

RECORDED AT THE REQUEST OF:

City of Scotts Valley

WHEN RECORDED MAIL TO:

City of Scotts Valley – Planning Dept.

One Civic Center Drive

Scotts Valley, CA 95066

NOTE: Restrictions and restricted resale price & procedures

(Space above this line for recorder's use only)

Exempt from Recording Fees per GC 27383

**Covenants, Restrictions, and Option to Purchase
for "The Encore at Scotts Valley"**

**COVENANTS, RESTRICTIONS
AND OPTION TO PURCHASE**

Owner: The Encore at 4104 LLC
Residences: Lot 206 (Low-Income) and Lot 304 (Low-Income)
in the "The Encore at Scotts Valley" condominium
subdivision, Tract Map No. 1616
APNs: 022-732-49

These Covenants, Restrictions and Option to Purchase ("Covenants") are entered into as of this ____ day of ____, 2024 by and between the City of Scotts Valley, a public body corporate and politic (the "City") and Apple Homes Development, (the "Owner").

RECITALS

A. The City desires to stimulate the development of new "for sale" residences for low income households.

B. The Project as approved by the City Council and constructed by the Developer will consist of two (2) condominium units to be sold to Eligible Persons or Households with an income not exceeding eighty percent (80%) of the Area Median Income for Santa Cruz County (Low-Income, as defined in Section 1 hereafter. Both units will contain two (2) bedrooms.

C. The Project will be financed by The Encore at 4104 LLC.

D. The City wishes to establish resale controls to provide for the continued availability of the Residences to low income households.

E. The purpose of this Agreement is to place resale controls on the Residences, provide eligibility requirements for subsequent purchasers, and reserve to the City an option to purchase the Residences.

NOW, THEREFORE, in consideration of the benefits received by the Owner and the City, they agree, as follows:

1. DEFINITIONS

The following terms are specially defined for these Covenants and their definitions can be found in the sections indicated below:

A. **"City"** - The City of Scotts Valley.

- B. **"Covenants"** - The Covenants, Restrictions and Option to Purchase provisions set out in this document.
- C. **"Eligible Person or Household"** - A low-income person or household making a gross income (as calculated in accordance with 25 California Code of Regulations ["CCR"] section 6914) no greater than eighty percent (80%) for the unit designated as low-income, and no greater than one-hundred and twenty percent (120%) for the unit designated as moderate-income, of the Average Median Income for Santa Cruz County (as established in 25 CCR §6932).
- D. **"Fair Market Value"** - See Section 8.
- E. **"Household Income"**- Includes, but is not limited to, all income from wages, tips, self-employment, child support, social security, disability payments, worker's compensation, retirement benefits, AFDC, veterans benefits, rental property, stock dividends, income from bank accounts, alimony, financial aid, military pay and all other sources. Income from assets shall be calculated using the greater of: 1) actual income as verified through third-party verification sources: or 2) imputed income from assets using the following formula:
- (Total assets - Verified cash requirement from borrower necessary to close) multiplied by (current passbook savings rate)
- The current passbook savings rate to be used is that published periodically by the Department of Housing and Urban Development, or the average derived by using rates quoted by three local financial institutions as chosen by the purchaser. Income from all household members shall be included. For the purpose of determining income eligibility, all income sources shall be verified through third-party verifications.
- F. **"Low-Income"**- A gross annual income that does not exceed 80% of area median income in accordance with 25 California Code of Regulations ["CCR"] Section 6932.
- G. **"Maximum Allowable Sales Price"**- the maximum price for which the affordable residence may be sold after the initial sale by the developer.
- H. **"Median-Income"** - A gross annual income that does not exceed 100% of area median income in accordance with 25 California Code of Regulations ["CCR"] Section 6932.

- J. **"Option"** - See Section 7.
- K. **"Option Sales Price"** - See Section 8.
- L. **"Owner"** - See introductory sentence of the Covenants on page 1.
- M. **"Preference Criteria"** means the criteria to be met by Households in the rank order listed and defined as follows:
 - 1. **Live and work in Scotts Valley:** An eligible person or household which includes at least one adult whose primary work location is in the city limits of the City of Scotts Valley and who has been working in Scotts Valley for a minimum of six (6) months, and the household has resided in the City of Scotts Valley for a minimum of six (6) months prior to the date of application to purchase the unit.
 - 2. **Live in Scotts Valley:** An eligible person or household who has resided in the city limits of the City of Scotts Valley for a minimum of six (6) months prior to the date of application to purchase the unit.
 - 3. **Work in Scotts Valley:** An eligible person or household which includes at least one (1) adult who has worked in the city limits of the City of Scotts Valley for a minimum of one (1) year prior to the application to purchase the unit and at least one (1) adult shall be working in Scotts Valley at the time of occupancy of the unit.
 - 4. **Live and work in Santa Cruz County:** An eligible person or household who contains at least one (1) adult who works within the County of Santa Cruz and the household has resided in the County of Santa Cruz for a minimum of one (1) year prior to the date of application to purchase the unit.
 - 5. **Live in Santa Cruz County:** An eligible person or household which has resided in the County of Santa Cruz for a minimum of six (6) months prior to the date of application to purchase the unit.
 - 6. **Work in Santa Cruz County:** An eligible person or household which includes at least one (1) adult who has worked in the County of Santa Cruz for a minimum of one (1) year prior to the date of application to purchase the unit and at least one (1) adult shall be working in the County of Santa Cruz at the time of occupancy of the unit.
 - 7. **All Others:** An eligible person or household who does not meet any of the above listed Preference Criteria.

- O. **"Residence"** - See Section 2.
- P. **"Salable Condition"** - See Section 8B.
- Q. **"Term of Restrictions"** - See Section 11.
- R. **"Transfer"** - See Section 5.

2. DESCRIPTION OF PROPERTY

These Covenants concern the property and improvements located in the City of Scotts Valley, County of Santa Cruz, State of California, as more fully described in Attachment "A" attached hereto and incorporated herein ("Residence"). Such residences include a total of two (2) restricted affordable housing units, two (2) Low-Income units.

3. OWNER CERTIFICATIONS

The Owner certifies that (a) the financial and other information previously provided by Owner to qualify to purchase the Residence is true and correct as of the date of execution of the Covenants first written above, (b) the Owner is a first time home-buyer and (c) the Owner shall occupy the Residence as the Owner's principal place of residence. The Owner shall be considered to be occupying the Residence if the Owner is living in the unit for at least ten (10) months out of each calendar year. The City, in its sole discretion, may grant in writing a temporary waiver of this occupancy requirement for good cause. The City, in its sole discretion, may grant in writing a temporary waiver of this occupancy requirement for good cause. City may, from time to time, request verification of occupancy by Owner to ensure compliance with this Agreement.

The City or its designee may assess a fee for services for conducting income eligibility determinations for potential purchasers. Such a fee will be established from time to time as necessary by the City or its designee. The payment of the fee shall be the responsibility of the Owner making the sale.

4. TEMPORARY RENTAL OF RESIDENCE

The Owner shall not rent the Residence for more than two (2) months without the prior written consent of the City during any twelve (12) month period and shall not rent the Residence without providing the City with a copy of any agreement related thereto. Written consent of City for the rental of a unit may be subject to terms and conditions to ensure that the unit is occupied by an Eligible Person or Household which meets the highest Preference Criteria feasible. The rental of the unit shall be subject to the standard income verification procedures of City and fees for such certification shall be paid by Owner. Any rental of the Residence in violation of these Covenants is prohibited. City reserves the right to validate the provisions of any rental agreement from time to time as may be necessary.

5. SALE RESTRICTIONS

Any transfer of the Residence shall be subject to the provisions of these Covenants. "Transfer" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a rental or leasehold interest of more than two (2) months in any twelve (12) month period without the City's prior written consent pursuant to Section 4 above, or an interest evidenced by a land contract by which possession of the Residence is transferred and Owner retains title. Any Transfer without satisfaction of the provisions of these Covenants is prohibited. Transfers by gift, devise, or inheritance to an existing spouse, surviving joint tenant, or a spouse as part of the dissolution proceeding, or in connection with marriage shall not be considered a transfer for the purposes of these Covenants; provided, however, the provisions of these Covenants shall remain in effect and shall apply to any subsequent Transfer.

6. NOTICE OF INTENDED TRANSFER

In the event the Owner intends to Transfer or vacate the Residence, the Owner shall promptly notify the City in writing by delivering a "Notice of Intent to Transfer" in the form attached hereto as Attachment "B", Form 1.

In the event the City determines to purchase the Residence, the provisions of Section 7 shall apply.

In the event the City refuses to exercise its option to purchase the Residence and Owner is therefore required to locate an Eligible Person or Household (the "Proposed Transferee"), the Owner shall have ninety (90) days from the date the City receives the Notice of Intent to Transfer within which to qualify the purchaser and conclude the Transfer. The following process shall be followed:

- A. **Notice to City:** Owner shall send to the City (or its successor) at One Civic Center Drive, Scotts Valley, CA 95066 the form attached hereto as Attachment B, Form 2, fully completed and executed by Owner and the Proposed Transferee (the "Approval Request").
- B. **Qualification of Proposed Transferee:** The Proposed Transferee shall provide the City with sufficient information in the form required by the City for the City to determine if the Proposed Transferee meets the following requirements:
 1. The Proposed Transferee shall certify its intent to occupy the Residence as the Proposed Transferee's principal residence.
 2. The Proposed Transferee shall be an Eligible Person or Household in the same Low-Income income bracket as the Owner.
- C. **Qualification of Transaction:** For the Transfer to qualify as an approved Transfer, the transaction shall meet the requirements of the Option Sales

Price (see Section 8).

- D. **Certificates from Parties:** The Owner and Proposed Transferee each shall certify in writing, in a form acceptable to the City, that the Transfer shall be closed in accordance with, and only with, the terms of the sales contract and other documents submitted to and approved by the City and that all consideration delivered by the Proposed Transferee to Owner has been fully disclosed to the City. The written certificate shall also include a provision that in the event a Transfer is made in violation of the terms of the Covenants or false or misleading statements are made in any documents or certificate submitted to the City for its approval of the Transfer, the City shall have the right to file an action at law or in equity to make the parties terminate and/or rescind the sale contract and/or declare the sale void notwithstanding the fact that the Transfer may have closed and become final. In any such event, any costs, liabilities or obligations incurred by the Owner/seller and his/her transferee for the return of any monies paid or received in violation of the Covenants or for any costs and legal expenses, shall be borne by the Owner/seller and/or his/her transferee and the Owner/Seller shall hold the City and its designees harmless and reimburse their expenses, legal fees and costs for any action they take in enforcing the terms of the Covenants.
- E. **Assumption Agreement:** The Proposed Transferee shall execute a recordable assumption agreement in the form attached hereto as Attachment B, Form 3 (the "Assumption Agreement"). The recordation of the Assumption Agreement shall be a condition of the City's approval of the proposed Transfer; provided the Covenants shall be binding on the Residence throughout the Term of Restrictions even if no Assumption Agreement is executed or recorded.
- F. **Written Consent of City Required Before Transfer:** The Residence, and any interest therein, shall not be Transferred except with the express written consent of the City, which consent shall be given only if the Transfer is consistent with the City's goal of creating, preserving, maintaining and protecting housing in Scotts Valley for Eligible Person and Households and shall be in accordance with the provisions of this Section 6.
- G. **Delivery of Documents:** Upon the close of the proposed Transfer, the Owner and Proposed Transferee shall provide the City with a certified copy of the recorded Assumption Agreement, a copy of the final sales contract, settlement statement, escrow instructions, and any other document which the City may request.
- H. **Assistance by City:** The City shall be available, at the Owner's request, to assist the Owner during the process outlined in sections 6(a)-(g) above. Specifically and without limitation, the City shall assist the Owner in identifying a Proposed Transferee, determining whether the Proposed

Transferee is an Eligible Person or Household and in calculating the Option Sales Price for the Proposed Transferee. The City shall have the right to designate a third party to provide such assistance to the Owner. If such a third party is designated by the City, that third party shall have the right to charge a reasonable fee for the assistance provided to the Owner, which shall be payable by Owner.

All deeds made relative to any Residence shall contain or be subject to substantially the following non-discrimination and non-segregation clause:

Deeds. In Deeds: "The Grantee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or handicap in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Grantee/Lessee or any person claiming under or through Grant/Lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

The failure of any deed to contain this provision shall not affect the validity of the deed or lease.

7. CITY PURCHASE OPTION

The Owner agrees that the City shall have the right of first refusal to purchase the Residence for an amount equal to the lesser of the Fair Market Value of the Residence or the Option Sales Price as calculated in the manner set forth in Section 8 ("Option"). If the City decides to exercise its Option to purchase the Residence, it shall within thirty (30) days after receipt of the notice specified in Section 6 above, notify the Owner in accordance with Section 16 of these Covenants that it chooses to exercise the Option. If the City exercises the Option to purchase, it shall purchase the Residence within ninety (90) days after the date it receives the notice of intended transfer specified in Section 6 above for an amount equal to the Fair Market Value or the Option Sales Price calculated on the manner set forth in Section 8, whichever is lower.

The City may, instead of purchasing the Residence itself, assign its right to purchase the Residence to a person who meets criteria established by the City, or to another governmental City or nonprofit organization which is devoted to developing or operating housing for low income persons. In the event this City does not exercise its option to purchase pursuant to this section, the Owner may sell the Residence to a purchaser of the Owner's choosing at a price no less than the Option Sales Price calculated in the manner set forth in Section 8. Any such sale shall be subject to these Covenants and conditioned upon the purchaser executing an agreement to assume the obligations and duties under these Covenants and approval by the City.

OWNER UNDERSTANDS THAT THE DETERMINATION OF THE SALES PRICE PURSUANT TO SECTION 8 OR SECTION 9, AS THE CASE MAY BE, CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION FACTORS THAT CANNOT BE ACCURATELY PREDICTED AND THAT THE SALES PRICE PERMITTED HEREUNDER MAY NOT INCREASE OR DECREASE IN THE SAME MANNER OR PROPORTION AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THE COVENANTS. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALES PRICE, THE PRIMARY OBJECTIVE OF THE CITY AND THE COVENANTS IS TO PROVIDE HOUSING TO ELIGIBLE PERSON OR HOUSEHOLDS AT AFFORDABLE HOUSING COST. THE SALES PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES WHICH HAVE NO RESTRICTION.

[Initialed by Owner(s)]

8. DETERMINATION OF OPTION SALES PRICE

The maximum sales price (the "Option Sales Price") that the Owner shall receive for Transfer of the Residence shall be the Increased Base Price, as adjusted by Section 8B.

- A. **Initial Base Price Calculation:** The Initial Base Price of the Residence shall be calculated as in the example provided below. The final calculation shall be based actual interest rates, income limits, etc. in effect at the time the units are sold.

Example only; actual maximum initial sales price is calculated later

1.	Determine number of bedrooms	2
2.	Add one (1) to the number of bedrooms to get the appropriate household size.	3
3.	Determine appropriate income limit for the calculation (<i>80% of median income for low income unit</i>)	<i>\$132,100</i>
4.	Determine the income limit for the household size established in Line 2.	<i>\$118,900</i>
5.	Divide line 4 by 12 to determine the gross monthly income limit.	<i>\$9,908.00</i>
6.	Multiply Line 5 by .3 to determine the maximum monthly housing allowance (<i>assumes that the purchaser will pay a total of 30% of their monthly gross income for housing costs</i>).	<i>\$2,972.50</i>

7.	Multiply Line 6 by .8 to determine the monthly housing allowance for principal and interest (<i>the other 20% is assumed to cover the costs of homeowners insurance, private mortgage insurance and property taxes</i>).	\$2,378.00
8.	Multiply projected homeowners association dues by .7 (<i>30% of homeowners association dues are assumed to pay for common area costs, such as club-house or swimming pool maintenance. 70% of the dues are included in the monthly housing allowance</i>).	\$628.50 x .7 = \$439.95
9.	Subtract Line 8 from Line 7	\$1,938.05
10.	Annual interest rate (<i>30-year fixed rate to be established by averaging the rates quoted by three (3) local financial institutions as chosen by the Seller</i>).	3.50%
11.	Principal amount of fully amortized fixed-rate thirty (30) year loan with the interest rate indicated in Line 10 and the monthly payments indicated in Line 9.	\$431, 594.02
12.	Divide Line 11 by .9 to determine the Initial Base Price (<i>assumes a 10% down payment</i>).	\$479,548.98

- B. **Maximum Allowable Sales Price:** The maximum sales price that the Owner shall receive for Transfer of the Residence shall be the current base price as determined in Section 8A above, or the most recent sales price plus closing costs incurred by the current owner.
- C. **Adjusted Increased Base Price:** The Increased Base Price shall also be increased by the value of any substantial structural or permanent fixed improvements which cannot be removed without substantial damage to the Residence or substantial or total loss of value of said improvements. No such adjustment shall be made except for improvements: (i) made or installed by or under the direction of the Owner; (ii) approved in advance by the City or its designee in writing; and (iii) whose initial costs were Two Thousand Dollars (\$2,000) or more. The value of such improvements by which the Option Sales Price shall be adjusted and shall be the appraised market value of the improvements when considered as additions or fixtures to the Residence (i.e., the amount by which said improvements enhance the market value of the Residence at the time of sale), which means that the adjustment to the Increased Base Price for such improvements shall be limited to an increase in value, not the cost of the improvements to the Residence. The Increased Base Price shall be decreased by an amount necessary to repair any damages and to put the Residence into a "salable condition." Items necessary to put a Residence into salable condition shall be determined by the City, and may include cleaning, painting and making needed structural, mechanical, electrical,

plumbing and fixed appliance repairs and other deferred maintenance repairs.

9. FAIR MARKET VALUE

If it is necessary to determine the Fair Market Value of the Residence or improvements to the Residence, it shall be determined by an appraisal prepared by an independent residential appraiser selected by the Owner from a list of appraisers provided by the City. Each appraiser on the City's list shall have been previously approved by the Federal National Mortgage Association or the Federal Housing Administration and placed on their list of approved single-family residential housing appraisers. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three-month period. The cost of the appraisal shall be shared equally by the City and the Owner. In the event that the Owner has made capital improvements to the Residence which have improved the value of the Residence or if damage or deferred maintenance has occurred while the Owner owned the Residence which has decreased the value of the Residence, the appraisal shall specifically ascribe a value to these adjustment factors and state what the Fair Market Value of the Residence would be without such adjustments. Nothing in this section shall preclude the Owner and the City from establishing the Fair Market Value of the Residence or improvements to the Residence by mutual agreement in lieu of an appraisal pursuant to this section.

10. DEFAULTS AND REMEDIES

Upon a violation of any of the provisions of these Covenants or of any provision of a document related to the purchase of the Residence by the Owner or the discovery of any misrepresentation by the Owner in connection with the purchase of the Residence, the City may give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within a reasonable period of time, not longer than thirty (30) days after the date the notice is delivered, or within such further time as the City determines is necessary to correct the violation, the City may declare a default under these Covenants.

Upon the declaration of a default, the City may apply to a court of competent jurisdiction for specific performance of these Covenants, for an injunction prohibiting a proposed Transfer in violation of these Covenants, for a declaration that a Transfer in violation of these Covenants is void, or for any other such relief at law or in equity as may be appropriate.

11. TERM BINDING ON SUCCESSOR AND ASSIGNS

These Covenants shall bind, and the benefit shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the City and its successors, until the earlier of (a) forty-five (45) years after execution of these Covenants ("Term of Restrictions"), or (b) the date the Contribution is paid to the Owner by the City. Upon sale/transfer of the initial dwelling unit which is covered by affordability covenant the developer will transfer its full responsibility of the affordable housing obligation to the new property owner. Upon each new approved Transferee (owner of the obligated affordable housing unit) shall become the new ownership of the affordability covenant for the term of the covenant from the original date of covenant recordation and obligation.

12. SUPERIORITY OF AGREEMENT

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions of these Covenants hereof, and that, in any event, these Covenants are controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

13. RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUSTS

Notwithstanding any other provision hereof, the provisions of these Covenants shall be subordinate to the lien of the first deed of trust and shall not impair their rights or such lenders' assignees or successors in interest, to exercise their remedies in the event of default under their deed of trust by Borrower. Such remedies under the first deed of trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, these Covenants shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, if the holder of such deed of trust acquired title to the Property pursuant to a deed or assignment in lieu of foreclosure, these Covenants shall automatically terminate upon such acquisition of title, only after (a) the City has been given written notice of default under such Deed of Trust; and (b) the City shall not have cured or commenced to cure the default within such sixty (60) day period and given its firm commitment to complete the cure in form and substance acceptable to Coast Commercial Bank, as applicable.

14. MAINTENANCE OF INSURANCE

Owner shall maintain at all time during the Term of Restrictions a policy of home owners insurance with a responsible insurance carrier insuring fire and extended coverage protecting the Residence for an amount of no less than the replacement value of the improvements constructed on the property and naming the City as an additional insured. Owner shall provide the City with proof of insurance.

15. RESTRICTIONS ON CONDEMNATION, INSURANCE AND FORECLOSURE PROCEEDS

In the event (i) of a judicial foreclosure, a trustee's deed upon a non-judicial foreclosure, a deed in lieu of foreclosure or any other involuntary Transfer to the holder of a secured interest in the Residence, (collectively, "Foreclosure"), (ii) the Residence is destroyed and insurance proceeds are to be distributed to Owner instead of being used to rebuild the Residence, or (iii) of a condemnation or Transfer in lieu of condemnation, if the proceeds thereof are to be distributed to the Owner, to the extent that the proceeds of any event described above exceed the proceeds that otherwise would be payable to Owner in the event the City exercised the City Purchase Option to acquire the Residence on the date of the relevant event pursuant to the provisions of section 8 above, ("Excess Proceeds"), all Excess Proceeds shall be paid to the City when available to Owner to place in the City's low/moderate housing fund.

16. INVALID PROVISIONS

If any one or more the provisions contained in these Covenants 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 these Covenants, and these Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

17. CONTROLLING LAW

The terms of these Covenants shall be interpreted under the laws of the State of California.

18. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as of the date received or the date delivery was refused as indicated on the return receipt as follows:

To the Owner: The Encore at 4104 LLC
 Attn: Chris Perri
 15 Sherman Court
 Scotts Valley, California 95066

To the City: City of Scotts Valley
 Attn: City Manager
 One Civic Center Drive
 Scotts Valley, California 95066

The parties may subsequently change addresses by providing written notice of the change in address to the other party in accordance with this Section 16.

19. INTERPRETATION OF AGREEMENT

The terms of these Covenants shall be interpreted so as to avoid speculation on the Residence and to insure to the extent possible that its sales price and mortgage payment remain affordable to low income persons and households.

20. COVENANTS RUN WITH THE LAND

Owner hereby declares its express intent that the Covenants shall be deemed covenants running with the land and shall pass to and be binding upon all parties having any interest in the Residence throughout the Term of Restrictions. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Residence or any interest therein, as the case may be (a "Contract") shall conclusively be held to have been executed, delivered and accepted subject to the Covenants regardless of whether the other party or parties to such Contract have actual knowledge of the Covenants.

The Owner and the City hereby declare their understanding and intent that (i) the Covenants shall be construed as covenants running with the land pursuant to California Civil Code section 1468 and not as conditions which might result in forfeiture of title by Owner; (ii) the burden of the covenants and restrictions set forth in the Covenants touch and concern the Residence in that the Owner's legal interest in the Residence and all improvements thereon may be rendered less valuable thereby; and (iii) the benefit of the covenants and restrictions set forth in the Covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Residence by Eligible Person or Households of very low, low and moderate income, the intended beneficiaries of the Covenants.

All covenants and restrictions contained herein, without regard to technical classification or designation, shall be binding upon Owner for the benefit of the City and the Covenants shall run in favor of such parties for the entire Term of Restrictions during which the Covenants shall be in force and effect, without regard to whether the City is an owner of the land or interest therein to which the Covenants relate.

21. COSTS AND ATTORNEY'S FEES

The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

22. ATTACHMENTS

Any attachments referred to in these Covenants are incorporated in these Covenants by such reference.

IN WITNESS WHEREOF, the parties have executed these Covenants on or as of the date first written above.

CITY:
CITY OF SCOTTS VALLEY

OWNER:
The Encore at 4104 LLC

Mali LaGoe, City Manager

Signature

Printed Name

[NOTE: Signatures must be notarized.]

ATTACHMENT "A"
LEGAL DESCRIPTION
for the
Covenants, Restrictions, and Option to Purchase for
"The Encore at Scotts Valley"

Legal Description

Real property in the City of Scotts Valley, County of Santa Cruz, State of California, described as follows:

PARCEL I:

CONDOMINIUM UNIT NO. 206 AS SHOWN UPON THE CONDOMINIUM PLAN RECORDED ON DECEMBER 1, 2023, DOCUMENT NO. 2023-0023065, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE PLAN") BEING A SUBDIVISION OF THE LAND AS SHOWN ON THAT CERTAIN MAP FILED IN BOOK 135 OF TRACT MAPS AT PAGE 13, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE MAP"), AND AS FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED ON OCTOBER 31, 2023, DOCUMENT NO. 2023-0021000, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE DECLARATION").

EXCEPTING THEREFROM, ANY PORTION OF THE COMMON AREA LYING WITHIN SAID UNIT.

RESERVING THEREFROM:

(A) EASEMENTS THROUGH SAID UNIT, APPURTENANT TO THE COMMON AREA AND ALL OTHER UNITS, FOR SUPPORT AND REPAIR OF THE COMMON AREA AND ALL OTHER UNITS.

(B) EASEMENTS, APPURTENANT TO THE COMMON AREA FOR ENCROACHMENT UPON THE AIR SPACE OF THE UNIT BY THOSE PORTIONS OF THE COMMON AREA LOCATED WITHIN THE UNIT.

PARCEL II:

AN UNDIVIDED INTEREST IN AND TO THE COMMON AREA AS SHOWN AND DEFINED ON THE PLAN, RESERVING THEREFROM THE FOLLOWING:

(A) EXCLUSIVE EASEMENTS, OTHER THAN PARCEL III, AS DESIGNATED ON THE PLAN AND RESERVED BY GRANTOR TO UNITS FOR USE AS DESIGNATED IN THE DECLARATION; AND

(B) NONEXCLUSIVE EASEMENTS APPURTENANT TO ALL UNITS FOR INGRESS AND EGRESS, SUPPORT, REPAIR AND MAINTENANCE.

PARCEL III:

(A) THE EXCLUSIVE EASEMENT TO USE THE PATIO AREA(S) DESIGNATED P201 ON THE PLAN.

(B) THE EXCLUSIVE EASEMENT TO USE THE STORAGE AREA(S) DESIGNATED S201 ON THE PLAN

(C) THE EXCLUSIVE EASEMENT TO USE THE PARKING SPACE AREA(S) DESIGNATED PS201 ON THE PLAN

PARCEL IV:

A NONEXCLUSIVE EASEMENT APPURTENANT TO PARCEL I ABOVE FOR SUPPORT, REPAIR AND MAINTENANCE, AND FOR INGRESS AND EGRESS THROUGH THE COMMON AREA IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTION 4505 (A).

PARCEL V:

ENCROACHMENT EASEMENTS APPURTENANT TO THE UNIT IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

APN: 022-732-49 **(portion) New assessor parcel number have not been assessed yet**

Legal Description

Real property in the City of Scotts Valley, County of Santa Cruz, State of California, described as follows:

PARCEL I:

CONDOMINIUM UNIT NO. 304 AS SHOWN UPON THE CONDOMINIUM PLAN RECORDED ON DECEMBER 1, 2023, DOCUMENT NO. 2023-0023065, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE PLAN") BEING A SUBDIVISION OF THE LAND AS SHOWN ON THAT CERTAIN MAP FILED IN BOOK 135 OF TRACT MAPS AT PAGE 13, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE MAP"), AND AS FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED ON OCTOBER 31, 2023, DOCUMENT NO. 2023-0021000, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE DECLARATION").

EXCEPTING THEREFROM, ANY PORTION OF THE COMMON AREA LYING WITHIN SAID UNIT.

RESERVING THEREFROM:

(A) EASEMENTS THROUGH SAID UNIT, APPURTENANT TO THE COMMON AREA AND ALL OTHER UNITS, FOR SUPPORT AND REPAIR OF THE COMMON AREA AND ALL OTHER UNITS.

(B) EASEMENTS, APPURTENANT TO THE COMMON AREA FOR ENCROACHMENT UPON THE AIR SPACE OF THE UNIT BY THOSE PORTIONS OF THE COMMON AREA LOCATED WITHIN THE UNIT.

PARCEL II:

AN UNDIVIDED INTEREST IN AND TO THE COMMON AREA AS SHOWN AND DEFINED ON THE PLAN, RESERVING THEREFROM THE FOLLOWING:

(A) EXCLUSIVE EASEMENTS, OTHER THAN PARCEL III, AS DESIGNATED ON THE PLAN AND RESERVED BY GRANTOR TO UNITS FOR USE AS DESIGNATED IN THE DECLARATION; AND

(B) NONEXCLUSIVE EASEMENTS APPURTENANT TO ALL UNITS FOR INGRESS AND EGRESS, SUPPORT, REPAIR AND MAINTENANCE.

PARCEL III:

(A) THE EXCLUSIVE EASEMENT TO USE THE PATIO AREA(S) DESIGNATED P201 ON THE PLAN.

(B) THE EXCLUSIVE EASEMENT TO USE THE STORAGE AREA(S) DESIGNATED S201 ON THE PLAN

(C) THE EXCLUSIVE EASEMENT TO USE THE PARKING SPACE AREA(S) DESIGNATED PS201 ON THE PLAN

PARCEL IV:

A NONEXCLUSIVE EASEMENT APPURTENANT TO PARCEL I ABOVE FOR SUPPORT, REPAIR AND MAINTENANCE, AND FOR INGRESS AND EGRESS THROUGH THE COMMON AREA IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTION 4505 (A).

PARCEL V:

ENCROACHMENT EASEMENTS APPURTENANT TO THE UNIT IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

APN: 022-732-49 **(portion) New assessor parcel number have not been assessed yet**

ATTACHMENT "B"
FORM 1
NOTICE OF INTENT TO TRANSFER

From: _____
("Owner")

To: City of Scotts Valley
One Civic Center Drive
Scotts Valley, CA 95066

Re: _____
(Street Address)
Scotts Valley, California (the "Residence")

Owner desires to Transfer¹ the Residence.

Owner desires to [check one]:

_____ Attempt to locate an Eligible Person or Household to purchase the Residence at Affordable Housing Cost; or

_____ Permit the City to exercise the City's option to purchase the Residence (the City is not required to exercise its option).

If the Owner wants to find the Eligible Person or Household, the Owner has ____ days to find the Eligible Person or Household and notify the City in writing (see Approval Request).

If the City has a program to help locate an Eligible Person or Household, does the Owner want the City to help look for an Eligible Person or Household to buy the Residence? ____ Yes ____ No

Signature of Owner

Signature of Owner

Name [Print or Type]

Name [Print or Type]

(_____) _____
Day time phone number of Owner

(_____) _____
Day time phone number of Owner

Date: _____

Date: _____

Consent of City to Transfer:

Signed by: _____
City Manager of City

(Print Name)

Date: _____

¹ All capitalized terms shall have the meaning as defined in the Covenants, Restrictions and Option to Purchase for Very Low, Low and Moderate Income Persons or Families.

ATTACHMENT "B"
FORM 2
APPROVAL REQUEST

_____, 20____

City of Scotts Valley
One Civic Center Drive
Scotts Valley, CA 95066
Attention: City Manager

Re: Request for Approval of Proposed Transferee

To Whom It May Concern:

The undersigned is the owner of real property in Scotts Valley, located at _____the "Residence").

The Owner now desires to transfer the Residence and by this letter is requesting the City to approve the proposed transferee.

1. Name: _____

Current Address: _____

Telephone No. (_____) _____

2. The terms of the proposed transfer are:

(a) Sales price of \$ _____. This sales price is based upon the lesser of [check one]:

- ___ (i) Fair market value; or
___ (ii) The Option Sales Price.

The price of any personal property being sold by the owner to the proposed transferee is: \$ _____ (if none, so state);

(b) The price of \$ _____ to be paid by the proposed transferee for any services of Owner (if none, so state);

(c) All other amounts of money or other consideration, if any, concerning the Residence or any other matter to be paid by the proposed transferee to the Owner: \$ _____ (if none, so state);

3. The proposed transferee represents and warrants the following:
 - (a) The Residence will be the principal residence of the proposed transferee;
 - (b) The combined maximum annual income for ____ household members of the proposed _____-income transferee is \$ _____ which does not exceed the maximum allowed of \$ _____ ; and
 - (c) The proposed transferee will deliver, to the City, a signed financial statement on a form acceptable to the City.

4. The proposed transferee household consists of the following person(s) who will reside in the Residence:

Adults (18 and over) - [name of each]

Minors (under 18) - [name of each]

5. The proposed transferee must submit to the City, on a form available from the City, an income certification so the City may determine if the proposed transferee is an Eligible Person.
6. A true and correct copy of the agreement between the owner and the proposed transferee is attached hereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

OWNER:

PROPOSED TRANSFEEE:

Signature

Name: _____
[print or type]

Telephone: (_____) _____

Date: _____

Signature

Name: _____
[print or type]

Signature

Name: _____
[print or type]

Telephone: (_____) _____

Date: _____

RECORDED AT THE REQUEST OF:

City of Scotts Valley

WHEN RECORDED MAIL TO:

City of Scotts Valley – Planning Dept.

One Civic Center Drive

Scotts Valley, CA 95066

**NOTE: Restrictions and restricted
resale price & procedures**

(Space above this line for recorder's use only)

Exempt from Recording Fees per GC 27383

**ASSUMPTION AGREEMENT
ATTACHMENT "B" FORM 3
THE ENCORE AT SCOTTS VALLEY**

(Document title)

This Assumption Agreement is entered into by:

The City of Scotts Valley (the "City")

_____ ("Selling Owners")

_____ ("Buying Owners")

Date of Agreement: _____

FACTS

- A. Selling Owners are all of the owners of property commonly known as Lots #206 and #304 of Tentative Map "The Encore at Scotts Valley", Scotts Valley, California (the "Residence").
- B. The Residence is subject to 45-year restriction entitled "Covenants, Restrictions and Option to Purchase" executed on ___, 2024, and recorded in Book No. ____, Page ____ in the official records of the County of Santa Cruz, State of California, which restricts the purchase price that can be charged for the Residence and the persons to whom the Residence can be sold (the "Covenants"). The Covenants also give the City an option to purchase the Residence.
- C. Buying Owners desire to purchase the Residence. Buying Owners understand that the Covenants will limit the purchase price they can receive when they sell the Residence and will limit the people to whom they can sell the Residence. Buying Owners understand that the City has an option to purchase the Residence for a price that is less than the fair market value of the Residence, if there were no Covenants.
- D. Buying Owners are able to purchase the Residence because the purchase price of the Residence is less than other similar property without the Covenants. For this reason, Buying Owners desire to purchase the Residence.
- E. In order to purchase the Residence, Buying Owners must assume all obligations of Owner pursuant to the Covenants and must agree to be bound by all the provisions in the Covenants. Buying Owners understand that reselling the Residence requires prior review and approval by the City or its agent that the prospective buyer is an Eligible household.

NOW, THEREFORE, Buying Owners agree as follows:

1. **Acknowledgment of Limitation on Future Sales Price.**

BUYING OWNERS UNDERSTAND THAT WHEN BUYING OWNERS DESIRE TO SELL OR TRANSFER THE RESIDENCE THAT THE SALES PRICE CAN BE DETERMINED ONLY AT THE TIME OF THE PROPOSED TRANSFER TAKING INTO CONSIDERATION FACTS THAT CANNOT BE PREDICTED ACCURATELY AND THAT THE SALES PRICE MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR RESIDENCE THAT IS NOT ENCUMBERED WITH THE RESTRICTION.

BUYING OWNERS ALSO ACKNOWLEDGE THAT AT ALL TIMES IN SETTING THE SALE PRICE, THE PRIMARY OBJECTIVE OF THE CITY AND THE RESTRICTION IS TO PROVIDE HOUSING TO ELIGIBLE PERSON OR HOUSEHOLDS AT AFFORDABLE HOUSING COST.

STHE SALES PRICE, WHEN BUYING OWNERS DECIDE TO SELL THE RESIDENCE, ALMOST CERTAINLY WILL BE LESS THAN OTHER SIMILAR PROPERTIES WHICH HAVE NO RESTRICTION.

(Initialed by Buying Owners)

2. **Understanding the Covenants.**

Buying Owners represent that they have read the Covenants and fully understand the Covenants.

3. **Owner Occupancy.**

Buying Owners agree that they will occupy the Residence as their primary residence and that they will comply with all provisions of the Covenants relating to occupancy of the Residence.

4. **Assumption of Obligation Under the Covenants.**

As a material consideration to the City in approving Buying Owners, Buying Owners hereby assume all obligations of Owner, as they relate to the Residence, under the Covenants. Buying Owners agree to be bound by all duties and obligations of the Owner in the Covenants and agree to comply with all provisions thereof for the term of the Covenants. Buying Owners agree, as set forth above, in order to take advantage of the purchase price for which the Residence is offered.

IN WITNESS WHEREOF, the parties have executed this Assumption Agreement to be effective on the date of recordation of a deed conveying the Residence to Buying Owners.

BUYING OWNER(S):

Date: _____

Signature

Name: _____
[Print or Type]

Date: _____

Signature

Name: _____
[Print or Type]

(Signatures must be notarized)

Based upon information provided by Selling Owners and Buying Owners and on Buying Owner's execution hereof, the City of Scotts Valley hereby approves Buying Owners to purchase property.

Date: _____

CITY OF SCOTTS VALLEY

By: _____

Name: _____

Title: _____