

EXHIBIT A TO PURCHASE AND SALE AGREEMENT

FORM OF DECLARATION OF COVENANTS AND RESTRICTIONS

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

Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

Exempt from recording fees (Cal. Gov. Code §6103, §27383)

*Exempt from documentary transfer tax- not a transfer of
property for consideration (Cal. Rev. & Tax Code §11911)*

Assessor Parcel Number: 510-44-054

(Space above this line for recorder's use only)

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this "**Declaration**") is entered into as of this day of _____, 202_ (the "**Effective Date**"), by and between the TOWN OF LOS GATOS, a California municipal corporation (the "**Town**"), and BRANISLAV VAJDIC (the "**Owner**"). Town and Owner are sometimes individually referred to herein as a "**Party**" and together referred to as "**Parties**".

R E C I T A L S

A. Town, as seller, and Owner, as purchaser, are parties to a California Residential Purchase Agreement and Joint Escrow Instructions dated _____, 202_ , as amended by the Addendum to California Residential Purchase Agreement and Joint Escrow Instructions dated _____, 202_ (the "**Purchase Agreement**"), pursuant to which Town proposes to sell and convey to Owner that certain approximately 0.28 acre real property located at 4 Tait Avenue, Los Gatos, California, designated as Santa Clara County Assessor Parcel Number 510-44-054 (the "**Real Property**"), as more particularly described in Attachment 1 attached hereto and incorporated by this reference, together with all buildings and improvements located on the Real Property ("**Improvements**") and all rights and interests appurtenant to the Real Property, including, without limitation, any water and mineral rights, easements and rights-of-way appurtenant thereto (collectively with the Real Property and Improvements, the "**Property**").

B. The Improvements on the Property were constructed in 1927 and originally used as a fire station and a dwelling unit for the fire truck driver and are currently listed on the California Register of Historical Resources as the "Los Gatos First Firehouse."

C. The Property is also located within the Town's Broadway Historic District and is zoned Single-Family Residential Downtown with a Landmark and Historic Preservation Overlay.

D. As a condition of the purchase and sale transaction, Owner has agreed to enter into this Declaration to ensure that the historic elements that comprise the Improvements, including the decorative and architectural features that contribute to its historic character, are preserved and that the Improvements remain in good condition and repair at all times.

NOW, THEREFORE, for good and valuable consideration, the Parties declare that the Property shall hereafter be held, used, operated, transferred, sold, conveyed, and leased subject to the following covenants and restrictions for the entirety of the term of this Declaration.

A G R E E M E N T

1. Definitions. Unless the context otherwise requires, the following terms shall have the meanings set forth in this Section 1.

1.1 “**Capital Repair**” means any repair or replacement that GAAP would consider capital in nature, except for repainting as described in Section 5.2.

1.2 “**Historic Preservation Law**” means any Law imposing obligations or restrictions relating to the maintenance and preservation of historic buildings and places, including without limitation the provisions of Chapter 29 of the Town of Los Gatos Municipal Code, the California Historical Building Code, the National Historic Preservation Act, the Secretary of the Interior’s Standards for the Treatment of Historic Properties and Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings, all as amended from time to time.

1.3 “**Landscaping**” means trees, grass, planters, succulents, shrubs, bushes, and other landscaping on the Property.

1.4 “**Law**” means individually and “**Laws**” mean collectively all laws, ordinances, statutes, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations that are now or hereafter promulgated or adopted by the Town, any other local government agency having jurisdiction over the Property, the State of California, or the United States of America.

1.5 “**Maintenance**”, “**maintain**” or “**maintaining**” means the operation, inspection, maintenance, repair, rehabilitation, restoration and, as necessary, replacement of the Improvements and components thereof. Without limiting the Quality Standard, “**maintenance**” shall include, without limitation:

a. Maintaining the asphalt and concrete surfaces and sidewalks in a reasonably level, smooth and evenly covered condition, ordinary wear and tear excepted, with the type of surfacing material originally installed or such substitute as shall in all respects be substantially equal or superior in quality, use and durability;

b. Maintaining all materials affixed or applied to the exterior surfaces of the Improvements, including paint, bricks, roof tiles, and stucco, and all finishes;

c. Maintaining the roof, exterior walls, interior walls, and ceilings;

d. Maintaining hardware, doors, and windows; and

e. Maintaining the drainage system, automatic sprinkler systems and water lines to keep the Property and Improvements in a condition that meets the Quality Standard and to prevent flooding; and

f. Placing, maintaining, repairing and (if and to the extent reasonably required) replacing any necessary or appropriate fencing and boundary walls.

1.6 “**Owner**” shall mean Owner, any successor owner of the Property or the Improvements, and any lessee or management agent to whom Owner may have delegated its responsibilities to maintain the Property or Improvements.

1.7 “**Quality Standard**” means maintenance of the Improvements and the Property at a standard consistent with a first-class residential property in the Town, but in any event not less than the maintenance and quality standards required by Historic Preservation Laws or any other Laws; reasonably frequent repainting; application of reasonably frequent pest control measures to remove and deter pests and rodents from the Property; prompt removal of any graffiti; prompt repair of damage caused by vandalism, trees, or weather; and prompt repair of cracks, holes, and subsidence.

1.8 “**Default Rate**” means the lesser of 10% per annum or the maximum non-usurious rate under applicable Law.

2. Term of Declaration; Termination. The Parties agree that the covenants, restrictions and other provisions set forth in this Declaration will stay in effect in perpetuity, unless sooner terminated by Town.

2.1 No Termination If Not Listed. For the avoidance of doubt, except as otherwise agreed by Town, this Declaration shall not terminate if the Property or the Improvements are removed from the California Register of Historic Places or not included in the National Register of Historic Places or any other similar local register.

2.2 Release. Upon the termination of this Declaration, Town will promptly execute and deliver to Owner an appropriate release and cancellation instrument acknowledging the expiration or termination of this Declaration, and the provisions thereof. The release and cancellation instrument will be executed in proper form for recordation in the official real estate records of the County. For the avoidance of doubt, the termination of this Declaration shall not relieve the then Owner of obligations they may have under applicable Laws, including then applicable Historic Preservation Laws.

3. Maintenance. Owner shall comply with the following maintenance requirements:

3.1 Prior to commencing any maintenance of the Improvements or the Property, all approvals required under applicable Laws shall have been obtained. Owner acknowledges and agrees that the approval and permitting process is more extensive for work on historic buildings than typical first-class residential buildings, and that public hearings may be required.

3.2 Owner shall perform all maintenance using historic materials appropriate for the time the Improvements were originally constructed and, to the extent feasible and not a life-safety hazard as determined under Historic Preservation Laws, use the original methods of construction.

3.3 All maintenance shall be performed in accordance with the Quality Standard.

3.4 For any element of the Improvements and the Property that is significant to its historical and architectural value or a character-defining feature of the Improvements, Owner shall use best efforts to repair such element before replacing it.

3.5 Once commenced, any maintenance shall be diligently prosecuted to completion.

4. Preservation. Owner shall preserve (as defined in the Historic Preservation Laws) any element of the Improvements that is significant to the Property's historical and architectural value and any character-defining features of the Improvements as required by the Historic Preservation Laws. Owner shall further operate the Improvements in a manner that does not adversely affect the character, historical, architectural or aesthetic interest of the Town's Broadway Historic District.

5. Alterations.

5.1 Exterior Alterations. Without Town's prior written consent, Owner shall not construct any addition to or make any change, improvement, or alteration (each, an "**Alteration**") to the exterior of the Improvements facing Tait Avenue or Main Street (including without limitation the roof, exterior walls, exterior trim, windows, shutters, doors, columns, doorways, and doors) or the walkways, fence or wall on the Tait Avenue or Main Street frontage (each individually a "**Restricted Exterior Improvement**" and collectively the "**Restricted Exterior Improvements**"). "**Alteration**" also includes any demolition or removal of any Restricted Exterior Improvement and any Capital Repair to any Restricted Exterior Improvement. The Town may withhold or condition consent if Town determines in its sole and absolute discretion that the Alteration would threaten or destroy the Improvements' character-defining features or the historical or architectural value of the Improvements or the Town's Broadway Historic District. Any request for Town consent shall be directed to the Town Manager and shall include conceptual plans and a description of the material to be used for the proposed Alteration. Consent under this Section 5.1 is required in addition to, and not in lieu of, any other approval required by Laws.

5.2 Exterior Maintenance Exception. Notwithstanding Section 5.1, Owner may make changes or alterations to the Restricted Exterior Improvements without Town consent if they (a) are performed in accordance with Sections 3 and 4 and (b) consist of (i) performing spot replacement or reapplication of materials then affixed or applied to the Restricted Exterior Improvements that have deteriorated with materials of like kind, including stucco, brick, mortar, or roof tiles (provided that less than all roof tiles are replaced); (ii) repair or reattachment of materials then affixed to the Restricted Exterior Improvements; (iii) using materials of like kind to fill cracks or resurface walkways; (iv) repainting one or more walls using substantially the same color as the then-existing color of such wall(s); or (v) applying sealants of a similar color to the Restricted Exterior Improvements.

5.3 Alterations Generally. Before commencing construction, installation, or demolition work associated with any Alteration to the Improvements or the Property, Owner must obtain all approvals required by the Laws. Any Alteration must comply with all requirements of the Historic Preservation Laws and any construction, installation, or demolition work associated with any Alteration must comply with all Laws.

6. Insurance Obligations. Owner shall obtain and maintain at all times fire and extended coverage insurance on all Improvements in the amount of the replacement cost of the Improvements, and in amounts at least sufficient to avoid the effect of any coinsurance provisions of such policies. Whenever any structural Alterations on the Property are in the course of construction, and are not otherwise covered by the fire and extended coverage insurance required above, Owner shall carry builder's risk insurance written on a completed value basis, insuring against loss to the extent of at least the replacement value of the improvements under construction. Such course of construction coverage shall be effective prior to commencement of construction of any improvements or alterations.

7. Indemnity. Owner shall indemnify, defend (with counsel reasonably acceptable to Town), protect and hold harmless Town from and against all claims, liabilities and expenses (including, without limitation, reasonable attorneys' fees) arising from the failure of Owner or its contractors, employees or agents to maintain, restore, reconstruct, or preserve the Property or the Improvements in accordance with this Declaration.

8. Casualty. If, during the Term, the Improvements are totally or partially destroyed by any fire, earthquake, or other casualty or sudden destructive event ("**Casualty**"), Owner shall within 90 days after the date of the Casualty commence to repair and restore the Improvements and shall proceed with reasonable diligence to complete the repair and restoration of the Improvements. Restoration, rehabilitation, and reconstruction following a casualty shall be conducted in the manner required by Historic Preservation Laws.

9. Default and Remedies. Failure by Owner or its successors or assigns to perform its or their obligations hereunder shall constitute a default under this Declaration, and Town may institute legal action to cure, correct or remedy such default, to recover damages for such default or to obtain any other remedy whether at law or in equity, including injunctive relief and specific performance, consistent with the purpose of this Declaration. Town is deemed the beneficiary of the terms and provisions of this Declaration and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Declaration and the covenants running with the land have been provided, without regard to whether Town has been, remains or is an owner of any land or interest therein in the Property.

10. Notices. All notices, requests, demands, and other communications under this Declaration shall be in writing and shall be deemed given and effective at the following times if sent to a Party at its address designated per this Section 10: (i) on the date of delivery if served personally on the Party to whom notice is to be given or, unless otherwise specifically provided or required by this Declaration; (ii) if sent by overnight delivery, such as by Federal Express, on the date said notice or other writing is delivered or on which delivery is refused; or (iii) five (5) business days after mailing by first class, registered or certified mail, postage prepaid.

If to Town:
Town of Los Gatos
Attn: Town Manager
110 E. Main Street
Los Gatos, CA 95030

With a Copy to:

Town of Los Gatos
Attn: Town Attorney
110 E. Main Street
Los Gatos, CA 95030

If to Owner:
Branislav Vajdic

[REDACTED]
[REDACTED]
[REDACTED]

Any Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

11. Conflict with Historic Preservation Law. To the extent that any Historic Preservation Law imposes obligations on Owner that conflict with this Declaration, the more restrictive of this Declaration or the Historic Preservation Law shall apply.

12. Covenants to Run with the Land. The covenants, restrictions, rights, conditions, powers, and other provisions contained or referenced in this Declaration: (a) are made for the mutual benefit of the Parties and their respective successors (by operation of law or otherwise) and assigns and the Property; (b) burden the applicable Property and are binding upon the Parties and their respective successors (by operation of law or otherwise), assigns, and all other persons or entities acquiring the Property, or any portion thereof or interest therein; and (c) are intended as and are enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including without limitation, Section 1468 of the Civil Code of the State of California, as the same may be amended from time to time and any successor statutes thereof.

13. Recordation. This Declaration shall be recorded in the official records of the Santa Clara County Recorder's Office.

14. Modification. This Declaration may not be modified, in whole or in part, except by a modification in writing signed by both Parties.

15. Delegation. To the extent that Owner delegates any of its responsibilities under this Declaration to any tenant or management agent, the tenant or management agent shall agree in writing to comply with all terms of this Declaration.

16. Approvals. Whenever reference is made herein to a consent, action or approval to be provided or undertaken by Town, the Town Manager or his or her designee is authorized to act on behalf of Town, unless specifically provided otherwise or the context requires otherwise.

17. No Waiver. The waiver by one Party of the performance of any covenant or condition hereunder shall not invalidate this Declaration, nor shall it be considered to be a waiver by such Party of any other covenant or condition hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

18. Attorneys' Fees. If either Party shall bring suit against the other as a result of any alleged breach or failure by the other Party to fulfill or perform any covenants or obligations under this Declaration or in any deed, instrument or other document delivered pursuant hereto, or to seek declaratory relief as to the rights or obligations of either Party, then in such event, the prevailing Party in such action shall be entitled to reasonable attorneys' fees incurred by reason of such action and all costs of suit incurred in pursuit thereof.

19. Provisions Severable. Each provision of this Declaration shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Declaration is deemed to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Declaration.

20. Time of the Essence. Time is of the essence of this Declaration and of the performance of all the terms, covenants and conditions contained in this Declaration.

21. Entire Agreement. This Declaration, which includes the recitals and each of the attachments attached hereto, constitutes the entire agreement between the Parties relating to the subject matter of this Declaration and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

22. Governing Law. This Declaration shall be governed and construed in accordance with the laws of the State of California, without reference to its choice of law rules. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of Santa Clara.

23. Construction. Each Party has participated in the drafting of this Declaration and has had the same reviewed by counsel of its choosing, and, as such, this Declaration shall not be construed against either such Party based on the drafter of any particular provision thereof. Section headings in this Declaration are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Declaration.

24. Counterparts. This Declaration may be executed in one or more counterparts, each of which will constitute an original, and all of which together will constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Declaration as of the date first set forth above.

TOWN:

TOWN OF LOS GATOS
a California municipal corporation

By: _____
Chris Constantin, Town Manager
[signature must be notarized]

APPROVED AS TO FORM:

By: _____
Gabrielle Whelan, Town Attorney

ATTEST:

By: _____
Wendy Wood, Town Clerk

OWNER:

BRANISLAV VAJDIC
[signature must be notarized]

ATTACHMENT 1

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LOS GATOS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF WEST MAIN STREET, FORMERLY HOTEL STREET, WITH SOUTHEASTERLY LINE OF TAIT STREET, THENCE RUNNING SOUTHEASTERLY AND ALONG SAID NORTHEASTERLY LINE OF WEST MAIN STREET, FORMERLY HOTEL STREET EIGHTY (80) FOOT TO A POINT ON THE DIVISIONAL LINE OF LOTS 2 AND 3 IN BLOCK 2 OF J.W. LYNDON'S SUBDIVISION AS HEREINAFTER REFERRED TO, THENCE RUNNING NORTHEASTERLY AND ALONG SAID DIVISIONAL LINE OF SAID LOTS 2 AND 3 SEVENTY (70) FEET, THENCE RUNNING NORTHWESTERLY AND PARALLEL WITH SAID NORTHEASTERLY LINE OF WEST MAIN STREET (FORMERLY HOTEL STREET) EIGHTY (80) FEET TO A POINT ON THE SOUTHEASTERLY LINE OF TAIT STREET, FORMERLY MONTGOMERY STREET, THENCE RUNNING SOUTHWESTERLY AND ALONG SAID SOUTHEASTERLY LINE OF TAIT STREET, FORMERLY MONTGOMERY STREET, SEVENTY (70) FEET TO THE POINT OF BEGINNING, AND BEING THE WESTERLY SEVENTY (70) FEET OF LOT 3 AND THE WESTERLY SEVENTY (70) FEET OF THE SOUTHERLY THIRTY (30) FEET OF LOT 4 IN BLOCK 2 OF J.W. LYNDON'S SUBDIVISION IN SAID TOWN OF LOS GATOS, A MAP OF WHICH SUBDIVISION IS OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA IN BOOK A, PAGE 54, OF MAPS, RECORDS OF SAID COUNTY.

PARCEL TWO:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF TAIT STREET, DISTANT THEREON SEVENTY (70) FEET NORTHEASTERLY FROM THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF TAIT STREET WITH THE NORTHEASTERLY LINE OF WEST MAIN STREET, FORMERLY HOTEL STREET; THENCE RUNNING NORTHEASTERLY AND ALONG THE SOUTHEASTERLY LINE OF TAIT STREET, EIGHTY (80) FEET TO A POINT ON THE NORTHEASTERLY LINE OF LOT 4, IN BLOCK 2 OF LYNDON'S SUBDIVISION, AS SHOWN UPON THE MAP THEREOF HEREINAFTER REFERRED TO; THENCE RUNNING SOUTHEASTERLY AND ALONG THE NORTHEASTERLY LINES OF LOTS 4 AND 3 IN SAID BLOCK 2, EIGHTY (80) FEET TO THE MOST EASTERLY CORNER OF SAID LOT 3; THENCE RUNNING SOUTHWESTERLY AND ALONG THE DIVIDING LINE BETWEEN LOTS 2 AND 3, IN SAID BLOCK 2, EIGHTY (80) FEET; THENCE RUNNING NORTHWESTERLY AND PARALLEL WITH THE NORTHEASTERLY LINE OF WEST MAIN STREET EIGHTY (80) FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF LOTS 3 AND 4, IN BLOCK 2, AS LAID DOWN, DESIGNATED AND DELINEATED UPON THAT CERTAIN MAP ENTITLED, "MAP OF J. W. LYNDON'S SUBDIVISION IN LOS GATOS, BEING PART OF THE ORIGINAL COVEL TRACT IN THE RANCHO RINCONADA DE LOS GATOS," END WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON SEPTEMBER 17, 1881 IN BOOK A, PAGE 54, OF MAPS.