

**RECORD WITHOUT FEE
PURSUANT TO GOVERNMENT CODE § 6103**

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

CITY OF FORT BRAGG

CITY CLERK'S OFFICE
416 N FRANKLIN STREET
FORT BRAGG, CALIFORNIA 95437

Space above this line for Recorder's use.

**AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF
RESTRICTIVE COVENANTS
("REGULATORY AGREEMENT")**

This Affordable Housing Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of February 28, 2023 ("**Effective Date**") by and between the City of Fort Bragg, a California municipal corporation ("**City**") and the Housing Mendocino Coast, a California nonprofit public benefit corporation ("**HMC**"). City and HMC are hereafter referred to as the "**Parties**."

RECITALS

A. On December 10, 2007 the City entered into an Affordable Housing Agreement ("Original AHA") with Charlie T. Dimock ("Developer"), recorded as instrument number 2008-00215 in the Official Records of Mendocino County. The Original AHA implemented the provisions of Fort Bragg Municipal Code Section 18.31.20(A)(1) and required the provision of one affordable housing unit ("Restricted Home") as part of a five unit condominium complex known as 435 North Whipple Street Association.

B. The Developer has since sold the Restricted Home in accordance with the Original AHA and its first amendment. The owner of this Restricted Home located at 435 #B N Whipple Street (The "Property") is now party to a Refinance and Resale Limitation Agreement and Option to Purchase with the City recorded as instrument number 2017-15192 in the Official Records of Mendocino County ("Original Limitation Agreement").

C. Both the Original AHA and the Original Limitation Agreement require the owner of the Restricted Home to sell the Property to either qualifying owners or, at the City's option, back to the City.

D. The Original Limitation Agreement allows the City to exercise its option to purchase through a nonprofit entity.

E. HMC is a nonprofit public benefit corporation committed to providing and maintaining affordable ownership opportunities, with a proven history of operations in Mendocino County and within the City.

F. This Agreement is entered into to provide assurance to City that the Restricted Home shall comply with the requirements of the Fort Bragg Municipal Code and the conditions of approval for the 435 North Whipple Street Association complex, to the extent applicable.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below. Additional terms are defined in the Recitals and the text of this Agreement.

(a) "**Affordable Purchase Price**" means a home purchase price resulting in an average monthly housing payment (including mortgage loan principal and interest, property taxes and assessments, homeowners insurance premiums homeowners association dues, if any) which is affordable to households of Low to Moderate-Income, as determined using standard underwriting criteria in common use by Fannie Mae or the California Housing Finance Agency.

(b) "**Area Median Income**" means the median household income, adjusted for household size, applicable to Mendocino County, California as published periodically by the State Department of Housing and Community Development in the California Code of Regulations, Title 25, Section 6932 pursuant to California Health and Safety Code Section 50093(c) (or successor provision).

(c) "**Eligible Buyer**" means a household of Low- to Moderate—Income, as applicable, which the City has determined meets the eligibility requirements for purchase of a Restricted Home.

(e) "**Low-Income**" means an annual income which does not exceed eighty percent (80%) of the Area Median Income adjusted for household size.

(f) "**Median-Income**" means an annual income which does not exceed one hundred percent (100%) of the Area Median Income, adjusted for household size.

(g) "**Moderate-Income**" means an annual income which does not exceed one hundred twenty percent (120%) of the Area Median Income, adjusted for household size.

(h) "**Maximum Initial Sales Price**" means the initial Affordable Purchase Price for a Home as determined by City.

2. Satisfaction of Affordable Housing Obligation. HMC agrees that it shall cause the sale of the Restricted Home at an Affordable Purchase Price to an Eligible Buyer of Low- Income in accordance with income categories specified in Exhibit B. Concurrently with the sale of each Restricted Home, HMC shall require the homebuyer to execute a Declaration of Affordability Covenants, Buyers

Occupancy Resale Restriction and Option to Purchase in a form approved by the City (the "Declaration") and related Deed of Trust (the "Deed of Trust") substantially in the form attached hereto as Exhibit C. Among other provisions, the Declaration will require each Restricted Home (i) to be used solely for residential purposes (ii) to be occupied as the homebuyer's principal residence, and (iii) to be permitted to be transferred only to HMC, another Eligible Buyer, or upon the death of the homebuyer, to the homebuyer's heirs who qualify as Low-Income. HMC agrees that the intent of this Agreement, the Declaration is that the Restricted Homes shall be permanently affordable to Eligible Buyers of Low-Income., and HMC agrees that resale of the Restricted Homes shall be so restricted pursuant to the Declaration.

3. Marketing and Sale to Eligible Buyers. The Restricted Home shall be sold at an Affordable Purchase Price as described in Section 4 to Eligible Buyers of Low-Income, with Exhibit B. Within the pool of eligible applicants, to the extent of the law, preference is to be given to persons that either live or work in the City of Fort Bragg. The City shall cooperate with HMC to identify Eligible Buyers; however, HMC will have primary responsibility for marketing the Restricted Homes, finding qualified Eligible Buyers, and screening and selecting applicants. City shall have no obligation to pay costs related to marketing, sales efforts or real estate commissions. HMC agrees that it shall comply with applicable fair housing laws in the marketing and sale, as applicable, of the Restricted Homes.

4. Affordable Purchase Price. The Maximum Initial Sales Price for the Home is shown in Exhibit B attached hereto and incorporated herein.

5. City Review of Documents. Upon request, HMC agrees that it shall provide the form of Buyers Acknowledgement of Purchase Agreement, Declaration, Letter of Acknowledgement, and Deed of Trust and Security Agreement ("Deed of Trust") to be executed by the homebuyers to the City for prior review and approval.

6. Compliance Reports, Inspections, Monitoring. Annually on the anniversary of the Effective Date, upon City's request HMC shall submit to City a Compliance Report verifying HMC's compliance with this Agreement, and certified as correct by HMC under penalty of perjury. The Compliance Report shall be in such format as City may reasonably request and shall contain certifications regarding the eligibility of homebuyers and evidence of the homebuyer's and HMC's execution of the Declaration, as applicable.

HMC shall retain all records related to compliance with this Agreement, and shall make such records available to City or its designee for inspection and copying on five (5) business days' written notice. HMC shall permit City and its designees to inspect the Property to monitor compliance with this Agreement following two (2) business days' written notice.

7. Covenants Run with the Land. The covenants and conditions herein contained shall apply to and bind, during their respective periods of fee ownership, HMC and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to

any part of the Property and shall run with and burden such portions of the Property. This Agreement shall remain in effect in perpetuity unless released by City pursuant to an instrument recorded in the Official Records of Mendocino County.

8. Default and Remedies. Failure of HMC to cure any default in HMC's obligations under this Agreement within thirty (30) days after the delivery of a notice of default from the City will constitute an Event of Default under this Agreement. In addition to remedies set forth in this Agreement, the City may exercise any and all remedies available under law or in equity, instituting against HMC or other applicable parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation.

9. Option to Purchase, Enter and Possess or Assignment of Rights. The following shall apply: If, at or after the initial sale of the Restricted Home to Eligible Buyers, the Restricted Home is sold to a person or persons who do not qualify as Eligible Buyers, the City shall have the option to assume HMC's rights under each Declaration and Deed of Trust. Upon notice from the City of a violation under this Section 9 and the exercise of the option under this Section 9 by the City, HMC shall assign its interest in the applicable Declaration(s) and Deed(s) of Trust to the City. In such event City shall assume the rights and obligations of HMC under the applicable Declaration(s) and Deed(s) of Trust.

In order to exercise the option to assume described in 9 above, the City shall give HMC notice of assignment, and HMC shall, within thirty (30) days after receipt of such notice to assign its rights and obligations under the applicable Declaration and Deed of Trust to the City.

10. Mortgagee Protection. The City's rights pursuant to Section 9 shall not defeat, limit or render invalid any mortgage or deed of trust recorded against the Property or any portion thereof, including without limitation, any Restricted Home. Any conveyance of the Property to the City pursuant to Section 9 shall be subject to mortgages and deeds of trust permitted by this Agreement. Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of the California Housing Finance Agency ("CalHFA"), HUD, the Federal National Mortgage Association ("FNMA"), or the Veterans Administration ("VA") under any mortgage recorded against the Property in compliance with the Declaration.

11. Remedies Cumulative. No right, power, or remedy specified in this Agreement is intended to be exclusive of any other right, power, or remedy, and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy available to the City under law or in equity. Neither the failure nor any delay on the part of the City to exercise any such rights, powers or remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right, power or remedy preclude any

other or further exercise of such right, power or remedy, or any other right, power or remedy.

12. Attorneys' Fees and Costs. The City shall be entitled to receive from HMC or any person violating the requirements of this Agreement, in addition to any remedy otherwise available under this Agreement or at law or equity, whether or not litigation is instituted, the costs of enforcing this Agreement, including without limitation reasonable attorneys' fees and the costs of City staff time. In any dispute arising in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees.

13. Appointment of Other Agencies. In its sole discretion, the City may designate, appoint or contract with any other person, public agency or public or private entity to perform some or all of the City's obligations under this Agreement.

14. Hold Harmless. HMC agrees to indemnify, defend (with counsel approved by the City) and hold harmless City and its elected and appointed officials, officers, employees, representatives and agents (all of the foregoing, collectively the "**Indemnitees**") from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter "**Claims**") arising or allegedly arising out of or relating in any manner to the Project, the Property, or HMC's performance or nonperformance under this Agreement, except to the extent arising from the gross negligence or willful misconduct of the City. The provisions of this section shall survive the expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement.

15. Insurance Requirements. HMC shall obtain and maintain at HMC's expense, Commercial General Liability, naming Indemnitees as additional insureds with aggregate limits of not less than Two Million Dollars (\$2,000,000) for bodily injury and death or property damage including coverage for contractual liability and premises operations, purchased from an insurance company duly licensed to issue such insurance in the State of California with a current Best's Key Rating of not less than A-V, such insurance shall be evidenced by an endorsement which so provides and delivered to the City prior to the Effective Date.

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

City:

City of Fort Bragg
416 N Franklin Street
Fort Bragg, CA 94928

Attn: City Manager

HMC:

Housing Mendocino Coast

P.O. Box 1172

Fort Bragg, CA 95437

Attn: Executive Director

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

17. Integrated Agreement; Amendments. This Agreement, together with the exhibits hereto constitutes the entire Agreement between the Parties with respect to the subject matter hereof. No modification of or amendment to this Agreement shall be binding unless reduced to writing and signed by the Parties. The City Manager or his or her designee shall have authority to approve or disapprove minor or technical amendments to this Agreement on behalf of the City.

18. Subordination; Execution of Riders for the Benefit of Mortgage Lenders. City agrees that if required in order to assist Eligible Buyers to secure purchase money financing for the acquisition of a Home, the City will enter into a subordination agreement with a purchase money lender to subordinate this Agreement under such terms as the City and the purchase money lender shall negotiate provided that City is granted reasonable notice and cure rights under the first mortgage. The City further agrees that if City succeeds to the interest of HMC under the Ground Lease applicable to any one or more Restricted Homes pursuant to the exercise of City's remedies under this Agreement or the Deed of Trust, the City agrees that it shall recognize the Lessee under the Ground Lease and shall comply with the requirements of Fannie Mae Form 2100 (3/06) and Fannie Mae Announcement 06-03 or similar successor policy, as such documents may be modified or amended. Notwithstanding any other provision hereof, the provisions of this Agreement shall be subordinate to the lien of the First Lender Loan (as defined in the Declaration) and shall not impair the rights of the First Lender, or the First Lender's successor or assign, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Unit or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquired title to the Home pursuant to a deed or assignment in lieu of foreclosure and no notice of default was recorded against the Home by such holder in connection therewith, this Agreement shall automatically terminate upon such acquisition of title, only if (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period (which requirement shall

be satisfied by recordation of a notice of default under California Civil Code Section 2924), and (ii) the City shall not have cured the default within the sixty (60)-day period. Owner agrees to record any necessary documents to effect such termination, if applicable

19. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

20. Further Assurances; Action by the City. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council unless the City Manager determines in his or her discretion that such action requires such approval.

21. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. The Parties consent to the jurisdiction of any federal or state court in the jurisdiction in which the Property is located (the "**Property Jurisdiction**"). Borrower agrees that any controversy arising under or in relation to this Agreement shall be litigated exclusively in courts having jurisdiction in the Property Jurisdiction. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

22. No Waiver. Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of HMC or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to HMC to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by HMC shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

23. Headings. The titles of the sections and subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

25. Severability. If any provision contained in this Agreement is to be held by a court of competent jurisdiction to be void or unenforceable the remaining portions of this Agreement shall remain in full force and effect.

26. Exhibits. The following exhibits attached to this Agreement are hereby incorporated herein by reference:

Exhibit A Legal Description of the Property

Exhibit B Maximum Homebuyer Income Level; Unit Size and Bedroom Count; Maximum Initial Sales Price

Exhibit C Declaration of Affordability Covenants, Buyers Occupany Resale Restriction and Option to Purchase (“Declaration”) and Deed of Trust and Security Agreement (“Deed of Trust”)

[SIGNATURES ON FOLLOWING PAGE; SIGNATURES MUST BE NOTARIZED]

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

HMC:

Housing Mendocino Coast,
A nonprofit public benefit corporation

By: _____

Its: _____

CITY :

City of Fort Bragg
a California municipal corporation

By: _____, City Manager

*Authorized by Resolution XX-2023 adopted by the Fort Bragg
City Council at their meeting of February 28, 2023.*

ATTEST: _____, City Clerk

APPROVED AS TO FORM:

By: _____, City Attorney

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Fort Bragg County of Mendocino, State of California, described as follows:

Parcel B and the common area, as numbered and designated upon Parcel Map of division 3-06, filed December 20, 2007, in Maps Drawer 75, Page 74, Mendocino County Records.

APN: 008-096-21

Exhibit C

[Attach Form of Declaration and Deed of Trust]

