

When Recorded Mail To:  
City of Santa Barbara  
Community Development Dept.  
Attn: Housing Programs / MB  
P.O. Box 1990  
Santa Barbara, CA 93102-1990

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APN: \_\_\_\_\_  
Property Address: \_\_\_\_\_  
Santa Barbara, CA

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**AFFORDABILITY COVENANT AND OPTION TO PURCHASE**

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This Affordability Covenant and Option to Purchase (hereinafter "Covenant") is dated as of this \_\_\_\_ day of \_\_\_\_\_ 2014, by and between \_\_\_\_\_ (hereinafter "Owner") and \_\_\_\_\_ (hereinafter "Seller") and the City of Santa Barbara, a body politic, (hereinafter "City").

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

This Covenant rescinds and supersedes the previous affordability control document on the Property, which was titled \_\_\_\_\_ recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ of Official Records, Santa Barbara County.

**RECITALS:**

WHEREAS, the City has provided development incentives to this project (such as allowing development at greater density than City zoning allows in the absence of a special permit, or other incentives); 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 City 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 City 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. "Owner": (i) \_\_\_\_\_, (ii) any subsequent purchaser (whether a Transferee or non-occupant titleholder), devisee, successor trustee, or grantee or (iii) any other holder of title to the Property or any portion thereof or interest in the property except City-approved lenders or easement holders.

B. "Non-Occupant Titleholder": See Section XIX

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

D. "Institutional Lender": Any financial institution, such as a bank, an insurance company or a savings and loan organization, whose lending practices are subject to and regulated by mortgage finance regulations.

E. "Three-or-more-person Household": Three or more persons who will live in the property as their primary residence and who are unrelated, related by blood, marriage, law, or are registered domestic partners. Persons (including sons and daughters) aged 18 and older who live away from home for purposes of either work or study and return to the household periodically will not be counted as household members.

F. "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 City 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 for a minimum of ten months out of each calendar year, unless otherwise reviewed and pre-approved by the City.

H. "Resident": A person who provides written verification of current residency or employment within the area bounded by the Pacific Ocean on the south, Ventura County line on the east, the Gaviota tunnel on the west and the ridge-line of the Santa Ynez mountains on the north generally known as the South Coast portion of Santa Barbara County.

I. "Residential Real Estate": Residential real property including single family dwellings, undeveloped residentially-zoned land, mobile homes and manufactured housing.

J. "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, community property, life estate, leasehold, or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title.

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

L. "Effective Date": The date Covenant is recorded in the Official Records of Santa Barbara County Recorder's Office or absent recordation the first date written above.

## **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 City, its successors, designees,

or assigns until ninety (90) years from the Effective Date of this Covenant. If an owner occupies the unit for the full term in compliance with this Covenant, this Covenant shall expire and the Owner may sell the Property to any transferee for any price. However, if the Owner sells the Property during the term of this Covenant, the City-qualified Transferee will be required to sign and record a new Covenant that begins a new period of then current price and occupancy restrictions. This requirement will continue for each new owner of the unit.

## **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 these covenants, conditions, restrictions and limitations. 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 with incomes within a specified range, the Owner hereby grants and assigns to the City the right to review and enforce compliance with this Covenant, and in furtherance of this right, grants to the City 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, and assigns to the City any proceeds payable to the Owner from a foreclosure or deed in lieu of foreclosure in excess of the Maximum Sale Price, as described in Section XII.B of this Covenant.

## **III. DEED OF TRUST: SUBORDINATION; DEFAULT; NOTICE TO CITY; RIGHT TO CURE**

### **A. Subordination**

This Covenant shall be subject and subordinate to the lien of a City-approved first deed of trust which secures a loan made by an Institutional Lender (hereinafter "Institutional First Deed of Trust"), subject to the following conditions and limitations:

#### **1. Limit on Amount**

The amount of the Institutional First Deed of Trust shall not exceed the following amount: the City approved purchase price paid by Owner, less the approximate balance on City financing (if any) as of the date of this Covenant (noted in Section XX below). The subordination of this Covenant pursuant to this Section III shall not apply to any Institutional First Deed of Trust that exceeds such amount, absent specific written approval from the Community Development Director.

#### **2. Default; Right to Cure**

In the event of default under any deed of trust, including the City-approved Institutional First Deed of Trust, the City 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 City 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 First Deed of Trust, shall trigger the City's right to exercise its option to purchase the Property, as described more fully in Section XIV below, and the City may exercise its option to purchase the Property 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 City 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 City elects to exercise such option to purchase, subsequent to a default on the Institutional First Deed of Trust, and notwithstanding any language contained herein to the contrary with regard to the rights of the City, the City 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 of Institutional Lender**

Subject to these above-stated conditions and limitations, this Covenant shall not impair the rights of such Institutional Lender, or such Lender's assignee or successor in interest, to foreclose or take title to the Property pursuant to the remedies in the Institutional First Deed of Trust, or accept a deed in lieu of foreclosure in the event of default by a trustor under the Institutional First Deed of Trust. Subsequent to the Institutional Lender acquiring title through foreclosure sale or accepting a deed in lieu of foreclosure under such Institutional First Deed of Trust, 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, City will execute a quitclaim deed or other recordable instrument in order to confirm the termination of this Covenant.

### **C. Notice to City by Owner**

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

## **IV. OCCUPANCY, LEASING AND OWNERSHIP OF OTHER REAL PROPERTY**

### **A. Property as Principal Residence**

Owner shall occupy the Property as his/her/their principal place of residence as defined herein. 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.

### **B. Rental of Property**

Owner shall not rent or lease the Property without prior written approval by the City. Owner may rent out a room in the Property without City approval as long as all Owner(s) of record continue to reside in the Property as his/her/their principal place of residence.

#### **1. Modification of Occupancy Restrictions**

The City Community Development Director or the Director's designee will consider modifications to these occupancy requirements and rental restrictions if Owner demonstrates need due to illness, temporary employment relocation, sabbatical, extended travels, or other good cause.

**2. Approval of Rental Agreement**

Any lease or rental agreement for the Property approved pursuant to this section shall conform to the affordability requirements established by the City, as these requirements are in effect at the time of the proposed lease or rental. Any lease or rental without prior written approval by the City violates this Covenant, and will result in an assignment of all rents due or collected, as described in Section XIII below.

**3. Submittal of Approved Rental Agreement to City**

As soon as possible after Owner has requested and obtained the City'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, City shall be notified in writing. Owner shall notify City when he/she/they re-occupy the property.

**C. 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, partnerships, and limited partnership or limited liability ownership) in or to any other residential real estate as defined herein, at time of application for ownership or concurrently with the ownership of this Property.

**D. Modification of Ownership Requirements**

The City Community Development Director or the Director's designee may consider modification to Item C 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 City violates this Covenant, and will result in default and remedies as described in this Covenant.

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

**A. No Further Encumbrance or Lien**

Except as provided in Section III above, Section V.B and Section XI below, the Property shall not be transferred, financed, refinanced, or otherwise encumbered in any way without the prior written approval of the City Community Development Director or the Director's designee.

**B. Exceptions**

The following transfers are exceptions to the requirements of Section V.A above and do not require prior written approval by the City Community Development Director or the Director's designee; however, Owner is required to notify the City in writing upon any of the following transfers and provide relevant documentation to the City:

**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 becomes the sole Owner of the Property.

**4. Trust**

A transfer by an Owner into an inter vivos trust in which the Owner is named the Trustee and the Beneficiary.

**VI. CITY OPTION TO PURCHASE UPON 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 City, and the City hereby accepts an Option to Purchase, which the City may exercise anytime Owner intends to sell or transfer the Property.

**B. Notice to City**

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 City written notice at the address and in the manner specified in Section XVI.F below, of its intent to sell the Property with a summary of the proposed transfer.

**C. Exercise of City Option**

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

1. The City shall have 30 days after receipt of written notice from Owner to respond in writing to Owner of the City's intent to exercise its Option to purchase.
2. The City shall have an additional 45 days to purchase the Property at the maximum price calculated as per Section X below. 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).

**D. Term of Option**

The term of the City Option shall be from the Effective Date of this Covenant until the expiration of the affordability term.

**VII. SALE OF PROPERTY TO PRIVATE PARTY**

**A. Owner's Right to Sell**

If the City does not exercise its right to purchase the Property during the affordability term pursuant to Section VI above, this Section VII shall take effect and Owner shall have the right to sell or transfer the Property to a City-qualified Occupant Purchaser (hereinafter "Transferee"), subject to the terms and conditions of this Section.

**B. Approval of Sale by City**

1. The City 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 City Community Development Director or the Director's designee.

2. The City may approve a proposed transfer of the Property provided that Owner is not in default under this Covenant, and that the City does not elect to exercise its Option to Purchase, and that the City 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. Owner or Transferee shall submit to the City the proposed sale contract, 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. Price to be paid by the Transferee for Owner's personal property, if any.

c. All other amounts of money or other consideration, if any, concerning the Property to be paid by the Transferee to the Owner or any other person or entity, and reason such payment is made.

d. The down payment to be paid by the Transferee

e. Financing terms and provisions

4. Transferee shall submit to the City 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 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. Documentation submitted to the City for eligibility purposes are valid for a 90-day period.

6. 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 TRANSFEREE 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(s) 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.

D. If the Transferee(s) owned residential real estate at any time during the two years prior to the application

to purchase the Property, the 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. The combined annual gross income of all members of the Transferees household 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). Income earned from investment assets and all other documented income will be included in the computation of annual income. The Community Development Director or the Director's designee will determine the method of calculating annual gross income and the method of inputting income from investment assets.

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 a 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. To assure affordability to the Transferee, Transferee's income, less approved business expenses if self-employed, shall be sufficient so that at least twenty percent (20%) and no more than forty percent (40%) of such income will be required to pay for housing expenses, including mortgage loan payments, mortgage insurance, homeowner's association dues, property taxes, and insurance. In the case of an adjustable rate mortgage, the mortgage loan payment will be calculated using the fully indexed rate or the start rate, whichever is greater.

I. Transferee's total debt-to-income ratio shall not exceed fifty percent (50%).

J. To assure continued affordability to the Transferee, no purchase money financing obtained or assumed by Transferee which requires graduated interest, graduated payments, interest-only payments, balloon payments or negative amortization shall be permitted. 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. Transferees are required to provide a down payment of at least five percent (5%) of the purchase price. The Transferee's down payment must not exceed forty percent (40%) of the purchase price. The Community Development Director or the Director's designee will consider a Transferee with a down payment in excess of forty percent (40%) only if the Transferee meets all other qualification requirements including verification that they have sufficient monthly income to support the required forty percent (40%) housing cost-to-income ratio under a theoretical sixty percent (60%) loan-to-value mortgage that is fully amortized over 30 years. Transferees 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. Gifts include funds given to Transferee within 12 months prior to the purchase.

L. Transferees are 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 cost-to-income ratio and total debt-to-income ratio, the income of the non-occupant title holder (co-signer) shall not be included.

M. A credit ("FICO") score within the bottom quartile of credit scores nationwide shall automatically 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.

N. Transferees of units with three or more bedrooms must be three-or-more-person households (as defined herein). 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.



O. All adults (18 and older) in the household are subject to eligibility requirements. They 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.

## **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. RESALE PRICE CALCULATION**

### **A. Calculation of Resale Price**

Except as provided in Section III above, the sale price of the Property shall not exceed 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 resale price will not be less than their purchase price. However, the maximum calculated 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 maximum calculated sales 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 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 affordable sale price as calculated at the time of Owner's request and prior to improvements.

#### **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 sales price be increased by the amount of monthly HOA dues/assessments or the conversion of an increase of HOA dues to a special assessment. Resale price increases requested due to a special HOA assessment imposed on a City affordable housing project 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 licensed institutional lenders as defined herein.

#### **B. Requirements for Refinance Approval**

1. The 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 total secured loan-to-value ratio does not exceed 80%
4. The housing cost-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 the loan costs unless approved in advance by the City.
6. 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 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 if City is assured that its security interest and the owner's ability to repay remain strong.

9. When refinancing results in cash to the Owner, the Owner's total secured loans-to-value ratio should not exceed 80%, and the housing cost -to income ratio shall not exceed 40%. If the City approves the Owner taking cash out to pay off installment debt, the 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 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 Sales 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.

**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.

**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

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

**SELLER:**

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

**OWNER:**

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

**CITY OF SANTA BARBARA, a body politic:**

\_\_\_\_\_  
George Buell, 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:

\_\_\_\_\_  
Deirdre Randolph  
Community Development Programs Supervisor