

- a. Documents to support identification
- b. Documents to support residency
- c. Documents to support income and assets
- d. Documents to support recent bank activity
- e. Documents to support current debts
- f. Documents to support loan terms and provisions
- g. Documents to support compensating factors as determined on a case-by-case basis

5. The information provided shall be used by the City to determine the eligibility of the Transferee. Qualification documentation is valid for a 90-day period. If Transferee has not purchased a home within this period, updated qualification documentation is required.

6. All information and documentation provided to the City is subject to third-party verification.

7. The City reserves the right to collect a reasonable fee to cover the City's costs of verifying information and administering its rights and obligations under this Covenant.

VIII. ELIGIBILITY OF TRANSFEE UPON PURCHASE

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

A. Each Transferee shall be a Resident as defined herein.

B. Each Transferee shall certify his/her/their intent to occupy the Property as his/her/their principal place of residence as defined herein.

C. Transferee shall not have any form of ownership or ownership interest in Residential Real Estate (as defined herein) at the time of application for the purchase of the Property. The Community Development Director, or designee, may consider waiving this requirement for good cause. For example, the Director, or designee, may consider waiving the requirement when the ownership interest in another property is a small fractional interest, if the property has minimal value compared to the value of the affordable unit, or in the case of an existing City affordable owner (in good standing) who has outgrown their unit due to birth or adoption and wishes to purchase a larger affordable unit. In the event an existing owner purchases another affordable unit, they will be required to concurrently sell their existing affordable unit to a City-qualified household and execute a new affordable covenant in effect at the time of the purchase. Years of ownership are not transferable.

D. If Transferee owned Residential Real Estate at any time during the two years prior to the application to purchase the Property, Transferee's total equity (net proceeds) in such Residential Real Estate shall not exceed fifty percent (50%) of the purchase price of the Property.

E. Transferee's annual Gross Household Income (as defined herein) shall not exceed _____ percent (___%) of the Area Median Income (AMI) in Santa Barbara County, adjusted for household size as published by the U.S. Department of Housing and Urban Development (HUD).

F. No income will be counted or inputted from those assets used for the down payment and closing costs on the Property, except to the extent that the down payment exceeds twenty percent (20%) of the purchase price.

G. The maximum value of Transferee's assets, excluding retirement accounts subject to IRS rules, cannot exceed three (3) times the purchase price of the Property. The Community Development Director or the

Director's designee may consider waiving this maximum asset requirement on a case-by-case basis for good cause.

H. Transferee's Housing Expense Ratio (as defined herein) shall be no more than forty percent (40%). The Community Development Director or the Director's designee, on a case-by-case basis, may consider a waiver of these requirements for good cause. For example, the Director may consider approving a slightly higher Housing Expense Ratio in the event Transferee requires a co-signer to obtain a loan.

I. Transferee's Total Debt-to-income Ratio (as defined herein) shall not exceed fifty percent (50%).

J. Transferee's first mortgage loan must be amortized over the loan period and cannot include graduated interest, graduated payments, interest-only payments, balloon payments or negative amortization. If Transferee obtains a second mortgage loan as part of their purchase money financing, the second mortgage loan may have an interest only-payment and/or a balloon payment. Adjustable rate mortgages are allowed as long as the loan terms satisfy the preceding requirements for a first mortgage loan and second mortgage loan. The Community Development Director or the Director's designee may consider waiving this financing terms requirement on a case-by-case basis for good cause.

K. Transferee is required to provide a down payment of at least five percent (5%) of the purchase price. Transferee's down payment cannot exceed forty percent (40%) of the purchase price. The Community Development Director or the Director's designee may consider a down payment in excess of forty percent (40%) or an all cash purchase (perhaps from an inheritance or divorce settlement) only if Transferee meets all other qualification requirements including verification that they have sufficient monthly income to support the required forty percent (40%) Housing Expense Ratio under a theoretical sixty percent (60%) loan-to-value mortgage that is fully amortized over 30 years.

L. Transferee may receive all or a portion of the down payment as a gift provided the gift does not exceed twenty percent (20%) of the purchase price and the donor provides a gift letter acceptable to the Transferee's lender and the City. Gifts include funds given to Transferee within 12 months prior to the purchase.

M. Transferee is allowed to have a non-occupant title holder (co-signer) for financing purposes if needed to help the Transferee qualify for a loan. For purposes of calculating the Housing Expense Ratio and Total Debt-to-income Ratio, the income of the non-occupant title holder (co-signer) shall not be included.

N. A credit ("FICO") score below 620 shall disqualify a buyer from owning an affordable unit. The Community Development Director or the Director's designee may consider waiving the credit score requirement on a case-by-case basis for good cause (such as mitigating circumstances for the low credit score).

O. Transferees of units with three or more bedrooms must have a Household (as defined herein) of three or more persons. The Community Development Director or the Director's designee may consider waiving this household size requirement for good cause in cases where the buyer demonstrates a need for a large unit or where necessary to prevent undue hardship.

P. All adults (18 and older) in the Household are subject to eligibility requirements. All adult residents must be owners of record and included on all loan documentation (including Promissory Note and Deed of Trust). The Community Development Director or the Director's designee may consider waiving this requirement on a case-by-case basis for good cause. For example, the Community Development Director or the Director's designee may consider waiving this requirement for a household member younger than age twenty-four (24) who is the child of a titleholder and will reside in the property as their Principal Place of Residence (as defined herein).

IX. REQUIREMENTS FOR APPROVED SALE TRANSACTION

A. Price

The sale price shall not exceed the amount calculated pursuant to Section X below.

B. Recordation of Replacement Covenant

Upon transfer each Owner and Transferee shall execute and cause the recordation of a new Affordability 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 City's adopted affordability policies. Years of ownership are not transferable or assumable. The Replacement Covenant shall have a term of 90 years.

C. Escrow Documents

Each Owner and Transferee shall approve and sign City's escrow instructions, which instruct escrow regarding the requirements of this Covenant, City financing, if any, and City disclosures, if any. Owner and Transferee shall provide the City with a copy of the final purchase/sale contract, settlement statement, signed escrow instructions, and any other document that the City 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 certifications submitted to the City for its approval of the sale or transfer, the City may declare a default under the Covenant. The City 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 Owner. In any event, any costs, liabilities or obligations incurred by the Seller and Owner for the return of any moneys paid or received in violation hereunder or for any costs and legal expenses incurred by City in the enforcement of this Covenant, shall be borne by the Seller and Owner, and not by the City. The Seller and Owner shall hold the City and its designees harmless and shall fully indemnify the City including, but not limited to, payment of all City fees and costs, for any action the City takes to enforce the terms of this Covenant.

X. MAXIMUM SALE PRICE CALCULATION

A. Calculation of Maximum Sale Price

The sale price of the Property shall not exceed the Maximum Sale Price as defined herein, except as provided in Section III above. The Maximum Sale Price of the Property is the City-approved purchase price paid by Owner (less the amount of mid-year adjustment, if applicable) adjusted by the percentage change in the Area Median Income (AMI) for the Santa Barbara area during the period in which the Owner owned the Property and occupied it in compliance with the requirements of this Covenant. In some cases a "mid-year adjustment" will apply, as specified below.

B. Mid-Year Adjustment

To allow for a projected change in the Maximum Sale Price between publication dates of the AMI, the Maximum Sale Price may be changed by a "mid-year adjustment" calculated as follows:

1. The City-approved purchase price paid by Owner, multiplied by the following estimate of the as yet unpublished change in the AMI:

One-half of the average annual percentage change in the AMI over the previous two years divided by twelve and multiplied by the number of months between the last publication of the AMI and the date of sale of the unit. Note: this adjustment is based on "one-half of the average" in order to apply a conservative estimate of the change in the AMI.

2. However, no mid-year adjustment shall be included unless at least four months have passed between the last publication of the AMI and the date of calculation of the sale price of the Property.
3. If the "mid-year adjustment" is included in the sale price at any sale, on the next sale the price calculation will be adjusted as follows: the amount of mid-year adjustment which was included in

the price paid by Owner shall be subtracted from the price paid by owner. This is to assure that the price is not changed by both the mid-year adjustment (which is based on a future estimate of the AMI), and the actual change in the AMI which later became known.

For Owners not in violation of the Covenant, the City's policy is that an Owner's calculated Maximum Sale Price will not be less than their purchase price. However, the calculated Maximum Sale Price is not a guarantee that the Owner will be able to sell for that price due to market conditions or due to specific project requirements. If the Property sells for less than the calculated Maximum Sale Price, such lower price becomes the basis for the calculation of the Maximum Sale Price upon the next sale of the Property.

C. Owner Improvements Adjustment

To help assure continued affordability to subsequent Transferees, no price increase or other reimbursement will be allowed for property improvements made by the Owner. The Owner is of course free to make improvements for the Owner's benefit and enjoyment, but the Owner will not be compensated for such improvements upon sale of the property.

The Community Development Director or Director's designee may consider, on a case-by-case basis, exceptions to the policy against price increases for property improvements. The minimum cost threshold for exception consideration is \$2,000 and the following shall apply:

1. The improvements must be new, permanent and substantial (maintenance repairs shall not be considered). Only new permanent and substantial improvements to the kitchen and/or bathroom(s) or upgrade of flooring shall be considered.
2. Improvements that are considered decorative, luxury, nonessential, or maintenance shall not be considered. Examples include, but are not limited to painting, wall coverings, window coverings, replacement of carpeting, and lighting.
3. Owners are required to contact the City to obtain program policy regarding owner improvements prior to the commencement of work.
4. Owners must document that improvements will be completed with all required City permits and that the improvements meet the requirements imposed by their Homeowners Association and recorded CC&Rs.

In order for the City to consider an Owner's request for an exception to allow for a price increase for improvements made by the Owner, the Owner must submit the following documentation:

- a. Before and after photos; and
- b. Proof of payment for the work that was completed, such as paid invoices or receipts; and
- c. A copy of any necessary permits, if required; and
- d. An approval letter from the HOA, if required

The allowed price increase for approved improvements shall not exceed the lower of the following:

1. Fifty percent (50%) of the actual out-of-pocket cost of approved improvements paid by Owner (as verified by paid receipts); or
2. Ten percent (10%) of the Maximum Sale Price as calculated at the time of Owner's request and prior to improvements.

The allowed price increase for approved improvements shall only be added to the owner's calculated Maximum Sale Price upon resale and not for a refinance.

D. 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. Transferee or Transferee's designee and Housing Programs staff or staff's designee shall be afforded reasonable opportunity to inspect the property for damage or deferred maintenance. If there is property damage or if there is substantial deferred maintenance, Owner shall correct to City's satisfaction. Housing Programs staff may lower the Maximum Sale Price by the amount needed either to repair the damage or to correct needed maintenance.
3. The Owner may not require a Transferee to pay any commissions or other costs of sale typically paid by sellers of residential real property. The Owner cannot require the Transferee to pay the listing agent; likewise, the Transferee cannot require the Owner to pay the selling agent. Absent a 'cooperating' provision in the listing agreement, a Transferee of a City affordable unit may contract with a real estate agent for representation and pay the negotiated fee for this service.
4. The price paid to Owner by the Transferee for Owner's personal property must be disclosed to the City in writing during escrow, and price paid shall not exceed the current fair market value of such personal property.
5. Under no circumstances will the Property's calculated Maximum Sale Price be increased by the amount of monthly HOA dues/assessments or the conversion of an increase of HOA dues to a special assessment. The City has no control over HOA dues, but the Community Development Director or the Director's designee may consider requests for resale price increases due to a special HOA assessment imposed on a City affordable housing project. Such requests will be considered on a project-by-project basis, subject to prior written notice to the City and only upon pre-approval by the Community Development Director or designee.

XI. FINANCING REQUIREMENTS

A. Approval by City

The terms of all financing secured by or recorded against the Property require pre-approval by the City, whether at the time of purchase or at any other time. Purchase financing and refinancing must be provided by a licensed Institutional Lender (as defined herein).

B. Requirements for Refinance Approval

1. Owner is in full compliance with the City's affordability requirements.
2. The terms of the new loan are more favorable than the old loan.
3. Owner's Housing Expense Ratio will not be greater than forty percent (40%).
4. No additional cash is taken out other than the loan costs unless approved in advance by the City. If refinancing results in cash to Owner, Owner's total secured loans-to-value ratio shall not exceed eighty percent (80%).
5. All owners of record are listed on all loan documentation (including the Promissory Note and Deed of Trust).
6. The City may review an owner's credit and may decline approval of proposed refinancing in cases where the borrower's credit is poor.
7. The Community Development Director or designee may consider approving interest-only refinanced loans on a case-by-case basis when no cash is taken out, the borrowers have excellent credit, and the loan-to-value ratio is favorable. Refinances which may result in negative amortization including "reverse mortgages" will not be approved.
8. If the City has provided financing secured by the Property, the City may agree to subordinate the City financing if City is assured that its security interest and the owner's ability to repay remain strong.
9. If the City's approval of the Owner taking cash-out is conditioned upon the pay-off of certain installment debt, such installment debt payments shall occur and be documented through the refinance escrow.

C. Modification of Financing Requirements

The City Community Development Director or the Director's designee may consider modifications to Item B above if Owner demonstrates need or other good cause.

D. Lien or Encumbrance

Owner may not take such action against the Property as may result in a Lien or other Encumbrance being recorded against the Property unless such Lien or Encumbrance is first approved in writing by City in its sole and absolute discretion. In the event a Lien or other Encumbrance is recorded against the Property without such prior approval by City, such an unapproved Lien or Encumbrance may be violation of this Covenant and City may thereafter declare a Default has occurred and pursue all remedies as set forth in Article XIII and Article XIV herein.

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, lien or encumbrance 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 City 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 Sale Price.

B. Transfer Proceeds

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 Sale Price calculated according to Section X above, and which would otherwise be payable to Owner after full satisfaction of the lien-holder or lender's loan and costs, shall be due and owing to the City in consideration of the development assistance given by the City.

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 according to the recording priority of their deeds of trust against the Property, as provided by law.
2. If any funds remain after the lenders have been paid, then to the Owner, up to but not to exceed the net amount (after payment of encumbrances) that Owner would have received under a sale at the Maximum Sale Price calculated according to Section X above.
3. If any funds remain after the Owner has been paid, the remainder shall be paid to the City.

XIII. DEFAULTS AND REMEDIES: ASSIGNMENT OF RENTS

A. Notice of Default

Upon any violation of the provisions of this Covenant the City may declare a default under this Covenant by delivering written notice thereof to the Owner. Upon the declaration of a default the City may 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, or for any such other relief as may be appropriate.

B. Assignment of Rents

Owner hereby assigns to City 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.

XIV. PURCHASE OPTION UPON DEFAULT

A. Option to Purchase Upon Default

In addition to the remedies provided the City elsewhere in this Covenant, Owner hereby grants to the City 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 City, or any deed of trust or any other lien secured by or recorded against the Property including but not limited to a judgment lien, tax lien or Homeowner's Association lien. The City 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 City or its assignee shall purchase the Property for the following default purchase price:

The lesser of the following:

1. The Maximum Sale Price calculated per Section X above as of the date of default; or
2. The appraised value of the property as determined by a state licensed appraiser approved by the Owner and City; or
3. The amount necessary to pay the balance due on any City-approved financing

The default purchase price, as determined, shall then be reduced by ten percent (10%) to cover the City's resale costs and further reduced by the cost of damage or maintenance repairs as reasonably determined by the City. The City may also enforce the covenant through the courts.

XV. CITY REQUIREMENTS AND AUTHORIZATIONS FROM OWNER

A. City Requirements from Owner

1. Annual Certification

a. Each year on October 15, or on such other date as specified by the City in writing, Owner shall submit an Annual Certification, signed by Owner under penalty of perjury, which includes 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 Certification required under this Section shall be mailed or delivered as follows:

City of Santa Barbara, Community Development Department
Attn: AHHS-Housing Programs
P.O. Box 1990
Santa Barbara, California, 93102-1990

or to such other person or address designated by the City.

c. Failure to provide a report within 30 days of the specified date, or any misrepresentations on the report, shall constitute a default under this Covenant.

B. Owner's Authorizations to City

1. Right of City to Inspect Property

Owner shall permit City 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 City to obtain status of Owner's loans

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

3. Right of City to procure reports to confirm compliance with terms of this Covenant.

Owner authorizes City to procure a background report, credit report, and any other screening reports deemed necessary by the City in order to confirm Owner's compliance with this Covenant. Consent is granted by Owner to procure such reports at any time during the term of this Covenant. In the event that information from the report(s) is utilized in whole or in part in making an adverse decision, Owner will be provided a copy of the report(s) and a description in writing of applicant's rights under the federal Fair Credit Reporting Act.

XVI. ADDITIONAL PROVISIONS

A. Assignment

The City may assign its rights and delegate its duties hereunder without the consent of Owner. Upon such assignment the City 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 City at: Community Development Department, Attn: Housing Programs, City of Santa Barbara, P.O. Box 1990, Santa Barbara, CA 93102-1990, or such other address that the City 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 City to record a Request for Notice of Default and a Request for Notice of Delinquency at any time.

G. Conflict of Terms Clause

This Covenant is a document that is required in implementation of the AHPP. In the event of inconsistencies between this Covenant and the City's policies as described in the most recently published Affordable Housing Policies and Procedures, as amended from time to time, then the terms and conditions of this Covenant will control. In cases where this Covenant is silent or does not address a certain policy item, the City's policy as described in the Affordable Housing Policies and Procedures Manual in effect at the time of this Covenant shall be applied.

XVII. DECLARATION OF EACH SELLER

A. I have been in compliance with the affordability and owner-occupancy requirements of the City during the entire period during which I owned the Property, and this sale is in compliance with those requirements.

B. I have not rented the Property except as has been approved by the City in writing.

C. The sale price of the Property in this transaction is the amount listed in Declaration by City below, and I have not received and will not receive any payment or consideration from the purchasers except as is disclosed in the purchase contract and escrow documents which have been delivered to and approved by the City.

D. I understand that any false statements or misrepresentations to the City in this transaction will constitute a default under this covenant, and may constitute fraud.

XVIII. 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 Owner or Non-Occupant Title-holders. I understand that written pre-approval from the City is required before anyone else may be listed on or removed from title.

E. The purchase price of the Property is the amount listed in the Declaration by City, below. I have not paid and will not pay any consideration to the seller, or seller's 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 City.

F. I understand that any false statements or misrepresentations to the City in this transaction will constitute a default under this covenant, and may constitute fraud.

XIX. DECLARATION BY NON-OCCUPANT TITLE-HOLDERS (IF ANY)

A. I appear on the title to the Property as a tenant in common only because I am a co-signer for the purpose of helping the Owner qualify for the City-approved purchase money loan. My equity interest in the Property will not be greater than one percent (1%) of the total equity of all owners of the Property, and I will receive no money from the sale of the property in excess of this one percent, except as provided in Section XIX.C below.

B. I acknowledge and agree that I have not been approved by the City as an eligible transferee, and I am not permitted to occupy the Property at any time, and that my occupancy of the Property will constitute a default under the Covenant.

C. If I am named in the will of the Owner I may receive an equity interest upon the death of the Owner. However, unless at that time I am certified as an eligible transferee by the City, I will not be permitted to occupy the Property, and will be required to sell my interest to an eligible transferee under the provisions of the Covenant.

D. I understand that any false statements or misrepresentations to the City in this transaction will constitute a default under this covenant, and may constitute fraud.

XX. DECLARATION BY CITY

A. The City has reviewed the financial information and other information submitted by the undersigned Owner. Based on this information the City has found the Owner to be an eligible Transferee as required by the Covenant.

B. The sale price of the Property in this transaction (the City approved purchase price paid by Owner) is _____ AND 00/100 DOLLARS (\$_____). This price includes the following projected increase ("mid-year adjustment") in the sale price for the period from the latest change in the AMI to the date of sale: \$_____. At the date of this sale the Area Median Income = \$_____. For information purposes only, the amount of City financing (if any) provided at the initial sale of the property was \$0.

THIS ____-BEDROOM UNIT IS RESTRICTED TO QUALIFIED _____ INCOME OWNERS

EXAMPLE

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

SELLER:

OWNER:

CITY OF SANTA BARBARA, a body politic:

Community Development Director

NOTE: This Covenant will be recorded; a Notary Public must acknowledge the signature of the parties except for approval as to form and content.

Approved as to form:

Sarah Knecht
Assistant City Attorney

Approved as to content:

Laura Dubbels
Housing & Human Services Manager