

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA BARBARA APPROVING THE ACCESSORY DWELLING UNIT COVENANTS AS TO FORM

WHEREAS, Assembly Bills 2299 and 494, and Senate Bills 1069 and 22, made significant changes to California Government Code Sections 65852.2 and 65852.22 (“state law”), which govern the manner in which local governments can regulate accessory dwelling units (ADUs) through a ministerial approval process and junior accessory dwelling units (JADUs) upon adoption of local regulations;

WHEREAS, the City of Santa Barbara 2015 Housing Element contains Policy H15 directing the City to further encourage second units in single family zones with neighborhood input to gauge the level of support and Implementation Action H15.1 directing more site planning flexibility and affordable-by-design concepts through amendments to the Secondary Dwelling Unit (Accessory Dwelling Unit) Ordinance;

WHEREAS, upon further review and consultation with the City Attorney’s Office, it was determined that the City is in compliance with the requirements of Assembly Bills 2299 and 494, and Senate Bills 1069 and 22 because ADUs and JADUs would be allowed through a ministerial approval process in all zone districts that allow single unit residences;

WHEREAS, state law allows a local agency, by ordinance, to require that the ADU may not be sold or otherwise conveyed separate from the primary residence, require an applicant for a permit issued for an ADU to be an owner-occupant, and require that the ADU to not be used for short-term rentals (terms lesser than 30 days);

WHEREAS, state law requires owner-occupancy of the primary residential unit in which the JADU will be permitted and requires a recordation of a deed restriction that prohibits the sale of the JADU separate from the sale of the primary residence;

WHEREAS, on April 6, 2017, Planning Division staff was directed to prioritize work on a local ADU Ordinance at the joint City Council/Planning Commission meeting;

WHEREAS, on September 7, 2017, the Planning Commission held a duly noticed public hearing to initiate an amendment to the Zoning Ordinance (Santa Barbara Municipal Code Titles 28 and 30) to adopt an ADU Ordinance and, after discussing key components of the draft Ordinance, voted to continue the item indefinitely;

WHEREAS, on October 24, 2017, the City Council held a duly noticed public hearing to provide direction to staff related to development regulations for ADUs and initiate amendments to the Zoning Ordinance establishing regulations for ADUs;

WHEREAS, on January 25, 2018, the Planning Commission held a duly noticed public hearing to review the draft ADU Ordinance and, after discussing the key components of the draft ordinance, including the owner-occupancy requirement with recordation of a covenant, was unable to pass a motion regarding the owner occupancy requirement and voted 6/1 to forward the ordinance amendments with other revisions to the City Council for adoption;

WHEREAS, on February 27, 2018, the City Council Ordinance Committee held a duly noticed public hearing to review the draft ADU Ordinance and receive public comment, and continued the hearing to March 6, 2018;

WHEREAS, on March 6, 2018, the City Council Ordinance Committee held a duly noticed public hearing to review the draft ADU Ordinance and, after discussing several key components of the draft ADU Ordinance, passed a motion to require the owner-occupancy requirement in the Residential Single Unit (RS) zone only with consideration of a to-be-determined sunset clause with recordation of a covenant, and voted 3/0 to forward the draft ADU Ordinance amendments with revisions to City Council for adoption;

WHEREAS, staff drafted amendments to Title 30 of the Santa Barbara Municipal Code in accordance with Ordinance Committee's motion of March 6, 2018 to require owner occupancy for ADUs in the Residential Single Unit (RS) zone only, subject to a period of not less than 10 years from the date that the final Certificate of Occupancy for the ADU is issued;

WHEREAS, the ADU and JADU requirements regarding ownership, occupancy, and rental terms are contingent upon recordation of a Covenant, which enables enforcement of the terms; and

WHEREAS, on April 17, 2018, The City Council held a duly noticed public hearing to introduce ordinance amendments to Title 30 of the Santa Barbara Municipal Code to regulate ADUs and JADUs in accordance with state law and approve the associated ADU and JADU Covenants;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SANTA BARBARA AS FOLLOWS:

**Section 1.** The City Council approves the form of the following Covenants, Conditions and Restrictions that may be used in association with the permitting of Accessory Dwelling Units and Junior Accessory Dwelling Units attached hereto as Exhibits 1 - 3:

1. Accessory Dwelling Unit Covenant for RS Zone (10-Year Owner Occupancy)
2. Junior Accessory Dwelling Unit Covenant
3. Accessory Dwelling Unit Covenant (No Owner Occupancy)

In addition to the approved form of these covenants, City staff may add the following clause, where appropriate, to affect the release of a prior-recorded Zoning Compliance Declaration in those cases where the permitting of the Accessory Dwelling Unit or Junior Accessory Dwelling Unit removes the need for the Zoning Compliance Declaration:

“Based upon the approval of the Accessory Dwelling Unit on the Real Property and the Owner’s agreement to comply with the terms and conditions of this Covenant, the City of Santa Barbara agrees to release the Real Property from the terms and conditions of the Zoning Compliance Declaration previously recorded on [DATE] as Instrument Number [INSTRUMENT NUMBER] in its entirety. Upon the recordation of this Covenant, the Zoning Compliance Declaration will have no further force or effect.”

City staff is also authorized to add the following clause, where appropriate, to affect the release of a prior-recorded Covenant in those cases where the Owner and City agree to implement the adopted owner-occupancy requirements:

[ADD IF NEEDED: “This Covenant supersedes the Covenant previously recorded on [DATE] as Instrument Number [INSTRUMENT NUMBER] (the “Prior Covenant”) in its entirety. Upon the recordation of this Covenant, the Prior Covenant will have no further force or effect.”]

**Section 2.** This Resolution is a legislative action of the Council of the City of Santa Barbara implementing the ordinance adopting Municipal Code amendments related to Accessory Dwelling Units and Junior Accessory Dwelling Units and shall become effective upon the effective date of that ordinance following a thirty day period in which interested parties may exercise their right to a referendum on its adoption.

**Exhibits:**

1. Accessory Dwelling Unit Covenant for RS Zone (10-Year Owner Occupancy)
2. Junior Accessory Dwelling Unit Covenant
3. Accessory Dwelling Unit Covenant (No Owner Occupancy)

RECORDING REQUESTED BY )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 City of Santa Barbara )  
 Community Development, )  
 Planning Division )  
 P.O. Box 1990 )  
 Santa Barbara, CA 93102-1990 )  
 )

) No fee per GOVT CODE 6103

Space above line for Recorder's Use

Address: [ADDRESS]

A.P.N.: [ASSESSOR'S PARCEL NO]

**ACCESSORY DWELLING UNIT COVENANT [ADD IF NEEDED: AND RELEASE OF ZONING COMPLIANCE DECLARATION]**

The undersigned hereby acknowledge that they are owners ("Owners") of the real property ("Property") described as follows:

For legal description see Exhibit A, attached

**RECITALS**

WHEREAS, Owner seeks City of Santa Barbara approval for the development of two separate residential units on the Property consisting of a Primary Dwelling Unit and an Accessory Dwelling Unit to be owned and occupied pursuant to the terms of this Covenant; and

WHEREAS, regarding the creation of the Accessory Dwelling Unit, approval of application number BLD20[BLD CASE NUMBER] is contingent upon the execution and recordation of this Covenant; and

WHEREAS, the Property shall be subject to ownership, occupancy, and rental requirements set forth in this Covenant; and

WHEREAS, Owner and City now wish to document their respective rights and obligations regarding the Property.

**NOW THEREFORE**, in consideration of the benefits received by Owner from the City's approval of the Accessory Dwelling Unit, Owner hereby covenants and agrees with the City to impose the following covenants, conditions, restrictions and limitations upon the possession, use and enjoyment of the Property:

**I. TERM, ENFORCEABILITY, AND SECURITY:**

- A. This Covenant shall be binding upon Owner and the successors and assigns of Owner and the heirs, personal representatives, grantees, lessees, contract purchasers, and assignees of Owner and any subsequent owner of the Property. This Covenant shall lapse only upon the removal of the Accessory Dwelling Unit.

- B. 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 covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.
- C. Any purchaser or transferee of the Property or of any portion or interest in the Property, shall, by the acceptance of any interest in the Property, or by the signing of a contract or agreement to purchase any interest in the Property, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.
- D. The use of the Property is subject to the ownership, occupancy and other restrictions listed below. In the event that the Property is not developed and used as a Primary Dwelling Unit and an Accessory Dwelling Unit in accordance with this Covenant, then Owner shall reconfigure the improvements on the Property to eliminate the Accessory Dwelling Unit and reestablish one single residential unit. Such reconfigurations shall require a Building Permit and shall require the elimination of any kitchen and cooking facilities from the former Accessory Dwelling Unit, and may also require the alteration or elimination of the bathing facilities from the former Accessory Dwelling Unit or other alterations necessary to eliminate the Accessory Dwelling Unit and reestablish one single residential unit on the Property.

## II. OWNERSHIP, SIZE, AND OCCUPANCY CONDITIONS:

The Property shall be subject to the following conditions for the term of this Covenant:

- A. The Accessory Dwelling Unit shall not be sold separately from the Primary Dwelling Unit.
- B. The Accessory Dwelling Unit or the Primary Dwelling Unit may be rented, however rental terms shall not be less than 31 consecutive days, nor shall any rental agreement provide for the expiration of the tenancy prior to an occupancy of at least thirty-one (31) consecutive days by the same tenant. During the period when owner occupancy is required, any simultaneous rental of the Primary Dwelling Unit and the Accessory Dwelling Unit shall constitute a violation of this Covenant.
- C. Owner shall reside in and maintain either the Primary Dwelling Unit or the Accessory Dwelling Unit as the Owner's principal place of residence ("Owner's Unit") for a minimum duration of 10 years. The 10 year period shall begin on the date a Final Certificate of Occupancy is issued for the Accessory Dwelling Unit. If multiple persons own the Property as tenants in common or some other form of common ownership, a person or persons representing at least fifty percent (50%) of the ownership interest in the Property shall reside on the Property and maintain the Property as his, her, or their principal place of residence. For purposes of this covenant, "principal place of residence" shall mean the place where Owner actually lives for the greater part of time, or the place where Owner remains when not called elsewhere for some special or temporary purpose and to which Owner returns frequently and periodically, as from work or vacation. There may be only one "principal place of residence," and where more than one residence is maintained or owned, the burden shall be on Owner to show that the Owner's Unit is his or her principal place of residence as evidenced by qualifying for the homeowner's tax exemption, voter registration, vehicle registration, or similar means. Any person or persons who qualify for the homeowner's tax exemption under the California State Board of Equalization rules,

may qualify as an owner occupant. Owner may re-designate the Primary Dwelling Unit or the Accessory Dwelling Unit as the Owner's Unit upon written notice to the Community Development Director and written approval of the re-designation by the Community Development Director, which approval shall not be denied unreasonably.

- D. No residential units in excess of one Primary Dwelling Unit and one Accessory Dwelling Unit shall be developed or maintained on the property. The installation of unauthorized or unpermitted food preparation facilities apart from the kitchens shown on the approved plans on file with the City of Santa Barbara shall constitute a violation of the terms of this Covenant.

### **III. BREACHES AND REMEDIES:**

- A. Upon receiving notice of any violation of the terms of this Covenant, the City may declare a default by delivering written notice to the Owner specifying the nature of the violation. 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 the violation of this Covenant, or for any such other relief as may be appropriate.
- B. Owner acknowledges that ownership or occupancy of the Property in violation of this Covenant is prohibited. The City may enforce these and other rights by any legal means. The City may also pursue code enforcement actions including, but not limited to fines, the assignment of all rents due or collected in violation of this Covenant, and may also require that the Property be altered in order to eliminate the Accessory Dwelling Unit and reestablish one single residential unit on the lot.
- C. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

### **IV. ADDITIONAL PROVISIONS:**

- A. The Accessory Dwelling Unit or Primary Dwelling Unit shall not be leased or rented in the absence of a written lease or rental agreement between the Owner and the occupant household. Any change or amendment to a lease or rental agreement shall also be made in writing.
- B. The Owner covenants that he or she has not and will not execute any other agreement or covenant with provisions contradictory to or in opposition to the provisions hereof and that in any event this Covenant is controlling as to the rights and obligations between and among the Owner, the City, and their respective successors.
- C. 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. The terms of this Covenant shall be interpreted under the laws of the State of California.
- E. All notices required herein shall be sent by Certified mail, return receipt requested, to the Owner at the address provided to the City by Owner, and to the City at: City of Santa Barbara, Community Development Department, Attn: Planning Division, P.O. Box 1990,

Santa Barbara, CA 93102-1990, or such other address that the City may subsequently notice in writing to the Owner.

F. [ADD IF NEEDED: This Covenant supersedes the Covenant previously recorded on [DATE] as Instrument Number [INSTRUMENT NUMBER] (the "Prior Covenant") in its entirety. Upon the recordation of this Covenant, the Prior Covenant will have no further force or effect.]

G. [ADD IF NEEDED: Based upon the approval of the Accessory Dwelling Unit on the Property and the Owner's agreement to comply with the terms and conditions of this Covenant, the City of Santa Barbara agrees to release the Property from the terms and conditions of the Zoning Compliance Declaration previously recorded on [DATE] as Instrument Number [INSTRUMENT NUMBER] in its entirety. Upon the recordation of this Covenant, the Zoning Compliance Declaration will have no further force or effect.]

**V. DECLARATION OF OWNER:**

A. *I own and occupy the Property as my principal place of residence.*

B. *The documentation supporting this declaration of ownership and occupancy of the Property provided by me is true and complete.*

C. *I have received a copy of this Covenant and agree to comply with all of the requirements of this Covenant.*

D. *I understand that any false statements or misrepresentations to the City in this declaration shall constitute a default under this Covenant, and may constitute fraud.*

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Community Development Director

APPROVED AS TO FORM:

City Attorney

By: \_\_\_\_\_  
Assistant City Attorney

OWNER:

\_\_\_\_\_  
[OWNER'S NAME AS SHOWN ON TITLE]

\_\_\_\_\_  
[OWNER'S NAME AS SHOWN ON TITLE]

Note: This Agreement will be recorded; the signatures of the parties (not including approvals as to form) must be acknowledged by a notary.

# **EXHIBIT A**

## **Real Property**



RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
 )  
City of Santa Barbara )  
Community Development, )  
Planning Division )  
P.O. Box 1990 )  
Santa Barbara, CA 93102-1990 )

) No fee per GOVT CODE 6103

Space above line for Recorder's Use

Address: [ADDRESS]

A.P.N.: [ASSESSOR'S PARCEL NO]

**JUNIOR ACCESSORY DWELLING UNIT COVENANT [ADD IF NEEDED: AND RELEASE OF ZONING COMPLIANCE DECLARATION]**

The undersigned hereby acknowledge that they are owners ("Owners") of the real property ("Property") described as follows:

For legal description see Exhibit A, attached

**RECITALS**

WHEREAS, Owner seeks City of Santa Barbara approval for the development of two separate residential units on the Property consisting of a Primary Dwelling Unit and a Junior Accessory Dwelling Unit to be owned and occupied pursuant to the terms of this Covenant; and

WHEREAS, regarding the creation of the Junior Accessory Dwelling Unit, approval of application number BLD20[BLD CASE NUMBER] is contingent upon the execution and recordation of this Covenant; and

WHEREAS, the Property shall be subject to ownership, occupancy, and rental requirements set forth in this Covenant; and

WHEREAS, Owner and City now wish to document their respective rights and obligations regarding the Property.

**NOW THEREFORE**, in consideration of the benefits received by Owner from the City's approval of the Junior Accessory Dwelling Unit, Owner hereby covenants and agrees with the City to impose the following covenants, conditions, restrictions and limitations upon the possession, use and enjoyment of the Property:

**I. TERM, ENFORCEABILITY, AND SECURITY:**

- A. This Covenant shall be binding upon Owner and the successors and assigns of Owner and the heirs, personal representatives, grantees, lessees, contract purchasers, and assignees of Owner and any subsequent owner of the Property. This Covenant shall lapse only upon the removal of the Junior Accessory Dwelling Unit.

- B. 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 covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.
- C. Any purchaser or transferee of the Property or of any portion or interest in the Property, shall, by the acceptance of any interest in the Property, or by the signing of a contract or agreement to purchase any interest in the Property, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.
- D. The use of the Property is subject to the ownership, occupancy and other restrictions listed below. In the event that the Property is not developed and used as a Primary Dwelling Unit and a Junior Accessory Dwelling Unit in accordance with this Covenant, then Owner shall reconfigure the improvements on the Property to eliminate the Junior Accessory Dwelling Unit and reestablish one single residential unit. Such reconfigurations shall require a Building Permit and shall require the elimination of any kitchen and cooking facilities from the former Junior Accessory Dwelling Unit, and may also require the alteration or elimination of the bathing facilities from the former Junior Accessory Dwelling Unit or other alterations necessary to eliminate the Junior Accessory Dwelling Unit and reestablish one single residential unit on the Property.

## **II. OWNERSHIP, SIZE, AND OCCUPANCY CONDITIONS:**

The Property shall be subject to the following conditions for the term of this Covenant:

- A. The Junior Accessory Dwelling Unit shall not be sold separately from the Primary Dwelling Unit.
- B. The Junior Accessory Dwelling Unit or the Primary Dwelling Unit may be rented, however rental terms shall not be less than 31 consecutive days, nor shall any rental agreement provide for the expiration of the tenancy prior to an occupancy of at least thirty-one (31) consecutive days by the same tenant. Any simultaneous rental of the Primary Dwelling Unit and the Junior Accessory Dwelling Unit shall constitute a violation of this Covenant.
- C. Owner shall reside in and maintain either the Primary Dwelling Unit or the Junior Accessory Dwelling Unit as the Owner's principal place of residence ("Owner's Unit") for as long as the Junior Accessory Dwelling Unit is maintained on the Property. If multiple persons own the Property as tenants in common or some other form of common ownership, a person or persons representing at least fifty percent (50%) of the ownership interest in the Property shall reside on the Property and maintain the Property as his, her, or their principal place of residence. For purposes of this covenant, "principal place of residence" shall mean the place where Owner actually lives for the greater part of time, or the place where Owner remains when not called elsewhere for some special or temporary purpose and to which Owner returns frequently and periodically, as from work or vacation. There may be only one "principal place of residence," and where more than one residence is maintained or owned, the burden shall be on Owner to show that the Owner's Unit is his or her principal place of residence as evidenced by qualifying for the homeowner's tax exemption, voter registration, vehicle registration, or similar means. Any person or persons who qualify for the homeowner's tax exemption under the California State Board of Equalization rules, may qualify as an owner occupant. Owner may re-designate the Primary

Dwelling Unit or the Junior Accessory Dwelling Unit as the Owner's Unit upon written notice to the Community Development Director and written approval of the re-designation by the Community Development Director, which approval shall not be denied unreasonably.

- D. No residential units in excess of one Primary Dwelling Unit and one Junior Accessory Dwelling Unit shall be developed or maintained on the property. The installation of unauthorized or unpermitted food preparation facilities apart from the kitchens shown on the approved plans on file with the City of Santa Barbara shall constitute a violation of the terms of this Covenant.

### **III. BREACHES AND REMEDIES:**

- A. Upon receiving notice of any violation of the terms of this Covenant, the City may declare a default by delivering written notice to the Owner specifying the nature of the violation. 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 the violation of this Covenant, or for any such other relief as may be appropriate.
- B. Owner acknowledges that ownership or occupancy of the Property in violation of this Covenant is prohibited. The City may enforce these and other rights by any legal means. The City may also pursue code enforcement actions including, but not limited to fines, the assignment of all rents due or collected in violation of this Covenant, and may also require that the Property be altered in order to eliminate the Junior Accessory Dwelling Unit and reestablish one single residential unit on the lot.
- C. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

### **IV. ADDITIONAL PROVISIONS:**

- A. The Junior Accessory Dwelling Unit or Primary Dwelling Unit shall not be leased or rented in the absence of a written lease or rental agreement between the Owner and the occupant household. Any change or amendment to a lease or rental agreement shall also be made in writing.
- B. The Owner covenants that he or she has not and will not execute any other agreement or covenant with provisions contradictory to or in opposition to the provisions hereof and that in any event this Covenant is controlling as to the rights and obligations between and among the Owner, the City, and their respective successors.
- C. 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. The terms of this Covenant shall be interpreted under the laws of the State of California.
- E. All notices required herein shall be sent by Certified mail, return receipt requested, to the Owner at the address provided to the City by Owner, and to the City at: City of Santa Barbara, Community Development Department, Attn: Planning Division, P.O. Box 1990,

Santa Barbara, CA 93102-1990, or such other address that the City may subsequently notice in writing to the Owner.

F. [ADD IF NEEDED: This Covenant supersedes the Covenant previously recorded on [DATE] as Instrument Number [INSTRUMENT NUMBER] (the "Prior Covenant") in its entirety. Upon the recordation of this Covenant, the Prior Covenant will have no further force or effect.]

G. [ADD IF NEEDED: Based upon the approval of the Junior Accessory Dwelling Unit on the Property and the Owner's agreement to comply with the terms and conditions of this Covenant, the City of Santa Barbara agrees to release the Property from the terms and conditions of the Zoning Compliance Declaration previously recorded on [DATE] as Instrument Number [INSTRUMENT NUMBER] in its entirety. Upon the recordation of this Covenant, the Zoning Compliance Declaration will have no further force or effect.]

**V. DECLARATION OF OWNER:**

A. *I own and occupy the Property as my principal place of residence.*

B. *The documentation supporting this declaration of ownership and occupancy of the Property provided by me is true and complete.*

C. *I have received a copy of this Covenant and agree to comply with all of the requirements of this Covenant.*

D. *I understand that any false statements or misrepresentations to the City in this declaration shall constitute a default under this Covenant, and may constitute fraud.*

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Community Development Director

APPROVED AS TO FORM:

City Attorney

By: \_\_\_\_\_  
Assistant City Attorney

OWNER:

\_\_\_\_\_  
[OWNER'S NAME AS SHOWN ON TITLE]

\_\_\_\_\_  
[OWNER'S NAME AS SHOWN ON TITLE]

Note: This Agreement will be recorded; the signatures of the parties (not including approvals as to form) must be acknowledged by a notary.

# **EXHIBIT A**

## **Real Property**

RECORDING REQUESTED BY )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 City of Santa Barbara )  
 Community Development, )  
 Planning Division )  
 P.O. Box 1990 )  
 Santa Barbara, CA 93102-1990 )  
 )  
 ) No fee per GOVT CODE 6103

Space above line for Recorder's Use

Address: [ADDRESS]

A.P.N.: [ASSESSOR'S PARCEL NO]

**ACCESSORY DWELLING UNIT COVENANT [ADD IF NEEDED: AND RELEASE OF ZONING COMPLIANCE DECLARATION]**

The undersigned hereby acknowledge that they are owners ("Owners") of the real property ("Property") described as follows:

For legal description see Exhibit A, attached

**RECITALS**

WHEREAS, Owner seeks City of Santa Barbara approval for the development of two separate residential units on the Property consisting of a Primary Dwelling Unit and an Accessory Dwelling Unit to be owned and occupied pursuant to the terms of this Covenant; and

WHEREAS, regarding the creation of the Accessory Dwelling Unit, approval of application number BLD20[BLD CASE NUMBER] is contingent upon the execution and recordation of this Covenant; and

WHEREAS, the Property shall be subject to ownership, occupancy, and rental requirements set forth in this Covenant; and

WHEREAS, Owner and City now wish to document their respective rights and obligations regarding the Property.

**NOW THEREFORE**, in consideration of the benefits received by Owner from the City's approval of the Accessory Dwelling Unit, Owner hereby covenants and agrees with the City to impose the following covenants, conditions, restrictions and limitations upon the possession, use and enjoyment of the Property:

**I. TERM, ENFORCEABILITY, AND SECURITY:**

- A. This Covenant shall be binding upon Owner and the successors and assigns of Owner and the heirs, personal representatives, grantees, lessees, contract purchasers, and assignees of Owner and any subsequent owner of the Property. This Covenant shall lapse only upon the removal of the Accessory Dwelling Unit.

- B. 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 covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.
- C. Any purchaser or transferee of the Property or of any portion or interest in the Property, shall, by the acceptance of any interest in the Property, or by the signing of a contract or agreement to purchase any interest in the Property, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.
- D. The use of the Property is subject to the ownership, occupancy and other restrictions listed below. In the event that the Property is not developed and used as a Primary Dwelling Unit and an Accessory Dwelling Unit in accordance with this Covenant, then Owner shall reconfigure the improvements on the Property to eliminate the Accessory Dwelling Unit and reestablish one single residential unit. Such reconfigurations shall require a Building Permit and shall require the elimination of any kitchen and cooking facilities from the former Accessory Dwelling Unit, and may also require the alteration or elimination of the bathing facilities from the former Accessory Dwelling Unit or other alterations necessary to eliminate the Accessory Dwelling Unit and reestablish one single residential unit on the Property.

## **II. OWNERSHIP, SIZE, AND OCCUPANCY CONDITIONS:**

The Property shall be subject to the following conditions for the term of this Covenant:

- A. The Accessory Dwelling Unit shall not be sold separately from the Primary Dwelling Unit.
- B. The Accessory Dwelling Unit or the Primary Dwelling Unit may be rented, however rental terms shall not be less than 31 consecutive days, nor shall any rental agreement provide for the expiration of the tenancy prior to an occupancy of at least thirty-one (31) consecutive days by the same tenant.
- C. No residential units in excess of one Primary Dwelling Unit and one Accessory Dwelling Unit shall be developed or maintained on the property. The installation of unauthorized or unpermitted food preparation facilities apart from the kitchens shown on the approved plans on file with the City of Santa Barbara shall constitute a violation of the terms of this Covenant.

## **III. BREACHES AND REMEDIES:**

- A. Upon receiving notice of any violation of the terms of this Covenant, the City may declare a default by delivering written notice to the Owner specifying the nature of the violation. 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 the violation of this Covenant, or for any such other relief as may be appropriate.
- B. Owner acknowledges that ownership or occupancy of the Property in violation of this Covenant is prohibited. The City may enforce these and other rights by any legal means. The City may also pursue code enforcement actions including, but not limited to fines, the assignment of all rents due or collected in violation of this Covenant, and may also require that the Property be altered in order to eliminate the Accessory Dwelling Unit and reestablish one single residential unit on the lot.

- C. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

**IV. ADDITIONAL PROVISIONS:**

- A. The Accessory Dwelling Unit or Primary Dwelling Unit shall not be leased or rented in the absence of a written lease or rental agreement between the Owner and the occupant household. Any change or amendment to a lease or rental agreement shall also be made in writing.
- B. The Owner covenants that he or she has not and will not execute any other agreement or covenant with provisions contradictory to or in opposition to the provisions hereof and that in any event this Covenant is controlling as to the rights and obligations between and among the Owner, the City, and their respective successors.
- C. 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. The terms of this Covenant shall be interpreted under the laws of the State of California.
- E. All notices required herein shall be sent by Certified mail, return receipt requested, to the Owner at the address provided to the City by Owner, and to the City at: City of Santa Barbara, Community Development Department, Attn: Planning Division, P.O. Box 1990, Santa Barbara, CA 93102-1990, or such other address that the City may subsequently notice in writing to the Owner.
- F. [ADD IF NEEDED: This Covenant supersedes the Covenant previously recorded on [DATE] as Instrument Number [INSTRUMENT NUMBER] (the "Prior Covenant") in its entirety. Upon the recordation of this Covenant, the Prior Covenant will have no further force or effect.]
- G. [ADD IF NEEDED: Based upon the approval of the Accessory Dwelling Unit on the Property and the Owner's agreement to comply with the terms and conditions of this Covenant, the City of Santa Barbara agrees to release the Property from the terms and conditions of the Zoning Compliance Declaration previously recorded on [DATE] as Instrument Number [INSTRUMENT NUMBER] in its entirety. Upon the recordation of this Covenant, the Zoning Compliance Declaration will have no further force or effect.]

**V. DECLARATION OF OWNER:**

- A. *I own and occupy the Property as my principal place of residence.*
- B. *The documentation supporting this declaration of ownership and occupancy of the Property provided by me is true and complete.*
- C. *I have received a copy of this Covenant and agree to comply with all of the requirements of this Covenant.*
- D. *I understand that any false statements or misrepresentations to the City in this declaration shall constitute a default under this Covenant, and may constitute fraud.*



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

APPROVED AS TO CONTENT:

\_\_\_\_\_

Community Development Director

APPROVED AS TO FORM:

City Attorney

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

Assistant City Attorney

OWNER:

\_\_\_\_\_

[OWNER'S NAME AS SHOWN ON TITLE]

\_\_\_\_\_

[OWNER'S NAME AS SHOWN ON TITLE]

Note: This Agreement will be recorded; the signatures of the parties (not including approvals as to form) must be acknowledged by a notary.

# **EXHIBIT A**

## **Real Property**