

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 Suite ____
Santa Barbara, CA 93102-2219

ATTN:

No recording fee per Government Code 6103

APN _____

RENTAL RESTRICTIVE COVENANT

This Document Creates a Lien on Real Property

This Rental Restrictive Covenant (hereinafter "Restrictive Covenant" or "Covenant") by and between _____ (hereinafter "Owner") and the County of Santa Barbara, a political subdivision of the State of California, (hereinafter "County") is entered into on the date set forth below. This Covenant supersedes and replaces in its entirety that certain document entitled Rental and Resale Restrictive Covenant and Preemptive Right recorded on _____ in the Official Records of Santa Barbara County as Document Number _____ and that certain document entitled Assignment and Assumption of Affordable Housing Obligation recorded on _____ in the Official Records of Santa Barbara County as Document Number _____.

This Covenant applies to the real property 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 it 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 Subject Property and maximum income restrictions on potential tenants of those units; and

WHEREAS, the purpose of this Restrictive Covenant is to assure the Subject Property remains affordable and available for lease by _____ Income households until _____.

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

I. TERMS AND ENFORCEABILITY

- A. Owner agrees maintain the Subject Property for rent according to the terms of this Covenant.
- 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 it expires on _____.
- 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 _____ 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.

II. DEFINITIONS

- A. “_____ [income category] Income Household” means a household annual gross income does not exceed the maximum income levels permitted within the _____ income category (at or under ____% 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 the Subject Property as established and periodically revised by the County Board of Supervisors as described in the Housing Element Implementation Guidelines of Santa Barbara County.
- C. “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.
- D. “Subject Property” means the property legally described in Exhibit A.
- E. “Tenant” means any tenant of the Subject Project.

III. OCCUPANCY AND RENT RESTRICTIONS

- A. The Subject Property must be occupied by, or reserved for occupancy by, certified _____ Income Households for the term of this Covenant.
- B. The total rent charged for the Subject Property inclusive of all fees and charges including utilities can not exceed the Maximum Monthly Rent.
- C. The income levels and other qualifications of applicants for and residents of the Subject Property shall be certified by the County or a duly authorized representative thereof as conforming to the income restrictions on that Subject Property prior to initial occupancy and re-certified every three years by Owner.
- D. In the event that re-certification of a household occupying the Subject Property indicates that the income of that household exceeds the maximum income for an _____ Income Household as determined by the Board of Supervisors, then the over-income tenant shall be given 90 days notice to vacate. Upon the Subject Property becoming vacant, it shall be marketed and leased to a new household meeting the income qualifications of this Covenant.

IV. LEASING

- A. Before leasing the Subject Property, Owner shall submit its proposed lease form to the 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 the Owner.

- B. The lease may not contain any of the following provisions:
1. An agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;
 2. An agreement by the tenant that Owner may take, hold, or sell 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 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 Owner against the tenant. The tenant however may be obligated to pay costs if the tenant loses.
- C. Owner shall include in the lease provisions which provide that the household is subject to re-certification of income every three years 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 _____ Income Household or repeatedly refuse or fail to cooperate in the re-certification process.
- D. Except in the case of non-payment of rent or material violation of its lease, to terminate or refuse to renew tenancy, Owner must serve written notice upon the tenant specifying the grounds for the action at least 60 days before the termination of tenancy.
- E. Prior to tenancy, applicants for the Subject Property must complete, execute and deliver to the Housing and Community Development Department or its designee an Application for Income Certification and eligibility statement. The County may request additional information to supplement the application as necessary.

- F. To be eligible to lease the Subject Property, tenants can not own any improved residential real estate.
- G. Owner may only lease the Subject Property to tenants who have been income certified by the County.
- H. In addition to executing a lease for the Subject Property, the Owner shall require each adult tenant execute a declaration of intent to occupy which shall require the household to occupy the Subject Property as the household's primary residence. Failure of Owner to enforce this requirement shall constitute a material violation of this Covenant.
- I. The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease or rental of the Subject Property 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 and shall comply with the County's Anti-Discrimination Ordinance.

V. MANAGEMENT

- A. The Owner is responsible for all management functions with respect to the Subject Property including without limitation the selection of tenants, 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's Housing and Community Development Department 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.
- C. Owner shall submit to the County Planning and 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 the Owner's compliance with the Covenant, 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. TRANSFER OF RESTRICTED PROPERTY

Prior to any transfer of the Subject Property the Owner shall notify the Planning and Development Department of the intended transfer. Failure to give such notice shall not affect 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 leasing 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 Covenant is to ensure that the Subject Property affordable to eligible income qualified households 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 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 affordable monthly rent as set forth in Section IIIB of this Covenant multiplied by the number of months that the Subject Property has been leased in violation of the Covenant.**
 2. **If the Subject Property is rented or leased to a tenant whose household income has not been certified as set forth herein, the required income certification set forth in Section III 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 Subject Property as required by this Restrictive Covenant, then Owner shall be assessed liquidated damages in the amount of 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 Subject Property in effect at the time the Subject Property is rented or leased multiplied by the number of months that the Subject Property has been so leased.**

Owner hereby agrees to the above liquidated damages provisions _____ (Owner'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, 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. 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 running of the term of this covenant shall be tolled during any period in which the Owner is found to be in violation of this Covenant.
- E. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

VIII. TRANSFER

- A. 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 Covenant.
- B. 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.

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: Housing and Community Development
 105 East Anapamu Street, Suite ____
 Santa Barbara, CA 93102-2219

To the Owner at: _____

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

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

COUNTY OF SANTA BARBARA

Dated: _____

By: _____

John Torell
Director, of Housing and
Community Development
(signature must be notarized)

Dated: _____

By: _____

OWNER

By: _____

OWNER

(Signatures must be notarized)

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By _____
Deputy County Counsel

EXHIBIT A

Legal Description of Property