

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 AND PREEMPTIVE RIGHT

**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 )

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(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 forty-five (45) 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 forty-five (45) 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, a new forty-five (45)-year term shall start upon the sale or transfer of the Property up to a maximum of restricted period of 90 years plus any additional period due to 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 and in the document entitled Agreement to Provide Affordable Housing recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ in the Office of the County Recorder of Santa Barbara County.
- 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 low 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 LOW 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 development of the project which the Subject Property is located within, 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.

Upon a Notice of Default or intent to sell the Subject Property, County staff or staff's designee shall be afforded reasonable opportunity to inspect the Property for damage or deferred maintenance. The Maximum Sales Price shall include decreases by any amount necessary to repair damages and undertake deferred maintenance, if any, and to put the Subject Property in a good and salable condition as reasonably determined by 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 for the period during such time, if any, that Owner was in violation of any requirement of this Covenant.

- 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.

- 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. The County's purchase price may be adjusted to account for deferred maintenance as set forth in Section II hereof. Notwithstanding the above, however, if the County receives a Notice of Default the County shall have the 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 VIB of this Covenant regarding rights of redemption.
4. 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 at the Maximum Sales Price (including downward adjustments for deferred maintenance if applicable) or at a lower price upon mutual agreement of County and Owner. Such time shall be extended by the length of any

delays caused by Owner or Owner's agents. Owner shall be solely responsible for all costs and provide all reports as is customary for sellers of residential property in the County, including title insurance, termite report, and required corrective work including but not limited to work to correct termite infestation and damage.

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 low 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:
  - a. 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 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 is satisfied if Owner occupies the Subject Property on a full-time basis for at least ten (10) months out of each twelve-month period. 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, for more than two (2) months during any twelve (12) month period 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.

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. Owner understands that the County's objective in requiring this Covenant is to insure that the Subject Property remains affordable for a period of forty-five (45) years rolling to ninety (90) years in the case of transfer and subject to additional extensions in the case of a violation(s), 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 for an amount greater than the Maximum Monthly Rent, the Owner shall be liable to the County for damages in an amount equal to the difference between the actual monthly rent and the Maximum Monthly Rent times the number of months that the Subject Property has been rented at the higher rent.**
- 4. If the Subject Property is rented to a tenant whose household income has not been certified by the County, the tenant shall complete the County's income certification process within thirty (30) days of notification of non-compliance. If the tenant's household gross annual income exceeds that which is permitted by the County as provided in Section III D, the Owner shall be assessed and shall pay to County liquidated damages in the amount of three times the difference between the tenant's gross monthly household income and one twelfth of the maximum income level permitted by the County multiplied by the number of months that the Subject Property has been so leased.**
- 5. 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.**
- 6. 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.**

**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 on 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. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the Subject Property to low income households or otherwise restricting the Owner's ability to sell the Subject Property shall have no further force or effect on subsequent Owners or purchasers of the Subject Property. Any person, including his or her successors or assigns (other than the Owner or a related entity of the Owner), receiving title to the Subject Property through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Subject Property free and clear from such restrictions.**

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 DEFAULT

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.

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 approved refinancing.

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 substantial the form as set forth in Exhibit "B".
- 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 a crime.

(the rest of this page is intentionally left blank)

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

DATED: \_\_\_\_\_ PURCHASER/OWNER:  
by: \_\_\_\_\_

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

BY: \_\_\_\_\_  
Signature(s) must be notarized

COUNTY OF SANTA BARBARA  
HOUSING AND COMMUNITY  
DEVELOPMENT DEPARTMENT:

DATED: \_\_\_\_\_  
BY: \_\_\_\_\_  
Director  
Signature must be notarized

APPROVED AS TO FORM: STEPHEN SHANE STARK  
COUNTY COUNSEL

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