

Attachment B

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RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

County of Monterey
Housing and Community Development
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901

Attn: Housing

2024016467

Xochitl Marina Camacho
Monterey County Clerk-Recorder

05/10/2024 11:35 AM

Recorded at the request of:
COUNTY OF MONTEREY HOUSING A

Titles: 1 Pages: 33

Fees: \$109.00
Taxes: \$0.00
AMT PAID: \$109.00



SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 139-392-009-000

19107 Garden Valley Way, Salinas, CA 93908

MEMORANDUM AND REAFFIRMATION OF INCLUSIONARY HOUSING AGREEMENT

COUNTY OF MONTEREY INCLUSIONARY HOUSING PROGRAM

This Memorandum and Reaffirmation of Inclusionary Housing Agreement (the "Reaffirmation Agreement") is entered into as of this 20th day of March, 2024, by and between the County of Monterey, a political subdivision of the State of California (the "County") and Jeffrey S. Kirby, (the "Owner"), all collectively as the "Parties".

RECITALS

A. Pursuant to the Monterey County Code, Chapter 18.40, a portion of all new housing constructed in Monterey County is required to be affordable to very low, low, and moderate-income households.

B. Pursuant to Monterey County Code Chapter 18.40, the County has developed a program by which certain units ("Inclusionary Housing Units") are established and are intended to be maintained as affordable housing through the execution of Inclusionary Housing Agreements with the purchasers of those Units.

C. On December 18, 1998, Jim J. Kirby, Sr. and Dorothy Kirby, husband and wife, purchased the property known as 19107 Garden Valley Way, Salinas, California (the "Property"). As part of that purchase, Jim J. Kirby, Sr. and Dorothy Kirby, entered into an Inclusionary Housing Agreement (the "County Agreement"). The County Agreement was recorded as Document No. 9903189 on January 14, 1999 and is hereby inserted as Exhibit C.

D. On March 25, 2004, Jim J. Kirby, Sr. and Dorothy Kirby, entered into Amendment No. 1 to Inclusionary Housing Agreement (the "County Amendment No. 1). The amendment was recorded as Document No. 2004027368 on March 25, 2004 and is hereby inserted as Exhibit D.

E. On February 12, 2013, Jim J. Kirby, Sr. and Dorothy Kirby placed the Property in a Trust without the County's written authorization. This action violated the County Agreement in

Inclusionary Reaffirmation
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compliance with Section 3 and Section 10. Their son, Jeffrey S. Kirby, is named as the Trustee of the Trust and beneficiary who will receive 100% distribution of the Property.

F. On May 20, 2020, Dorothy Kirby passed away.

G. On October 21, 2022, Jim J. Kirby, Sr. passed away.

H. On May 4, 2023, Jeffrey S. Kirby, as successor trustee of the Trust granted the inclusionary unit to himself. The Grant Deed was recorded as Document No. 2023017155 on June 7, 2023.

I. Now, Jeffrey S. Kirby wishes to receive the County's approval as the owner of the Property upon the terms and conditions set forth below.

J. The purpose of this Reaffirmation Agreement is to reaffirm and acknowledge the terms of the County Agreement and County Amendment No. 1, by Jeffrey S. Kirby, an ADDITIONAL OWNER with respect to the Property.

NOW, THEREFORE, in consideration of the benefits received by the Owner through the County's Inclusionary Housing Program, and in acknowledgment of the continuing rights of the Owner and County pursuant to the County Agreement and County Amendment No. 1, the Owner and the County agree, as follows:

1. DESCRIPTION OF PROPERTY

This Agreement concerns the real property in the County of Monterey, State of California with the street address set forth on Page 1 of this Reaffirmation Agreement, which is more fully described in Exhibit A attached hereto and incorporated by this reference.

2. EXECUTION OF AGREEMENT AND ACKNOWLEDGMENT BY JEFFREY S. KIRBY

The Parties acknowledge that the County Agreement and County Amendment No. 1 was executed originally by Jim J. Kirby, Sr. and Dorothy Kirby, husband and wife. In executing this Reaffirmation Agreement, Jeffrey S. Kirby hereby agrees to be bound by all the terms and conditions of the County Agreement and County Amendment No. 1 as though he executed the same on December 11, 1998, and June 23, 2003, respectively, and further agrees to execute any additional documents reasonably required by the County to confirm application of the County Agreement and County Amendment No. 1 to Jeffrey S. Kirby.

Owner also reaffirms that all provisions of the County Agreement recorded on January 14, 1999 and County Amendment No. 1 recorded on March 25, 2004, remain valid and shall apply to Owner, and expressly reaffirms the following provisions.

3. REAFFIRMATION OF OWNER OCCUPANCY REQUIREMENT AND RESTRICTIONS ON TRANSFERS AND CONVEYANCES

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The Owner reaffirms that he shall occupy the Property as the Owner's principal place of residence. The Owner shall be considered as occupying the Property if Owner is living in the unit for at least 10 months out of each calendar year. On or before February 1st of each calendar year, the Owner shall provide an annual written certification to the County in the form shown in Exhibit B that the Owner is occupying the Property as his principal place of residence, and that Owner is not renting the Property to another party.

The Owner also reaffirms the restrictions on the possible lease, rental or other transfer or conveyance of the Property as set forth in Paragraphs 10 and 11 of the County Agreement.

4. REAFFIRMATION OF COUNTY PURCHASE OPTION

The Owner reaffirms that the County has the option to purchase the Property for the Maximum Restricted Resale Price, upon the terms and conditions set forth in the original County Agreement.

5. REAFFIRMATION OF OBLIGATION TO PAY COUNTY EXCESS SALES PROCEEDS

Owner reaffirms that if Owner makes a Transfer of the Property in violation of the County Agreement, the Owner shall pay the Excess Sale Proceeds to the County, in accordance with the terms and conditions set forth in the County Agreement.

6. REAFFIRMATION OF TERM OF AGREEMENT

Owner reaffirms that the Option and all the provisions of the County Agreement, including the benefits and burdens, shall bind, and the benefit hereof shall inure to, the Owner and to the County and its successors, for thirty years from the date of recordation of the County Agreement, which was recorded on January 14, 1999, provided that any transfer occurring after the date of this Reaffirmation Agreement must comply with the provisions of the Monterey County Code Section 18.40.110 or its equivalent section number. Except as provided by the terms therein, the provisions set forth in the Agreement shall constitute covenants which shall run with the land, shall further and independently constitute an Option encumbering the Property and shall be binding upon Owner, Owner's heirs, executors, administrators, successors, transferees and assignees, and/or all parties having or acquiring any right, title, or interest in or to any part of the Property. As long as the Option has not terminated as to the Property, any attempt to transfer title to any interest in the Property in violation of this Reaffirmation Agreement or the County Agreement shall be voidable at the election of County.

7. REAFFIRMATION OF SUPERIORITY OF AGREEMENT

Owner reaffirms and covenants that he has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the County and their respective successors.

8. REAFFIRMATION OF SUBORDINATION OF AGREEMENT TO PURCHASE MONEY LENDER

Owner and County reaffirm that, notwithstanding any provision herein, or in the County Agreement and County Amendment No. 1, neither this Reaffirmation Agreement, the County Agreement, or County Amendment No. 1 shall diminish or affect the rights of the First Lender under the First Lender Deed of Trust, or any subsequent First Lender deeds of trust hereafter recorded against the Property in compliance with Paragraph 12 of the County Agreement.

9. REAFFIRMATION OF NONDISCRIMINATION COVENANTS

Owner reaffirms and covenants by and for himself, and any successors and assigns of Owner that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry, or national origin in the sale, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property.

10. REAFFIRMATION OF MONITORING AND INSPECTION RIGHTS AND OBLIGATIONS

Owner reaffirms the rights of the County to monitor and inspect the Property, pursuant to the County Agreement, and Owner's obligation to cooperate by providing required certifications and other information required by the County, as set forth in the County Agreement.

11. COUNTERPARTS

This Reaffirmation Agreement may be executed in 2 or more counterparts, each of which shall be deemed an original and all of which together shall constitute one single agreement.

12. RECORDATION

Upon execution of this Agreement by all parties, Owner shall record this Agreement with the County of Monterey Recorder's Office. Owner is responsible for all costs to record this Agreement. Owner is also responsible for promptly providing proof of recordation to the County Housing and Community Development Department.

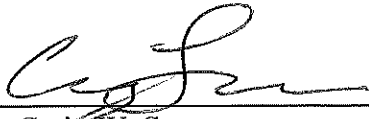
IN WITNESS WHEREOF, the parties have executed this Agreement on or as of the date first written above.

Inclusionary Reaffirmation
Kirby, Jeffrey S.
19107 Garden Valley Way, Salinas
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COUNTY:

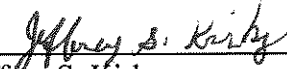
County of Monterey, a political subdivision
of the State of California

OWNER:

By: 

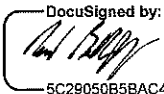
Craig W. Spencer

Its: Director of Housing & Community Development

By: 

Jeffrey S. Kirby

Approved as to Form:


5C29050B5BAC433
Reed Gallogly
Deputy County Counsel

Inclusionary Reaffirmation
Kirby, Jeffrey S.
19107 Garden Valley Way, Salinas
March 2024

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT, TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF MONTEREY)

) SS.

On 4-8-2024 before me, Melissa Nicole McDougal, a Notary Public, personally appeared Craig W. Spencer who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature



A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT, TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF MONTEREY)

) SS.

On MAY 16, 2024 before me, ALISA NICOLE BALESTERI, a Notary Public, personally appeared Jeffrey S. Kirby, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature



Inclusionary Reaffirmation
Kirby, Jeffrey S.
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**EXHIBIT A
LEGAL DESCRIPTION**

Real property in the unincorporated area of the County of Monterey, State of California, described as follows:

Parcel 1:

Lot 48 of Tract No. 1283 Las Palmas Ranch Phase II, Unit VI, in Volume 19 of Cities and Towns at Page 47 file in the Office of the County Recorder of Monterey County, California, on September 29, 1997;

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 on October 31, 1997 as Document No. 9764772, 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 a 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 1 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 Common Area to the Association (defined below).

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 Fieldcrest at Las Palmas Ranch recorded September 26, 1995 in Reel 3279, Page 1447, Official Records of Monterey County, California ("Fieldcrest Declaration"), for the purposes described in the Fieldcrest Declaration and subject to the terms, provisions and reservations of the Fieldcrest Declaration. This easement is appurtenant to PARCEL 1 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 (defined below).

Parcel IV:

An easement for the benefit of an appurtenant to Parcel 1 above on, over, under and across that portion of Lot 62 of Tract No. 1283 Las Palmas Ranch Phase II, Unit VI in Volume 19 of Cities and Towns at Page 47 filed in the Office of the County Recorder of Monterey County, California, on September 29, 1997 ("Lot 62") shown as described on Exhibit A attached hereto and by this

Inclusionary Reaffirmation
Kirby, Jeffrey S.
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reference made a part hereof ("Exclusive Use Easement Area"). As reserved in deed recorded August 14, 1998 as Document No. 9854093, Official Records of Monterey County, California. The easement is subject to the terms, easements, covenants and restrictions set forth in the Grant of Private Storm Drain Easements and Supplemental Declaration of Restrictions recorded August 13, 1998 as Document No. 9853753, Official Records of Monterey County, California ("Supplemental Restrictions"). The easement is exclusive except for the right of each owner of a Private Storm Drain Lot (defined in the Supplemental Restrictions) which is up-gradient from Parcel 1 (if any) to drain water through the Private Storm Drain System (defined in the Supplemental Restrictions) locate within the Exclusive Use Easement Area. The owner of Parcel 1 may use the Exclusive Use Easement Area for access, recreation, drainage and landscaping (including irrigation systems) only. The owner of Parcel 1 shall maintain the Exclusive Use Easement Area in a neat, clean and attractive appearance at no expense to the Master Association.

The Master Association retains the right, but not the obligation, at all reasonable times to enter the Exclusive Use Easement Area for purposes of inspecting, maintaining and repairing any structure located on Lot 62, including without limitation that portion of the Private Storm Drain System located within the Exclusive Use Easement Area should the owner of Parcel 1 fail to maintain the same pursuant to the Supplemental Restrictions; provided that such entry does not unreasonable interfere with the use of the easement by the owner of Parcel 1. The right of entry includes the right of reasonable access across the lot conveyed hereby to enter the Exclusive Use Easement Area. The owner of the lot conveyed hereby is obligated to reimburse the Master Association for its costs incurred in performing maintenance of that portion of the Private Storm Drain System located within the Exclusive Use Easement Area.

Parcel V:

One Class A membership in LAS PALMAS RANCH MASTER ASSOCIATION NO. 2, a California Nonprofit Mutual Benefit Corporation ("Master Association").

Parcel VI:

One Class A membership in FIELDCREST AT LAS PALMAS RANCH ASSOCIATION, a California Nonprofit Mutual Benefit Corporation ("Association").

APN: 139-392-009-000

EXHIBIT B ANNUAL MONITORING CERTIFICATION FORM

Date _____

«Owner_First_Name» «Owner»
«Mailing_Address»
«Mailing_City», «Mailing_State» «Mailing_Zip_Code»

Dear «Owner_First_Name»,

Our records indicate that you executed «Monitoring_Authority» and are required to be an owner occupant of the home. In order to remain in compliance with conditions under which you purchased your home or you received a loan, you must document to the County that you are a permanent occupant of the home.

To document your compliance with your obligations as a borrower or beneficiary of a County Housing Program, the following documents must be submitted to the County:

1. Fully **completed** and **signed** Owner-Occupant **CERTIFICATION** section (located on the back of this page);
2. A **copy of your current gas/electric or phone bill** which cites your name and the address of your home;
3. A **copy of your current Property Insurance declaration page with current policy dates**. If the County has extended a loan to you, your insurance policy must list the County as "second mortgagee". Please do not send a copy of your bill.

Please provide all requested information to our office no later than _____. If you do not supply the requested information, the County will not process any requests for refinancing or provide resale pricing until the information is supplied. In addition, the County may take other actions to secure the information, including, but not limited to, conducting a site visit. If you have any questions regarding this letter, please call our office at 755-5390.

WARNING: THIS OWNER OCCUPANCY REQUIREMENT INCLUDES PROHIBITIONS AGAINST RENTAL OF YOUR INCLUSIONARY UNIT. YOU **SHALL OCCUPY** YOUR INCLUSIONARY UNIT AS YOUR PRIMARY RESIDENCE. YOU **MAY NOT LEASE** THE UNIT WITHOUT THE COUNTY'S PRIOR WRITTEN APPROVAL AND SUCH APPROVAL SHALL ONLY BE GRANTED FOR LIMITED CIRCUMSTANCES AND FOR RESTRICTED TIME PERIODS. VIOLATIONS OF THESE PROVISIONS MAY RESULT IN BREACH OF CONTRACT AND THE LOSS OF YOUR HOME.

FOR ADDITIONAL INFORMATION REGARDING THE RESTRICTIONS ON YOUR INCLUSIONARY UNIT, PLEASE REVIEW THE ADMINISTRATIVE MANUAL LOCATED ON THE COUNTY'S WEBSITE AT:

<https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/housing>

The *Occupancy Requirements* section begins on page 24, and the *Monitoring and Compliance Procedures* for the owner-occupied units begin on page 32 of the **Administrative Manual**.

If you are no longer the owner and/or are no longer residing in this home, please contact this office immediately.

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Inclusionary Reaffirmation
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March 2024

EXHIBIT C
INCLUSIONARY HOUSING AGREEMENT (COUNTY AGREEMENT)

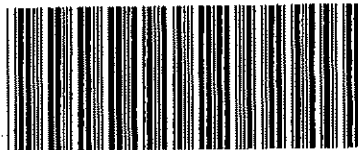
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Inclusionary Reaffirmation
Kirby, Jeffrey S.
19107 Garden Valley Way, Salinas
March 2024

Joseph R. F. I.
Monterey County Recorder
Recorded at the request of
Chicago Title

1/14/1999
8:00:00

1712363CW
Recording Requested By
and Chicago Title
When Recorded Return To:
County of Monterey
Department of Planning and Building Inspection
240 Church Street, Salinas CA 93901
Attn. Frank Brunings, Housing Coordinator

DOCUMENT: **9903189**

0009903189

Titles: 1 / Pages: 15

Fees.... 50.00

Taxes...

Other...

AMT PAID 50.00

As applied only to Lot No. 48, Tract No. 1283, this agreement shall supersede 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 December 11th, 1998, between JIM J. KIRBY, SR. AND DOROTHY KIRBY, HUSBAND AND WIFE ("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 **19107 GARDEN VALLEY WAY, SALINAS, CA 93908, (APN 139-392-009-000)**, within the Final Maps (as defined in the California Subdivision Map Act) for Tract No. 1283 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

1283

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

- D. In full satisfaction of the requirements of COUNTY CODE Chapter 18.40 with respect to Tract 1283, Owner has agreed to sell the Units at a price effectively restricted by County to make the Units "affordable" in accordance with the provisions of Chapter 18.40 of the COUNTY CODE.
- E. In return for and in consideration of the opportunity for Owner to sell the Unit and purchasers to purchase the Unit at "affordable prices" and in consideration of and for other good and valuable consideration, Owner, on behalf of himself and with the express intent to bind all those defined as "Owner" in Paragraph 2(e) below, hereby grant to County the option to purchase the Units ("Option") on the following terms and conditions.
1. **Good Faith Effort To Sell The Units.** Owner shall make a good faith effort to sell the Units to purchasers who meet the eligibility requirements of Chapter 18.40 of the Monterey County Code. Good faith effort shall constitute the following:
 - (a) Sell the units to persons having an annual income no greater than 120% of the median income for Monterey County as defined by the U.S. Department of Housing and Urban Development (H.U.D.) as adjusted for family size.
 - (b) Inform the Housing Authority and the Department of Planning and Building Inspection of intent to sell inclusionary units by mailing a "Notice of Intent to Sell Inclusionary Units."
 - (c) To perform any preliminary verification of households selected to purchase inclusionary units from owner. Preliminary verification includes review of prequalification statement from a lender and income tax statements to determine the household's income eligibility with county median income guidelines.
 - (d) To pay the Housing Authority for the services rendered in verifying and certifying eligible households. The fee for such services shall not exceed \$300 for each household submitted for verification.
 - (e) To deliver a copy of this Agreement to any household certified as an eligible household by the Housing Authority.
 - (f) Request, if necessary, a sixty (60) day extension of the marketing period and a sixty (60) day extension of the escrow period pursuant to Paragraph E.3.(a)(ii) of this Agreement.

- (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.

3. Method of Exercising Option.

(a) Notice to Sell and Notice of Acceptance.

- i) Except for permitted transfers of a Unit as set forth in Paragraph 11 below and 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, if Owner wishes to sell or otherwise dispose of a Unit, Owner shall notify County in writing ("Notice to Sell"). The Notice to Sell shall state the street address of the Unit and Owner's full name(s), and shall be personally delivered or deposited in the United States mail, postage prepaid, first class, certified return receipt requested, addressed to 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 Street, Salinas, CA 93907. County, its Designee or any assignee of County or its Designee shall then have the right to exercise the Option by delivery of written notice ("Notice of Acceptance") by personal delivery or upon deposit into the United States mail, postage prepaid, first class certified mail, to Owner at the address of the Unit at any time within sixty (60) days following the actual receipt by County of the Notice to Sell.
- ii) Should Owner fail to sell the unit within sixty (60) days, or complete a transfer of title to purchasers who meet the eligibility requirements of the Inclusionary Housing Ordinance during the following sixty (60) day escrow period, Owner may request from County one additional sixty (60) day marketing period and sixty (60) day escrow period before County exercises its Option.
- iii) County shall have sixty (60) days from the date it receives notice of the owner's failure to close escrow to exercise its option to purchase the Property at the Option Price. Upon such exercise, the County shall have sixty (60) days from the date of exercise of its option to consummate the Escrow Closing.
- iv) 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, County shall cause to be recorded in the Office of the Recorder of County, a notice of intent not to exercise the option with respect to the Unit, and shall deliver a copy of the notice to Owner addressed to the street address of the Unit. The notice shall be recorded within fifteen (15) days following County's decision not to exercise its Option but not later than one hundred twenty (120) days from the Owner's original notice of intent to sell.

- 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

the street address of the Unit and to the beneficiary under the deed of trust, if the deed of trust is in default. In the event County elects not to exercise its option upon default, any surplus to which Owner may be entitled shall be paid as follows: that portion of surplus, if any, up to but not to exceed the net amount that Grantee would have received under the formula in Paragraphs 6 and 7 had County exercised its option to purchase the Unit on the date of the foreclosure sale, shall be paid to Owner on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to County. Anything contained in this Agreement to the contrary notwithstanding, the provisions of this Agreement and the Option granted to County, shall be subordinate to any purchase money deed of trust encumbering a Unit, but County shall have the right to cure any default under a deed of trust encumbering a Unit.

- (c) **Sale, Transfer or Conveyance of Interest in Unit Without Notice to Sell.** If Owner fails to provide County with a properly delivered Notice to Sell pursuant to Paragraph 3(a) and County learns of (i) a pending sale, transfer or conveyance of the Unit; or (ii) the actual transfer, sale or conveyance of the Unit, County shall have the right to exercise the Option pursuant to the terms of this Agreement AT ANY TIME THEREAFTER AT ITS ELECTION, however, any such option must be exercised by written notice delivered to the property owner no later than 60 days from the date the County learns of such pending or actual sale, conveyance, or transfer. Owner expressly understands and agrees that only a properly delivered Notice to Sell shall result in the period for exercise of the Option being limited to sixty (60) days pursuant to Paragraph 3(a)(i), or an additional sixty (60) days marketing period when requested by Owner.

4. **Escrow.**

- (a) **Opening of Escrow.** If and in the event that County, its Designee or any assignee of County or its Designee exercises the Option, close of escrow for the purchase of the Unit shall be on or before forty-five (45) days following receipt by Owner of the Notice of Acceptance, or such later date as may be mutually agreed upon by Owner and County, County's Designee or assignee. The escrow shall be opened upon delivery to Owner of the Notice of Acceptance or as soon thereafter as possible, or at such later time as may be mutually agreed upon by Owner and County, County's Designee or assignee.

- (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.

6. **Purchase Price.** The purchase price of the Unit (\$167,000.00) shall, prior to adjustment as provided in Paragraph 7 below, be the lower of:

- (a) The purchase price as agreed upon between Owner and County, its Designee or assignee;
- (b) The Owner's purchase price of the Unit, regardless of when purchased (hereinafter, "Base Price"), plus an amount, if any, equal to (A) the Base Price multiplied by (B) the percentage increase in the median household income published by the United States Department of Housing & Urban Development ("HUD") for the Monterey County Standard Metropolitan Statistical Area for a family of four (4), from that published for the date nearest the date of purchase of the Unit by Owner over that published nearest the date of receipt by Owner of the Notice of Acceptance. In the event that HUD no longer establishes median income levels at the time of the giving of the Notice to Sell, County may use any other recognized method of computing median income for computing the percentage increase.

In no event, however, shall the purchase price be below the Base Price or below the outstanding balance owing on the note(s) secured by a purchase money deed(s) of trust encumbering the Unit.

7. **Adjustment to Purchase Price.** The purchase price as determined under Paragraph 6 above shall then be adjusted as follows:

- (a) If the Unit is sold, the purchase price shall be:
 - (i) Increased by the actual cost, evidenced by receipts, of any single capital improvement which has a value in excess of one percent (1%) of the Base Price to the Unit made since Owner's acquisition of the Unit which have a useful life of greater than five (5) years subsequent to the conveyance by Owner pursuant to the Option and which were made with all required building and other governmental approvals and with the approval of the relevant homeowners association if such approvals are required (provided, however, the one percent (1%) limitation shall not apply where the expenditure was made pursuant to a mandatory assessment levied by the homeowners association for the development of which the Unit is a part, whether levied for improvements or maintenance to the Unit, the common area or related purposes, or where the expenditure was made for replacement of appliances, fixtures or equipment which was originally acquired as part of the Unit by Owner but in no event shall the purchase price be increased in excess of five percent (5%) of the Base Price); and

- (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 or 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.

10. **Transfers and Conveyances While Option is Operative.** Except as otherwise provided in Paragraph 11 below, until such time as the Option is exercised, waived or expires, the Unit and any interest in title thereto shall not be sold, leased, rented, assigned or otherwise transferred to any person or entity except with the express written consent of County or its Designee, which consent shall be granted only if consistent with County's goal of creating, preserving, maintaining and protecting low and moderate priced housing in Monterey County. Any such sale, lease, assignment or other transfer which has not been consented to by County shall result in County having the RIGHT AT ITS ELECTION TO EXERCISE AT ANY TIME THEREAFTER THE OPTION however, any such option must be exercised by written notice delivered to the property owner no later than 60 days from the date the County learns of such pending or actual sale, conveyance, or transfer PURSUANT TO PARAGRAPH 3(c) ABOVE.

11. **Permitted Transfers.** The Option contained in this Agreement shall not apply to:

- (a) a transfer of title of a Unit by gift, devise or inheritance to Owner's spouse, to a surviving joint tenant, to a spouse as a party to a divorce or marital dissolution proceeding or to a spouse in conjunction with marriage; or
- (b) a transfer of title of a Unit to a transferee if:
 - (i) the transferee occupies the Unit,
 - (ii) the transferee earns no more than One Hundred and Twenty percent (120 %) of the then current County median income as defined by HUD,
 - (iii) the transferee resides in County prior to the transfer,
 - (iv) the purchase price paid to Owner by the transferee is not more than the "purchase price" for the Unit as computed pursuant to the provisions of Paragraphs 6 and 7 above, and
 - (v) County certifies that the facts required by subclauses (i), (ii), (iii) and (iv) are correct and Owner pays to County the costs incurred by County to conduct an investigation to enable County to make the certification; or
- (c) a transfer of title of a Unit authorized by resolution of the Board of Supervisors of County as being consistent with the goals and purposes of the provisions of Chapter 18.40 of the MONTEREY COUNTY CODE.

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.

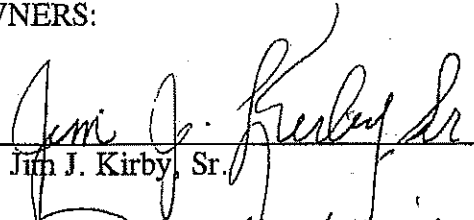
12. **Permitted Encumbrances.** This Agreement and the Option granted to County shall not prohibit Owner from encumbering the Unit for the purpose of securing financing for purposes of purchasing the Unit or securing financing to refinance the original purchase price of the Unit, and shall not supersede 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.

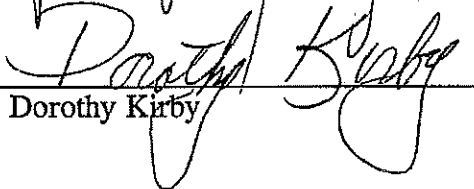
15. **Acceptance of Terms by Owner.** By acceptance of the Deed to which this Agreement is attached, Owner accepts and agrees to be bound by the covenants, restrictions and Option contained in this Agreement, and further acknowledges receipt of and agrees to be bound by the covenants, restrictions and Option contained in this Agreement, and further acknowledges receipt of and agrees to be bound by the provisions of this Agreement.
16. **Miscellaneous Provisions.**
- (a) **Independent and Severable Provisions.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or invalid, such holding shall not render unenforceable any other provision hereof, each provision hereof being expressly severable and independently enforceable to the fullest extent permitted by law.
 - (b) **Further Assurances and Recordation.** The undersigned covenant that upon the request of County or its Designee, they will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and agreements and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of this Agreement and other instruments required hereunder, including, but not limited to, (i) immediately executing and acknowledging a Memorandum and Reaffirmation of Grant of Option to Purchase to the County of Monterey; and (ii) upon the sale or other transfer of an interest in the Unit, the undersigned Owner causing the purchaser or transferee to execute and acknowledge an Agreement to Grant Deed in form acceptable to County which shall be attached to the Grant Deed by which the undersigned conveys title to the Unit.
 - (c) **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only and shall not be used in construing this Agreement.
 - (d) **Waiver.** No waiver by County or its Designee of the right to exercise the Option or of any breach by Owner of any covenant, restriction or condition herein contained shall be effective unless such waiver is in writing signed by County or its Designee and delivered to the undersigned.
The waiver by County or its Designee of any such breach or breaches, or the failure by County or its Designee to exercise any right to remedy with respect to any such breach or breaches, shall not constitute a waiver or relinquishment for the future of any such covenant or condition or bar any right or remedy of County or its Designee with respect to any such subsequent breach.

- (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.

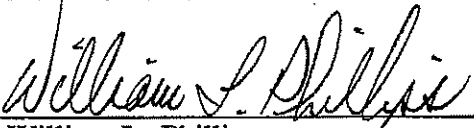
IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the date first set forth above.

OWNERS:

By 
Jim J. Kirby, Sr.

By 
Dorothy Kirby

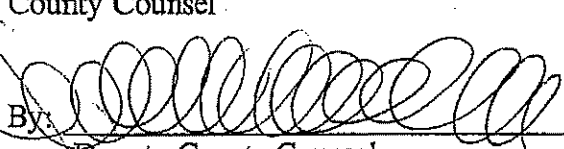
COUNTY OF MONTEREY:

By 
William L. Phillips
Director of Planning and
Building Inspection

Approved as to form:

Douglas C. Holland

County Counsel

By: 

Deputy County Counsel

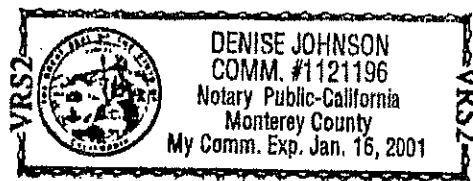
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
 COUNTY OF MONTEREY)

On 12-11-98 before me, the undersigned, Notary Public, personally appeared Jim G. Kirby Sr. & Dorothy Kirby, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Denise Johnson (Seal)

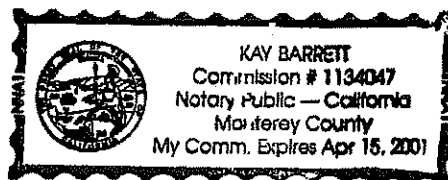
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

STATE OF CALIFORNIA)
 COUNTY OF MONTEREY)

On 1/5/99 before me, Kay Barrett, Notary Public, personally appeared William L. Phillips, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Kay Barrett (Seal)



PARCEL I:

Lots 48 as shown on the Map of "Tract No. 1283, Las Palmas Ranch Phase II, Unit VI", filed for record September 29, 1997 in Volume 19, Cities and Towns, at Page 47, Monterey County 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 31, 1997, Series No. 9764772, 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 Fieldcrest at Las Palmas Ranch, recorded September 26, 1995, in Reel 3279, Page 1447, Official Records of Monterey County, California ("Fieldcrest Declaration"), for the purposes described in the Fieldcrest Declaration and subject to the terms, provisions and reservations of the Fieldcrest 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.

A.P. NO. 139-392-009

END OF DOCUMENT

EXHIBIT D
AMENDMENT NO. 1 TO INCLUSIONARY HOUSING AGREEMENT (COUNTY
AMENDMENT NO. 1)

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**AMENDMENT NO. 1 TO INCLUSIONARY HOUSING AGREEMENT: Resale
Restrictions on Inclusionary Housing Unit and Option to Purchase Real Property**

THIS AMENDMENT NO. 1 to Agreement: Resale Restrictions on Inclusionary Housing Unit and Option to Purchase Real Property is made and entered into by the County of Monterey, hereinafter referred to as "COUNTY", and Jim J. Kirby, Sr. and Dorothy Kirby, hereinafter referred to as "OWNER."

WITNESSETH:

WHEREAS, the County and Jim J. Kirby, Sr. and Dorothy Kirby, have heretofore entered into an Agreement: Resale Restrictions on Inclusionary Housing Unit and Option to Purchase Real Property recorded on January 14, 1999; and

WHEREAS, on April 9 2002 the Board of Supervisors of the County of Monterey approved certain revisions to the Inclusionary Housing Program, and

WHEREAS, the parties wish to amend the Inclusionary Housing Agreement to incorporate the program revisions pertaining to encumbrance and refinancing of property.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and in the Agreement, the parties agree as follows:

1. **Adjustment to Purchase Price.** Section 7 (a) (i) of the Agreement is hereby amended to include the following:
Calculation of Resale value is determined by Monterey County Housing and Redevelopment staff and is based on the following formula:
 - a. Using original sales price as base figure, apply percentage change in median income for Monterey County 4-person household from the original sales year to current year and add this amount to original sales price,
 - b. If home has been maintained in good condition, a credit of up to 10% of original sales price can also be added to resale price calculation,
 - c. Proposed bedroom addition(s) costs can be added to the resale price calculation based on the bedroom addition formula as used by Monterey County Housing and Redevelopment for Inclusionary units,
 - d. The resultant value after completing steps a-c is the resale value as long as *the unit's resale value will still be affordable to an income-eligible household with a household size appropriate for the unit size.*
2. **Permitted Encumbrances.** Section 12 of the Agreement is hereby amended to add the following:
 - a. Refinancing can include the refinancing of the first mortgage on the property and/or adding a second mortgage on the property. In no case

- b. shall the County's non-monetary deed of trust be in less than third position on the property.
 - c. Property owners may "take cash" out from the refinancing proceeds as long as the total loans encumbered do not exceed resale value.
 - c. If using refinancing proceeds to fund a bedroom addition(s), property owner agrees to deposit an amount equal to the increased value due to bedroom addition(s) in an escrow account, with the County of Monterey listed as an additional co-signer to authorize any disbursement from the escrow account. The sole purpose of the funds in the escrow account shall be used for the construction of the bedroom addition(s).
3. **Recordation:** Upon execution of this Amendment No.1 by all parties, Owner shall cause this Amendment No. 1 to Inclusionary Housing Agreement to be recorded in the office of the Recorder of the County of Monterey.
4. **Inclusionary Housing Agreement to Remain in Effect.** Except as herein stated, all other terms, provisions and exhibits of the Inclusionary Housing Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed the Amendment No.1 on the day and year first written below.

COUNTY OF MONTEREY

By: *Jim Cook* For
Jim Cook

3/8/04
Date

Owner

Jim J. Kirby, Sr.
Jim J. Kirby, Sr.
6/23/03

Date

Dorothy Kirby
Dorothy Kirby
6/24/03
Date

APPROVED AS TO FORM:

By: *Mary Grace Perry*
County Counsel Deputy

7-9-2003
Date

EXHIBIT A

Parcel # 139-392-009

Lots 48 as shown on the Map of "Tract No. 1283, Las Palmas Ranch Phase II, Unit VT", filed for record September 29, 1997 in Volume 19, Cities and towns, at Page 47, Monterey County 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 31, 1997, Series No. 9764772, 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 Fieldcrest at Las Palmas Ranch, recorded September 26, 1995, in Reel 3279, Page 1447, Official Records of Monterey County, California ("Fieldcrest Declaration"), for the purposes described in the Fieldcrest Declaration and subject to the terms, provisions and reservations of Fieldcrest 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.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

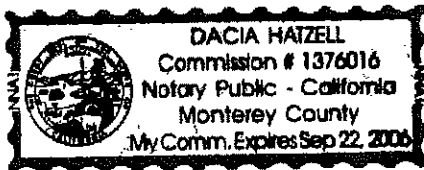
County of Monterey

} ss.

On June 23, 2003 before me, Dacia Hatzell, Notary,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Jim J. Kirby, Sr.

Name(s) of Signer(s)

- ☐ personally known to me
☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Dacia Hatzell
 Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: Amend. No. 1 to Inclusionary Housing Agr.Document Date: 6-23-03 Number of Pages: 3Signer(s) Other Than Named Above: Dorothy Kirby**Capacity(ies) Claimed by Signer**Signer's Name: Jim J. Kirby, Sr.☒ Individual☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Attorney-in-Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

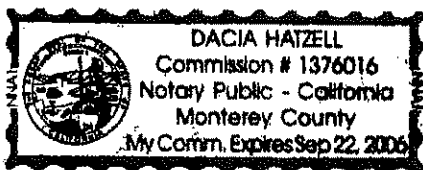
State of California

County of Monterey } SS.On June 24, 2003 before me, Dacia Hatzell, Notary

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Dorothy Kirby

Name(s) of Signer(s)

☐ personally known to me☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Dacia Hatzell
Signature of Notary Public

OPTIONAL

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Description of Attached DocumentTitle or Type of Document: Amendment No. 1 to Inclusionary HousingDocument Date: 6-24-03Number of Pages: 3Signer(s) Other Than Named Above: Jim J. Kirby Sr.**Capacity(ies) Claimed by Signer**Signer's Name: Dorothy Kirby☒ Individual☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Attorney-in-Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

ACKNOWLEDGEMENT

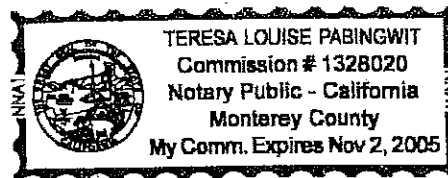
STATE OF CALIFORNIA)
COUNTY OF MONTEREY)

On March 8, 2004 before me, Teresa Louise Pabingwit
Notary Marlen Noel Public, personally appeared

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

WITNESS my hand and official seal.

Signature Teresa Louise Pabingwit (Seal)



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