

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 E. Anapamu St.  
Santa Barbara, CA 93101

Attn: Affordable Housing Program Planner

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A.P.N : 101-390-004

## AGREEMENT TO PROVIDE AFFORDABLE LOW INCOME HOUSING

### RICE RANCH

**Project Case Numbers 03RZN-00000-00003, 97-SP-001, TM 14,430, TM 14,636, 03ORD-00000-00008, 03DVP-00000-00009, -00010, -00011, -00012, -00013, -00014.**

This AGREEMENT between the County of Santa Barbara (hereinafter "County") and Rice Ranch Ventures LLC, (hereinafter "Developer") is made and entered into on the date set forth below.

Developer proposes to develop a residential development consisting of 725 units as described in Project Case Numbers 03RZN-00000-00003, 97-SP-001, TM 14,430, TM 14,636, 03ORD-00000-00008, 03DVP-00000-00009, -00010, -00011, -00012, -00013, -00014. Said development is further identified as Assessor Parcel Numbers 101-380-002 (Valley View), 101-390-003 (The Oaks), 101-390-004 (Pine Creek), 101-400-001 (The Meadow) and 101-400-002 (The Grove), located along the south side of Stubblefield and Rice Ranch Roads in the southern

portion of the Orcutt Community, Fourth Supervisorial District and is to be called Rice Ranch (the "Subject Property") and is more fully described in Exhibit "A" attached hereto and made a part hereof for all purposes.

### **RECITALS**

WHEREAS, the County has determined that the granting of approval for Rice Ranch requires as a condition of approval that Developer provide affordable housing; and

WHEREAS, Developer desires to comply with the conditions of approval by constructing, marketing and selling the Subject Property, and all portions thereof, in compliance with the County's Housing Element of the Comprehensive Plan and Housing Element Implementation Guidelines; and

WHEREAS, the purpose of this agreement is to assure that the developer complies with the County requirements for provision of affordable housing; and

WHEREAS, the purpose of this Agreement is to satisfy those portions of the affordable housing conditions that require the development of 73 dwelling units (10% of the total number of proposed units) at sale prices affordable to low-income households with an affordability target of 75% of median income; and

WHEREAS, Developer's obligation to provide an additional 73 units (10% of the units approved) for Work Force Housing for buyers earn less than 150% of median area income will be satisfied through a separate Agreement to Provide Workforce Housing ("Workforce Agreement to Provide"); and

WHEREAS, both this Agreement to Provide Affordable Low Income Housing and the Workforce Agreement to Provide must be recorded prior to Map Recordation for TM 14,430 and together satisfy the project conditions 49 and 50.

NOW, THEREFORE the parties hereto agree as follows:

1. Developer agrees to construct 73 affordable units for sale for low-income households (“Restricted Units”) pursuant to the conditions of Approval for the Tract Map TM 14,430 including but not limited to pertinent sections of Conditions 49 and 50 which are set forth in Exhibit B attached hereto and incorporated by this reference. The Restricted Units shall be constructed in the “Pine Creek” and “The Meadows” neighborhoods of the Subject Property as shown on Exhibit “C” attached hereto and incorporated herein. The formula used to determine the restricted sales price shall be that the formula set forth in the Housing Element Implementation Guidelines in place on December 9, 2003 subject to adjustments for changes in the County median income.
2. The Restricted Units and applicable income levels for each Restricted Unit to be constructed by Developer are described in Exhibit "C". Developer agrees to provide a list of all addresses for the Restricted Units containing the information set forth in the attached Exhibit "C" to the Santa Barbara County Housing and Community Development prior to commencement of the income certification process for any project units. The County or its designee will not be able to process any income certification applications without the address list, as applicants must be matched with the Restricted Units.
3. Developer understands that the purpose and objective of this Agreement is to obtain and provide housing affordable to income eligible families. To achieve this end, Developer agrees to have executed and recorded the County's Resale Restrictive Covenant and Preemptive Right (“Restrictive Covenant”) attached hereto as Exhibit “D” and incorporated by this reference, on the title of each Restricted Unit within the

Subject Property at the time of the first sale of the Restricted Unit to a qualified buyer. Notwithstanding the above, in the event that the County revises its form Restrictive Covenant prior to the first sale of the Restricted Unit, then a revised Restrictive Covenant shall be recorded provided that the new form does not substantially alter the terms of the Restrictive Covenant attached as Exhibit "D". The Restrictive Covenant places maximum sales price on the Restricted Units and maximum income restrictions on potential buyers of Restricted Units. By executing this Agreement, Developer agrees that all purchasers, successor in interest assignees and beneficiaries of Restricted Units shall be bound by the terms of the Restrictive Covenant (even if they do not execute such covenant). . In the event that a Restrictive Covenant is not executed or recorded against a Restricted Unit, the provisions of the Restrictive Covenant attached hereto as Exhibit "D" shall nonetheless be binding and enforceable against all purchasers and successors in interest in the Restricted Unit. Developer also agrees that it shall lease and shall not sell Restricted Units except as allowed for in the Restrictive Covenant and to purchasers who have met the County's Income Certification Guidelines and been income certified by the County

4. Developer agrees to sell the Subject Property in compliance with the Restrictive Covenant. Developer shall comply with the procedures for the sale of a Restricted Unit, as described herein and in the Restrictive Covenant, including, but not limited to sale of the Restricted Unit for a price within the maximum sales price as established by the Santa Barbara County Board of Supervisors or as dictated by other State or Federal programs and approved by the County. Failure to comply with these requirements shall render the developer subject to the enforcement and liquidated damages provisions set forth in the Restrictive Covenant.
5. Developer agrees that, with respect to the first sale of each Restricted Unit, no Restricted Unit within the Subject Property shall be separately sold, offered for sale,

leased or financed except, at a minimum, in compliance with a marketing plan which has been approved by the Director of Housing and Community Development (hereinafter "DIRECTOR"). This Marketing Plan, approved by the DIRECTOR for the advertising and sale of the Restricted Units, is attached hereto as Exhibit "E" and by reference made a part of this Agreement as though set forth in full herein. The marketing plan shall represent the minimum effort used by Developer to market units. Developer agrees to abide by the Lottery Plan attached hereto as Exhibit "F". Subsequent sales or transfers shall be in accordance with the transfer provisions of the Restrictive Covenant.

6. Developer is obligated to use best efforts to sell the Restricted Units to persons within the corresponding income category. Developer understands and agrees that household of and over a certain size may be given a preference for certain Restricted Units depending on bedroom size pursuant to County policy. Should any of the Restricted Units not be sold, or not be in escrow as evidenced by an earnest money deposit by an eligible income purchaser within one year from the date of the Building and Safety Division's issuance of a Certificate of Occupancy for that unit, Developer may request a modification of final conditions of approval and/or changes to the terms of this Agreement. Any modification or amendment of this Agreement shall be made in writing and shall be consistent with the intent of the original conditions of approval to provide affordable housing and could include increasing the household income level, temporary rental of for sale units at or below the maximum rent for the identified income category, or some other remedy acceptable to the County.
7. Developer agrees that County is not obligated to grant a modification of condition(s) specified in paragraph 6 above. Any request for modification of condition(s) must be accompanied by proof of diligent efforts on the part of Developer to sell or rent, if applicable, the Restricted Units to eligible households. Diligent efforts include, but

are not limited to, continuous advertisement of the Restricted Units for one year in a major newspaper of county-wide circulation.

8. The Developer and County shall comply with all applicable Federal, State and County laws and regulations governing conflict of interest and fair housing.
9. Developer agrees that should County be required to enforce any provision of this Agreement through legal proceedings, Developer will, in addition to any other amount owing County, pay County all reasonable legal costs including attorneys' fees.
10. This Agreement shall be recorded by County immediately following its execution..  
This agreement is for the benefit of the real property described on the attached Exhibit "A" and shall inure to and benefit the owners thereof and the County of Santa Barbara. The burdens and benefits of this Agreement shall be both a covenant running with the land and equitable servitudes, binding the Developer, and the heirs, representatives, successors in interest and assigns of the Developer.

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

**COUNTY OF SANTA BARBARA**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Brooks Firestone  
Chair Board of Supervisors

ATTEST:

MICHAEL F. BROWN  
CLERK OF THE BOARD

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
John Torell, Director  
Housing and Community Development  
Department

**RICE RANCH VENTURES, LLC,**  
a Delaware limited liability company

BY: Troxler Residential Ventures 31, LLC,  
a Delaware limited liability company  
its Managing Member

BY: Troxler Ventures Partners III, LLC,  
a California limited liability company  
its Operating Member

BY: \_\_\_\_\_  
BRYAN PAYNE TROXLER, as Settlor  
and Trustee of the Troxler Family Trust,  
dated January 7, 1993, amended and completely  
restated December 3, 1996  
its Sole Member

Attest:

\_\_\_\_\_  
Bryan P. Troxler  
Manager, Troxler Ventures Partners III, LLC

APPROVED AS TO FORM:  
STEPHEN SHANE STARK  
COUNTY COUNSEL

BY: \_\_\_\_\_  
Mary McMaster  
Deputy County Counsel

EXHIBIT A

**LEGAL DESCRIPTION**

LOT 201, INCLUSIVE, OF RICE RANCH TRACT 14,430 UNIT 1, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, RECORDED \_\_\_\_\_, 2007, IN BOOK \_\_\_\_\_ PAGES \_\_\_\_\_ THROUGH \_\_\_\_\_ INCLUSIVE, OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

A.P.N. 101-390-004

## EXHIBIT B

### AFFORDABLE HOUSING CONDITION(S)

FOR

Project Case No. TM14,430, 97-SP-007, 3DVP 00000-00009, -00010, -00011, -00012, -00013, -00014

73 dwelling units (10% of the total number of proposed units) shall be provided at sale prices affordable to low-income with an affordability target of 75% of median income, consistent with the Housing Element and the Housing Element Implementation Guidelines. **Plan Requirements and Timing:** Prior to Final Tract Map recordation, the applicant or project developer shall enter into and record an Agreement to provide affordable housing with the County of Santa Barbara, agreeing to provide 73 affordable units at sale prices affordable to low-income households, as required by the Housing Element and Housing Element Implementation Guidelines for the Santa Maria Housing Market Area. The Agreement to Provide shall require that purchasers of the affordable units execute a Restrictive Covenant and Pre-emptive Right which shall be recorded against the units at the time of purchase. The Agreement and Covenant shall specify that the affordable units remain affordable for a period of 30 years unless preempted by state or federal programs and shall be based upon the County's model agreement and covenant. Both shall be subject to review and approval by Planning & Development, Housing and Community 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 sale 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 purchasers of the affordable units. The maximum sales price 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 applicant for the Rice Ranch project shall include an additional 10% of the units approved for Work Force Housing. These units would be available only to first time homebuyers whose earnings place them above qualification for moderate income units as defined in the County's existing Affordable Housing Program, but who earn less than 150% of median area income. Of these 73 additional units, 50 would be priced to be affordable to individuals and families that earn up to 120% of median area income; 23 units would be price restricted to be affordable to individuals and families that earn up to 150% of median area income. **Plan Requirements and Timing:** Prior to Final Tract recordation, the applicant or project developer shall enter into and record an Agreement to Provide Affordable Housing with the County of Santa Barbara, agreeing to provide 73 affordable units at sale prices affordable to individuals and families that earn up to 120% of median area income as provided by the Housing Element and Housing Element Implementation Guidelines for the Santa Maria Housing Market Area, and 23 units at sale prices affordable to 150% of median area income. The Agreement to Provide shall require that purchasers of the affordable units execute a Restrictive Covenant and Pre-emptive Right which shall be recorded against the units at the time of purchase. These units would be dispersed throughout the Meadows and Pine Creek condominium areas. The Agreement and Covenant shall specify that the affordable units remain affordable for a period of 30 years unless preempted by state or federal programs and shall be sold to qualified households at prices as established by the Board of Supervisors.

Construction of the affordable units shall be concurrent with the construction of the market rate units throughout the development. Occupancy clearance for no more than 10% of the market rate units shall be allowed prior to occupancy clearance for the same percentage of the affordable units. **PLAN REQUIREMENTS & TIMING:** Prior to any final map recordation, this requirement shall be included in the “Agreement to Provide Affordable Housing” and shall be printed on all grading and building plans. **MONITORING:** Permit Compliance staff shall ensure compliance during construction

**EXHIBIT C**  
**ADDRESS LIST OF AFFORDABLE HOUSING UNITS**  
 FOR

Project Case Numbers 03RZN-00000-00003, 97-SP-001, TM 14,430, TM 14,636, 03ORD-00000-00008, 03DVP-00000-00009, -00010, -00011, -00012, -00013, -00014.

TOTAL NUMBER OF UNITS IN THE PROJECT:	725
NUMBER OF AFFORDABLE UNITS FOR VERY LOW INCOME HOUSEHOLDS:	0
NUMBER OF AFFORDABLE UNITS FOR LOW INCOME HOUSEHOLDS:	73
NUMBER OF AFFORDABLE UNITS FOR LOWER-MODERATE INCOME HOUSEHOLDS:	0
NUMBER OF AFFORDABLE UNITS FOR UPPER-MODERATE INCOME HOUSEHOLDS EARNING UNDER 120% OF MEDIAN INCOME:	0
NUMBER OF AFFORDABLE UNITS FOR MIDDLE MEDIAN INCOME HOUSEHOLDS EARNING UNDER 150% OF MEDIAN INCOME:	0

	<u>ADDRESS</u>	<u>LOT #</u>	<u>BEDROOMS</u>	<u>INCOME LEVEL</u>
1)		Model B – Unit 20	1	LOW
2)		Model B – Unit 23	1	LOW
3)		Model C- Unit 26	1	LOW
4)		Model B – Unit 27	1	LOW
5)		Model B – Unit 28	1	LOW
6)		Model B – Unit 31	1	LOW
7)		Model B – Unit 32	1	LOW
8)		Model B – Unit 35	1	LOW
9)		Model B – Unit 36	1	LOW
10)		Model B – Unit 39	1	LOW
11)		Model B – Unit 40	1	LOW

	<u>ADDRESS</u>	<u>LOT #</u>	<u>BEDROOMS</u>	<u>INCOME LEVEL</u>
12)		Model B – Unit 43	1	LOW
13)		Model B – Unit 44	1	LOW
14)		Model B – Unit 47	1	LOW
15)		Model B – Unit 48	1	LOW
16)		Model B – Unit 51	1	LOW
17)		Model B – Unit 52	1	LOW
18)		Model B – Unit 55	1	LOW
19)		Model B – Unit 58	1	LOW
20)		Model B – Unit 59	1	LOW
21)		Model B – Unit 62	1	LOW
22)		Model B – Unit 63	1	LOW
23)		Model B – Unit 66	1	LOW
24)		Model B – Unit 69	1	LOW
25)		Model B – Unit 70	1	LOW
26)		Model C – Unit 73	1	LOW
27)		Model B – Unit 74	1	LOW
28)		Model B – Unit 75	1	LOW
29)		Model C – Unit 78	1	LOW
30)		Model B – Unit 79	1	LOW
31)		Model B – Unit 80	1	LOW
32)		Model C – Unit 81	1	LOW
33)		Model B – Unit 84	1	LOW

	<u>ADDRESS</u>	<u>LOT #</u>	<u>BEDROOMS</u>	<u>INCOME LEVEL</u>
34)		Model B – Unit 85	1	LOW
35)		Model C – Unit 86	1	LOW
36)		Model B – Unit 89	1	LOW
37)		Model C – Unit 92	1	LOW
38)		Model B – Unit 93	1	LOW
39)		Model B – Unit 94	1	LOW
40)		Model C – Unit 97	1	LOW
41)		Model B – Unit 98	1	LOW
42)		Model B – Unit 99	1	LOW
43)		Model B – Unit 102	1	LOW
44)		Model B – Unit 104	1	LOW
45)		Model B – Unit 107	1	LOW
46)		Model B – Unit 108	1	LOW
47)		Model B – Unit 111	1	LOW
48)		Model B – Unit 112	1	LOW
49)		Model B – Unit 115	1	LOW
50)		Model B – Unit 116	1	LOW
51)		Model B – Unit 119	1	LOW
52)		Model B – Unit 120	1	LOW
53)		Model B – Unit 123	1	LOW
54)		Model B – Unit 124	1	LOW
55)		Model C – Unit 127	1	LOW

	<u>ADDRESS</u>	<u>LOT #</u>	<u>BEDROOMS</u>	<u>INCOME LEVEL</u>
56)		Model B – Unit 128	1	LOW
57)		Model B – Unit 129	1	LOW
58)		Model B – Unit 132	1	LOW
59)		Model B – Unit 133	1	LOW
60)		Model C – Unit 134	1	LOW
61)		Model B – Unit 137	1	LOW
62)		Model B – Unit 138	1	LOW
63)		Model C – Unit 141	1	LOW
64)		Model B – Unit 142	1	LOW
65)		Model B – Unit 143	1	LOW
66)		Model C – Unit 144	1	LOW
67)		Model B – Unit 147	1	LOW
68)		Model B – Unit 150	1	LOW
69)		Model B – Unit 152	1	LOW
70)		Model B – Unit 153	1	LOW
71)		Model C – Unit 156	1	LOW
72)		Model B – Unit 157	1	LOW
73)		Model B – Unit 158	1	LOW

**EXHIBIT D**  
**COVENANT**

**EXHIBIT E**  
**MARKETING PLAN**  
**FOR**  
**RICE RANCH**

**Project Case No. TM14,430, 97-SP-007, 3DVP 00000-00009, -00010, -00011, -00012, -00013, -00014**

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

The Agreement to Provide Affordable Housing binds the Developer to this Marketing Plan. If the Developer determines that changes may be necessary after the Agreement has been recorded, Developer must contact Housing and Community Development regarding these changes and must receive approval of the revised Marketing Plan from the Director of Housing and Community Development.

- C. Project advertising shall conform to the requirements of the Fair Housing Act. Advertisements for the project shall state that a lottery will be conducted if the number of interested persons exceeds the number of units available. The name and telephone number of the person to contact to participate in the lottery and to obtain additional information regarding income requirements and resale restrictions shall also be provided in the advertisement. The advertisement shall clearly state the deadline for inclusion in the lottery. Developer shall provide Housing and Community Development with a copy of the publicized advertisement.
- D. Developer shall do the following minimum marketing for the identified affordable housing units:
1. Developer shall run at least one advertisement in the real estate section of the Santa Maria Times and one Spanish language newspaper or radio station which circulates or broadcasts in the area of this project at least one time per week for six weeks or such additional time as specified in paragraph E of Exhibit E . At a minimum, the advertisement shall be placed in the Sunday Real Estate section. The advertisements shall be coordinated with the time period that the lottery list is open.
  2. During the time period that the lottery is open, Developer will have a phone number identified at which inquiries concerning the affordable housing units can be made. A phone-recording device will be included on the phone when it is not being directly answered.
  - 3.. During the time period that the lottery is open, information sheets will be available to prospective purchasers of the affordable housing units identifying the level of affordability for the affordable units, qualifying income levels, an explanation of the income certification process, resale restrictions, floor plans, a site plan indicating the location of available units, first-time homebuyers guides and other information concerning time of

sale, time within which each person must be qualified as a purchaser, etc. Developer shall also have available to prospective buyers, Lottery applications.

4. The prospective affordable housing purchasers will be identified in a list collected by the Developer and given to the County of Santa Barbara for the purpose of implementing the lottery pursuant to Housing and Community Development requirements.
5. The affordable units will be sold to the parties identified and Income Certified according to Affordable Housing income requirements.

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Representative of Developer  
Director

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John Torell  
Santa Barbara County  
Housing and Community Development  
Department

**EXHIBIT F**  
**LOTTERY PLAN**  
**FOR**  
**RICE RANCH**

**Project Case No. TM14,430, 97-SP-007, 3DVP 00000-00009, -00010, -00011, -00012, -00013, -00014**

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- A. Developer shall publish an advertisement consistent with the terms of the Marketing Plan in a newspaper of general circulation in the County. At the time a prospect expresses interest in purchasing a unit, Developer or the Developer's representative shall provide an informational packet describing income qualifications, the lottery process and expected timing, County Income and Price Guidelines, County Income Certification Guidelines and Application, resale restrictions and the names of lenders providing no cost loan approval. *(This information packet shall be developed in conjunction with Housing and Community Development or its designee.)*
- B. Consistent with Fair Housing Laws, the Developer shall not restrict applicants on the basis of race, color, religion, national origin, gender, age, familial status, or handicap.
- C. Developer shall provide a dated receipt to prospective buyers who have completed a Lottery Application. This receipt shall correspond to the number of the applicant on the lottery list.
- D. During the marketing period, Developer shall maintain a list of prospective buyers. The following information should be included on the list:
1. Name
  2. Receipt Number and Date Issued
- E. Developer shall accept completed Lottery Applications from applicants for a minimum of 30 days **or until the number of applicants is at least three times the number of units available**, whichever occurs later. However, the acceptance of names shall not be required to continue for more than 90 days.
- F. All names of applicants with completed Lottery Applications shall be included in the lottery except for exceptions outlined in the HCD administration manual.
- G. Housing and Community Development (HCD) shall conduct the lottery by randomly computer-ranking the names on the initial list which includes all applicants with completed Lottery Applications. Lottery results shall be made publicly available at the Developer's sales office, the offices of the County of Santa Barbara and on the Housing and Community Development website.
- H. Housing and Community Development will contact the top lottery ranked applicants ("lottery selected applicants") equal to the number of affordable units available who will be required to complete an Income certification application. Housing and Community Development will instruct applicants to return the Income Certification applications within three weeks of Lottery. Late Income Certification applications will not be accepted and HCD will continue contacting the next Lottery ranked applicant in the ranked order.
- I. Housing and Community Development will income certify Lottery applicants in the order of their Lottery standing. When applicants are deemed income certified they are eligible to purchase a

unit. Thereafter as any of those applicants drop out or are unable to obtain financing, HCD will continue contacting other Lottery ranked applicants in the ranked order.

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

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Representative of Developer

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John Torell  
Director  
Santa Barbara County  
Housing and Community Development  
Department

RECORDING REQUESTED BY AND RETURN TO:

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

SEND ANOTHER COPY TO:

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

Attn: Affordable Housing Program

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APN \_\_\_\_\_

RESALE RESTRICTIVE COVENANT RESALE  
RESTRICTION AND PREEMPTIVE RIGHT  
SECURED BY A DEED OF TRUST

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

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( Project Name and Case Number )

---

(Address and Unit/Lot Number)

This Resale Restrictive Covenant and Preemptive Right (hereinafter "Covenant") by and between \_\_\_\_\_ (hereinafter "Owner") and the County of Santa Barbara, a political subdivision of the County of Santa Barbara (hereinafter "County") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

This Covenant applies to the real property commonly known as \_\_\_\_\_ in Santa Barbara County, California, which is more fully described in Exhibit "A" attached and incorporated by this reference herein (hereinafter "Subject Property").

RECITALS

WHEREAS, it is the intent of the parties that the Subject Property be sold in accordance with certain affordability criteria established by the County so the Subject Property will remain "affordable" to subsequent purchasers consistent with the provisions of the Housing Element and/or Housing Element Implementation Guidelines of the Comprehensive Plan of the County (hereinafter "Housing Element" or "Implementation Guidelines"); and

WHEREAS, it is the intent of the parties that this Covenant will place sales price restrictions on the Subject Property and maximum and asset and income restrictions on potential purchasers of the Subject Property; and

WHEREAS, the purpose of this Covenant is to assure that the Subject Property remains affordable and available for purchase by qualified households for the thirty (30) year term of this Covenant, beginning upon the date of occupancy clearance of the Subject Property subject to possible extensions upon violation of this Covenant and extensions upon resale;

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

I. TERM AND ENFORCEABILITY:

- A. 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 of the Subject Property or longer period as provided for herein in the event of violations. In addition, this period may be extended in the event of violations as provided for herein.
- B. 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 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. Any purchaser of or successor in interest or assignee to the Subject Property or of any portion of or interest in the Subject Property, 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.
- D. In order to preserve through this Covenant the affordability of the Subject Property for persons of \_\_\_\_\_ income, the Owner for itself and all successors and assigns hereby grants and assigns to the County the right to review and enforce compliance with this Covenant, and in furtherance of this right, grants to the County an Assignment of Rents, described under Section V B of this Covenant, the right to audit Owner's eligibility to purchase the subject property as set forth in Section III of this Covenant, an Option to Purchase the Subject Property, described under Section III A of this Covenant and assigns to the County any proceeds payable to Owner from a foreclosure or deed in lieu of foreclosure in excess of the Maximum Sale Price as described in Section II.C of this Covenant.

## II. DEFINITIONS:

- A. First Deed of Trust: a deed of trust of an Institutional Lender or successor in interest to such Institutional Lender which is recorded in first position, senior to any other deeds of trust against the Property, and which is made for purchase money financing or for other financing which has been approved by the County in writing. For the purposes of this Covenant, Deeds of Trust are only First Deed of Trust if they meet all of the requirements set forth in this definition.
- B. Institutional Lender: Any bank, savings and loan association, or any other lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property in the State of California or the United States Department of Housing and Urban Development.
- C. Maximum Sales Price: The Maximum Sales Price is the highest price that an Owner is allowed pursuant to this Covenant to resell the Subject Property for, inclusive of real estate commissions and closing costs, so as to be affordable to \_\_\_\_\_ income households. The base Maximum Sales Price shall be set by the County Board of Supervisors based upon the formula in effect at the time the subdivision application for the project was deemed complete, and shall be periodically revised in consideration of the US Department of Housing and Urban Development revised income limits for Public Housing and Section 8 Programs, and median family incomes for Santa Barbara County and shall be subject to adjustment as set forth herein.

County staff or staff's designee shall be afforded reasonable opportunity to inspect the Property for damage or deferred maintenance. The Maximum Sales Price may be decreased 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 Housing and Community Development staff. In no event shall the maximum sales price be adjusted by Housing and Community Development staff below the liens from County approved financing on the 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 purchasers 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 purchasers, no price increase will be allowed for property improvements made by the Owner. The Owner is of course free to make legal improvements, but will not be compensated for any improvements made upon the sale of the Subject Property.

No increase whatsoever shall be allowed during such time, if any, that Owner was in violation of any requirement of this Covenant. County staff or staff's designee shall be afforded reasonable opportunity to inspect the Subject Property for damage or deferred maintenance. The Director of Planning and

Development or the Director's designee may lower the Maximum Sale Price by the amount needed to repair any damage or deferred maintenance.

- D. Maximum Monthly Rent: The Maximum Monthly Rent for the Subject Property refers to the maximum rents as established and periodically revised by the County Board of Supervisors. These monthly rates are determined as described in the Housing Element, Implementation Guidelines, or as otherwise dictated by applicable state or federal programs.

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

- E. Owner: The owner of the Subject Property and any subsequent successor, purchaser, beneficiary, devisee, grantee or holder of title of the Subject Property whether in whole or in part.

### III. TRANSFER OF SUBJECT PROPERTY:

The Subject Property shall not be transferred, sold or assigned without prior written approval of the County Housing and Community Development Department. As used herein "transfer" shall include any assignment or transfer, voluntary, involuntary, or by operation of law (whether by deed, contract for sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure or otherwise) of any interest in the Subject Property, including but not limited to a fees simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title.

#### A. Notice of Intent To Sell/Option To Purchase:

1. In consideration of the benefits received by Owner, Owner hereby grants to the County and the County hereby accepts, an Option to Purchase the Subject Property, which the County may exercise any time Owner wishes to sell or transfer the Subject Property.
2. Prior to offering the Subject Property for sale or prior to granting an option to purchase it, Owner shall send to the County at the address and in the manner specified in Section VIII H below, written notice of Owner's intent to sell or 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.
3. The County shall have 30 days after receipt of such notice to send to Owner written notice of the County's intent to exercise its Option to Purchase. Notwithstanding the above however, if the County is notified by the filing of a Notice of Default, the County shall have until the time of the

sale under the deed of trust to notify owner and to exercise its option subject to the provisions of Section IV B of this Covenant regarding rights of redemption. The County's purchase price may be adjusted to account for deferred maintenance as set forth in Section II hereof.

If the County sends a Notice of Intent to exercise option, the County shall then have an additional 90 days to purchase the Subject Property for the following option price:

The lesser of:

- a. the Maximum Sales Price as defined herein (including a deduction for any deferred 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, less six percent (6%) to cover the County's resale costs,

but not less than:

- c. the amount necessary to pay the balance due on the outstanding first mortgage or deed of trust of the original purchase money loan on the Subject Property or any refinancing that was approved by the County in writing.
5. This option shall be binding on the Owner and the Owner's heirs, successors in interest, devisees, administrators, executors and assigns, and the failure of County to exercise this option in any one case, shall not effect the County's right to exercise such option in other cases thereafter arising during the term of this Covenant.
  6. The County may designate a governmental or non-profit organization to exercise its option to purchase. The County or its designee may assign this option to an individual private buyer who meets the County's eligibility requirements.

All transfers of title of the Subject Property, or interest therein are prohibited except upon the prior written approval of the County. This includes but is not limited to transfers by a gift or sale to Owner's spouse or issue, transfer of title to spouse as part of divorce or dissolution proceedings; acquisition of title or interest therein in conjunction with marriage. The County shall not approve any of the above transfers if the County determines in its sole discretion that such transfer violates the purposes or provisions of this Covenant. Transfers to trusts are strictly prohibited. A transfer in violation of this section shall be void and may subject the Owner to cumulative remedies set forth in

Section V of this Covenant. In addition, the running of the term of this Covenant shall be tolled during any period wherein the Subject Property has been transferred in violation of this provision.

B. Requirements for County Approval of transferee and Continuing Obligations for Owner:

1. Eligibility. To be eligible to purchase the Subject Property, the annual gross income of the proposed transferee must not exceed the maximum income levels permitted within the \_\_\_\_\_ income category established by the County and must meet the requirements set forth in the County's Income Certification Guidelines including those pertaining to household size.

To be eligible to purchase the Subject Property a transferee can not own any improved residential real estate in the United States prior to the close of escrow. If the transferee does own improved residential real estate, a divestment of any interest in other real estate prior to the close of escrow is required, and relevant transfer documents shall be provided to Housing and Community Development Department.

Notwithstanding the above, if the County has adopted a program requiring County selection of purchasers of affordable for-sale units, Owner shall be required to sell the Subject Property to such County-selected purchaser for the Maximum Sales Price as set forth herein (with deductions for deferred maintenance if applicable).

2. At least 30 days prior to the close of escrow, transferee shall complete, execute, and deliver to the County Housing and Community Development Department or its designee the following information:

Application for Income Certification. Purchasers of the Subject Property shall complete, execute and deliver to Housing and Community Development or its designee the Application for Income Certification and eligibility statement. The County may request additional information to supplement the application if deemed by the County to be necessary to verify the applicant's income.

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

3. Within ten days of receipt of all the completed executed documents set forth above and any additional information requested by the County, Housing and Community Development, or designee, shall notify escrow in

writing that the purchaser and sales transaction qualify or fail to qualify to purchase the Subject Property under County guidelines. If the purchaser or the sales transaction fails to qualify then execution of the sales transaction would constitute a breach of this Covenant as set forth in Section III B.

4. Penalty for Providing False Information/Continuing Obligation to Cooperate with Audits. By signing this Covenant Owner covenants for itself and all successors and assigns that, for the term of this Covenant, the County may audit their household for the purpose of evaluation or re-evaluating their eligibility for purchase of the Subject Property and for compliance with the terms of this Covenant including the Owner Occupancy and income requirements set forth herein. Owner for itself and all successors and assigns agrees to assist and cooperate with the County in any such audit. Such assistance and cooperation shall include but not be limited to promptly supplying any information reasonably requested by County including tax returns, utility bills, bank statements and employment records and signing any reasonably requested release of information forms. Owner hereby consents to and grants County the right to conduct financial background investigations including but not limited to credit checks during the term of the Covenant. **If upon such audit it is determined that false or misleading information was supplied to the County, Owner's purchase of the Subject Project may be voided at County's option and Owner shall be subject to the enforcement provisions set forth in Section V of this Covenant.**
5. Surveys. Owner for itself and all successors and assigns agrees to assist and cooperate with the County in any County sponsored survey, monitoring, investigations and audits of the program and of property owners. Failure to so cooperate shall render owner subject to the enforcement provisions set forth in Section V of this Covenant.

C. Requirements for Approval of Proposed Transaction.

For a proposed transfer to be eligible for approval, the transaction shall meet all of the following requirements:

1. The sales price of the Property shall not exceed the Maximum Sales Price as set forth herein.
2. Upon transfer each transferee shall execute and cause the recordation of a new Resale Restrictive Covenant and Pre-emptive Right ("Replacement Covenant") which shall replace this Covenant and be substantially similar to this Covenant. The Replacement Covenant shall contain revisions to reflect any changes to the County's adopted affordability policies. The Replacement Covenant shall have a term equal to the remaining term of this Covenant inclusive of extensions due to resales or violations.

3. Each Owner and transferee shall approve and sign escrow instructions provided by the County, which instruct escrow regarding the requirements of this Covenant. Owner and transferee shall provide the County with a copy of the final sales contract, settlement statement, signed escrow instructions and any other documentation which the County may reasonably request.
- D. 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 income certification guidelines and owner occupancy requirements, the devise or beneficiary shall sell the Subject Property subject to the terms of this Covenant, including this section V regarding the County's option rights, as soon as practicable.
- E. Prior to transfer Owner shall submit the proposed sale contract, escrow instructions, and all other related documents which shall set forth the terms of the sale or transfer of the Property. These documents must include the following terms:
1. The sale price.
  2. The price to be paid by the transferee for Owner's personal property, if any, and for the services of Owner, if any.
  3. All other amounts of money or other consideration, if any concerning the Property to be paid by the transferee to the Owner and the reasons therefore.
  4. The down payment to be paid by the transferee.
  5. Any additional financing obtained by the Transferee to purchase the Property, including all terms and conditions of the financing.
  6. The monthly payments to be paid by the Transferee in connection with the purchase and ownership of the Property, itemized for each loan, taxes, insurance, homeowners association fees, etc.
- F. 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 certifications submitted to the County for approval of the sale or transfer, the County may declare a default under this Covenant. The County shall also have the right to file action at law and in equity to force the parties to terminate and rescind the sale contract and declare the sale void notwithstanding the fact that the sale or transfer may have closed and become final as between the seller and purchaser. In any event, any costs, liabilities or obligations incurred by the seller and purchaser for the return of any moneys paid or received in violation of this Covenant or for any

costs and legal expenses, shall be borne by the seller and purchaser, and not by the County. The running of the term of this covenant shall be tolled during any period in which the owner is in default of any of the provisions of the Covenant.

IV. OWNER OCCUPANCY:

- A. Owner shall occupy the Subject Property as his/her principal place of residence. This requirement does not apply during the time the Subject Property is vacant while being actively offered for sale by the Owner. A failure to comply with this requirement is a violation of this Covenant, which may be enforced by the County as provided in Section V of this Covenant.
- B. The Subject Property shall not be leased or rented, in whole or in part without the consent of the County Housing and Community Development Department. All requests for consent must be in writing, consent shall be consistent with the County's goal of creating, preserving, maintaining, and protecting the County's supply of housing for persons of low and moderate income. Any lease approved by Housing and Community Development shall conform to the maximum income and rental rates established by the County Price and Income Guidelines for affordable housing adopted by the County Board of Supervisors and in effect at the time of the lease. Owner may not rent out bedrooms or other parts of the Subject Property, even if Owner continues to occupy the Subject Property.
- C. Housing and Community Development or its designee may approve modifications to these occupancy requirements and lease period restrictions if the Owner or non-occupying title-holder demonstrate personal hardship as defined below:

Personal Hardship

- 1. 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 Subject Property would result in a substantial and irrevocable loss of the Owner's investment in the Subject Property) to the Owner: 1) An emergency or a long-term illness or injury requiring medical attention of the Owner or a member of the immediate family; 2) the death of a member of the Owner's immediate family; 3) an Owner or spouse's job transfer or loss of job; or 4) an economic hardship experienced by an Owner as determined by the County, based on the following:

“...severe financial hardship to the participant resulting from unexpected illness or accident of the Owner or of a legal dependent of the Owner, loss of the Owner's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute a Personal Hardship Exemption unforeseeable emergency will depend upon the facts of each case.”

2. 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. Upon determination by the County that a Personal Hardship exists, the following remedies are available:
    - a. The Owner may rent the Subject Property while it is for sale provided that the rent does not exceed the Maximum Monthly Rent for the original income category for the Subject Property. Note: the Owner must keep the Subject Property on the market for sale.
    - b. If the Owner documents to the County a good faith effort to sell the Subject Property for three consecutive months and the Subject Property has not sold, he/she may offer the Subject 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 Subject Property and its Maximum Sales Price would not be altered.
    - c. For those properties in the upper-moderate income category (or for those units offered to this income level but have still not sold after six months), potential buyers will be eligible if they qualify under the income certification process for 121% to 140% of the County's Median Income (the upper-moderate income category is 101% to 120% of Median Income).
  4. At any time, Housing and Community Development reserves the right to request that the Owner submit a status report of Owner Occupancy to the County. The Owner shall comply with such request and shall certify his or her status report within 10 days of receipt of the request. In the case of Owner absentee, this report would include an explanation of any rental, vacancy or violation, which may have occurred over a range of time specified by Housing and Community Development. The Owner also agrees to cooperate with any action the County takes to monitor compliance with all conditions and requirements of this Covenant including Owner Occupancy requirements.
- D. Owner shall not own other residential real property concurrently with ownership of this Property.

V. ENFORCEMENT:

- A. The rights and remedies of the parties to this Covenant are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party. 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, sale, or transfer of the Subject Property in violation of this Covenant, to void an executed transfer or for any such other relief as may be appropriate.
- B. Assignment of Rents: Owner hereby assigns to County the right to receive the rents due or collected during the entire period the Property is occupied in violation of any terms of this Covenant.
- C. **Owner understands that the County's objective in requiring this Covenant is to insure that the Subject Property remains affordable for a period of thirty (30) years or longer in the case of a violation, and that should Owner sell 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 the Subject Property is sold for an amount in excess of the Maximum Sales Price permitted under this Covenant, Owner/Seller shall be liable to the County for damages in an amount equal to two times the difference between the actual sales price and the Maximum Sales Price set forth in Section II C of this Covenant.**
- 2. If the Subject Property is sold to a buyer whose household income has not been certified by the County, the required income certification set forth in Section III D shall be completed within thirty (30) days of notification of non-compliance. If the purchaser's household income does not qualify for purchase of the Restrictive Unit as required by this Covenant, the Owner and/or the Purchaser shall be assessed liquidated damages in the amount of three times the difference between the Purchaser's gross annual household income and the**

**County's maximum household income level eligible to purchase the Subject Property in effect at the time the Subject Property is sold.**

- 3 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.**
- 4. If it is determined that false or misleading information was supplied by the Owner to the County in its income certification process, the sale may be voided or County may require that the Owner sell the Subject Property to a qualified household in compliance with the terms of this Covenant. In addition, Owner shall be liable to the County for an amount equal to the Maximum Monthly Rent for the Subject for the period of time in which the Owner's household owned or occupied the Subject Property.**
- 5. If Owner does not truthfully respond to any County surveys of property owners within 3 weeks of receiving such survey, Owner shall be liable to County in the amount of \$5.00 per day for each day following the twenty first (21<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.**
- 6. The amounts stated above shall be in addition to any fines and penalties that may be owned under applicable County ordinances.**

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

- 7. 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 VI A 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.**

**VI. SUBORDINATION, FORECLOSURE OR BEQUEST:\***

- A. County and Owner acknowledge and agree that this Covenant is subject and subordinate in all respects to the liens, terms covenants and conditions of any First**

Deeds of Trust meeting all of the requirements of Section II.a above, recorded against the Subject Property and to all advances heretofore made or which may hereafter be made pursuant to such First Deed of Trust including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by the Owner under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Subject Property. Notwithstanding the above, the amount of the First Deed of Trust shall not exceed the following amount: the County approved purchase price of the Subject Property paid by the Owner. The subordination of this covenant pursuant to this Section VI shall not apply to any First Deed of Trust that exceeds such amount absent specific written approval from the County Housing and Community Development Director.

The provisions of this Covenant shall not impair the rights of an Institutional Lender under a First 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.
- B. Owner covenants to record concurrently with this Covenant in the office of the County Recorder of Santa Barbara County a request for any notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Subject Property in the form attached hereto as Exhibit C. Any notice of sale given pursuant to Civil Code Section 2924(f) or any service of summons or other papers in a judicial foreclosure shall constitute a notice of intent to sell and the County may exercise its option as set forth in Section III A. In the event the County receives notice of a default or notice of sale, and the County elects to exercise its option as set forth in Section III A hereof, the County must complete such purchase no later than the end of the period established by Civil Code Section 2924c for the reinstatement of a monetary default under the deed of trust. In the event of default and foreclosure under any deed of trust, the County shall have the same right as the Owner to cure defaults and redeem the Subject 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.
- C. In the event the County does not exercise its option and the Subject Property is

transferred through a trustee's sale, judicial foreclosure, or deed in lieu of foreclosure, any amount of the sale price or transfer price which is over and above the Maximum Sale Price as defined in Section II and which would otherwise be payable to Owner after full satisfaction of the foreclosing lender's loan and costs, shall be due and owing to the County. However, if foreclosing lender's lien is subordinate to this Covenant, the County shall be paid first. The recordation of this Covenant shall establish, create and give constructive notice of a lien in favor of the County secured by the Subject Property in the amount of the surplus to be paid to the County as described above.

- D. 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.
- E. Owner shall notify County of any deed of trust or mortgage recorded against the Subject Property, and shall provide the County with the information needed by the County to record a request for notice of default. This section does not relieve the Owner of responsibility to obtain County approval of all refinancing.
- F. Any hazard insurance proceeds which are not used to repair or rebuild the Subject Property and any condemnation award, shall be distributed as follows:
  - 1. First to the holder of the First Deed of Trust on the Subject Property.
  - 2. If any funds remain after the First Deed of Trust lender has been paid, then to the Owner (and other lenders if applicable), up to but not to exceed the net that Owner would have received under a sale at the Maximum Sale Price.
  - 3. In any funds remain after the Owner has been paid, the remainder shall be paid to the County.

## VII. PURCHASE OPTION UPON NOTICE OF DEFAULT OF COVENANT OR DEED OF TRUST

- A. In addition to the remedies provided the County in this Agreement, Owner hereby grants to the County the option to purchase the Subject Property effective upon a notice of a default of this Covenant or any deeds of trust recorded against the Subject property .

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 County, or any deed of trust, or any other lien, including a judgement lien, recorded against the Subject Property. The County shall have sixty (60) days after the declaration of default or

the filing of a notice of default to notify Owner of its decision to exercise its option to purchase. Notwithstanding the above however, if the County is noticed by the filing of a Notice of Default, the County shall have until the time of the sale under the deed of trust to notify owner and to exercise its option to purchase subject to the provisions of Section IV B of this Covenant regarding rights of redemption. After the mailing of the notice to exercise it option, the County or its assignee may purchase the Subject Property for the following option price:

The lesser of:

1. the Maximum Sales Price as defined herein (including a deduction for any deferred maintenance), less six percent (6%) to cover the County's resale costs; 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,

but not less than:

3. the amount necessary to pay the balance due on the outstanding first mortgage or deed of trust of the original purchase money loan on the Subject Property or any refinancing that was approved by the County in writing.

#### VIII. FINANCING OR REFINANCING OF RESTRICTED UNIT:

- A. The terms of all financing secured by the Subject Property, whether at the time of sale or at any other time must be approved by the County in writing. The County will approve a refinancing of the first mortgage loan by an Institutional Lender if no additional cash is taken out other than the loan costs, and the terms of the new loan are more favorable than the old loan. If the Owner wishes to take out cash, the County will consider the request on a case-by-case basis. Generally the Owner's total secured loan-to-value ratio should not exceed 80%, and the debt payment-to-income ration should not be higher than it was upon owner's purchase of the property. If the County has provided financing secured by a deed of trust, the refinancing will only be approved if the County's security interest and the homeowner's ability to repay remain strong. Financing which may result in negative amortization or balloon payments will not be approved. This Covenant shall not be subordinate to deeds of trusts or loans resulting from the refinancing of the Subject Property unless such refinancing has been approved by the County in writing and meets the requirements for subordination set forth in Section VII of this Covenant.

#### IX. ADDITIONAL PROVISIONS:

- A. The County may assign its rights and delegate its duties hereunder without the

consent of Owner.

- B. Except that the parties may amend this Covenant by mutual agreement in writing to be duly recorded the Owner. 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. Nothing in this Agreement shall be construed by the County, by Owner or by any Third Party to create the relationship of principle and agent, or of partnership, joint venture or association with one another. Owner agrees to indemnify, defend, and hold harmless the County, it's officers, agents, and employees from any and all claims, demands, liability, costs, and expenses whatever nature, including but not limited to, court cost, damages, and counsel fees accruing or resulting to any and all contractors, subcontractors, material providers, laborers, and any other person, firm, or corporation furnishing or supplying work in connection with this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may injured or damaged by Owner in the performance of this agreement.
- 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. The terms of this Covenant shall be interpreted under the laws of the State of California.
- G. The terms of this Covenant shall be interpreted in a manner that is in accordance with Federal and State Fair Housing Laws.
- H. 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 at the following address or such other address as either party may subsequently provide in writing.

Director  
Santa Barbara County  
Housing and Community Development Department  
105 East Anapamu Street, Suite 105  
Santa Barbara, CA 93101

- I. The Redevelopment Agency of the County of Santa Barbara is hereby made a

third party beneficiary of this Covenant and is authorized to enforce all of the terms contained herein. This Covenant constitutes an agreement pursuant to Health and Safety Code Section 33413(b)(2)(B).

- J. A waiver by County of any obligation in this Covenant must be in writing. No waiver will be implied from any delay or failure by County to take action on any breach or default of Owner or to pursue any remedy allowed under the Covenant or applicable law. Any extension of time granted to County to perform any obligation under the Covenant shall not operate as a waiver or release from any of its obligations under the Covenant. Consent by County to any act or omission by Owner shall not be construed to be in consent to any other or subsequent act or omission or to waive the requirement for County's written consent to future waivers.
- K. This Covenant is an agreement only between County and Owner. There are no third party beneficiaries to this Covenant.
- L. This Covenant shall be secured by a Deed of Trust in substantially the form as set forth in Exhibit "B" attached hereto and incorporated by this reference.

X. DECLARATION OF EACH OCCUPANT PURCHASER

- A. All information provided by me in regards to purchase of the Subject Property is true and complete.
- B. I have received a copy of this Covenant and agree to comply with and be bound by all of the requirements herein.
- C. I will occupy the Subject Property as my principal residence for as long as I own the residence.
- D. The purchase price of the Subject Property is the amount provided to the County. I have not paid and will not pay any consideration to the seller, or any real estate commissions, or any costs normally paid by sellers, except as already disclosed to County in the purchase contract and escrow instructions which have been delivered to County.
- E. I understand that any false statements or misrepresentations to the County in this transaction will constitute a default under this Covenant and may constitute criminal fraud.

(the rest of this page is intentionally left blank)

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

**PURCHASER/OWNER**

DATED:

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

**PURCHASER/OWNER**

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

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

Signature(s) must be notarized

COUNTY OF SANTA BARBARA  
HOUSING AND COMMUNITY DEVELOPMENT  
DEPARTMENT

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

John Torell, Director  
Housing and Community Development  
Department

Signature must be notarized

APPROVED AS TO FORM:

STEPHEN SHANE STARK  
COUNTY COUNSEL

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

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

Mary McMaster  
Deputy County Counsel

EXHIBIT A

Legal Description of Property

**EXHIBIT B**

Deed of Trust

EXHIBIT C  
Request for Notice of Default

RECORDING REQUESTED BY AND RETURN TO:

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

Attn: Affordable Housing Program

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded \_\_\_\_\_, as Instrument Number \_\_\_\_\_ in the official records of Santa Barbara County California, executed by \_\_\_\_\_ as trustor in which \_\_\_\_\_, is named as beneficiary (or mortgagee) and \_\_\_\_\_ as trustee be mailed to:

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

NOTICE: a copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature \_\_\_\_\_



RECORDING REQUESTED BY AND RETURN TO:

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

SEND ANOTHER COPY TO:

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NO FEE DOCUMENT PURSUANT TO  
GOVERNMENT CODE SECTION 27383

**DEED OF TRUST WITH  
ASSIGNMENT OF RENTS**

THIS DEED OF TRUST, ASSIGNMENT OF ("Deed of Trust") is made as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_ ("Trustor"), to First American Title Insurance Company, as trustee ("Trustee"), for the benefit of the County of Santa Barbara, a public body corporate and politic ("Beneficiary").

**GRANT IN TRUST**

1. **GRANT.** Trustor, hereby irrevocably grants and conveys to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, all of Trustor's interest in the property located \_\_\_\_\_ in an unincorporated area of Santa Barbara County known as \_\_\_\_\_, California, as more particularly described in Exhibit A, incorporated herein by this reference (the "Property");

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

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

**OBLIGATIONS SECURED**

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

A. That certain RESALE RESTRICTIVE COVENANT AND PREEMPTIVE RIGHT (“Covenant”) made by Trustor, to order of Beneficiary and extensions and renewals thereof; and

B. Payment of any sums advanced by Beneficiary to protect the security and priority of this Deed of Trust; and

C. Any liquidated damages accruing to Beneficiary under Covenant.

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

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

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

### **RIGHTS AND OBLIGATIONS OF TRUSTOR**

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

7. **PAYMENT OF PRINCIPAL AND INTEREST.** Trustor shall promptly pay when due any amount owing under the Covenant.

**8. MAINTENANCE OF THE SECURITY.** Trustor shall, at the Trustor's own expense, maintain and preserve the Security or cause the Security to be maintained and preserved in good condition, in good repair, and in a decent, safe, sanitary, habitable and tenable condition. Trustor shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Security. Trustor shall not commit or permit waste on or to the Security. Trustor shall not abandon the Security. Beneficiary shall have no responsibility over maintenance of the Security.

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

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

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

**12. DAMAGE TO SECURITY.** Trustor shall give Beneficiary and Trustee prompt notice in writing of any damage to the Security. If any building or improvements erected on the Property is damaged or destroyed by an insurable cause, Trustor shall, at its cost and expense, repair or restore said buildings and improvements consistent with the original plans and specifications if Trustor reasonably determines that such restoration or repair is economically feasible. Such work or repair shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be complete within one year thereafter. Subject to Trustor's election to rebuild, all insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration.

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

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

**15. TAXES AND LEVIES.** Trustor shall pay prior to delinquency, all taxes, fees, assessments, charges and levies imposed by any public authority or utility company which are or

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

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

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

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

**18. RECONVEYANCE BY TRUSTEE.** This trust is intended to continue for the entire term of the Covenant. Upon written request of Beneficiary stating that all sums secured by this Deed of Trust have been and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

## **DEFAULT AND REMEDIES**

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

20. **ACCELERATION OF MATURITY.** Upon the happening of an Event of Default Beneficiary may declare all sums advanced to Trustor under the Note and this Deed of Trust immediately due and payable.

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

A. Enforce the assignment of rents and right to possession as provided for in this Deed of Trust, and/or seek appointment of a receiver to take over possession of the Security and collect Rents;

B. Cure any Monetary Default secured by the Property and add the amount of such payment to the amount owing to beneficiary;

C. Commence an action to foreclose this Deed of Trust pursuant to California Code of Civil Procedure Section 725(a) *et seq.* as amended, and/or seek appointment of a receiver from a court of competent jurisdiction with the authority to protect Beneficiary's interests in the Security, including the authority to complete construction of improvements;

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

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

22. **FORECLOSURE BY POWER OF SALE.** Should Beneficiary elect to foreclose by exercise of the power of sale contained in this Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust (the deposit of which shall be deemed to constitute evidence that the unpaid sums disbursed under the Note are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by Trustor, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser its deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such

deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee, or Beneficiary, may purchase at the sale.

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

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

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

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

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

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

### **GENERAL PROVISIONS**

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

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

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

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

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

**BENEFICIARY:** County of Santa Barbara  
105 E. Anapamu Street  
Room 105  
Santa Barbara, CA 93101  
Attn: Housing Program Manager

**TRUSTOR:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

31. **BINDING UPON SUCCESSORS.** All provisions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Trustor, Trustee, and Beneficiary.

32. **WAIVER.** Any waiver by Beneficiary of any obligation of Trustor in this Deed of Trust must be in writing. No waiver will be implied from any delay or failure by Beneficiary to take action on any breach or default of Trustor or to pursue any remedy allowed under the Deed of Trust or applicable law. Any extension of time granted to Trustor to perform any obligation under this Deed of Trust shall not operate as a waiver or release Trustor from any of its obligations under this Deed of Trust. Consent by Beneficiary to any act or omission by Trustor shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's written consent to future waivers.

33. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Deed of Trust must be in writing, and shall be made only if mutually agreed upon by Beneficiary and Trustor.

34. **PROOFS OF CLAIM.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, recomposition or other proceedings affecting Trustor, its creditors or its property, Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

35. **SEVERABILITY.** Every provision of this Deed of Trust is intended to be severable. If any term or provision of this Deed of Trust is declared to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforceability of the remaining provisions shall not be affected. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt and all payments made on the debt (whether voluntary or under foreclosure or other enforcement action or procedure) shall be considered to have been first paid or applied to the payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

36. **SUBSTITUTION OF TRUSTEES.** Beneficiary may from time to time appoint another trustee to act in the place and stead of Trustee or any successor. Upon such appointment and without conveyance, the successor trustee shall be vested with all title, powers, and duties conferred upon Trustee.

37. **ACCEPTANCE BY TRUSTEE.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

**IN WITNESS WHEREOF,** Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[TRUSTOR'S SIGNATURE MUST BE ACKNOWLEDGED]

EXHIBIT A

Legal Description of the Property