



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

A-10

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Housing & Community
Development
Department No.: 055
For Agenda Of: 06/07/2011
Placement: Administrative
Estimated Tme: n/a
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Sharon Friedrichsen, 568-2068 *S. Friedrichsen*
Director(s) Housing and Community Development Director
Contact Info: Christa Coski, 568-3526
Housing and Community Development, Chief Financial Officer

SUBJECT: *Amendment to Agreement to Provide Affordable Housing and Resale Restrictive Covenant - Old Mill Run* [TM 14,532, 99-DP-029]. Orcutt area, Fourth Supervisorial District, Assessor Parcel Number(s) 105-020-046.

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

Approve and execute the attached *Amendment to Agreement to Provide Affordable Housing - Old Mill Run*, [TM 14532, 99-DP-029] with the Department of Housing and Community Development and direct its recordation.

Summary Text:

The recommended Board action requests the Board of Supervisors approve and execute the attached *Amendment to Agreement to Provide Affordable Housing* and the *Resale Restrictive Covenant and Preemptive Right* for Old Mill Run on July 25, 2006 between the County of Santa Barbara, a subdivision of the State of California ("County") and MLB OM 54, LLC, a Delaware limited liability company ("Developer"). This amendment essentially changes the construction timeline of the affordable units so that the construction of the six affordable units is on an "unit-by-unit" basis as opposed to a concurrent build out of all houses, which is more difficult under current market conditions.

Background: The Planning Commission approved the Old Mill Run Housing Project on May 19, 2004. The *Agreement to Provide Affordable Housing - Old Mill Run* ("Agreement to Provide") requires the Developer to construct six affordable housing units affordable to low income families concurrently with construction of the single family market rate homes. At the time the County and Developer entered into the Agreement to Provide, the Developer anticipated construction of the affordable and market rate units in TM

14,532, 99-DP-029 at approximately the same time. However, the Developer has constructed houses on a unit-by-unit basis as changes to market conditions have made concurrent build out of all houses more difficult. Similarly, the Developer expressed an interest to continue the unit-by-unit approach for the remainder of the project, including the affordable units. Conditions regarding the timing of construction for the affordable housing units are provided for in the Amendment to Agreement to Provide. Accordingly, Marketing and Lottery Plans originally attached to the Agreement to Provide assumed concurrent construction of all affordable units and were thus amended to take into account unit-by-unit development.

Although the County makes no representations to the Developer regarding any future amendments of the County's inclusionary policies, the Developer believes the County may amend its inclusionary housing requirements so as to allow the payment of in-lieu fees instead of providing affordable units on-site. As a result, an Amendment to the Agreement to Provide has been completed to delay the construction of Affordable Units in order to enable the utilization of possible future amendments to the County's inclusionary housing program. Moreover, since the time the Agreement to Provide was executed, the County has revised its model Restrictive Covenant and wishes to attach the revised model to the Amended Agreement to Provide.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The Department of Housing and Community Development will expend funds for advertisements to market the affordable homes; to screen potential buyers through the Certification process; to monitor the affordable homes in this project, and to enforce the "Grant of Preemptive Right: Resale Restriction Covenant and Option to Purchase Secured by Deed of Trust" (see Exhibit B Covenant, Exhibit C Marketing Plan and Exhibit D Lottery Plan). Application fees offset a portion of the expenses; the remainder will be paid from Santa Maria HMA In-Lieu Fees in the Affordable Housing Trust Fund. The affordable units remain affordable for a period of 45 years which shall be restarted when the unit is sold or transferred for a maximum of 90 years unless preempted by state or federal programs.

Staffing Impacts: N/A

Special Instructions:

- Clerk of the Board to forward the executed *Amendment to Agreement to Provide Affordable Housing - Old Mill Run*, TM 14532, 99-DP-029 to the Department of Housing and Community Development to forward to the County Clerk Recorder for recordation.
- Clerk of the Board shall send copies of the Minute Order and executed document to Christa Coski, Department of Housing and Community Development.

Attachments:

- A. *Attachment A, Amendment to Agreement to Provide Affordable Housing – Old Mill Run including Exhibit A, Legal Description of Property*
Exhibit B, Grant of Preemptive Right: Resale Restriction Covenant and Option to Purchase Secured by Deed of Trust
Exhibit C, Marketing Plan for Old Mill Run Affordable Homes
Exhibit D, Lottery Plan for Old Mill Run Affordable Homes

Authored by: Christa Coski, Chief Financial Officer

ATTACHMENT A

AMENDMENT TO AGREEMENT TO PROVIDE AFFORDABLE HOUSING
OLD MILL RUN
TM 14532, 99-DP-029

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

No fee per Government Code Sec. 6103

A.P.N.: 105-020-046-02

AMENDMENT TO AGREEMENT TO PROVIDE AFFORDABLE HOUSING
OLD MILL RUN
TM 14532, 99-DP-029

This Amendment to the Agreement to Provide Affordable Housing ("Amendment") is entered into as of the _____th day of June, 2011, by and between the County of Santa Barbara, a subdivision of the State of California ("County") and MLB OM 54, LLC, a Delaware Limited Liability Company ("Developer") and amends that certain document entitled Agreement to Provide Affordable Housing executed by County and Developer and recorded on August 18, 2006 in the official records of Santa Barbara County as Document Number 2006-0065411 ("Agreement to Provide") and relates to the real property specifically described in the legal description attached hereto as Exhibit A.

Recitals

WHEREAS, the Agreement to provide requires Developer to construct six affordable housing units affordable to low income families concurrently with construction of the single family market rate homes; and

WHEREAS, at the time the County and Developer entered into the Agreement to Provide, Developer anticipated that it would build out all of the units in TM 14,532, 99-DP-029 at approximately the same time; and

WHEREAS, since the time the Agreement to Provide was entered into, changes to market conditions have made concurrent build out of all houses infeasible and Developer has constructed houses on a unit-by-unit basis; and

WHEREAS, Developer wishes to continue to build out the project, including the affordable units, on a unit-by-unit basis; and

WHEREAS, Developer additionally believes that the County may amend its inclusionary housing requirements so as to allow Developer to pay an in-lieu fee instead of producing affordable units on-site; and

WHEREAS, as an accommodation to Developer, County has agreed to amend the Agreement to Provide; and

WHEREAS, Developer also wishes to delay the construction of Affordable Units so as to enable it to utilize possible future amendments of the County's inclusionary program that would allow it to pay fees in lieu of providing the Affordable Units on site; and

WHEREAS, the County makes no representations to Developer regarding any future amendments of County inclusionary policies; and

WHEREAS, since the time the Agreement to Provide was executed, the County has revised its model Restrictive Covenant and wishes to attach the revised model Restrictive Covenant to the Agreement to Provide in place of the Restrictive Covenant that is currently attached thereto; and

WHEREAS, the Marketing and Lottery Plans that were attached to the Agreement to Provide assumed concurrent construction of all of the affordable units and must be amended to take into account unit-by-unit development of affordable units, and;

WHEREAS, the County's form Restrictive Covenant has been renamed and should be referred to herein as it is currently named.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by County and Developer, the parties agree to amend the Agreement to Provide as follows:

SECTION 1. The third sentence of Section 1 of the Agreement to Provide is hereby amended to read as follows:

“The six Affordable Units will be constructed by Developer pursuant to the following schedule:

Affordable Unit

Lot Number

Completion Date

Lot 44 and Lot 45:

Prior to or at the issuance of the 47th building permit for a market rate home in the project.

Lot 57 and Lot 58:

Prior to or at the issuance of the 52nd building permit for a market rate home in the project.

Lot 20 and Lot 21:

Prior to or at the issuance of the 57th building permit for a market rate home in the project.

SECTION 2. The second sentence of Section 3 of the Agreement to Provide is hereby amended to read as follows:

“To achieve this end, Developer agrees to have executed and recorded the Grant of Preemptive Right: Resale Restriction Covenant and Option to Purchase Secured by Deed of Trust (the “Restrictive Covenant”) attached hereto as Exhibit “B” and incorporated herein by reference as though set forth in full herein, on the title of each Restricted Unit within the Subject Property at the time of the first sale of each Restricted Unit to a qualified buyer.”

SECTION 3, Exhibit “D” to the Agreement to Provide is hereby replaced in its entirety by Exhibit “B” to this Amendment.

SECTION 4, Exhibit “E” to the Agreement to Provide is hereby replaced in its entirety by Exhibit “C” to this Amendment.

SECTION 5, Exhibit “F” to the Agreement to Provide is hereby replaced in its entirety by Exhibit “D” to this Amendment.

SECTION 6, This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. Developer and County shall each pay any and all of their own costs and expenses relating to the execution and delivery of this Amendment. Except as provided in this Amendment, each and every term, condition and agreement contained in the Agreement will remain in full force and effect. The parties reaffirm that the representations made by each of the parties in the Agreement are true and accurate.

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

COUNTY OF SANTA BARBARA

Dated: _____

By _____

Joni Gray, Chair
BOARD OF SUPERVISORS
(Signature must be notarized)

ATTEST:
CHANDRA L. WALLAR
CLERK OF THE BOARD

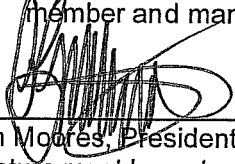
By: _____
Deputy Clerk

By: _____
Housing & Community Development

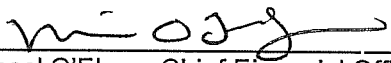
DEVELOPER
MLB OM 54, LLC,
a Delaware limited liability company

By: CAPITAL PACIFIC DEVELOPMENT
GROUP, INC.,
a California corporation, its sole
member and manager

Dated: _____

By: 
Gavin Moore, President
(signature must be notarized)

Dated: _____

By: 
Michael O'Flynn, Chief Financial Officer
(signature must be notarized)

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By: _____
Deputy County Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

File No:

APN No:

STATE OF California)
COUNTY OF Santa Barbara)

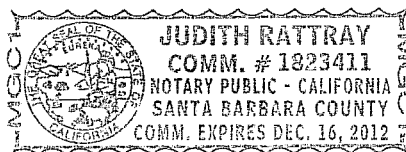
On May 24, 2011 before me, Judith Rattray, Notary Public, personally appeared Gavin Moores and Michael O'Flynn

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Judith Rattray



This area for official notarial seal.

OPTIONAL SECTION
CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- Individual, Corporate Officer(s), Partner(s), Attorney-in-fact, Trustee(s), Guardian/conservator, Other, Limited, General

SIGNER IS REPRESENTING:

Name of Person or Entity Name of Person or Entity

OPTIONAL SECTION

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT:

NUMBER OF PAGES DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT A

(Legal Description of the Subject Property to be supplied by Property Owner)

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of SANTA BARBARA, State of California, described as follows:

THE WEST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 9 NORTH, RANGE 34 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THE DEED FROM JOHN WILKINSON ET AL., TO THE COUNTY OF SANTA BARBARA, RECORDED APRIL 5, 1883 IN BOOK 2, PAGE 158 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

FURTHER EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THE DEED FROM UNION OIL COMPANY OF CALIFORNIA TO THE COUNTY OF SANTA BARBARA RECORDED APRIL 1, 1977, AS INSTRUMENT NO. 77-15235, OFFICIAL RECORDS OF SAID COUNTY.

APN: 105-020-46-002

EXHIBIT B
GRANT OF PREEMPTIVE RIGHT: RESALE RESTRICTION COVENANT AND OPTION TO
PURCHASE
SECURED BY DEED OF TRUST

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

No fee per Government Code Sec. 6103
APN: _____

**GRANT OF PREEMPTIVE RIGHT:
RESALE RESTRICTION COVENANT
AND OPTION TO PURCHASE
SECURED BY DEED OF TRUST**

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

(Project Name and Case Number)

(Address and Unit/Lot Number)

This Grant of Preemptive Right, Resale Restriction Covenant and Option to Purchase Secured by
Deed of Trust (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 _____, _____.

RECITALS:

WHEREAS, the County has provided development incentives to this project including reduced parking
and set back and height requirements; and

WHEREAS, Seller and Owner have benefited from these development incentives through the opportunity
to purchase the Property at a price substantially below fair market value; and

WHEREAS, the intent of the County in providing these development incentives is to preserve the
affordability of the Property for persons with incomes within a specified range; and

WHEREAS, subsequent Owners will benefit from the limitation on the purchase price of the Property

which this Covenant requires; and

WHEREAS, the intent of Seller is to preserve through this Covenant the affordability of the Property for persons with incomes within a specified range and to assign to the County the right to enforce compliance with this Covenant.

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

I. DEFINITIONS

A. "Approved Institutional Lender First Deed of Trust": A County-approved First Deed of Trust made by an Institutional Lender.

B. "Approved First Deed of Trust": A deed of trust of 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 and which has been approved by the County in writing.

C. "Encumber" "Encumbrance": Shall include any mortgage, deed of trust, lien, security agreement or other instrument intended to secure an obligation or indebtedness.

D. "Household": All those persons - related or unrelated - who occupy a single housing unit.

E. "Institutional Lender": Any FDIC-insured bank or savings and loan association which is licensed to engage in the business of providing mortgage financing (purchase money or refinance) for residential real property or the United States Department of Housing and Urban Development.

F. "Maximum Monthly Rent": The maximum rent that may be charged for a unit reserved for households of a designated income category 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 Property as set forth in Section IV C of this Covenant and when the Property is being leased as provided therein upon written consent of County.

G. "Maximum Sales Price": The Maximum Sales Price is the highest price that an Owner is allowed pursuant to this Covenant to resell the Property for, inclusive of real estate commissions and closing costs, so as to be affordable to Low (80% AMI) 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 subject to adjustments as set forth below.

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 be decreased by any amount necessary to repair damages and undertake deferred maintenance, if any, and to put the 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 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 Property to pay any commissions or other costs of sale typically paid by sellers of residential real property or to purchase items of personal property or services in conjunction with the purchase of the Property.

To help assure continued affordability to subsequent purchasers, no price increase will be allowed for property improvements made by the Owner. The Owner may make legal improvements, but will not be compensated for any improvements made upon the sale of the Property.

No increase whatsoever shall be allowed for the period during such time, if any, that Owner was in violation of any requirement of this Covenant.

H. "Median Annual Income": Median annual income shall be determined by reference to income figures for the Santa Barbara area as published by the U.S. Department of Housing and Urban Development (HUD). In the event such income figures are no longer published, or have not been updated for a period of at least eighteen (18) months, the County may use or develop such other reasonable and comparable substitute figures as it may choose.

I. "Owner": (i) the current Owner as set forth above and, (ii) any subsequent purchaser (whether an occupant purchaser or non-occupant titleholder), devisee, successor trustee, transferee, or grantee of an owner or subsequent purchaser, or (iii) any other holder of title to the Property or any portion thereof or interest in the Property except County-approved lenders or easement holders.

J. "Principal place of residence": The place where a person or persons reside on a full-time basis.

K. "Property". The real property located generally at _____ [address] as more particularly described in Exhibit A legal description attached and incorporated by this reference herein.

L. "Residential Real Estate": Real property including developed or undeveloped residentially-zoned land, mobile homes and manufactured housing.

M. "Transfer": Any sale, assignment, or transfer, either voluntary or involuntary, or by operation of law, whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise, of any interest in the Property, including but not limited to, a fee simple interest, joint tenancy, life estate, leasehold, or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title.

N. "Transferee": A person who receives property being transferred.

II. TERM AND ENFORCEABILITY

A. Term

This Covenant shall bind and the benefit hereof shall inure to the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the County, its successors, designees, or assigns until 45 years from the effective date of this Covenant subject to extensions of that term if the Owner violates the terms of this Covenant. If the Owner occupies the Property for the full term in compliance with this Covenant, this Covenant shall expire at the end of the 45 year term and upon such expiration, the Owner may sell the Property to any buyer for any price. Notwithstanding the above, if the Owner sells the Property during the term of this Covenant, the Transferee will be required to sign and record a new Covenant that will begin a new 45 year term up to a maximum period of 90 years. This requirement will continue for each new owner of the Property up to the 90 year limitation. In addition, the running of the 45 year period shall be tolled during any time that the Owner is found by the County to be in violation of this Covenant.

B. Covenants Running With the Land; Equitable Servitude

The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the covenants, conditions, restrictions and limitations contained herein.

All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

C. Binding Effect

Any purchaser of the Property or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Owner or from any subsequent owner of the Property, or by the signing of a contract or agreement to purchase the same, shall, by the acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

D. Enforceability

In order to preserve through this Covenant the affordability of the Property for persons of Low (80% AMI) income, the Owner for itself and all successors and assigns, hereby grants and assigns to the County the right to review and enforce compliance with this Covenant, and in furtherance of this right, grants to the County an Assignment of Rents, described under Section XIII of this Covenant, and an Option to Purchase the Property, described under Sections III and XIV of this Covenant, the right to collect liquidated damages for certain violations as described in Section XIII of the Covenant and assigns to the County any proceeds payable to the Owner from a foreclosure or deed in lieu of foreclosure in excess of the Maximum Sales Price, as described in Section XII.B of this Covenant.

III. DEED OF TRUST: SUBORDINATION; DEFAULT; NOTICE TO COUNTY; RIGHT TO CURE

A. Subordination

This Covenant shall be subject and subordinate to the lien of an Approved Institutional Lender First Deed of Trust subject to the following conditions and limitations:

1. Limit on Amount

The amount secured by the Approved Institutional Lender First Deed of Trust shall not exceed 95% of the purchase price paid by Owner plus any late fees and charges as may be permitted under the Approved Institutional Lender First Deed of Trust. The subordination of this Covenant pursuant to this Section III shall not apply to any Institutional Lender First Deed of Trust that exceeds such amount.

2. Default; Right to Cure

In the event of default under any deed of trust, including the Approved Institutional Lender First Deed of Trust, the County shall have the same right as the Owner to cure the default and redeem the Property prior to foreclosure sale. Such redemption shall be subject to the same fees, charges and penalties which would otherwise be assessed against the Owner. Nothing herein shall be construed as creating an obligation on the part of the County to cure any such default nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

3. Right to Exercise Option

Any default under a deed of trust, including the Approved Institutional Lender First Deed of Trust, shall trigger the County's right to exercise its option to purchase the Property, as described more fully in Section XIV below, and the County may exercise its option to purchase the Property pursuant to such provisions.

4. Request for Notice of Default

The holder of the Approved Institutional First Deed of Trust shall be under no obligation to

provide notice of default to the County other than as required pursuant to a duly filed request for notice of default under Section 2924b of the Civil Code. In the event the County elects to exercise such option to purchase, subsequent to a default on the Approved Institutional First Deed of Trust, and notwithstanding any language contained herein to the contrary with regard to the rights of the County, the County must complete such purchase no later than the end of the period established by Section 2924c of the Civil Code for the reinstatement of a monetary default under the deed of trust.

B. Rights Under Approved Institutional Lender First Deed of Trusts

Subject to these above-stated conditions and limitations, this Covenant shall not impair the rights under an Approved Institutional Lender First Deed of Trust, to foreclose or take title to the Property pursuant to the remedies of the Approved Institutional Lender First Deed of Trust, or accept a deed in lieu of foreclosure in the event of default by a trustor under the Approved Institutional Lender First Deed of Trust. Subsequent to the Institutional Lender or its successors and assigns acquiring title through foreclosure sale or accepting a deed in lieu of foreclosure under such Approved Institutional Lender First Deed of Trust and payment to County of any excess proceeds as set forth in Section XII.B, this Covenant shall be terminated and of no further force or effect as an encumbrance against the Property (or any owners, tenants or encumbrancers in the chain of title), and the Institutional Lender or subsequent transferee may sell the Property to any purchaser at any price or lease the Property to any tenant at any rental amount, without thereafter being subject to this Covenant. At the request of a Lender or its title insurer, County will execute a recordable instrument to confirm the termination of this Covenant.

C. Covenant Not Subordinate to Any Other Deeds of Trust

Only Approved Institutional Lender First Deeds of Trust are subject to the subordination provisions of this section. All other deeds of trust recorded against the Property shall be subject to all of the terms and limitations of this Covenant including, but not limited to the County's option to purchase the Property for the Maximum Sales Price.

D. Notice to County by Owner

Prior to recordation, Owner shall notify County of any deed of trust, financing instrument or mortgage to be recorded against the Property, and shall provide the County with the information needed by the County to record a Request for Notice of Default. Note that the County's written approval of any financing is required under Sections V and XI below.

IV. OCCUPANCY, LEASING AND OWNERSHIP OF OTHER REAL PROPERTY

A. Property Must be Used as Owner's Principal Residence

Owner shall occupy the Property as his/her/their principal place of residence. During the time the Property is vacant while being actively offered for sale by Owner, this owner-occupancy requirement shall not apply; however, Owner may not rent the Property during such period except as set forth below. A failure to comply with this owner occupancy requirement is a material violation of this Covenant. If Owner is determined by the County to be in violation of this owner occupancy requirement, County may exercise its option to purchase the Property as set forth in Section XIV so that the Property can be resold to a qualifying household and fulfill the purpose of the County's affordable housing program.

B. Rental of Property

Owner shall not rent or lease the Property without prior written approval by the County. All requests for consent must be in writing, consent shall be consistent with the County's goal of creating, preserving, maintaining, and protecting the County's supply of affordable housing. 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.

C. Personal Hardship Exemption

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 demonstrates personal hardship.

1. Definition

A Personal Hardship Exemption from this Covenant may be granted by Housing and Community Development (or its designee) if it is determined that one or more of the circumstances listed below will result in an economic hardship (i.e. the retention of the Property would result in a substantial and irrevocable loss of the Owner's investment in the Property) to the Owner: 1) An emergency or a long-term illness or injury requiring medical attention of the Owner or a member of the immediate family; 2) the death of a member of the Owner's immediate family; 3) an Owner or spouse's job transfer or loss of job; or 4) 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. Determination

A Personal Hardship exemption determination by Housing and Community Development shall be made within 30 days of receiving said request. A Personal Hardship Exemption may not be made to the extent that such hardship described above is or may be relieved by:

- a. Liquidation of the Owner's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- b. Reimbursement or compensation by insurance or otherwise.

3. Remedies

Upon determination by the County that a Personal Hardship exists, the following remedies may be granted:

- a. The Owner may rent the Property while it is for sale provided that the rent does not exceed the Maximum Monthly Rent for the original income category for the Property. Note: the Owner must keep the Property on the market for sale.
- b. If the Owner documents to the County a good faith effort to sell the Property for three consecutive months and the Property has not sold, he/she may offer the Property for sale to households which are in the next highest income category (e.g. a restricted lower-moderate unit may be marketed to both lower-moderate and upper-moderate income households). The restrictive covenant on the Property and its Maximum Sales Price would not be altered.

4. Submittal of Approved Rental Agreement to County

As soon as possible after Owner has requested and obtained the County's written approval to rent the Property, Owner shall provide a copy of the lease or rental agreement, the names of the renters, the rent being charged, and the new temporary address of the Owner. If the terms of any lease or rental agreement are amended, County shall be notified in writing. Owner shall notify County when he/she/they re-occupy the property.

D. No Ownership of Other Residential Real Estate

Owner may NOT have any form of ownership or ownership interest in whole or in part, (including long-term leaseholds, partnership, limited partnership or limited liability ownership) in or to any other Residential Real Estate as defined herein, concurrently with the ownership of this Property

E. Modification of Ownership Requirements

The County Department of Housing and Community Development may approve modification to Item D above if Owner demonstrates need or other good cause. Ownership of any other Residential Real Estate in whole or in part without written approval by the County violates this Covenant, and will result in default and remedies as described in this Covenant.

V. REQUIREMENTS FOR COUNTY APPROVAL OF TRANSFER, REFINANCE OR OTHER ENCUMBRANCE

A. Approval of All Proposed Transfers, Financing, Refinancing Required

Except as provided in Section III above and Section V.B below, the Property shall not be transferred, financed, refinanced, or otherwise encumbered in any way without the prior written approval of the County. As used herein "transfer" shall include any assignment or transfer of any interest in the Property, including but not limited to a fee simple interest, transfer to a trust, 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 transfer in violation of this section shall be void and may subject the Owner to cumulative remedies set forth in Section XIII of this Covenant. In addition, the running of the term of this Covenant shall be tolled during any period wherein the Property has been transferred in violation of this provision.

B. Exceptions

The following transfers are exceptions to the requirements of Section V.A above and do not require prior written approval by the County Department of Housing and Community Development; however, Owner is required to notify the County in writing upon any of the following transfers and such transfers may trigger resale obligations as set forth in Section XII below:

1. Death

A transfer resulting from the death of an Owner where the Property is transferred to the spouse who was a co-owner prior to the transfer.

2. Marriage

A transfer by an Owner where the Owner's spouse becomes the co-owner of the Property.

3. Divorce

A transfer resulting from a decree of dissolution of a marriage or legal separation from

a property settlement agreement incidental to such a decree by which a spouse who is an Owner become the sole Owner of the Property.

VI. COUNTY OPTION TO PURCHASE UPON PROPOSED SALE OR OTHER TRANSFER

A. Grant of Option and Right of First Refusal

In consideration of the benefits received by Owner, Owner hereby grants to the County, and the County hereby accepts an Option to Purchase, which the County may exercise anytime Owner intends or is required to sell or transfer the Property.

B. Requirement to Sell to County Selected Purchaser.

County may adopt a program whereby the County selects purchasers of affordable units whose owners have notified County of their intent to sell. If the County has adopted such a program, then the Owner would be required to sell the Property pursuant to the program.

If the County has not exercised its right to purchase the Property during the term of this Covenant pursuant to Section VI above, and if County has adopted a program requiring County selection of purchasers of affordable for-sale units, Owner shall be required to sell the Property to County as set forth below or to such County-selected purchaser for the Maximum Sales Price consistent with Sections VII, VIII, IX and X below.

C. Notice to County

If the County has not adopted a program requiring County selection of purchasers of affordable units, then anytime during the term of this Covenant when Owner intends to offer to sell, convey, or transfer the Property or any portion thereof, Owner shall give to the County written notice at the address and in the manner specified in Section XVI.E below, of its intent to sell the Property with a summary of the proposed transfer including the price and proposed transferee.

D. Exercise of County Option

The County Option may be exercised by County at the times and on the conditions set forth below:

1. The County shall have 30 days after receipt of written notice from Owner to respond in writing to Owner of the County's intent to exercise its Option to purchase.
2. The County shall have an additional 45 days to purchase the Property at Maximum Sales Price. The length of any delays caused by Owner or Owner's agents shall extend such time. Owner shall be responsible for all costs and provide all reports as is customary for sellers of residential property in Santa Barbara, including title insurance, zoning inspection, termite report and any other maintenance repairs as disclosed by property and/or termite inspection report(s).

E. Term of Option

The term of the County Option shall be from the date of recording of this Covenant until the expiration of the term of this Covenant as set forth in Section II above.

VII. SALE OF PROPERTY TO PRIVATE PARTY

A. Owner's Right to Sell

If the County has not adopted a program requiring County selection of purchasers for affordable for-sale units and County has not exercised its option, Owner shall have the right to sell or transfer the Property to

a Qualified Transferee. All sales of the Property by Owner to a private party shall be (hereinafter "Transferee"), subject to the terms and conditions of this Section.

B. Approval of Sale by County

1. The County Department of Housing and Community Development shall oversee the transfer or sale of the Property to any Transferee. No transfer or sale of the Property shall occur under this Section without the prior written approval of the County Housing and Community Development Director, or the Director's designee.
2. The County Department of Housing and Community Development may approve a proposed transfer of the Property provided that Owner is not in default under this Covenant, and that the County does not elect to exercise its Option to Purchase, and that the County has determined that Owner and Owner's proposed Transferee has complied with all of the requirements and provisions of this Covenant and affordable policies then current.
3. Purchasers of the Property shall complete, execute and deliver to Housing and Community Development or its designee the Home Ownership Application. The County may request additional information to supplement the application if deemed by the County to be necessary to verify the applicant's eligibility.

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

4. Owner or Transferee shall submit to the County the proposed Residential Purchase Agreement and Joint Escrow Instructions, and all other related documents that shall set forth the terms of sale or transfer of the Property. Contract shall incorporate information including, but not limited to the following:
 - a. Sales Price
 - b. All other amounts of money or other consideration, if any, concerning the Property to be paid or given by the Transferee to the Owner or any other person or entity, and reason such payment is made or other consideration granted.
 - c. The down payment to be paid by the Transferee
 - d. All Financing terms
 - e. The monthly payments to be paid by the Transferee in connection with the purchase and ownership of the Property, itemized for the loan, taxes, insurance, homeowners association fees, etc.
5. Transferee shall submit to the County Housing and Community Development Director, or the Director's designee, information including, but not limited to the following:
 - a. Documents to Support Identification
 - b. Documents to Support Residency
 - c. Documents to Support Income and Assets
 - d. Documents to Support Savings and Recent Bank Activity
 - e. Documents to Support Current Debts
 - f. Documents to Support Loan Terms and Provisions
6. The information provided shall be used by the County to determine the eligibility of the Transferee.
7. The County reserves the right to collect a reasonable fee to cover the County's costs of verifying information and administering its rights and obligations under this Covenant.
8. No goods or services shall be sold by Owner to the Transferee in conjunction with the

Sale of the Property.

VIII. ELIGIBILITY OF TRANSFEREE TO PURCHASE

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

- A. Each Transferee shall meet the County's then current qualification guidelines for the income category of the Property including those pertaining to household size and income.
- B. Each Transferee shall certify his/her/their intent to occupy the Property as his/her/their principal place of residence.
- C. Transferee(s) shall not own other Residential Real Estate (as defined herein) at the time of application and during the three years prior to purchase of this Property. This prohibition may be waived for a particular buyer by the Housing and Community Development Director for good cause.

IX. REQUIREMENTS FOR APPROVED SALE TRANSACTION

A. Price

The sale price shall not exceed the Maximum Sales Price.

B. Recordation of Replacement Covenant

Upon transfer each Owner and Transferee shall execute and cause the recordation of a new Resale Restriction Covenant and Option to Purchase ("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.

C. Escrow Documents

Each Owner and Transferee shall approve and sign the County's instructions to escrow regarding the requirements of this Covenant and County financing, if any. At least 10 business days prior to scheduled close of escrow, Owner and Transferee shall provide the County with a copy of the final sales contract, estimated final settlement statement, signed escrow instructions, and any other document that the County may reasonably request.

D. Unapproved or Fraudulent Sale

In the event a sale or transfer is made in violation of the terms of this Covenant or false or misleading statements are made in any documents or application submitted to the County for its 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 or 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 hereunder or for any costs and legal expenses incurred by County in the enforcement of this Covenant, shall be borne by the seller and purchaser, and not by the County.

E. County Review

Within ten working 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 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.

X. RESALE PRICE CALCULATION

A. Resale Price

The sale price of the Property shall not exceed the Maximum Sales Price.

B. No Adjustment for Owner Improvements

To help assure continued affordability to subsequent purchasers, no price adjustment or other reimbursement will generally be allowed for property improvements made by the owner. The owner may make improvements (with the exception of adding bedrooms) for the owner's benefit and enjoyment, but will not be compensated for such improvements upon sale of the property.

C. Other Requirements and Conditions

1. No price increase whatsoever shall be allowed during such time, if any, that Owner was in violation of any requirement of this Covenant.
2. County staff or staff's designee shall be afforded reasonable opportunity to inspect the Property for damage or deferred maintenance. If the Property is damaged or if there is substantial deferred maintenance, Housing and Community Development staff may lower the Maximum Sales Price as set forth in Section I.
3. The Owner may not require the buyer to pay any commissions or other costs of sale typically paid by sellers of residential real property. In addition, buyers cannot require owners to pay real estate commissions for transactions in which the Owner listed the Property without a realtor and did not engage the services of a realtor to complete or assist in the transaction.
4. At any given time, Maximum Sales Price may be greater than the fair market value of the Property and there is no guarantee or assurance that the Owner will be able to sell the Property for the Maximum Sales Price. There is no minimum price that is guaranteed.

XI. REQUIREMENTS FOR COUNTY APPROVAL OF FINANCING OR REFINANCING

A. Approval by County

The terms of all financing secured by the Property must be approved by the County in writing, whether at the time of sale or at any other time. Purchase financing and refinancing may only be provided by licensed institutional lenders.

B. Requirements for Approval

1. The Owner is in full compliance with the County's affordability requirements.
2. The terms of the new loan are more favorable than the old loan.
3. Owner's total secured loans-to-value ratio does not exceed 95%.
4. The debt payment-to-income ratio will not be higher than it was upon owner's purchase of the property.
5. No additional cash is taken out other than reasonable loan costs unless approved in advance by the County in writing.
6. County may review an owner's credit and may decline approval of proposed refinancing in cases where the borrower's credit is poor.
7. Financing which may result in balloon payments or negative amortization including "reverse mortgages" will not be approved.

C. Modification of Financing Requirements

The County Housing and Community Development Director or the Director's designee may approve

modifications to subsection B above if Owner demonstrates need or other good cause.

D. Unapproved Financing

Securing any financing against the Property that has not been approved by the County Department of Housing and Community Development in writing constitutes a material default of this Covenant which at County's option will trigger the County's option to purchase the Property as set forth in Section XIV below.

XII. BEQUEST OR FORECLOSURE, INSURANCE AND CONDEMNATION

A. Transfers by Operation of Law

In the event of a transfer of the Property by operation of law such as by devise, bequest, foreclosure on any financing not exempted under Section III above, or deed in lieu of foreclosure on any such financing, to a person who does not meet the requirements of Section VIII, the transferee or the estate of the decedent shall be bound by the provisions of this Covenant; however, the County shall not declare a default before allowing such person a reasonable period of time, not less than 90 days, to convey the Property to an eligible purchaser in conformance with all of the provisions of this Covenant, including the Maximum Sales Price.

B. Excess Foreclosure Funds Payable to County

In the event that the Property is transferred through foreclosure, a deed in lieu of foreclosure or a trustee's deed upon sale, a default in a contract of sale, or through any other means, for the purpose of curing or preventing the default by Owner on a loan or obligation, any amount of the sale price which is over and above the Maximum Sales Price and which would otherwise be payable to Owner after full satisfaction of the Approved Institutional Lender First Deed of Trust loan and costs, shall be due and owing to the County. However, this Covenant will continue in full force and effect to bind the Property except after foreclosures of Approved Institutional Lender First Deeds of Trust.

C. Insurance Proceeds

Any hazard insurance proceeds received by the Owner which are not used to repair or rebuild the Property, and any condemnation award collected by the Owner, shall be distributed as follows:

1. First, to lenders claiming under an Approved Institutional Lender First Deed of Trust.
2. If any funds remain after the Approved Institutional 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 Sales Price.
3. If any funds remain after the Owner has been paid, the remainder shall be paid to the County.

XIII. DEFAULTS AND REMEDIES: ASSIGNMENT OF RENTS

A. Notice of Default

Upon any violation of the provisions of this Covenant the County may declare a default under this Covenant by delivering written notice thereof to the Owner. Upon the declaration of a default the County may purchase the Property as set forth in Section XIV or apply to a court of competent jurisdiction for specific performance of the Covenant, for an injunction prohibiting a proposed sale or transfer in violation of this Covenant, for a declaration that the prohibited transfer violates this Covenant and is, therefore, void, assess liquidated damages as set forth in Section XIII.D or for any such other relief as may be appropriate.

B. Assignment of Rents

Owner hereby assigns to County the right to receive the rents due or collected during the entire period the Property is occupied in violation of any of the terms of this Covenant.

C. Remedies Not Exclusive

The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

D. Liquidated Damages

Owner understands that the County's objective in requiring this Covenant is to ensure that the Property remains affordable for a period of forty-five (45) years or longer in the case of a violation, and that should Owner sell the 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.

4. If 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.
5. If it is determined that false or misleading information was supplied by the Owner to the County in its eligibility certification process, the sale may be voided or County may require that the Owner sell the 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 improperly owned or occupied the Property.
6. If Owner does not truthfully respond to any County surveys of property owners within 21 days 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 (21st) 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.
7. The amounts stated above shall be in addition to any fines and penalties that may be owed under applicable County ordinances.

Owner hereby agrees to the above liquidated damages provisions _____
(Owner's initials)

XIV. PURCHASE OPTION UPON DEFAULT

In addition to the remedies provided the County elsewhere in this Covenant, Owner hereby grants to the County the option to purchase the Property effective upon the declaration 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 the County, or any deed of trust, or any other lien, including a judgment, tax or Homeowner's Association lien, recorded against the Property. The County shall have thirty (30) days after declaring a default or receiving notice that a default is declared on any other obligation secured by this Property to notify the Owner of its decision to exercise its option to purchase.

Not later than sixty (60) days after the certified mailing of the notice to exercise its option, the County or its assignee shall purchase the Property for the following option price:

The lesser of the following:

1. The Maximum Sales Price calculated as of the date of violation or default less six percent (6%) to cover the County's resale costs, and less the amount necessary to repair any damage and correct deferred maintenance as reasonably determined by the County;

or

2. The appraised value of the Property as determined by a state licensed appraiser approved by Owner and County, less six percent (6%) to cover the County's resale costs; Notwithstanding the above, the option price shall not be less than the amount necessary to pay the balance due on any County-approved financing.

XV. COUNTY REQUIREMENTS AND AUTHORIZATIONS FROM OWNER

A. County Requirements from Owner Regarding Compliance Monitoring

1. Annual Surveys.

- a. Upon written request by County, Owner shall submit an Annual Survey, signed by Owner under penalty of perjury, which may include, but is not limited to Owner's statement that Owner has occupied the Property and complied with all provisions of this Covenant, or includes Owner's explanation of any financing, occupancy or other violation of any provision of this Covenant.
- b. The Annual Survey required under this Section shall be mailed or delivered as follows:
Housing and Community Development
County of Santa Barbara
105 East Anapamu Street, Room 105
Santa Barbara, CA 93101-2062

or to such other person or address designated by the County.
- c. Failure to provide a report within 30 days of the specified date, or any misrepresentations on the report, shall constitute a material default under this Covenant subject to the enforcement provisions of Sections XIII and XIV.

2. Audits.

By signing this Covenant Owner covenants for itself and all 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 Property and for compliance with the terms of this Covenant including, but not limited to the Owner Occupancy and income requirements and refinancing restrictions set forth herein. Owner for itself and all successors and assigns agrees to assist and cooperate with the County in any such audit. Such assistance and cooperation shall include, but not be limited to promptly supplying any information reasonably requested by County including tax returns, utility bills, bank statements and employment records and signing any reasonably requested release of information forms. Owner hereby consents to and grants County the right to conduct financial background investigations including, but not limited to credit checks during the term of the Covenant. If upon such audit it is determined that Owner supplied false or misleading information to the County, Owner's purchase of the Property may be voided at County's option and Owner shall be subject to the enforcement provisions set forth in Section XIII and XIV of this Covenant.

B. Owner's Continuing Authorizations to County

1. Right of County to Inspect Property.

Owner shall permit County staff the right to enter and inspect the Property during normal business hours upon at least 72-hours advance notice to Owner. An Owner's refusal to permit inspection will be a default under the Covenant.

2. Right of County to obtain status of Owner's loans.

Owner authorizes County to contact Owner's lender or lenders to obtain current loan status and loan information at any time without further written authorization from Owner.

XVI. ADDITIONAL PROVISIONS

A. Assignment

The County may assign its rights and delegate its duties hereunder without the consent of Owner. Upon such assignment the County shall notify the Owner.

B. Purchase of Other Residential Real Estate

The Owner covenants that they have not and will not execute any other agreement to purchase or purchase any other residential real property during their ownership of the Property.

C. Severability

If any one or more of the provisions contained in this Covenant shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Covenant and this Covenant be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

D. Choice of Law; Venue

The terms of this Covenant shall be interpreted under the laws of the State of California.

E. Notices

All notices required herein shall be sent by certified mail, return receipt requested, to the Owner at the address of the Property and to the County at: Department of Housing and Community Development, Attn: Property Management, County of Santa Barbara, 105 East Anapamu Street, Room 105, Santa Barbara, CA 93101, or such other address that the County may subsequently provide in writing to the Owner.

F. Recordation of Request for Notice of Default, Request for Notice of Delinquency

Owner agrees to permit the County to record a Request for Notice of Default and a Request for Notice of Delinquency at any time.

G. Enforcement Rights Granted to Redevelopment Agency

In addition to the County, the Redevelopment Agency of the County of Santa Barbara is hereby granted the right to enforce this Covenant.

XVII. DECLARATION OF EACH OWNER

- A. The financial and other information provided by me is true and complete.
- B. I have received a copy of this Covenant and agree to comply with the all of the requirements of this Covenant.
- C. I will occupy the Property as my principal residence.
- D. No persons or entity will be on title to the Property other than as listed below as Occupant Purchasers or Non-Occupant Title-holders. I understand that the County must give its approval in writing before anyone else may be listed on the title.
- E. I have not paid and will not pay any consideration to the seller, or any real estate commissions, or any costs normally paid by sellers, except as already disclosed in the purchase contract and escrow instructions which have been delivered to and approved by the County.
- F. I understand that any false statements or misrepresentations to the County in this transaction will constitute a default under this covenant, and may constitute fraud.

(Signatures appear on the following page. No further text appears on this page.)

IN WITNESS WHEREOF, the Parties have executed this Covenant as of the date written below.

PURCHASERS/OWNERS:

DATED: _____

BY: _____
Signature(s) must be notarized

DATED: _____

BY: _____
Signature(s) must be notarized

COUNTY OF SANTA BARBARA
DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT:

DATED: _____

BY: _____
Director
Signature must be notarized

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

Approved as to form:
DENNIS A. MARSHALL
COUNTY COUNSEL

DATED: _____

BY: _____
Deputy County Counsel

EXHIBIT C
MARKETING PLAN

EXHIBIT "C"
MARKETING PLAN
FOR
OLD MILL RUN, TM 14532, 99-DP-029,
(PROJECT NAME AND CASE NUMBER)

The Agreement to Provide Affordable Housing (hereinafter "AGREEMENT") binds the representatives of MLB OM 54, LLC, a Delaware Limited Liability Company (hereinafter "DEVELOPER") to this Marketing Plan. If DEVELOPER determines that changes may be necessary after the Agreement has been recorded, DEVELOPER must contact Santa Barbara County Department of Housing and Community Development (hereinafter "HCD") regarding these changes and must receive approval of the revised Marketing Plan from the Director of HCD or his/her designee.

- A. After the AGREEMENT has been recorded for the project, HCD will make the project publicly available on the Affordable Housing interest list by including the project's name, location, number of affordable units and the DEVELOPER or representative's phone number.
- B. An advertisement shall be prepared by HCD in conjunction with DEVELOPER who will pay for the advertisement of 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".
- 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 advertisement will contain the name and phone number of the person to contact to obtain additional information about the project. The advertisement will also include information on Santa Barbara County's requirements for eligibility, which include, but are not limited to: 1) the applicant must have the legal right to reside in the country, 2) the applicant must not have owned real estate in the past three years, 3) the applicant must live and/or work in Santa Barbara County, 4) household size will be matched to number of bedrooms, 5) applicant will be subject to income and other eligibility requirements, and resale restrictions, 6) the applicant must agree to reside in the property. The advertisement shall clearly state the deadline for inclusion in the lottery.

DEVELOPER'S specific marketing plan shall be comprised of the following elements:

1. DEVELOPER shall approve and pay for at least one advertisement in the real estate section of one newspaper of general circulation 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, unless HCD approves less frequent advertising. 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 marketing period is open.
2. HCD shall provide a notice of availability of the units to the potential applicants on HCD's website, those on HCD's Interest list, community groups, the County Housing Authority and housing advocacy groups. The notice shall be provided concurrent with commencement of advertisement described above.
3. During the time period that the affordable homes are being marketed, 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.
4. During the time period that the affordable homes are being marketed, buyer information packets will be available at the County offices and DEVELOPER'S sales office at **1180 Terrazzo Way, Orcutt, CA**. The Buyer Information Packet shall identify the level of affordability for the units, qualifying income levels, first-time homebuyers guidelines, County residency/employment requirement, County household size, occupancy guidelines, an explanation of Santa Barbara County Certification of Eligibility guidelines, resale restrictions, floor plans, a site plan indicating the location of the available units, information regarding the Homeowner's Association fees, and other information concerning the time of sale, time within which each person must be qualified as a purchaser, etc. This packet shall be prepared by HCD in conjunction with DEVELOPER and shall be subject to review and approval by HCD and DEVELOPER prior to commencement of project advertising.
5. During the time that the marketing period is open, prospective affordable housing purchasers will be able to visit DEVELOPER's office at **1180 Terrazzo Way, Orcutt, CA** in order to learn more about the project during scheduled hours approved by HCD.

6. DEVELOPER will create a list of prospective affordable housing purchasers to be given to HCD for the purpose of implementing the Lottery and Post Lottery Considerations identified in Exhibit F.

7. The affordable units will be marketed to applicants identified and qualified to County requirements pursuant to this plan.



Representative of Developer

Director
Santa Barbara County
Housing and Community Development

EXHIBIT D
LOTTERY PLAN

EXHIBIT D

LOTTERY PLAN

FOR

OLD MILL RUN, TM 14532, 99-DP-029


(PROJECT NAME AND CASE NUMBER)

To be eligible to purchase homes developed under Santa Barbara County's Affordable Housing Program, Santa Barbara County requires applicants to first complete a Lottery application in order to participate in the lottery for the affordable units offered. If the applicant is selected, then a Home Ownership Application must be completed and the applicants must be certified as eligible by Santa Barbara County. Some of the eligibility requirements include maximum allowable income, residency or employment in Santa Barbara County, not have owned other real estate within the past three years, and meet the County's household size occupancy standards in addition to other qualifications. The Lottery Plan and Post Lottery Considerations are as follows:

- A. Representatives of **MLB OM 54, LLC, a Delaware Limited Liability Company** (hereinafter "DEVELOPER") and Santa Barbara County Department of Housing and Community Development (hereinafter "HCD") will be 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.
- B. DEVELOPER shall provide a dated receipt to applicants who return completed Lottery Applications and a cashier's check or money order in the amount of \$10.00 payable to the County of Santa Barbara for the application screening fee to the sales office before the marketing deadline. The receipt shall correspond to the number of the applicant on the lottery list. DEVELOPER shall not be held liable for any judgment errors occurring while DEVELOPER or DEVELOPER'S representative is determining preliminary completeness of applications. HCD will require additional information from applicants after the lottery is conducted during the Certification of Eligibility Process.
- C. During the marketing period, DEVELOPER shall maintain a list of prospective buyers. The following information should be included on the list:
 - 1. Name
 - 2. Address
 - 3. Daytime and Nighttime phone numbers
 - 4. Receipt Number and Date Issued

- D. DEVELOPER shall accept the Lottery applications 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 60 days. DEVELOPER shall keep two lottery lists. Lottery Lists are based on maximum allowable household income and minimum and maximum allowable household size.
- E. Applicants must return COMPLETE Lottery applications in order to be included in the lottery. Lottery applicants will participate in one lottery based on their income category and household size.
- F. Upon closure of the marketing period, the DEVELOPER shall provide HCD with the list of applicants who were issued receipts and their Lottery applications. HCD will review the Lottery applications and shall make the list of lottery eligible applicants publicly available for ten (10) days at **MLB OM 54, LLC** and at HCD offices. It is the responsibility of applicants to check this list and to inform HCD at (805) 568-3520 within this ten-day period if their names do not appear on this list.
- G. After the ten-calendar day review period, HCD shall conduct the lottery by randomly computer ranking the names on the lottery lists. A representative of the County Auditor-Controller's office shall witness the lotteries. Lottery results will be posted in a manner similar to (item F) above for ten calendar days.
- H. Units are offered on the basis of the lottery results and an applicant's ability to qualify for the maximum allowable household income and minimum and maximum allowable household size. Note: In the County's effort to maximize space availability priorities for larger units shall be given to larger households consistent with County policies and procedures.
- I. HCD shall contact an initial pool of applicants (two times the number of affordable units available) following the ten-calendar day lottery results review period. The top selected applicants will be required to pay the remaining \$65.00 fee (\$75.00 total), payable to Santa Barbara County by either cashier's check or money order to fund the Certification process. HCD will conduct certifications sequentially starting at the top of the lottery results.
- J. According to the lottery ranking, Certified households will be referred to DEVELOPER to open escrow and secure final loan approval and documents. Terms of escrow will be provided for HCD to have final approval of the loan documents before the close of escrow.
- K. Before the close of escrow, DEVELOPER will hold a workshop in conjunction with HCD for the Lottery-selected or Certified applicants to review the COVENANTS, CONDITIONS AND RESTRICTIONS of **(name of Association)** and the Resale Restrictive Covenant.

- L. Before the close of escrow, HCD will compare the buyers' Home Ownership Application with final loan documents for consistency. If any home falls out of escrow or applicants are disqualified by HCD, the above process (item I) will continue until all homes are sold.



Representative of Developer

Director
Santa Barbara County
Housing and Community Development

Note: In the County's effort to maximize space availability priorities for larger units shall be given to larger households consistent with County policies and procedures.