

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:

Treasurer-Tax Collector  
County of Santa Barbara  
P.O. Box 2219  
Santa Barbara, CA 93102-2219

ATTN: Affordable Housing Division

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AP No. 077-490-039

AGREEMENT TO PROVIDE AND RENTAL RESTRICTIVE COVENANT

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

El Encanto Apartment Project  
P&D Case Numbers: 99-GP-08, 99-RZ-10, 99-DP-045, 00-CP-107 and 01-GC-01

This Rental Restrictive Covenant (hereinafter "Restrictive Covenant" or "Covenant") by and between Community Housing Corporation (hereinafter "Owner") 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 Covenant applies to the real property commonly known as El Encanto Apartments, in Santa Barbara County, California, which is more fully described in Exhibit "A" attached hereto and incorporated by this reference (hereinafter "Subject Property").

RECITALS

WHEREAS, it is the intent of the Owner that this Subject Property be leased in accordance with certain affordability criteria established by the County so that a certain number of units in the Subject Property will remain "affordable" to tenants, consistent with the provisions of the Housing Element of the Comprehensive Plan of the County of Santa Barbara; and

WHEREAS, it is the intent of the parties that this Restrictive Covenant will place maximum rent restrictions on the certain units and maximum income restrictions on potential tenants of those units; and

WHEREAS, the purpose of this Restrictive Covenant is to assure that certain units within the Subject Property remains affordable and available for lease by Very Low and Low Income households for the thirty (30) year term of this deed restriction.

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

I. TERMS AND ENFORCEABILITY

- A. Owner agrees to construct and thereafter to maintain 16 affordable units for rent according to the terms of this Covenant as required by the Conditions of approval as stated in Exhibit "B" which is incorporated by reference herein.
- B. 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 thirty (30) years from the date of occupancy clearance for the Subject Property.
- 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 Covenant, 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 Covenant, 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 Covenant, 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 Covenant the affordability of the Subject Property for persons of very low and low income, the Initial Owner for itself and all successors in interest, assignees and beneficiaries hereby grants and assigns to the County the right to review and enforce compliance with this Covenant, and in furtherance of this right, grants to the County an Assignment of Rents, described under Section VII C of this Covenant.

- G. The term of this Restrictive Covenant shall be thirty (30) years from the date of occupancy clearance.

## II. DEFINITIONS

- A. “Very Low Income Household” means a household annual gross income does not exceed the maximum income levels permitted within the very low-income category (at or under 50 % of area median income) established by the County. “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 specified on an annual basis.
- B. “Institutional Lender” means any bank, savings and loan association, Freddie Mac, Fannie Mae, California Housing Finance Agency, the California Department of Housing and Community Development or any other lender which is licensed to engage in the business of providing mortgage financing for residential real property or the United States Department of Housing and Urban Development.
- C. “Maximum Monthly Rent” means the maximum rents for a 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.
- D. “Owner” means Initial Owner of the Subject Property and any subsequent purchaser, devisee, grantee or holder of title of the Subject Property or any portion of the Subject Property.
- E. “Restricted Unit” means a Unit with restricted occupancy and rents pursuant to the Covenant and which has been designated as such by Owner or as provided for herein.
- F. “Tenant” means any tenant of a Unit in the Subject Project.
- G. “Unit” means a housing unit in the Subject Property.

### III. OCCUPANCY AND RENT RESTRICTIONS

- A. A total of sixteen (16) Units in the Subject Property shall be designated as Restricted Units. Four Restricted Units must be occupied by, or reserved for occupancy by, certified Very Low Income Households. Twelve Restricted Units must be occupied by, or reserved for occupancy by, certified Very Low and Low Income Households. The initial Restricted Units applicable income levels for each Restricted Unit are described in Exhibit "C", attached hereto and incorporated herein. Owner agrees to provide a current list of all addresses for the Restricted Units containing the information set forth in the attached Exhibit "C" to the Santa Barbara County Housing Department upon any change in addresses of Restricted Units.
- B. For households occupying a Restricted Unit the total rent charged inclusive of all fees and charges can not exceed the Maximum Monthly Rent for the income category applicable to their Restricted Unit.
- C. The income levels and other qualifications of applicants for and Tenants of Restricted Units shall be certified by the County or a duly authorized representative thereof as conforming to the income restrictions on that Restricted Unit prior to initial occupancy.

### IV. LEASING THE RESTRICTED UNITS

- A. Owner agrees that no Restricted Unit within the Subject Property shall be leased except in compliance with a marketing plan which has been approved by the County.
- B. Leases of Restricted Units may not contain any of the following provisions:
  - 1. An agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;
  - 2. An agreement by the tenant that Owner may take, hold, or sell 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, Owner may dispose of this personal property in accordance with State law;
  - 3. An agreement by the tenant not to hold Owner or Owner's agent legally responsible for any action or failure to act, whether intentional or negligent;
  - 4. An agreement of the tenant that Owner may institute a lawsuit without notice to tenant;

5. An agreement by the tenant that Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
  6. An agreement by the tenant to waive any right to a trial by jury;
  7. 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
  8. An agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by Owner against the tenant. The tenant however may be obligated to pay costs if the tenant loses.
- E. Owner may not terminate the tenancy or refuse to renew the lease for a Restricted Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State or local law, for completion of the tenancy period for transitional housing, for failure to occupy the Restricted Unit as a tenant's primary residence, or for other good cause. To terminate or refuse to renew tenancy, Owner 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, Owner must certify that tenants meet the requirements of the County's current Income Certification Guidelines.
- G. To be eligible to lease a Restricted Unit, tenants can not own any improved residential real estate.
- I. In addition to executing a lease for a Restricted Unit, the Owner shall require that each household leasing a Restricted Unit execute a declaration of intent to occupy which shall require the household to occupy the Restricted Unit as the household's primary residence. Failure of Owner to enforce this requirement shall constitute a material violation of this covenant.
- K. The Owner shall not convert Restricted Units in the Subject Property to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Subject Property during the term of this Covenant.
- L. The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease or rental of the Restricted Units on the basis or race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status,

source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or any other arbitrary basis.

## V. MANAGEMENT

- A. The Owner is responsible for all management functions with respect to the Subject Property including without limitation the selection of tenants, certification and re-certification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. Such management functions shall be performed by or on behalf of Owner by an experienced, professional management company or organization. The County shall have no responsibility over management of the Subject Property.
- B. Owner shall maintain records that clearly document the Owner's performance of its obligations to operate the Subject Property under the terms of this Covenant. The Owner shall submit any records to the County within ten (10) business days of the County's request. The Owner shall permit the County or its designee to enter and inspect the Subject Property for compliance with obligations under this Agreement upon twenty-four (24) hours advance notice of such visit by the County to Owner or Owner's management agent and to tenants of any Units.

## VI. TRANSFER OF RESTRICTED PROPERTY

Prior to any transfer of the Subject Property the Owner shall notify the County. Failure to give such notice shall not effect the running or enforcement of this Restrictive Covenant.

## VII. ENFORCEMENT

- A. 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 or its agent, the County may apply to a court of competent jurisdiction for specific performance of the Covenant, for an injunction prohibiting a proposed letting, sale, or transfer in violation of this Covenant, or for any such other relief as may be appropriate.
- B. Owner and Tenant understand that County's objective in requiring this deed restriction is to ensure that the Restricted Units remain affordable to Very Low and Low Income Households for a period of thirty (30) years and that should Owner sell or lease or 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 Owner as liquidated damages would be as follows:

1. If a Restricted Unit in the Subject Property is rented or leased for an amount in excess of the Maximum Monthly Rent permitted under this Restrictive Covenant, Owner/Lessor 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 as set forth in Section IIIB. of this Covenant multiplied by the number of months that the Unit has been rented in excess of the Maximum Monthly Rent.
  2. If a Restricted Unit is rented or leased to a tenant whose household income has not been certified by the County, the required income certification set forth in Section II shall be completed within thirty (30) days of notification of non-compliance. If the tenant household's income does not qualify for letting of the Restricted Unit as required by this Restrictive Covenant, then subject to Section III.D herein Owner shall be assessed liquidated damages in the amount of three times the difference between the tenant's gross monthly household income and one twelfth of the County's maximum 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 the Restricted Unit is rented in violation of this requirement.
  3. This remedy shall be cumulative to all other rights and remedies the County may have.
- C. In addition to any other remedies the County may have, the Owner hereby grants, transfers and assigns to the County the right to receive the rents due or collected during the entire period the Subject Property is rented in violation of this Covenant, except where such rights are exercised by an institutional lender which is the maker of a loan secured by a deed of trust recorded in first priority as described in Section VIII. The Owner also assigns to the County the right to collect and/or compromise such rents, in whole or in part, and/or to enforce the payment of all or any part thereof as the County may deem proper.
- D. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

- E. In the event that any legal or administrative action is commenced to interpret or to enforce the terms of this Covenant, the prevailing party in any such action shall be entitled to recover all reasonable attorney's fees and costs incurred in such action.
- F. A violation of this Covenant 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.

#### VIII. FORECLOSURE OR BEQUEST

- A. The County agrees that the terms and conditions of this Restrictive Covenant are and shall be subordinate to the liens, rights, duties and obligations created by a deed of trust of an Institutional Lender.
- B. The provisions of this Covenant shall not impair the rights of an Institutional Lender which is the maker of a loan secured by a deed of trust or such lender's assignee or successor in interest, to:
  - 1. Foreclose or take title to the Subject Property pursuant to the remedies in the deed of trust; or
  - 2. Accept a deed or assignment in lieu of foreclosure in the event of default by a trustor; or
  - 3. Sell or lease the Subject property to any person at any price, subsequent to exercising its rights under the deed of trust.
- C. In the event of a transfer of the Subject Property by operation of law such as by devise, bequest, foreclosure on any financing (except financing by an Institutional Lender which is exempt under this Section VIII above), the transferee or the estate of the decedent shall be bound by the provisions of this Covenant.
- D. Owner 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 Santa Barbara County Treasurer-Tax Collector, Affordable Housing Division, P.O. Box 2219, Santa Barbara, California 93102-2219.
- E. In the event the Owner of the Subject Property reacquires the Subject Property at any time subsequent to a foreclosure, a deed in lieu of foreclosure or a trustee's sale of that Owner's interest in the Subject Property, the doctrine of after-acquired



title shall apply, and the property shall be subject to all of the terms, conditions, restrictions and limitations of this Covenant.

IX. ADDITIONAL PROVISIONS

- A. The County may assign its rights and delegate its duties thereunder without the consent of Owner. Upon such assignment the County shall notify the Owner.
- B. The Owner and County covenant that they have not and will not execute any other agreement or covenant with provisions contradictory to or in opposition to the provisions hereof and that in any event this Covenant is controlling as to the rights and obligations between the Owner, the County, and their respective successors.
- C. 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. The terms of this Covenant shall be interpreted under the laws of the State of California.
- E. The terms of this Covenant shall be interpreted in a manner that is consistent with the County Housing Element and Housing Element Implementation Guidelines.
- F. All notices required herein shall be sent by certified mail, return receipt requested, to the addresses listed below.

To the County at:

Manager of Affordable Housing  
Treasurer-Tax Collector  
P.O. Box 2219  
Santa Barbara, CA 93102-2219

To the Owner at:

Santa Barbara Community Housing Corporation  
Susan Boehlje, Executive Director  
11 East Haley Street  
Santa Barbara, CA 93101

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

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

COUNTY OF SANTA BARBARA

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

—

By \_\_\_\_\_

BOARD OF SUPERVISORS

ATTEST:  
MICHAEL F. BROWN  
CLERK OF THE BOARD

\_\_\_\_\_

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

\_\_\_\_\_

By \_\_\_\_\_

OWNER

By \_\_\_\_\_

OWNER

—

(Signatures must be notarized)

APPROVED AS TO FORM:

STEPHEN SHANE STARK  
COUNTY COUNSEL

By \_\_\_\_\_

Deputy County Counsel



## EXHIBIT A

### Legal Description of Property

Parcel D of Parcel Map No. 10,706 in the County of Santa Barbara, State of California, as shown on Map filed in Book 3, Page 11 of Parcel Maps in the Office of the County Recorder of said County.

## EXHIBIT B

### Project Description Condition:

1. This Final Development Plan is based upon and limited to compliance with the project description, the hearing exhibits marked Board of Supervisors Approved Plans, dated August 13, 2001, and conditions of approval set forth below. Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

The applicable housing portion of the project description is as follows:

The Development Plan, 99-DP-045 includes the development of a 16-unit apartment project designed in a village orientation with a cottage architecture style. Due to noise constraints on the property, parking would be provided on the southern half of the property adjacent to Calle Real. The residences would be clustered in two-story buildings on the northern half of the site.

The units would consist of 8 two-bedroom and 8 three-bedroom flats. Four of the units (25% of the total) would be provided at a very low income rental rates. Twelve units (75% of the total) would be provided at low income rental rates. The two-bedroom units would range in size from 881 to 960 square feet, and the three-bedroom units would range from 1,120 to 1,166 square feet in size. Each unit would be provided a private patio of approximately 100 square feet. A common laundry area and lounge building would be provided in addition to a common workroom. A resident manager would occupy one of the units.

34. Four dwelling units shall be provided at rental prices affordable to very low income households and twelve units shall be provided at rental prices affordable to low income households as defined by the County's Housing Element and the Housing Element Implementation Guidelines. Prior to land use clearance the applicant shall enter into and record an Agreement to Provide Affordable Housing and a Rental Restrictive Covenant and Preemptive Right, based upon the County's model agreement and restrictive covenant. Both shall be subject to review and approval by Planning & Development and County Counsel. These documents shall specify affordability consistent with the terms described above and shall include provisions describing marketing and lottery requirements for the initial rental of units. Income eligibility of prospective renters shall be determined by the County or its designee. An intent to reside statement shall be required for potential renters of the affordable units. The maximum rental rate for the affordable units shall not exceed the maximum levels established by the Board of Supervisors, consistent with the provisions of the Housing Element. The agreement and covenant shall specify that the affordable units shall remain affordable for a minimum period of 30 years unless preempted by state or federal programs and shall be rented to qualified households at prices as established by the Board of Supervisors.

EXHIBIT C

ADDRESS LIST OF AFFORDABLE HOUSING UNITS FOR  
THE EL ENCANTO APARTMENT PROJECT

TOTAL NUMBER OF UNITS IN THIS PROJECT: 16

Four dwelling units to be provided at rental prices affordable to very low income households.

ADDRESSES AND/OR UNIT NUMBER OF THE VERY-LOW UNITS:

- 1) Bldg. A, no. 4
- 2) Bldg. B, no. 5
- 3) Bldg. C, no. 9
- 4) Bldg. D, no. 16

The remaining twelve units shall be provided at rental prices affordable to low income households.