

RECORDING REQUESTED BY
Clerk of the Board of Supervisors of
San Benito County

AND WHEN RECORDED, RETURN TO:
Clerk of the Board of Supervisors
San Benito County
481 Fourth Street, First Floor
Hollister CA 95023

THIS SPACE RESERVED FOR RECORDER ONLY
(Gov. Code § 27361.6)

**OWNER'S COVENANT AND AGREEMENT REGARDING
PAYMENT OF CSA OR CFD FEES**

APN 019-18-0-045-0

THIS COVENANT AND AGREEMENT ("Covenant and Agreement") is made and entered by the undersigned owner ("Owner") as of August 6, 2019 with respect to the following recitals:

RECITALS

- A. WHEREAS, Owner owns a certain 8.63 acre parcel of real property located at 1512 Santa Ana Road, within the County of San Benito ("County"), identified as Assessor Parcel No. 019-18-0-045-0, and is more particularly described in Exhibit "A" ("Property"); and
- B. WHEREAS, the Owner submitted an application for a tentative subdivision map for subdivision of the Property into seven (7) lots ("Subdivided Lots") and said map (TSM 16-99) was approved by the Planning Commission of San Benito County on September 21, 2016 subject to conditions of approval ("Notice of Decision").
- C. WHEREAS, Condition No. 22 of the Notice of Decision requires the Owner to form an homeowners association for the purpose of street lighting, street sweeping, road maintenance, storm drainage, landscaping maintenance and other services directly related to the subdivision or annex to an existing homeowners' association or County Service Area, subject to approval by the Board of Supervisors and LAFCO, and establish a funding mechanism prior to issuance of the final map in an amount to be determined by County to fund any CSA; and

- D. WHEREAS, Owner chose to annex to CSA No. 24, annexation proceedings were initiated by resolution of the San Benito County Board of Supervisors to the San Benito County Local Agency Formation Commission (“LAFCO”);
- C. WHEREAS, LAFCO approved the annexation on May 9, 2019 and the Property has been annexed into CSA 24 to satisfy that part of Condition No. 22 in the Notice of Decision;
- C. WHEREAS, Owner desires to establish a funding mechanism to collect fees by and through the execution and recordation of this Covenant and Agreement to fund the Property’s share of CSA 24 costs and expenses; and
- D. WHEREAS, as a condition of issuance of the Final Map, Owner (i) agrees to be personally liable for an amount not to exceed Two Thousand One Hundred Sixteen and 52/100s Dollars (\$2,116.52) per year [\$302.36/Lot x 7 Subdivided Lots] until CSA or CFD fees have been approved by a two-thirds vote of the ownership of the Subdivided Lots, (ii) agrees to hold and successfully approve a Proposition 218 vote at the earliest possible time, but no later than sixty (60) days following issuance of the Final Map, to assess CSA or CFD fees against the Subdivided Lots following issuance of the Final Map, and (iii) agrees to retain ownership of the seven (7) Subdivided Lots until such a successful Prop 218 vote to assess CSA or CFD fees against the Subdivided Lots has taken place;
- E. WHEREAS, these obligations shall be covenants running with the land and pass to subsequent owners of the Subdivided Lots;

NOW, THEREFORE, the undersigned Owner agrees as follows:

1. **Recitals Incorporated.** The above recitals are hereby incorporated in and made a part of this Covenant and Agreement as fully as if set forth verbatim herein.
2. **Covenants by Owner.**
 - 2.1 Upon the terms noted, Owner hereby consents and agrees to hold a successful Proposition 218 at the earliest possible time, but no later than sixty (60) days following issuance of the Final Map, to assess CSA or CFD fees against the Subdivided Lots.
 - 2.2 Owner hereby consents and agrees that until such time that CSA or CFD fees have been approved by a two-thirds vote of the ownership of the Subdivided Lots, Owner shall agree to be personally liable for an amount not to exceed Two Thousand One Hundred Sixteen and 52/100s Dollars (\$2,116.52) per year [\$302.36/Lot x 7 Subdivided Lots] to cover payment of the fees.

- 2.3 Until such time that a successful Proposition 218 vote to assess fees against the Subdivided Lots has taken place, Owner consents and agrees to retain ownership of the seven (7) Subdivided Lots.
3. **Binding Effect** To the extent allowed by law, this Agreement shall bind and inure to the benefit of the Owner and its respective successors, heirs and assigns, and shall be construed as a covenant and restriction which shall run with the land under and pursuant to California Civil Code section 1468, or its successor provision, if any.
4. **Recording**. This Covenant and Agreement shall be recorded forthwith in the office of the San Benito County Recorder by Owners with conformed copies provided to County Clerk and shall be referenced in any deed or other instruments conveying any interest in said Property or Subdivided Lots.
5. **General Provisions**.
- 5.1 **Exhibits**. The exhibits attached to this Agreement are incorporated by this reference.
- 5.2 **Heading and Titles**. The captions of the articles or sections of this Agreement are only to assist the parties in reading this Agreement and shall have no effect upon the construction or interpretation of any part hereof.
- 5.3 **Construction of Terms; Severability**. All parts of this Agreement shall in all cases be construed according to their plain meaning and shall not be construed in favor or against either of the parties. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, the remainder of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. In the event of such invalidity, voidness or unenforceability, the parties hereto agree to enter into supplemental agreements to effectuate the intent of the parties and the purposes of this Agreement.
- 5.4 **Controlling Law**. This Agreement shall be construed in accordance with and governed by the laws of the State of California, with venue proper only in the County of San Benito, State of California.
- 5.5 **Entire Agreement**. This Agreement with its attached exhibits which are incorporated herein by this reference constitutes the entire agreement between the parties pertaining to the Premises and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. This Agreement may be altered, amended or modified only by a supplemental writing executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert

that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

- 5.6 Amendments. No subsequent agreement, representation or promise made by any party hereto, or by or to an employee, officer, agent or representative of any party shall be of any effect unless it is in writing.
- 5.7 Counterparts and Execution. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original Agreement and all of which taken together shall constitute one (1) agreement, notwithstanding that all of the parties are not signatories to the original or to the same counterpart.

IN WITNESS HEREOF, the Owner has caused this Covenant and Agreement to be executed as of the 6th day of August, 2019, and the undersigned hereby certifies (i) to be the owner of Property described in the aforementioned Covenant and Agreement, (ii) the only party whose consent is necessary to pass title to said Property, and (iii) that it has consented to all of the terms, provisions and covenants contained herein.

OWNER:

Nguyen—Tran Family Trust, dated 6/02/2004

By: _____
Son Nguyen, Co-Trustee

Date: _____

By: _____
Tuyet Tran, Co-Trustee

Date: _____

CALIFORNIA NOTARY ACKNOWLEDGMENT

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.

State of California

County of _____

On _____ before me, _____ (name and title of officer), personally appeared _____, 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 she/he/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 _____

(Seal)

CALIFORNIA NOTARY ACKNOWLEDGMENT

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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 _____

(Seal)

Exhibit “A”

Legal Description of Property