

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of San Luis Obispo  
Community Development Department  
919 Palm Street  
San Luis Obispo, CA 93401-3249  
Attn: Community Development Director

No fee for recording pursuant to  
Government Code Section 27383

(Space above for Recorder's Use)

**OCCUPANCY, RESALE, AND REFINANCING RESTRICTION AGREEMENT, WITH  
OPTION TO PURCHASE AND PROMISSORY NOTE SECURED BY DEED OF TRUST  
(Long-Term Affordability Program – Avila Ranch Workforce Unit)**

[enter note amount]

[enter date]

at City of San Luis Obispo, California

NOTICE TO BORROWER: THIS DOCUMENT GRANTS THE CITY AN OPTION TO BUY  
YOUR PROPERTY AT A RESTRICTED PRICE THAT MAY BE BELOW THE MARKET  
VALUE AND CONTAINS PROVISIONS RESTRICTING ASSUMPTIONS.

FOR VALUE RECEIVED, the undersigned [enter homeowners' name(s)] (the "**Borrower**")  
promises to pay to the order of the City of San Luis Obispo, a California charter city and municipal  
corporation (the "**City**"), at 919 Palm Street, San Luis Obispo, California 93401 or such other  
address as City may from time to time designate, the sum of the difference between the Appraised  
Market Value and the Affordable Sale Price, as those terms are hereinafter defined, [enter note  
amount] (the "**Loan**") according to terms set forth herein. The Loan shall accrue interest,  
compounded monthly, at an annual rate of three (3) percentage points added to the Enterprise  
11th District COFI Replacement Index, published by Freddie Mac. Payments of principal and  
interest are due and payable to the City as set forth below.

1. Security for Note. This Occupancy, Resale, and Refinancing Restriction  
Agreement, with Option to Purchase and Promissory Note Secured by Deed of Trust (the "**Note**")  
is secured by that certain Purchase Money Deed of Trust, Deed of Trust Covenants, Assignment  
of Rents, Security Agreement and Fixture Filing dated [enter Deed of Trust date] (the "**Deed of  
Trust**") executed by Borrower, as Trustor, and naming the City as Beneficiary, covering certain  
real property owned by Borrower in the City of San Luis Obispo, State of California, commonly  
known as [enter property address] and more particularly described in Exhibit A to this Note.  
Borrower acknowledges that this Note is given in connection with the Borrower's purchase of  
the Property as part of a program of the City to assist in the purchase of residences by lower,  
moderate, or workforce income households. Said property, including both the real property and all  
improvements now or hereafter erected on the property, and all easements, rights, appurtenances  
and all fixtures now or hereafter attached to the property, shall be referred to in this Note as the

Property. The term "**Property**," as used herein, shall have the same meaning as the term "**Security**" is used in the Deed of Trust.

2. Purpose of the Note. Borrower is purchasing the Property in conformance with that certain Affordable Housing Agreement and Declaration of Restrictive Covenants (the "**Agreement**") recorded in the Official Records of the County of San Luis Obispo on [enter date of recordation] as Instrument No. [enter recording number] regarding affordable housing requirements applying to [enter the residential development information].

The Agreement implements policies contained in the Housing Element of the City's General Plan, Chapter 17.138 of the San Luis Obispo Municipal Code and the City's "**Below Market Rate Housing Standards**" published by the City's Community Development Department pursuant to Municipal Code Section 17.138.040 B (the "**Legal Requirements**") as part of an effort by the City to create affordable home ownership opportunities for [enter income level]-income persons and households. The Legal Requirements provide for the sale of some homes at an Affordable Sales Price to an Eligible Household, as such terms are defined below.

This Note evidences: (a) the obligation of the Borrower to occupy the Property as his or her primary residence; (b) the resale restriction prohibiting the Borrower from transferring the Property to any person or entity other than an Eligible Household, as such term is defined below; (c) the grant to the City of an Option to purchase the Property following a Default under the terms of this Note; and (d) **the obligation of the Borrower to pay the Loan amount to the City.**

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3. Definitions. In addition to terms defined elsewhere in this Note, the following terms have the following meanings in this Note:

(a) "**Affordable Sales Price**" means the maximum allowable sales price for an Affordable Unit in effect at the time of its sale to an Eligible Household, which is to be calculated in accordance with the formula provided in the Affordable Housing Standards, which is subject to annual updates.

(b) "**Appraised Market Value**" means the value of the Property at the time of its sale to an Eligible Household, as agreed to by the parties or, if the parties are unable to agree, as determined by a certified MAI or other qualified real estate appraiser approved in advance by the City. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period.

(c) "**Eligible Household**" means a household which has been determined to be eligible to purchase an Affordable Unit as a [enter income level] Income Household, in compliance with the Affordable Housing Standards.

(d) "**Transfer**" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, an interest evidenced by a land contract by which possession of the Property is transferred and Borrower retains title, or a deed of trust.

4. Term. The Term of this Note shall be ten (10) years.

5. Borrower Certifications; Borrower Occupancy Requirement. The Borrower certifies that the financial and other information previously provided in order to qualify to purchase the Property is true and correct as of the date first written above. The Borrower shall occupy the Property as the Borrower's principal place of residence for the Term of this Note. The Borrower shall be considered as occupying the Property as the Borrower's principal place of residence if the Borrower is living in the unit for at least ten (10) months out of each calendar year, maintains a valid homeowner's property tax exemption, and provides reasonable requested documentation to verify occupancy.

The Community Development Director may, in its sole discretion, grant a temporary waiver of this occupancy requirement if all of the following conditions are met: (1) the City has determined that the Borrower will incur substantial hardship if he or she is not permitted to temporarily vacate the Property; (2) the Borrower provides a written request to the City for a temporary waiver of the occupancy requirement before vacating the Property; and (3) the term of the occupancy waiver is not greater than one (1) year. A temporary vacancy shall only be considered approved if the City approves the request in writing.

6. Grant of Option.

(a) In consideration of the economic benefits received by the Borrower resulting from purchase and ownership of the Property at the Affordable Sales Price, Borrower hereby grants and gives to the City a right to purchase all of Owner's right, title, and interest in and to the Property ("**Option**") for the "**Option Price**," which shall be equal to the Affordable Sales Price at the time the Option is exercised.

(b) The term of the Option extends for the Term of this Note. The City's rights to exercise the Option shall survive any Transfer of the Property by the Borrower in violation of this Note. As long as the Option has not been expressly abandoned in writing by the City, any actual or attempted Transfer of the Property in violation of the terms and conditions of this Note shall be a Default and shall be voidable at the election of the City.

(c) The City shall have the right to exercise the Option by providing the Borrower with written notice of its election to exercise the Option (the "**Option Notice**") within thirty (30) days of the occurrence of either of the following:

- i) The City's receipt of a Transfer Notice (defined below); or
- ii) The City's Declaration of Default as provided in this Note.

(d) If the City sends an Option Notice, the City shall open an escrow account for its purchase of the Property. Close of escrow shall take place on such date which is the later to occur of the following: (a) ninety (90) days after the date of the Option Notice, or (b) ten (10) days after Owner has done all acts and executed all documents required for close of escrow.

(e) Prior to the close of escrow, the City shall ensure that funds are deposited to pay the Option Price. All Advances previously paid by the City shall be repaid from escrow. "**Advances**" include any payment by the City of costs including, but not limited to, principal, interest, taxes, assessments, insurance premiums, homeowners' fees, and associated late fees,

costs, interest, attorneys' fees, costs of investigation (including but not limited to costs of investigating compliance with the owner occupancy requirements of this Note), pest inspections, resale inspections, and other expenses related to the Property, which Borrower has failed to pay or has permitted to become delinquent or which are required to remove liens and encumbrances as provided in Section 6(f) below or which are otherwise due to the City. Closing costs and title insurance shall be paid by City and Borrower pursuant to the custom and practice in the County of San Luis Obispo at the time of the opening of escrow, or as may be provided otherwise by mutual agreement.

(f) The Borrower shall convey title to the Property at the close of escrow free and clear of any mortgage, lien, or other encumbrance, unless approved in advance in writing by the City. If the amounts deposited into escrow by the City are not sufficient to satisfy all liens and encumbrances recorded against the Property, then the Borrower shall deposit into escrow the additional sums that are required to remove the liens and encumbrances.

(g) Borrower agrees to do all acts and execute all documents necessary to enable the close of escrow and transfer of the Property to the City.

(h) Notwithstanding the above, if Borrower has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development ("**HUD**") or guaranteed by the Secretary of the Department of Veteran's Affairs ("**VA**"), and a notice of default under such mortgage has been recorded pursuant to California Civil Code Section 2924 (or successor provisions), this Option shall automatically terminate if title to the Property is transferred to HUD or the VA by foreclosure, or deed-in-lieu of foreclosure with prior written notice to the City, under such mortgage, or if the insured mortgage is assigned to the Secretary of HUD or VA .

7. Resale Restriction.

(a) Pursuant to Legal Requirements, Borrower shall be prohibited from selling the Property other than to Eligible Households at a sales price determined by the Borrower, but that shall not exceed the Affordable Sales Price. In the event that the Borrower intends to Transfer the Property to an Eligible Household, the Borrower shall promptly give the City written notice of such intent (the "**Transfer Notice**") prior to notifying real estate brokers or lenders of Borrower's intent to Transfer the Property and prior to listing of the Property on the Multiple Listing Service. The Transfer Notice shall be sent to the City in accordance with the notice provisions of this Note.

(b) Any Transfer without satisfaction of the provisions of this Agreement is prohibited. In the event Borrower Transfers the Property to any person or entity other than an Eligible Household, the City may issue a Declaration of Default, as such term is defined below. The Community Development Director may, in its sole discretion, approve a Transfer (other than a sale to any person or entity that is not an Eligible Household) on a case-by-case basis upon receipt of a written request from the Borrower.

8. No Payments Due Prior to Default. In consideration of Borrower's compliance with the terms and conditions of this Note, no payments of the outstanding principal of the Loan

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and all interest thereon shall be due and payable provided that Borrower remains in compliance with the terms and conditions of this Note throughout the Term. Following a Default, as such term is defined below, then the principal of and accrued interest on the Loan shall be immediately due and payable to the City as set forth in the Deed of Trust in favor of City. Failure to declare such amounts due shall not constitute a waiver on the part of the City to declare them due in the event of a Default.

9. No Assumption of City Note by Subsequent Buyers. Borrower acknowledges that this Note is given in connection with the purchase of the Property as part of an effort by the City to assist in the purchase of the Property by [enter income level] income households. Consequently, this Note is personal to Borrower and is not assumable by subsequent purchasers nor by the successors and assigns of the Borrower.

10. Prepayments. The Deed of Trust shall remain on the Property to secure performance of this Note, including the occupancy restrictions, the Option, and the resale restrictions, and so the Note shall not be released prior to the conclusion of the Term even if the Borrower prepays the Loan in whole or in part.

11. Payment. The amount due under this Note shall be paid without the necessity for notice or demand by City.

12. Payment Amount. The amount due under this Note shall be paid from the net proceeds. Net proceeds are the sales price minus any loans or liens that are senior to this Note and minus closing costs.

13. Default. The Borrower shall be in Default under this Note if he or she fails to make any payment, satisfy any covenant, or perform any obligation under or in connection with (a) this Note, (b) the Deed of Trust, or (c) any other note, trust deed or other obligation of Borrower relating to the Property, or secured by all or any part of the Property, whether junior or senior to this Note, and if such failure is not cured within such time as may be permitted by the obligation or the oblige ("**Default**").

14. Remedies. Upon a Declaration of Default by the City under this Note, the City may exercise any remedies at law or in equity, including without limitation any or all of the following, none of which shall be an exclusive remedy:

- (c) Declare all sums due under the Note immediately due and payable without further demand;
- (d) Declare a Default under the Note and Deed of Trust and pursue all City remedies under the Deed of Trust;
- (e) Invoke the power of sale under the Deed of Trust;
- (f) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;

(g) Take such enforcement action as is authorized under the San Luis Obispo Municipal Code; and

(h) Exercise the Option as provided in Section 3 of this Note.

15. Notice and Cure; Declaration of Default. The City may give written notice to the Borrower specifying the nature of any violation. If the violation is not corrected to the satisfaction of City within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as the City may provide at its sole discretion, the City may declare a Default under this Note by written notice to Borrower ("**Declaration of Default**"). However, if the Borrower is in default under any financing secured by the Property, the City may send a Declaration of Default upon receipt of any notice given to the City as provided in Civil Code Section 2924b or through any other means and may exercise its remedies upon Default as provided in Section 13 of this Note.

16. Acceleration. Upon a Declaration of Default, the full amount of the Loan or any other amounts due under this City Note, if any, shall be immediately due and payable. Any failure by the City to pursue its legal and equitable remedies upon Default shall not constitute a waiver of the City's right to issue a Declaration of Default and exercise all of its rights under this Note, and the Deed of Trust. Nor shall acceptance by the City of any payment provided for herein constitute a waiver of the City's right to require prompt payment of any remaining payments owed.

17. Request for Notice of Default. As a condition for subordination of the City Deed of Trust or approval of a subordinate loan, a request for notice of default and notice of sale regarding the senior or subordinate loan shall be recorded in the Office of the Recorder of the County of San Luis Obispo for the benefit of the City.

18. Nonliability for Negligence, Loss, or Damage. Borrower acknowledges, understands and agrees that the relationship between Borrower and City is solely that of borrower and lender, and that the City and its designated agents neither undertake nor assume any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality, adequacy or suitability of the Property or any other matter. The City and its designated agents owe no duty of care to protect Borrower against negligent, faulty, inadequate, or defective building or construction or any condition of the Property, and Borrower agrees that neither Borrower, nor Borrower's heirs, successors or assigns shall ever claim, have, or assert any right or action against City or its agents for any loss, damage, or other matter arising out of or resulting from any condition of the Property and will hold City and its agents harmless from any liability, loss, or damage for these things.

19. Indemnity. Borrower agrees to defend, indemnify, and hold the City and its designated agents harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys' fees that the City and its designated agents may incur as a direct or indirect consequence of:

(a) Borrower's failure to perform any obligations as and when required by this Note and the Deed of Trust; or

- (b) the failure at any time of any of Borrower's representations or warranties to be true and correct.

20. Attorneys' Fees and Costs. If either Party takes or commences any actions or proceedings, including litigation or arbitration, against the other by reason of any breach or claimed breach of any provision of, or in any way connected with, this Note, or seeks a judicial declaration of rights under this Note, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party the prevailing Party's reasonable attorney's fees and costs, including, but not limited to, all expert witness fees, other witness fees and associated expenses, whether or not suit is filed or the proceeding or action proceeds to judgment.

21. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

22. No Offset. Borrower hereby waives any rights of offset it now has or may hereafter have against City, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

23. Waiver. Borrower and any endorsers or guarantors of this Note, for themselves, their heirs, legal representatives, successors and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of non-payment of this Note, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waive the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

24. Notices. All notices required pursuant to this Note shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the party to receive such notice at the addressed set forth below:

TO THE CITY:

City of San Luis Obispo  
Community Development Department  
919 Palm Street  
San Luis Obispo, CA 93401-3249  
Attn: Community Development Director

WITH COPY TO:

City of San Luis Obispo  
990 Palm Street  
San Luis Obispo, CA 93401  
Attn: City Attorney

TO THE BORROWER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Any notice shall be deemed delivered on the first business day that delivery is attempted or upon receipt, whichever is sooner. As used herein, "business day" means any day other than a Saturday, Sunday, or any state or federal holiday on which financial institutions in San Luis Obispo County are authorized or required to close for observance thereof. The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section.

25. Controlling Law. This Note shall be construed in accordance with and governed by the laws of the State of California. Borrower agrees that the site of any hearing or action of whatever nature or kind regarding this Note shall be conducted in the County of San Luis Obispo, State of California.

26. Assignment by City. The City may assign its right to receive the proceeds under this Note to any other governmental body or nonprofit organization which is eligible to receive such transfer under state and federal law, and upon notice to the Borrower by the City, all payments shall be made to the assignee.

27. Severability. If any provision of this Note shall be declared by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other application of such provision or the balance of the provisions hereof, which shall, to the fullest extent possible, remain in full force and effect.

28. Entire Agreement. This Note (along with the Deed of Trust) sets forth the entire understanding and agreement between the City and the Borrower, and any amendment, alteration or interpretation of this Note must be in writing signed by both the City and the Borrower.



IN WITNESS WHEREOF, the Parties hereto have caused this Note to be executed as of the day and year first above written.

**OWNER:**

\_\_\_\_\_

By: \_\_\_\_\_

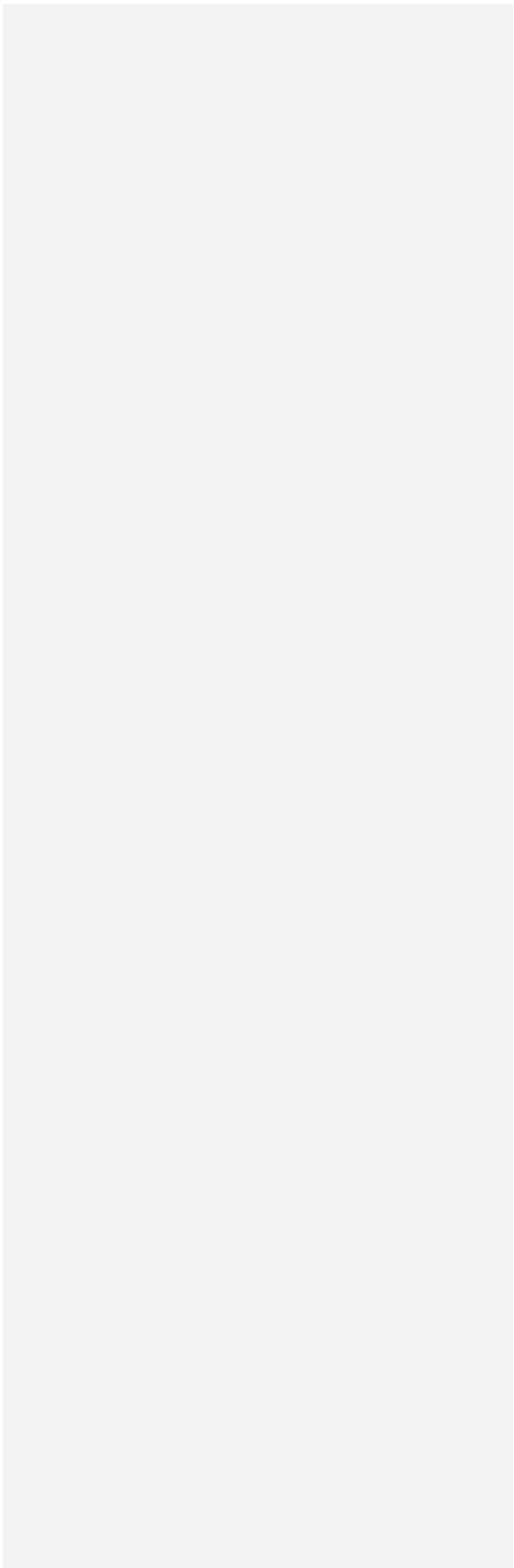
**CITY:**

City of San Luis Obispo, a California charter city and municipal corporation

By: \_\_\_\_\_  
Michael Codron, Community Development Director

**APPROVED AS TO FORM AND LEGAL EFFECT:**

By: \_\_\_\_\_  
Christine Dietrick, City Attorney



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(SEAL ABOVE)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(SEAL ABOVE)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**