

RECORDING REQUESTED BY AND RETURN TO:

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

Attn: Affordable Housing Program

No fee per California Government Code Sec. 6103
APN:

SAMPLE
RESALE RESTRICTIVE COVENANT

This document creates a lien on real property

Cavaletto Tree Farm Residential Housing Project, 01GPA-00000-00009, 01RZN-00000-00015, 08DVP-00000-00012, 09TRM-00000-00001 and 09RDN-00000-00001

(Project Name and Case Number)

555 Las Perlas Santa Barbara Ca. 93111

(Property Address)

This Resale Restrictive Covenant (hereinafter "Covenant") by and between The Cavaletto Family L.P., a California Limited Partnership (hereinafter "Initial Owner"), and the County of Santa Barbara, a political subdivision of the State of California (hereinafter "County"), is entered into as of this _____ day of _____, 20____.

RECITALS:

WHEREAS, the County of Santa Barbara ("County") has provided development incentives to Initial Owner (collectively referred to together with the County as the "Parties") with regard to the Cavaletto Tree Farm Residential Housing Project (this "Project") such as allowing development at greater density than County zoning allows in the absence of a special permit, or other incentives; and,

WHEREAS, Subsequent Owners will benefit from these development incentives through the opportunity to purchase the Restricted Unit at a price substantially below fair market value with the limitation on the purchase price of the Restricted Unit which this Covenant requires; and,

WHEREAS, the intent of the Parties is to preserve through this Covenant the affordability of the Restricted Unit 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. "Initial Owner": (i) The Cavaletto Family L.P., a California Limited Partnership and Developer, (ii) any subsequent purchaser (whether an occupant purchaser or non-occupant titleholder), devisee, successor, assignee, beneficiary, heir, legal representative, executor, trustee, transferee, or grantee holding, claiming or asserting title to the Property or any portion of or interest in the Property, or (iii) any other holder of title to the Property or any portion thereof or interest in the Property. Owner does not include the Institutional Lender holding the Institutional Lender First Deed of Trust, easement holders, or a Subsequent Owner of a Restricted Unit.
- B. "Subsequent Owner": shall mean any and all subsequent purchasers, titleholders, devisees, successors in interest, assignees, beneficiaries, heirs, legal representatives, executors, trustees, transferees, including a Qualified Transferee, or grantees that receive the Restricted Unit being Transferred pursuant to this Covenant or holds, claims or asserts title to or interest in the Restricted Unit.
- C. "Qualified Transferee": A bona fide initial purchaser for value of the Restricted Unit that is eligible to purchase the Restricted Unit and meets the requirements set forth in Section VI of this Covenant, below.
- D. "Household": All those persons - related or unrelated - who occupy the Restricted Unit.
- E. "Initial Maximum Sales Price": The Initial Maximum Sales Price is the highest price that the Initial Owner is allowed pursuant to this Covenant to sell the Restricted Unit to a Qualified Transferee, inclusive of real estate commissions and closing costs, so as to be affordable to **Workforce (120-200% Area Median Income (AMI))** income households. The Initial Maximum Sales Price shall be set by the County Board of Supervisors based upon the formula in effect at the time of the initial sale of the Restricted Unit.
- County staff or staff's designee shall be afforded reasonable opportunity to inspect the Restricted Unit for damage or deferred maintenance. The Initial Maximum Sales Price shall be decreased by any amount necessary to repair damages and undertake deferred maintenance, if any, and to put the Restricted Unit in a good and salable condition as reasonably determined by County staff or staff's designee. In no event shall the Initial Maximum Sales Price be adjusted by County staff below the total amount of all liens from County-approved financing on the Restricted Unit.

The Initial Maximum Sales Price has been set to include allowance for a real estate sales commission and closing costs, and Initial Owner may not require any Qualified Transferee 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 Restricted Unit.

To help assure continued affordability to a Qualified Transferee, no price increase will be allowed for property improvements made by the Initial Owner. The Initial Owner is of course free to make legal improvements, but will not be compensated for any improvements made upon the sale of the Restricted Unit.

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

"Subsequent Maximum Sales Price": The Subsequent Maximum Sales Price is the highest price that a Subsequent Owner is allowed pursuant to this Covenant to sell the Restricted Unit to another Subsequent Owner, inclusive of real estate commissions and closing costs. The Subsequent Maximum Sales Price shall be the sales price that the selling Subsequent Owner paid for the Restricted Unit plus 2.5% per annum during the period of ownership pro-rated per diem to the close of escrow; or, alternatively, an

annual appreciation in sales price of 2.5% per annum prorated per diem from the close of escrow for the initial sale, whichever of these two way of calculating the price is greater..

The Subsequent Maximum Sales Price has been set to include allowance for a real estate sales commission and closing costs, and a selling Subsequent Owner may not require any purchasing Subsequent Owner 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 Restricted Unit.

No price increase beyond the 2.5% per annum described above and allowed by this Covenant will be allowed for property improvements made by the selling Subsequent Owner. The selling Subsequent Owner is of course free to make legal improvements, but will not be compensated for any improvements made upon the sale of the Restricted Unit beyond the 2.5% per annum price increase described above and allowed by this Covenant.

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

- F. "Area Median Income": Area Median Income (AMI). The median family income of a geographic area if the state, as defined in California Health & Safety Code Section 50093 as that Section now appears and may be amended or renumbered, adjusted for family size. The AMI for a household of four is updated and released annually by the U.S. Department of Housing and Urban Development (HUD). The State of California Housing and Community Development (HCD) adopts AMI for each county in California after applying an adjustment factor to calculate the AMI for different household sizes. 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.
- G. "Principal place of residence": The place where a person or persons reside on a full-time basis.
- H. "Transfer": Any sale, grant, 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 portion of or interest in the Restricted Unit, including, but not limited to, a fee simple interest, joint tenancy, tenancy in common, life estate, leasehold, or an interest evidenced by a land contract by which possession of the Restricted Unit is transferred but title to the Restricted Unit is retained.
- I. "Institutional Lender": Any FDIC-insured bank which is licensed to engage in the business of providing mortgage financing (purchase money or refinancing) for residential real property or the United States Department of Housing and Urban Development.
- J. "Institutional Lender First Deed of Trust": A First Deed of Trust made by an Institutional Lender.
- K. "Restricted Unit": The real property located at _____

II. TERM AND ENFORCEABILITY

A. Term

This Covenant shall bind and the benefit hereof shall inure to the Initial Owner and Subsequent Owner, his, her or its heirs, legal representatives, executors, trustees, beneficiaries, devisees, grantees, successors in interest and assigns, and to the County, its successors, designees, or assigns from the date of recording of this Covenant until 35 years from the date of the close of escrow for the initial sale of the

Restricted Unit subject to extensions of that term if the Initial Owner or Subsequent Owner violates the terms of this Covenant (“Permitted Extensions”) (“35 Year Restriction Period”). If the Qualified Transferee or Subsequent Owner cumulatively occupies the Restricted Unit for the full term in compliance with this Covenant, this Covenant shall expire at the end of the 35 year term and upon such expiration, the Qualified Transferee or Subsequent Owner may sell the Restricted Unit to any buyer for any price. This Covenant will continue for each Subsequent Owner of the Restricted Unit up to the 35 year limitation calculated from the time of the initial sale. In addition, the running of the 35 year period shall be tolled during any time that the Qualified Transferee or Subsequent Owner is in violation of this Covenant.

B. Covenants Running With the Land; Equitable Servitude

The Restricted Unit is held and hereafter shall be held, Transferred, conveyed, hypothecated, encumbered, used, and occupied subject to the covenants, conditions, restrictions and limitations contained herein and in that document entitled “[Agreement to Provide Workforce Housing](#)” recorded on _____, as Instrument No. _____, in the office of the Recorder of Santa Barbara County, California. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land. In the event of a conflict between the terms of the Agreement to Provide Workforce Housing and the terms of this Covenant, the terms of this Covenant shall prevail unless specifically indicated otherwise.

C. Binding Effect

Any Initial Owner or Subsequent Owner of the Restricted Unit or of any portion of or interest in the Restricted Unit, by the acceptance of a deed therefore, or by the signing of a contract or agreement to purchase or occupy 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 and in the Agreement to Provide Workforce Housing.

D. Enforceability

In order to preserve through this Covenant the affordability of the Restricted Unit, the , Initial Owner and Subsequent Owner for himself, herself or itself and all of his, her or its heirs, legal representatives, executors, trustees, beneficiaries, devisees, grantees, 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 XII of this Covenant, and an Option to Purchase the Property, described under Sections XIII and XII of this Covenant, the right to collect liquidated damages for certain violations as described in Section XII.D and assigns to the County any proceeds payable to the Initial Owner or Subsequent Owner from a foreclosure or deed in lieu of foreclosure in excess of the Initial Maximum Sale Price or Subsequent Maximum Sales Price, as described in Section XI.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 solely to the lien of an Institutional Lender First Deed of Trust subject to the following conditions and limitations:

1. Limit on Amount

The amount secured by the Institutional Lender First Deed of Trust shall not exceed 95% of the purchase price paid by the Subsequent Owner plus any late fees and charges as may be permitted under the Institutional Lender First Deed of Trust. This Covenant shall not be subordinate 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 Institutional Lender First Deed of Trust, the County shall have the same right as the Subsequent Owner to cure the default and redeem the Restricted Unit prior to foreclosure sale. Such redemption shall be subject to the same fees, charges and penalties which would otherwise be assessed against the Subsequent 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 Institutional Lender First Deed of Trust, shall trigger the County's right to exercise its option to purchase the Restricted Unit, as described more fully in Section XV below, and the County may exercise its option to purchase the Restricted Unit pursuant to such provisions.

4. Request for Notice of Default

The holder of the 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 California Civil Code.

B. Rights Under Institutional Lender First Deed of Trusts

Subject to these above-stated conditions and limitations, this Covenant shall not impair the rights under an Institutional Lender First Deed of Trust, to foreclose or take title to the Property pursuant to the remedies of the Institutional Lender First Deed of Trust, or accept a deed in lieu of foreclosure in the event of default by a trustor under the 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 Institutional Lender First Deed of Trust, this Covenant shall be terminated and of no further force or effect as an encumbrance against the Restricted Unit (or any owners, tenants or encumbrancers in the chain of title), and the Institutional Lender or Subsequent Owner may sell the Restricted Unit to any purchaser at any price or lease the Restricted Unit to any tenant at any rental amount, without thereafter being subject to this Covenant. At the request of an Institutional 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

This Covenant shall be subordinate solely to an Institutional Lender First Deed of Trust. All other deeds of trust recorded against the Restricted Unit 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 Restricted Unit.

D. Notice to County by Owner

Prior to recordation, Qualified Transferee and Subsequent Owner shall notify County of any deed of trust, financing instrument or mortgage to be recorded against the Property or Restricted Unit, and shall provide the County with the information needed by the County to record a Request for Notice of Default.

IV. OCCUPANCY; LEASING

A. Restricted Unit Must be Used as Owner's Principal Residence

Qualified Transferee and Subsequent Owners shall occupy the Real Property as his/her/their principal place of residence during the entire term of this Covenant. Qualified Transferee or Subsequent Owner may not rent or lease the Restricted Unit during such period. A failure to comply with this owner occupancy requirement is a material violation of this Covenant. If Qualified Transferee and Subsequent Owner is determined by the County to be in violation of this owner occupancy requirement, County may exercise its option to purchase the Restricted Unit as set forth in Section XII so that the Restricted Unit can be resold to a Subsequent Owner and fulfill the purpose of this Covenant.

V. REQUIREMENTS FOR ALL TRANSFERS

A. A Transfer in violation of this Covenant shall be voidable and may subject the Initial Owner and Subsequent Owner to cumulative remedies set forth in Section XII of this Covenant. In addition, the running of the term of this Covenant shall be tolled during any period wherein the Restricted Unit has been Transferred in violation of this Covenant.

B. Transfers By Operation Of Law

Subsequent Owners are required to notify the County in writing upon any of the following Transfers below:

1. Death

A transfer resulting from the death of a Subsequent Owner where the Restricted Unit is Transferred to the spouse who was a co-owner prior to the Transfer.

2. Marriage

A Transfer by a Subsequent Owner where the Subsequent Owner's spouse becomes the co-owner of the Restricted Unit.

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 a Subsequent Owner become the sole Subsequent Owner of the Restricted Unit.

C. County Fees

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.

VI. INITIAL TRANSFERS

A. County Approval of Initial Transfer to Qualified Transferee

1. The County Housing and Community Development Division shall oversee the initial Transfer of the Restricted Unit to a Qualified Transferee. No initial Transfer of the Restricted Unit to a Qualified Transferee shall occur under this Covenant without the prior written approval of the County Housing and Community Development, or designee. ***The County Housing and Community Development Division shall have no further monitoring responsibility after the close of escrow has occurred for the initial Transfer of the Restricted Unit to a Qualified Transferee.***

- 2.** Each Qualified Transferee shall complete, execute and deliver to the Housing and Community Development Division or its designee the Application for Eligibility Certification. The County may request additional information to supplement the application if deemed by the County to be necessary to verify a Qualified Transferee's income.
- 3.** Qualified Transferees shall be held liable for the accuracy of information provided. The Housing and Community Development Division or its designee shall review the complete application and shall determine whether the Qualified Transferee meet the County's eligibility standards.
- 4.** The Qualified Transferee or Initial Owner shall submit to the County Housing and Community Development, or designee, the proposed sales contract, escrow instructions, and all other related documents that shall set forth the terms of the initial Transfer of the Restricted Unit. The sales contract shall incorporate information including, but not limited to, the following:

 - a.** Sales price, which shall not exceed the Initial Maximum Sales Price;
 - b.** All other amounts of money or other consideration, if any, concerning the Restricted Unit to be paid by the Qualified Transferee to the Initial Owner or any other person or entity, and reason such payment is made;
 - c.** The down payment to be paid by the Qualified Transferee;
 - d.** Financing terms; and
 - e.** The monthly payments to be paid by the Qualified Transferee in connection with the purchase and ownership of the Restricted Unit, itemized for taxes, insurance, and homeowners association fees.
- 5.** Each Qualified Transferee shall submit to the County Housing and Community Development, or 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; and
 - f.** Documents to Support Loan Terms and Provisions
- 6.** The information provided shall be used by the County to determine the eligibility of the Qualified Transferee.

B. Eligibility Of Qualified Transferee To Purchase

Initial Owner shall not Transfer the Restricted Unit to any Qualified Transferee that does not satisfy all of the following requirements, and these shall be the sole restrictions on all subsequent sales during the total period of the 35 Year Restriction Period:

1. At least one Qualified Transferee of the Restricted Unit must work on the South Coast at the time of the Transfer ;
2. The Qualified Transferees must occupy the Restricted Unit during the entire period that it is subject to this Covenant; and
3. The Qualified Transferees of the Restricted Unit shall meet County income eligibility requirements for the workforce housing income category (120-200% AMI) This provision shall only apply for the initial sale of each Restricted Unit

C. No Sale of Goods or Services

No goods or services shall be sold by Initial Owner to any Qualified Transferee in conjunction with the initial Transfer of the Restricted Unit.

D. Escrow Documents

Qualified Transferee shall approve and sign the County's instructions to escrow regarding the requirements of this Covenant. At least 10 business days prior to scheduled close of escrow, Qualified 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. This requirement shall not apply to Subsequent Owners.

E. County Review

As soon as possible, but no later than 15 days thereafter, after the County has received all completed executed documents set forth above and any additional information received by the County, the Housing and Community Development Division, or designee, shall notify escrow in writing that the Qualified Transferee and Transfer qualify or fail to qualify to purchase the Restricted Unit under County guidelines. If the Qualified Transferee or the Transfer fails to qualify then execution of the Transfer transaction would constitute a breach of this Covenant and may subject the Initial Owner to the County's cumulative remedies as set forth in Section XII of this Covenant. This provision shall only apply for the initial sale of each Restricted Unit.

VII. SUBSEQUENT TRANSFERS.

A. Initial Owner shall oversee all subsequent Transfers of the Restricted Unit or delegate that responsibility to a licensed property manager..

B. Initial Owner or licensed property manager shall report all subsequent Transfers of the Restricted Unit to County's Planning & Development Department.

VIII. REQUIREMENTS FOR APPROVED TRANSFER TRANSACTION

A. Recordation of Replacement Covenant

Upon Transfer, each Subsequent Owner shall execute and cause the recordation of a new Resale Restrictive Covenant ("Replacement Covenant") which shall replace this Covenant and be substantially

similar to this Covenant, but with the 35 years restriction period running from the initial sale of the property.

B. Unapproved or Fraudulent Transfer

In the event 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 initial Transfer, the County may declare a default under this Covenant. The County shall also have the right to file actions at law or in equity to force the parties to terminate and rescind the Transfer contract and declare the Transfer void notwithstanding the fact that the Transfer may have closed and become final as between the Initial Owner and Qualified Transferee or as between any Subsequent Owner and any other Subsequent Owner. In any event, any costs, liabilities or obligations incurred by the Initial Owner or Subsequent Owner 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 Initial Owner, or Subsequent Owner, and not by the County.

IX. SALES PRICE

A. Maximum Sales Price

1. Initial Transfers. The sales price for the initial Transfer of the Restricted Unit shall be equivalent to that which would apply if the Restricted Unit were governed by the County's Inclusionary Housing Program, but in no case shall it exceed the Initial Maximum Sales Price. County staff or staff's designee shall be afforded reasonable opportunity to inspect the Restricted Unit for damage or deferred maintenance. If the Restricted Unit is damaged or if there is substantial deferred maintenance, County staff may lower the Initial Maximum Sale Price as set forth in Section I.

2. Subsequent Transfers. For all subsequent Transfers, the annual appreciation in sales price shall not exceed 2.5% per year for a minimum of 35 years from the date of close of escrow for the initial Transfer, but in no case shall the sales price exceed the Subsequent Maximum Sales Price.

B. No Adjustment for Owner Improvements

To help assure continued affordability to Subsequent Owners, no price adjustment or other reimbursement will generally be allowed for Restricted Unit improvements made by the Initial Owner or Subsequent Owner. The Qualified Transferee and Subsequent Owner may make legal and permitted improvements (with the exception of adding bedrooms) for the Qualified Transferee's or Subsequent Owner's benefit and enjoyment, but will not be compensated for such improvements upon sale of the Restricted Unit other than as allowed by this Covenant.

C. Other Requirements and Conditions

- 1.** No price increase whatsoever shall be allowed during such time, if any, that Initial Owner or Subsequent Owner was in violation of any requirement of this Covenant.
- 2.** The Initial Owner may not require the Qualified Transferee, and a Subsequent Owner may not require another Subsequent Owner, to pay any commissions or other costs of sale typically paid by sellers of residential real property. In addition, Initial Owners cannot require the Qualified Transferee, and a Subsequent Owner may not require another Subsequent Owner to pay real estate commissions for transactions in which the Restricted Unit was listed without a realtor and the services of a realtor were not engaged to complete or assist in the transaction.
- 3.** At any given time, the Initial Maximum Sale Price or Subsequent Maximum Sales Price may be greater than the fair market value of the Restricted Unit and there is no guarantee or assurance that the Initial Owner or Subsequent Owner will be able to sell the Real Property for the Initial Maximum Sales Price or Subsequent Maximum Sales Price. There is no minimum price that is guaranteed.

X. REQUIREMENTS FOR COUNTY APPROVAL OF INITIAL PURCHASE FINANCING

A. Approval by County

The terms of the initial Transfer financing secured by the Restricted Unit must be approved by the County in writing before the time of the initial Transfer. Financing may only be provided by licensed Institutional Lenders.

B. Requirements for Approval

1. Qualified Transferee's total secured loans-to-value ratio does not exceed 95%.
2. Financing which may result in balloon payments or negative amortization including "reverse mortgages" will not be approved.

C. Modification of Financing Requirements

The County may approve modifications to subsection B above if the Qualified Transferee demonstrates need or other good cause.

D. Unapproved Financing

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

XI. BEQUEST OR FORECLOSURE, INSURANCE AND CONDEMNATION

A. Initial Transfers by Operation of Law

In the event of an initial Transfer of the Restricted Unit by operation of law such as by devise, bequest, foreclosure on any financing not exempted under Section V.B above, or deed in lieu of foreclosure on any such financing, to any transferee who is not a Qualified Transferee, 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 transferee a reasonable period of time, not less than 90 days, to Transfer the Restricted Unit to a Qualified Transferee in conformance with all of the provisions of this Covenant, including the Initial Maximum Sales Price.

B. Excess Foreclosure Funds Payable to County

In the event that the Restricted Unit 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 Initial Owner on a loan or obligation, any amount of the sale price which is over and above the Initial Maximum Sale Price or Subsequent Maximum Sales Price and which would otherwise be payable to Initial Owner or Subsequent Owner after full satisfaction of the 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 Restricted Unit except after foreclosures of an Institutional Lender First Deed of Trust.

C. Insurance Proceeds

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

1. First, to an Institutional Lender claiming under an Institutional Lender First Deed of Trust.
2. Second to any other lenders and to Initial Owner or Subsequent Owner but only up to a

combined amount (including a loan of an Institutional Lender First Deed of Trust) of the Initial Maximum Sales Price or Subsequent Maximum Sales Price, all as according to the recording priority of their deeds of trust against the Restricted Unit and as otherwise provided by law.

3. If any funds remain after the Initial Owner or Subsequent Owner has been paid, the remainder shall be paid to the County.

XII. 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 Initial Owner or Subsequent Owner. Upon the declaration of a default, the County may purchase the Restricted Unit as set forth in Section XIII or apply to a court of competent jurisdiction for specific performance of the Covenant, for an injunction prohibiting a proposed 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 XII or for any such other relief as may be appropriate.

B. Assignment of Rents

Initial Owner and Subsequent Owner hereby assign to County the right to receive the rents due or collected during the entire period the Restricted Unit 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

Initial Owner and Subsequent Owner understand that the County's objective in requiring this Covenant is to ensure that the Restricted Unit remains subject to this Covenant [for a period of thirty-five \(35\) years or longer](#) in the event of unapproved or fraudulent Transfers or in the case of a violation, and that should Initial Owner or Subsequent Owner Transfer the Restricted Unit 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 Initial Owner or Subsequent Owner as liquidated damages would be as follows:

Note: Liquidated damages for multiple violations are cumulative.

1. If Restricted Unit is rented in violation of this Covenant, the Initial Owner and Subsequent Owner shall be liable to the County for damages in an amount equal to the total amount of rent collected.

2. If it is determined that false or misleading information was supplied by the Initial Owner or the Qualified Transferee to the County in its eligibility certification process, the Transfer may be voided or County may require that the Transfer the

Property to a Subsequent Owner in compliance with the terms of this Covenant. In addition, the Qualified Transferee shall be liable to the County for an amount equal to the Maximum Monthly Rent for the Restricted Unit for the period of time in which the Qualified Transferee improperly owned or occupied the Restricted Unit.

3. The amounts stated above shall be in addition to any fines and penalties that may be owed under applicable County ordinances.

Initial Owner and Subsequent Owner hereby agree to the above liquidated damages provisions

(Initial Owner's initials)

(Subsequent Owner's initials)

XIII. COUNTY OPTION TO PURCHASE UPON PROPOSED TRANSFER

A. Grant of Option and Right of First Refusal

In consideration of the benefits received by Subsequent Owner, Subsequent Owner hereby grant to the County, and the County hereby accepts an Option to Purchase and Right of First Refusal, which the County may exercise anytime Subsequent Owner lists, offers or otherwise makes the Restricted Unit available for a potential Transfer.

B. Notice to County

Anytime during the term of this Covenant when Subsequent Owner intends to list, offer, or otherwise make available the Restricted Unit or any portion thereof for Transfer, Subsequent Owner shall give to the County written notice at the address and in the manner specified in Section XIV.D of Subsequent Owner's intent to Transfer the Restricted Unit. The notice shall specify the Subsequent Owner's proposed asking price for the Restricted Unit, which asking price shall be equal to or below the Subsequent Maximum Sales Price.

C. 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 Subsequent Owner to respond in writing to Subsequent Owner of the County's intent to exercise its Option to Purchase.
2. The County shall have an additional 45 days to purchase the Restricted Unit at up to or not to exceed the Subsequent Maximum Sales Price. The length of any delays caused by Subsequent Owner or Subsequent Owner's agents shall extend such time. Subsequent Owner shall be responsible for all costs and provide all reports as is customary for sellers of residential property in Santa Barbara County, including, but not limited to, title insurance, zoning and building inspection, termite report and any other maintenance repairs as disclosed by property and/or termite inspection report(s).

D. 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.

XIII. PURCHASE OPTION UPON DEFAULT

A. Option to Purchase Upon Default

In addition to the remedies provided the County elsewhere in this Covenant, Initial Owner and Subsequent Owner hereby grant to the County the option to purchase the Restricted Unit effective upon the declaration of Notice of Default.

The option to purchase may be exercised upon a default under this Covenant or upon default under any notes Initial Owner and Subsequent 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 Restricted Unit. 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 Restricted Unit, whichever occurs first in time, to notify the Initial Owner and Subsequent 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, and within the time period otherwise established by Section 2924c of the California Civil Code, the County or its assignee may purchase the Restricted for the following option price:

The lesser of the following:

1. The Initial Maximum Sales Price or Subsequent 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 Restricted Unit as determined by a state licensed appraiser approved by Initial Owner and Subsequent 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.

2. Audits.

By signing this Covenant and Subsequent Owner covenant for himself/herself/itself and all of his/her/its heirs, legal representatives, executors, 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 Restricted Unit and for compliance with the terms of this Covenant, including, but not limited to, the owner occupancy requirements set forth herein. Initial Owner and Subsequent Owner for himself/herself/itself and all of his/her/its heirs, legal representatives, executors, 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. Initial Owner and Subsequent Owner hereby consent to and grant 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 Initial Owner or Subsequent Owner supplied false or misleading information to the County, Subsequent Owner's purchase of the Restricted Unit may be voided at County's option and Initial Owner and Subsequent Owner shall be

subject to the enforcement provisions set forth in Section XII and XIII of this Covenant.

B. Owner's Continuing Authorizations to County

1. Right of County to Inspect Restricted Unit

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

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

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

XIV. ADDITIONAL PROVISIONS

A. Assignment

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

B. 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.

C. Choice of Law; Venue

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

D. Notices

All notices required herein shall be sent by certified mail, return receipt requested, to the Initial Owner or Subsequent Owner at the address of the Property and to the County at: Planning and Development, Attn: Permit Compliance Staff, County of Santa Barbara, 123 East Anapamu Street, Santa Barbara, CA 93101, or such other address that the County may subsequently provide in writing to the Owner.

XV. DECLARATION OF EACH INITIAL OWNER OR SUBSEQUENT OWNERS

- 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 Restricted Unit as my principal residence.
- D.** No persons or entity will be on title to the Restricted Unit 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 anyone, 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.

INITIAL OWNER/SUBSEQUENT OWNERS:

DATED: _____

BY: _____

(Signature(s) must be notarized)

DATED: _____

BY: _____

(Signature(s) must be notarized)

COUNTY OF SANTA BARBARA
COMMUNITY SERVICES DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT DIVISION

DATED: _____

BY: _____

Dinah Lockhart, Deputy Director
(Signature must be notarized)

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

Approved as to form:
MICHAEL GHIZZONI
COUNTY COUNSEL

BY: _____
Deputy County Counsel

EXHIBIT A
Legal Description