

Attachment A

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1715362 CW

Monterey County Recorder
Recorded at the request of
Chicago Title

CRCARMEN
3/17/2000
8:00:00

Recording Requested By
and

When Recorded Return To:

County of Monterey

Environmental Resource Policy

Housing and Redevelopment

29 Bishop Street, Suite 203, Pajaro, CA 95076

Attn. Frank Brunings, Senior Housing Program Analyst

DOCUMENT: **2000017089**



2000017089

Titles: 1/ Pages: 15

Fees.... 50.00

Taxes....

Other....

AMT PAID \$50.00

As applied only to Lot No. 48, Tract No. 1306, this agreement is an addendum to the Agreement between Las Palmas Ranch Company, Inc. and the County of Monterey, recorded November 1st, 1995, Volume 3296 at Page 1466 of the Official Records at the Office of the Recorder, Monterey County as well as its related exhibits that may have updated the original agreement, but were recorded later.

INCLUSIONARY HOUSING AGREEMENT

(Resale Restrictions on Inclusionary Housing Unit and Option to Purchase Real Property)

THIS INCLUSIONARY HOUSING AGREEMENT is entered into at Monterey County, California, as of JAN. 25, 2000, between **KAREN J. SMITHSON, AN UNMARRIED WOMAN** ("Owner"), and the **COUNTY OF MONTEREY**, a political subdivision of the State of California ("County"),

RECITALS:

- A. Owner is the owner of the real property located in the County of Monterey, California, at **19323 ACCLAIM DRIVE, SALINAS, CA 93908, (APN 139-412-006-000)**, within the Final Maps (as defined in the California Subdivision Map Act) for Tract No. 1306 which has been filed of record with the Office of the County Recorder of Monterey County, California known as **LAS PALMAS RANCH SUBDIVISION PHASE II** ("Development") as described in Exhibit "A" attached to this Agreement.
- B. The development of the **LAS PALMAS RANCH SUBDIVISION PHASE II** has resulted in the construction and sale to the public of single-family dwellings.
- C. County has designated the following lot within Development to be "Inclusionary Units" as defined in Subsection 18.40.030M of the COUNTY CODE:

Lot No.

Tract No.

48

1306

Each of the Lots which are Inclusionary Units are hereinafter referred to as a "Unit".

- (g) Notwithstanding the foregoing, if Owner requests a Hardship Waiver in writing from the obligation to seek to sell the Property as described hereinabove, and the County grants said Hardship Waiver, the sixty (60) day period set forth in 3. (a.) (i.) below shall commence upon the County's receipt of the Owner's request for Hardship Waiver. A Hardship Waiver shall include job loss, death in Borrower's immediate family, divorce or other event or circumstance which the County reasonably believes warrants a Hardship Waiver.

2. **Exercise and Administration of Option.**

- (a) County may administer and/or exercise the Option itself.
- (b) County may from time to time designate another entity, person or organization to administer and/or exercise the Option ("Designee").
- (c) County or its Designee may assign the Option to an individual private buyer who meets the eligibility requirements of, and is approved by, County.
- (d) After the exercise of the Option by County, its Designee or any assignee of County or its Designee in the manner prescribed in this Agreement, County or its Designee may assign or reassign the right to purchase the Unit to any substitute individual private buyer who meets the eligibility requirements of, and is approved by County; provided, however, that any such subsequent assignment shall not extend any time limits contained in this Agreement.
- (e) The Option contained in this Agreement shall not apply to the first purchaser owner nor to any subsequent sale to a purchaser owner who meets the eligibility requirements for a low or moderate income buyer under Chapter 18.40 of the Monterey County Code or to the transfer of a Unit by the Owner if the transfer is a permitted transfer described in Paragraph 11 of this Agreement or to the sale of a unit which is subject to a permitted encumbrance as described in Paragraph 12 of this Agreement, pursuant to a foreclosure sale or deed in lieu, or any subsequent transfer of title to the unit following such foreclosure or deed in lieu transfer.

- v) In the event that County abandons, or fails to exercise, or elects not to exercise the Option within sixty (60) days after it actually receives the Notice to Sell or within an additional sixty (60) day marketing period requested by the owner, or in the event that upon the County's exercise of the Option, County fails to consummate Escrow Closing at the end of sixty (60) days from the date of exercise of the Option, Owner may then sell the Unit for a fair market price determined by an appraisal approved by County. In the event an escrow is opened related to the sale of the Unit at fair market price, Owner shall be entitled to be paid that amount up to but not to exceed the net amount that Owner would have received under the formula in Paragraphs 6 and 7 upon the close of escrow plus any transaction costs related to the sale. County will submit to the Escrow Agent a demand for payment for the balance of surplus, if any, in an amount which equals the appraised value minus the amount that owner would have received under the formula in Paragraphs 6 and 7. Upon close of escrow related to the sale of the Unit at fair market price, title to the Unit shall be taken free and clear of the covenants, restrictions and terms of this Agreement and the Option granted to County. County shall deliver a full release of this Agreement to escrow for recordation. The fair market price purchaser of the Unit and any subsequent transferee may thereafter sell the Unit without regard to this Agreement or the Option granted to County.
- (b) **Notice of Default Under Deed of Trust.** Owner covenants to cause to be filed for record in the Office of the Recorder of County, a request for a copy of any notice of default and of any notice of sale under any deed of trust encumbering the Unit. The request shall specify that any such notice shall be mailed to the Housing Coordinator, County of Monterey, Post Office Box 1208, Salinas, California 93902 and to the County Housing Authority of the County of Monterey addressed to 123 Rico St. ,Salinas, CA 93907. County shall have the right but not the obligation to cure any default under any deed of trust encumbering a Unit. In the event Owner encumbers a Unit with a non-purchase money deed of trust or mortgage, an act which is in violation of this Agreement, any notice of sale under the non-purchase money deed of trust or mortgage given pursuant to CIVIL CODE SUBSECTION 2924(f) may, at the election of County, constitute a Notice to Sell pursuant to Paragraph 3(a) and the option to purchase shall take priority over any trustee's sale or foreclosure of a non-purchase money deed of trust. In the event Owner fails to file such request for notice, County's option to purchase shall, at its election, run from the date County obtains actual knowledge of sale or proposed sale. County shall exercise its election as provided in the previous two sentences only after (i) County has reasonably determined that Owner either does not intend to or is not in a financial position to cure the default or defaults under the deed of trust; and (ii) depositing in the United States mail, first class certified, postage prepaid, written notice of its election, addressed to the owner at

- (b) **Payment From Escrow.** At the close of escrow for the sale of the Unit, Owner shall pay through escrow to County or its Designee a resale fee for administration of the resale program in an amount determined by County, which in no event may exceed four percent (4%) of the actual purchase price for the Unit, as computed pursuant to Paragraphs 6 and 7 below, and any prepayment fee charged by the holder of a trust deed encumbering the Unit.

5. **Terms of Purchase.**

- (a) **Cash.** The purchase price shall be paid in cash at the close of escrow, or as otherwise provided by mutual agreement of Owner and County, County's Designee or assignee. Owner acknowledges and agrees that the percentage amount of any deposit required pending close of escrow shall not exceed that customarily required for the purchase of single-family residences in County at the time of the escrow opening. Closing costs shall be allocated between the buyer and seller according to the customary practices in Monterey County. If Inclusionary Owner sells the unit, he or she is required to certify eligibility of potential buyer and obtain certification of physical condition and correction of any deficiencies in property through the County or the County's designee and agree to pay the Monterey County Housing Authority for such services.
- (b) **Assumption of Financing.** Owner agrees to cooperate with County, its Designee or assignee in permitting the purchaser of the Unit purchasing pursuant to the Option, to assume any deed of trust encumbering the Unit, if the purchaser so requests and otherwise is eligible to assume. In the event County purchases a Unit pursuant to the Option and if eligible to do so, takes subject to or assumes an existing deed of trust encumbering the Unit, County shall make the payments on the note secured by the deed of trust and waives any defense to payment based upon the doctrine of sovereign immunity.
- (c) **Conditions to Close of Escrow.** The escrow instructions may provide for conditions or contingencies of the type and nature commonly included within residential purchase escrows (including, but not limited to, financing contingencies, inspection rights and preliminary title report approvals) to the obligation of the purchaser to purchase the Unit from the then Owner, provided that any such conditions or contingencies (other than the status of title to the Unit at the time of conveyance and other conditions which by their nature cannot be satisfied prior to closing) must be satisfied or waived on or before sixty (60) days following receipt by Owner of the Notice of Acceptance.

- (ii) Decreased by the amount necessary to repair any damages and to put the Unit into salable condition as reasonably determined by County, including, but not limited to, cleaning, painting, cleaning or replacing worn carpeting and draperies, and making needed structural, mechanical, electrical, plumbing and fixed appliances repairs. County shall provide Owner with a schedule describing "salable condition" upon purchase of the Unit by Owner and again upon receipt from Owner of the Notice to Sell. In the event Owner disputes the amount determined by County Housing Coordinator to be necessary to repair damage to put the Unit in salable condition, Owner shall have the right to obtain an independent estimate of the amount. County shall reconsider its determination taking into consideration the estimate obtained by Owner. However, the reconsidered determination by County shall be binding upon Owner.
 - (b) In the event that Owner sells the Unit after a default under a deed of trust, but prior to a trustee's sale or foreclosure sale, Owner shall pay all expenses actually incurred by the beneficiary under the deed of trust incurred due to Owner's default, including, but not limited to, trustee's fees, attorney's fees, costs of sale and debt service on the debt secured by the deed of trust.
8. **Limits on Liability.** Neither County nor its Designee shall become liable to Owner or become obligated in any manner to owner by reason of its assignment of the Option, nor shall County be in any way obligated or liable to owner for any failure of any designee to consummate a purchase of the Unit or to comply with the terms of any agreement or escrow for the sale of the Unit. Only the purchaser executing a purchase agreement or escrow instructions shall be liable to owner pursuant to the terms of any such agreement of escrow.
9. **Indemnification.** Nothing in this Agreement shall be construed by County, by Owner or by any Third Party to create the relationship of principal and agent, or of partnership, joint venture or association with one another. Owner agrees to indemnify, defend, and hold harmless the County, its officers, agents, and employees from any and all claims, demands, liability, costs, and expenses of whatever nature, including but not limited to, court costs, damages and counsel fees accruing or resulting to any and all contractors, subcontractors, material providers, laborers, and any other person, firm, or corporation furnishing or supplying work in connection with this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by Owner in the performance of this Agreement.

The covenants made by, restrictions imposed upon, and Option granted by this Agreement shall continue to encumber and run with the title to the Unit following a transfer permitted by this Paragraph 11. Owner shall notify County in writing at least fifteen (15) working days before a transfer of the Unit and the transferee must, in writing, assume the obligations and duties and agree to be bound by the restrictions of this Agreement.

12. **Permitted Encumbrances.** This Agreement and the Option granted to County shall not prohibit Owner from encumbering the Unit for the purpose of securing financing for purposes of purchasing the Unit or securing financing to refinance the original purchase price of the Unit, and shall not supersede or in any way reduce the security or affect the validity of any purchase money deed of trust or mortgage. If a Unit is acquired at a foreclosure sale under any purchase money deed of trust or mortgage encumbering the Unit, or by deed in lieu of foreclosure sale, title to the Unit shall be taken free and clear of the covenants, restrictions and terms of this Agreement and the Option granted to County and the purchase money trust deed holder and any subsequent transferee may sell the Unit without regard to this Agreement or the Option granted to County. Owner shall not encumber a Unit with a deed of trust which is not a purchase money deed of trust as defined by California law.
13. **Duration of Option.** The Option and the provisions set forth in this Agreement shall terminate and become void automatically as to the Unit thirty (30) years following the later to occur of (a) any sale of the Unit or any transfer of the Unit permitted pursuant to Paragraph 11(b) or 11(c), or (b) the date of recordation of this Agreement. Except as provided by the terms herein, the provisions set forth in this Agreement shall constitute covenants which shall run with the Unit, shall further and independently constitute an Option encumbering each Unit and shall be binding upon Owner, Owner's heirs, executors, administrators, successors, transferees and assignees, and all parties having or acquiring any right, title or interest in or to any part of a Unit. As long as the Option has not terminated as to a Unit, any attempt to transfer title to any interest in the Unit in violation of this Agreement shall be voidable at the election of County.
14. **Insurance Proceeds.** Notwithstanding the provisions of Paragraph 13, in the event that the Unit is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the improvements on the Unit or, in the event of condemnation, if proceeds thereof are distributed to Owner, any surplus of proceeds so distributed remaining after payment of encumbrances of the Unit shall be distributed as follows: that portion of the surplus up to but not exceeding the net amount that Owner would have received under the formula set forth in Paragraphs 6 and 7 above had County exercised the Option on the date of the destruction or condemnation valuation date, shall be distributed to Owner, the balance of such surplus, if any, shall be distributed to County. County shall be named as an additional insured on the fire and casualty insurance policy issued to the Owner insuring loss to the Unit.

- (e) **Amendment.** The parties agree that this instrument contains all of the provisions of the Agreement between the parties hereto. No alteration or variation of the terms of this Agreement shall be valid unless made in writing in the form of an amendment and signed by the parties hereto. No oral understanding or Agreement not incorporated herein shall be binding on any of the parties hereto.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the date first set forth above.

OWNERS:

By Karen J. Smithson
Karen J. Smithson

COUNTY OF MONTEREY:

By James J. Colangelo
James J. Colangelo
Assistant County Administrative Officer

Approved as to form:
Adrienne M. Grover
Acting County Counsel

By: Adrienne M. Grover
Deputy County Counsel

LEGAL DESCRIPTION EXHIBIT

PARCEL I:

Lot 48 as shown on the Map of "Tract No. 1306, Las Palmas Ranch Phase II, Unit VIII", filed for record October 27, 1998, in Volume 20, Cities and Towns, at Page 6, Monterey County Records. Amended by a Supplemental Information recorded October 27, 1998, Series No. 9874236, Official Records.

EXCEPTING THEREFROM any and all water, but without the right of entry or to make any withdrawal of water which will result in damage to any building or structure, as granted in the deed to California Water Service Company, recorded October 29, 1998, Series No. 9875141, Official Records.

PARCEL II:

A non-exclusive easement on, over, under and across the "Master Common Area" as defined in the Master Declaration of Covenants, Conditions and Restrictions for Las Palmas Ranch No. 2, recorded September 26, 1995 in Reel 3279, Page 1412, Official Records of Monterey County, California, as amended and restated by document recorded December 27, 1995, in Reel 3316, Page 1339, Official Records of Monterey County, California ("Master Declaration"), for the purposes described in the Master Declaration and subject to the terms, provisions and reservations of the Master Declaration. This Easement is appurtenant to Parcel I above and shall become effective as to each Lot within the Master Common Area upon the later to occur of (i) the recordation of this Deed or (ii) the conveyance of record of the lot within the Master Common Area to the Master Association.

PARCEL III:

A non-exclusive easement, on, over, under and across the "Common Area" as defined in the Declaration of Covenants, Conditions and Restrictions for Acclaim at Las Palmas Ranch, recorded March 23, 1999, Series No. 9922400, Official Records of Monterey County, California (Acclaim Declaration), for the purposes described in the Acclaim Declaration and subject to the terms, provisions and reservations of the Acclaim Declaration. This Easement is appurtenant to Parcel I above and shall become effective as to each Lot within the Common Area upon the later to occur of (i) the recordation of this Deed or (ii) the conveyance of record of the Lot within the Common Area to the Association.

APN: 139-412-006

END OF DOCUMENT