

Free Recording Pursuant to
Government Code Section 27383 at the
Request of the California Department
of Transportation

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

California Department of Housing and
Community Development
P.O. Box 952052
Sacramento, California 94252-2052
Attn: General Counsel

[site address]

(Space Above This Line for Recorder’s Use)

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
(CALTRANS STATE ROUTE 710 SALES PROGRAM)**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
(CALTRANS STATE ROUTE 710 SALES PROGRAM)** (“*Use and Resale Covenant*”) is dated _____, 20__, for reference purposes only, by and among the City of Pasadena, (“*City*”), the California Department of Transportation, a department of the State of California (“*Caltrans*”), and the California Department of Housing and Community Development, a department of the State of California (Monitoring Entity). City is purchasing that certain real property, consisting of land and all buildings thereon, in the City of Pasadena with a street address of _____, _____, California _____, and a legal description found in Exhibit A attached hereto and made a part hereof (“*Property*”). Capitalized terms used in this Use and Resale Covenant not already defined above have the meanings given to them in Section 2 below. This Use and Resale Covenant is made with reference to the following facts:

RECITALS

A. WHEREAS, in 1979 the Legislature passed Senate Bill 86, commonly referred to as the “Roberti Act” (herein, as may be amended from time to time, the “*Act*”) which added, in part, Sections 54235 through ~~54238.7~~ ~~54239.5~~ 54239.6 to the California Government Code wherein the Legislature found and declared that the sale of certain surplus residential properties by Caltrans would directly serve an important public purpose; Caltrans, pursuant to the Act, is selling the Property to the City, subject to the provisions of this document;

B. WHEREAS, in accordance with the Act, Caltrans has developed a program as more particularly set forth in Chapter 9.5, Division 2 of Title 21 of the California Code of Regulations

(herein, the “**Regulations**”) to make certain unoccupied surplus residential properties in Pasadena available for sale pursuant to Government Code section 54239.5(b) ~~historic homes available for public and community use;~~

C. **WHEREAS**, Caltrans has identified City as being eligible to purchase the Property at Caltrans’ original acquisition price in accordance with the Act;

D. **WHEREAS**, to effectuate the sale of the Property to City, City has agreed to use and resale controls in accordance with the Act and evidenced by this Use and Resale Covenant; and

E. **WHEREAS**, Caltrans has determined the Property is “excess real property” within the meaning of Streets and Highways Code Section 118.6 and approved the sale;

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to City and the public purposes to be achieved under the Act, City, Caltrans, and the Monitoring Entity hereby declare and agree as follows:

Section 1. Extraordinary Provisions.

1.1 Purchase Price. Caltrans and City agree that City’s purchase price for the Property is Caltrans’ original acquisition price. Caltrans and City further agree that City’s purchase price complies with Government Code section 54239.5, subdivision (b)(1) as set forth in the Purchase and Sale Agreement between the parties.

1.2 City Acknowledgments.

- (a) City understands and agrees to abide by all the provisions of this Use and Resale Covenant.
- (b) City hereby takes the Property subject to certain restrictions and limitations of the full enjoyment and use of the Property as set forth in this Use and Resale Covenant. City acknowledges that City may not enjoy the same economic benefits from owning the Property that City would enjoy if this Use and Resale Covenant did not exist.
- (c) Absent the assistance provided by Caltrans and the provisions of this Use and Resale Covenant, the Property could not be made available to City.
- (d) In recognition of the acknowledgements and agreements stated herein, City accepts and agrees to the provisions of this Use and Resale Covenant with the understanding that this Use and Resale Covenant will remain in full force and effect to limit the use and transfer of the Property unless terminated pursuant to the terms herein.
- (e) City covenants and agrees for itself, its successors, its assigns, and every successor interest in the Property or any part thereof, that City, such successors and such assignees, shall regularly and continuously use the Property only for the purposes authorized in this Use and Resale Covenant unless otherwise provided herein.

- (f) City further agrees not to challenge the terms and provisions of this Use and Resale Covenant or any right of Caltrans, or the Monitoring Entity under this Use and Resale Covenant ~~created hereunder~~ and acknowledges that the same are not an unreasonable restraint on any right to transfer the interest of the City in the Property.
- (g) City acknowledges that Government Code section 54239.5, subdivision (b) imposes additional requirements upon City that are not reflected in this Use and Resale Covenant, and that full compliance with this Use and Resale Covenant does not equate to full compliance with Government Code section 54239.5, subdivision (b).
- (h) City acknowledges that Government Code section 54239.5, subdivision (b)(15) authorizes the Monitoring Entity to review, adopt, amend, and repeal standards, forms, or definitions to implement Government Code section 54239.5, subdivisions (b)(3) through (14), inclusive.

Section 2. Definitions.

As used in this Use and Resale Covenant, the capitalized terms set forth below shall have the following meanings:

- (a) “**Event of Default**” is defined in Section 6.1.
- (b) “**Monitoring Entity**” means Department of Housing and Community Development.
- (c) “**Notice**” is defined in Section 7.2.

Section 3. Use of the Property.

3.1 Resale. City shall resell the Property within two (2) years of the close of escrow that transfers title of the Property from Caltrans to City. Monitoring Entity may grant the City up to one two-year extension of time to resell the Property if City demonstrates sufficient progress on the sale of the Property. Sufficient progress includes:

- (a) Proof that the Property has been listed for 180 days at a price that does not exceed fair market value based on comparable sales in the City of Pasadena with no offers; or
- (b) Unexpected structural damage to the Property due to a natural disaster or similar occurrence; or
- (c) Other proof of progress at the discretion of the Monitoring Entity’s Director.

3.2 Affordable Housing. If City does not resell the Property within the period described in Section 3.1 (including any extension(s) granted by the Monitoring Entity), then City shall cause the Property to be used as either of the following:

- (a) As an affordable rental to lower income and moderate-income households, as defined by Health and Safety Code sections 50052.5 and 50079.5, respectively. Such use shall be for no less than 55 years.
- (b) If the Property is a single-family residence, then as owner-occupied affordable housing for no less than 45 years, with the Property being sold to a person or family of low or moderate income at an affordable price, as defined by Government Code section 62250. The Property may then only be resold at an affordable price to a person or family of low or moderate income.

Section 4. Use of the Proceeds After Resale.

4.1 Required Use of Proceeds. City shall use the proceeds from the resale of the Property described in Section 3.1 to finance the production or acquisition of at least three (3) housing units that meet all the following criteria:

- (a) The housing units must be affordable to persons and families of very-low, low or moderate-income, as defined by Health and Safety Code section 50093; and
- (b) Either through its ownership of the housing units or by regulatory agreement if it does not own the housing units, City shall cause each housing unit to be made available at an affordable sales price or an affordable rent, as defined in Health and Safety Code sections 50052.5 and 50053; and
- (c) If a housing unit is used as a rental, then it shall be available at an affordable rent for no less than 55 years; and
- (d) If a housing unit is used as an owner-occupied affordable housing unit, then it shall be so used for no less than 45 years; and
- (e) Each housing unit shall be within high or highest resource census tracts within the City of Pasadena as identified by the latest edition of the California Tax Credit Allocation Committee's opportunity maps. To the greatest extent possible, units acquired or produced shall be in geographic proximity to the unoccupied homes sold by the City.

4.2 Monitoring. City shall monitor compliance with the regulatory agreement described in Section 4.1(b). City may charge a fee to recover the cost of this monitoring.

4.3 Sites for Housing Units. The housing units described in Section 4.1 may be produced or acquired on a single site or on multiple sites.

4.4 Timeline for Production and Acquisition. City shall commence construction or complete acquisition of all housing units described in Section 4.1 by December 31, 2026. Monitoring Entity may grant the City two two-year extensions if it demonstrates sufficient

progress on the development or acquisition of the housing units. Sufficient progress includes, but is not limited to:

- (a) An executed option agreement or exclusive negotiation agreement for the purchase of property intended for conversion to affordable units; or
- (b) Completed project entitlements or building permits; or
- (c) Executed purchase agreements and draft covenants for the acquisition or rehabilitation of market rate units for the purpose of conversion to affordable units, or a combination thereof; or
- (d) Other proof of progress at the discretion of the Monitoring Entity's Director.

4.5 Use of Surplus Funds. Any surplus funds remaining after the completion of the construction of the housing units described in Section 4.1 shall be used at the discretion of City for the production or acquisition of rental or for-sale housing affordable to persons and families of very-low, low or moderate-income, as defined by Health and Safety Code section 50093.

Section 5. Termination.

5.1 Termination of Use and Resale Covenant. This Use and Resale Covenant shall cease to encumber the Property upon resale pursuant to Section 3.1 and the parties agree to execute and record a Release of the Declaration of Covenants, Conditions, and Restrictions within seven days of resale of the property. However, the terms of the Use and Resale Covenant shall remain enforceable under applicable law and as a contract between Monitoring Entity and City to ensure compliance of Sections 4.1 through 4.5.

Section 6. Default and Remedies.

6.1 Event of Default. The occurrence of any one of the following events or circumstances shall constitute an "*Event of Default*" by City under this Use and Resale Covenant.

- (a) City's failure to comply with the requirements in Sections 4.1 through 4.5, or Section 3.2, as applicable.
- (b) City's failure to comply with Government Code section 54239.5, subdivision (b)(9).
- (c) City's failure to comply with Government Code section 54239.5, subdivision (b)(10).

6.2 Remedies. Upon the occurrence of an Event of Default by City, the Monitoring Entity may exercise the remedy set forth below:

The City shall pay a fine to the Monitoring Entity of an amount equal to the funds generated through the resale of the Property, pursuant to Section 3.1- minus the purchase price described in

Section 1.1. Fines shall be deposited into an account held by the Monitoring Entity pursuant to Government Code section 54239.5(b)(11).

6.3 Not Subject to Appeal. Pursuant to Government Code section 54239.5(b)(14), an Event of Default shall be determined by the Monitoring Entity and is not subject to appeal.

Section 7. Miscellaneous.

7.1 Nondiscrimination. City covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or a group of persons on account of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, familial status, source of income, veteran or military status, or sexual orientation in the transfer, use, or occupancy of the Property, nor shall City, any person claiming under or through City, establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property.

7.2 Notices. Notice shall be in writing and sufficiently given or delivered if transmitted by (a) registered or certified United States mail, postage prepaid, return receipt requested, (b) personal delivery, or (c) nationally recognized private courier services, in every case addressed as follows:

If to City: [to be inserted]

If to the Monitoring Entity ~~[to be inserted]~~ California Department of Housing and
Community Development
P.O. Box 952052
Sacramento, CA 94252-2052
Attn: General Counsel

Any such Notice transmitted in accordance with this Section 7.2 shall be deemed delivered upon receipt, or upon the date delivery was refused. Any party may change its address for notices by written Notice given to the other party in accordance with the provisions of this Section 7.2.

7.3 Attorneys' Fees for Enforcement. If any action or legal proceeding is instituted by City or the Monitoring Entity arising out of this Use and Resale Covenant, the prevailing party therein shall recover reasonable attorneys' fees and costs in connection with such action or proceeding. For purposes of this Use and Resale Covenant, reasonable fees for the Monitoring Entity include the fees and costs of any in-house counsel for the Monitoring Entity, which shall be based on: (i) the employee's hourly rate on the employee's salary, (ii) forty-one and eight-tenths percent (41.8%) of the employee's hourly salary rate to reflect non-salary direct and indirect costs, and (iii) five percent (5%) of the employee's hourly salary rate to reflect central service costs.

7.4 Integration. This Use and Resale Covenant constitutes an integration of the entire understanding and agreement of Caltrans, City, and the Monitoring Entity with respect to the subject matter hereof. Any representations, warranties, promises, or conditions, whether written

or oral, not specifically and expressly incorporated in this Use and Resale Covenant, shall not be binding on any of the parties, and City and the Monitoring Entity each acknowledge that in entering into this Use and Resale Covenant they have not relied upon any representation, warranty, promise or condition, not specifically and expressly set forth in this Use and Resale Covenant. All prior discussions and writings have been, and are, merged and integrated into, and are superseded by, this Use and Resale Covenant.

7.5 Severability. In the event that any provision of this Use and Resale Covenant is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

7.6 Headings. The headings within this Use and Resale Covenant are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Use and Resale Covenant.

7.7 Time for Performance. Time is of the essence in the performance of the terms of this Use and Resale Covenant. All dates for performance or cure shall expire at 5:00 p.m. on the performance or cure date. Any performance date which falls on a Saturday, Sunday, or a holiday specified in Code of Civil Procedure section 135 is automatically extended to the next day that is not a Saturday, Sunday, or holiday.

7.8 Amendments. Any modification or waiver of any provision of this Use and Resale Covenant or any amendment thereto shall be in writing and signed by the authorized representatives of both the Monitoring Entity and the City.

7.9 Controlling Use and Resale Covenant. City covenants that City has not executed and will not execute any other agreement with provisions contradictory to or in opposition to the provisions of this Use and Resale Covenant. City understands and agrees that this Use and Resale Covenant shall control the rights and obligations between City and the Monitoring Entity with respect to the subject matter contained herein.

7.10 Exhibits. The Exhibits and Attachments attached hereto are a material part of this Use and Resale Agreement and are incorporated herein by this reference.

7.11 Governing Law. This Use and Resale Covenant shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

7.12 Counterparts. This Use and Resale Covenant may be signed in counterparts, each of which shall constitute an original.

7.13 Recordation. Caltrans shall cause this Use and Resale Covenant to be recorded in the Official Records.

7.14 Interpretation. Each party hereto acknowledges and agrees that each has had independent counsel review and participate in the negotiation and drafting of this Use and Resale

Covenant, and each hereby fully waives the application of any law, statute or rule of construction or interpretation, including without limitation Civil Code section 1654, to the effect that any ambiguities are to be construed against the drafting party.

7.15 Assignment by Caltrans to the Monitoring Entity. Upon this Use and Resale Covenant being recorded in the Official Records, Caltrans assigns all the rights, duties, and benefits granted to it by this Use and Resale Covenant to the Monitoring Entity, and the Monitoring Entity accepts such assignment.

IN WITNESS WHEREOF, City, Monitoring Entity, and Caltrans have executed this Use and Resale Covenant as of the date written above.

CITY:

MONITORING ENTITY:

California Department of Housing and
Community Development, an agency of the
State of California

By: _____

Its: _____

CALTRANS:

California Department of Transportation,
an agency of the State of California

By: _____

Its: _____

ALL SIGNATURES MUST BE NOTARIZED.

----- Attach All Purpose California Notary Acknowledgment -----

EXHIBIT A – LEGAL DESCRIPTION