAS, it is the intent of the parties that the Property be sold in accordance with certain affordability criteria established by the County so the Property will remain “affordable” to subsequent purchasers consistent with the recorded Affordability Restrictions and the provisions of the County’s Housing Element;

WHEREAS, it is also the intent of the parties that Property be sold in accordance with certain additional terms that are not specified in the Affordability Restrictions and that the County be assigned the right to enforce compliance with this covenant;

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

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 purchase 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 Subject Property or any portion thereof or interest in the Subject 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 Subject Property, and which is made to Owner or subsequent Owner 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 or any other lender which is licensed to engage in the business of providing mortgage financing (purchase money or refinance) for residential real property by the State of California or the United States Department of Housing and Urban Development (HUD).

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 for which an Owner is allowed pursuant to this Covenant to resell the Subject Property, inclusive of real estate commissions and closing costs, so as to be affordable to **Lower-Moderate (80-100% Area Median Income (AMI))** income households.

The Maximum Sales Price for the Subject Property shall not exceed **three (3) times fifty (50%)** of the Santa Barbara County median income as then determined by HUD and calculated as of the time that the Subject Property is sold, multiplied by the following factor and rounded to the nearest \$100 to adjust for the size of the Subject Property:

Two Bedroom                      0.9

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 include decreases by any amount necessary to repair damages and undertake deferred maintenance, if any, and to put the Subject Property in a good and salable condition as reasonably determined by County Housing and Community Development Division staff. In no event shall the Maximum Sales Price be adjusted by County Housing and Community Development Division staff below the total amount of all liens from County-approved financing on the Subject 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 Subject Property to pay any commissions or other costs of sale typically paid by sellers of residential real property.

To help assure continued affordability to subsequent Owners, no price increase will be allowed for property improvements made by or on behalf of the Owner or at the Owner's direction or control. The Owner may make legal and permitted improvements (with the exception of adding bedrooms), but will not be compensated for any improvements made upon the sale of the Subject 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. "Maximum Monthly Rent": The maximum monthly rent for the Subject Property refers to the maximum rents as established and periodically revised and published annually by the County Housing and Community Development Division. 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 Subject Property as set forth in Section IV.C of this Covenant and when the Subject Property is being leased as provided therein.

I. "Area Median Income": The median family income of a geographic area of the state, as defined in California Health & Safety Code Section 50093 as that Section now appears and may be amended or renumbered, adjusted for family size. The AMI for a household of four is updated and released annually by the U.S. Department of Housing and Urban Development (HUD). The State of California Housing and Community Development Department (HCD) adopts AMI for each county in California after applying an adjustment factor to calculate the AMI for different household sizes.

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, residentially zoned land and mobile homes or manufactured homes where the underlying space is also owned.

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, 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 the Subject Property being transferred pursuant to Sections VII, VIII, and IX of this Covenant.

L. "Effective Date": date upon which this Covenant is recorded

## **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 [September 7, 2024](#).

### **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 and in the Agreement to Provide.

### **D. Enforceability**

In order to preserve through this Covenant the affordability of the Property for persons of **Lower-Moderate (80-100% 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 Chapter 46 of the Santa Barbara County Code, 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.

Upon any violation of the provisions of this Covenant or if false or misleading statements are made in any documents or certification submitted to the County in connection with this Covenant, the County may apply to a court of competent jurisdiction for specific performance of the Covenant, for an injunction prohibiting a proposed letting or Transfer of the Subject Property in violation of this Covenant, to void an executed Transfer, for penalties, remedies and enforcement pursuant to the Santa Barbara County Code, including but not limited to, Section 46-10, or for any such other relief as may be appropriate.

## **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 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 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. Owner hereby gives advance consent to execute a Promissory Note and Deed of Trust to secure the amount necessary to cure the default which will become a lien in favor of the

County of Santa Barbara on the Subject Property.

### **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**

This covenant shall be subordinate solely to a County-approved Institutional Lender First Deed of Trust. All other deeds of trust recorded against the Subject 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 Subject Property for 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. OCCUPANCY, LEASING AND OWNERSHIP OF OTHER REAL PROPERTY**

### **A. Subject 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. County Housing and Community Development Division may only approve a request to rent or lease the property if the Owner has met the hardship requirements for rental of the property as set forth in Section IV.C of this Covenant and if the Subject Property is leased as provided herein. County Housing and Community Development Division may only grant approval if such approval is consistent with the County's goal of creating, preserving, maintaining, and protecting the County's supply affordable housing. Any lease approved by County Housing and Community Development shall conform to the Maximum Monthly Rent.

## **C. Personal Hardship Exemption**

County Housing and Community Development or its designee may approve exemptions to these occupancy requirements and lease period restrictions if the Owner demonstrates personal hardship. Owner shall provide in writing to the County Housing and Community Development Division staff describing the cause of the Personal Hardship as stated below and supply supporting documentation which substantiates the Personal Hardship request.

### **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) loss of the Owner's Subject Property due to casualty; or 5) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Owner. The circumstances that will constitute a Personal Hardship Exemption due to an 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. Owner shall market the Subject Property for sale. 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**

Owner shall submit to County Housing and Community Development Division the lease or rental agreement for review and approval. As soon as possible after Owner has requested and obtained County Housing and Community Development Division's written approval to rent the Subject 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 Housing and Community Development Division in writing prior to any amendments to the lease or rental agreement for County Housing and Community Development Division review and approval. Owner shall notify County Housing and Community Development Division 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, trusts, limited partnership or limited liability ownership) in or to any other Residential Real Estate as defined herein, concurrently with the ownership of the Subject Property.

#### **E. Modification of Ownership Requirements**

The County Department of Housing and Community Development 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 County Housing and Community Development. A transfer in violation of 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.

In the event that the Subject Property is transferred by inheritance or devise to a person or person not meeting the requirements contained in this Covenant, including but not limited to the income, household size and asset requirements contained in the County's eligibility certification guidelines and owner occupancy requirements, the devisee or beneficiary shall sell the Subject Property subject to the terms of this Covenant, including [Section VI.C.](#) and [Section XIV.A.](#) regarding the County's Option to Purchase rights, as soon as practicable.

## **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 Housing and Community Development Division in writing upon any of the following transfers and such transfers may trigger resale obligations as set forth in Section 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 Subject 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 Subject 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 Subject 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. Should the County be required by law to request approval from the County Board of Supervisors

before exercising the Option to Purchase, The County Housing and Community Development Division will request an extension of the above time limit in order to receive approval from the County Board of Supervisors. Owner will not unreasonably withhold a request for additional time. If the County Housing and Community Development Division sends a Notice of Intent to exercise its Option to Purchase, the County shall then have an additional 90 days to execute a purchase agreement for the Subject Property for the following option price:

The Lesser of:

- a. The Maximum Sales Price as defined herein (including a deduction for any maintenance), less six percent (6%) to cover the County's resale costs; or,
- b. The appraised value of the Subject Property as determined by a state licensed appraiser approved by Owner and County Housing and Community Development Division, less (6%) to cover the County's resale costs,

But not less than:

- c. The amount necessary to pay the balance due on the outstanding County-approved First Deed of Trust of the original purchase money loan on the Subject Property or any refinancing that was approved by the County Housing and Community Development Division.

#### **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 Housing and Community Development Division 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 not exercised its option to purchase the Subject 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 purchaser of affordable for-sale units, owner shall be required to transfer the Subject Property to such County-selected purchaser for the Maximum Sales Price consistent with sections VII, 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 Subject Property to a Qualified Transferee (hereinafter "Qualified Transferee"), subject to the terms and conditions of this Section and Sections VIII, IX.

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

1. The County Department of Housing and Community Development shall oversee the transfer or sale of the Property to any Qualified 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 Division, or designee.

2. The County Housing and Community Development Division may approve a proposed transfer of the Subject 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 County affordable housing policies then current.
3. Qualified Transferees of the Subject Property shall complete, execute and deliver to Housing and Community Development Division or its designee the Application for Eligibility Certification, a form which is created by the County Housing and Community Development Division. The County may request additional information to supplement the application if deemed by the County to be necessary to verify the Qualified Transferee's income.

Qualified Transferees shall be held liable for the accuracy of information provided. The County 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 Housing and Community Development Division the proposed sales contract, escrow Instructions, and all other related documents that shall set forth the terms of transfer of the Subject Property within 10 days of the execution of the purchase agreement. 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 Subject 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 of the new Purchase Money First Deed of Trust
  - 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 Division, 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 Housing and Community Development Division to determine the eligibility of the Qualified Transferee.
7. The County reserves the right to collect a reasonable fee to cover the County Housing and Community Development Division'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 Subject Property.

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

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

- A. Each Qualified 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 Qualified Transferee shall certify his/her/their intent to occupy the Property as his/her/their principal place of residence.
- C. 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 Subject Property. This prohibition may be waived in writing for a particular buyer 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 Grant of Preemptive Right Resale Restriction Covenant and Option to Purchase secured by Deed of Trust ("Replacement Covenant"), which shall replace this Covenant and be substantially similar to this Covenant and the Deed of Trust securing 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 Housing and Community Development Department Division'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 Housing and Community Development Division with a copy of the final sales contract, estimated final settlement statement, signed escrow instructions, and any other document that the County Housing and Community Development Division may reasonably request.

**D. Unapproved or Fraudulent Transfer**

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 Housing and Community Development Division 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 County 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 Subject 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.

## **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 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 Housing and Community Development staff or staff's designee shall be afforded reasonable opportunity to inspect the Property for damage or deferred maintenance. If the Subject Property is damaged or if there is substantial deferred maintenance, County Housing and Community Development staff may lower the Maximum Sales 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 Subject 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 Subject Property must be approved by the County Housing and Community Development Division in writing, whether 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 of Refinancing**

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 Subject 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 Subject 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 Subject Property by operation of law such as by devise or bequest not exempted under Section V.B above, 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 Housing and Community Development division shall not declare a default before allowing such Transferee a reasonable period of time, not less than 90 days, to transfer the Subject 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 Subject 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 Subject Property except after foreclosures of 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 Subject 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 Subject 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 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 Subject 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 Subject Property remains affordable until [September 7, 2024](#) in the case of a violation, and that should Owner transfer 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 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 Subject 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 Housing and Community Development Division in its eligibility certification process, the transfer may be voided or County may require that the Owner transfer the Subject 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 Subject Property for the period of time in which the Owner improperly owned or occupied the Subject 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 Subject Property effective upon the declaration of a 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 Subject 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 Subject 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 Housing and Community Development Division, 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:

Housing and Community Development  
County of Santa Barbara

123 East Anapamu Street, 2<sup>nd</sup> Floor  
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 Subject 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 Subject 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 Housing and Community Development Division to Inspect Subject Property. Owner shall permit County Housing and Community Development Division staff the right to enter and inspect the Subject 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 Housing and Community Development Division to obtain status of Owner's loans. Owner authorizes County Housing and Community Development Division 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 agreement to purchase any other residential real property during their ownership of the Subject Property. Owners cannot agree to purchase any other real estate in trust or in any of the other forms of ownership identified at Section IV.D. The County Housing and Community Development Division may approve modification to this prohibition if the Owner demonstrates need or other good cause.

### **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 shall 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 Subject Property and to the County: Community Services Department, Housing and Community Development Division, Attn: Housing Programs, County of Santa Barbara, 123 E. Anapamu Street, 2<sup>nd</sup> Floor, 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 Housing and Community Development Division to record a Request for Notice of Default and a Request for Notice of Delinquency at any time.

## **XVII. 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 all of the requirements of this Covenant.
- C. I will occupy the Subject Property as my principal residence.
- D. No persons or entity will be on title to the Subject Property other than as listed below as Occupant Purchasers or Non-Occupant Title-holders. I understand that the County Housing and Community Development Division 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 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 Housing and Community Development Division.
- 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: \_\_\_\_\_

George Chapjian  
Director, CSD  
Signature must be notarized

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

Approved as to form:  
COUNTY COUNSEL

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

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

Deputy County Counsel

Legal Description