



**BELOW MARKET RATE
HOUSING PROGRAM
ADMINISTRATIVE PROCEDURES FOR
THE HOME OWNERSHIP PROGRAM**

INTRODUCTION

These City of Sunnyvale Below Market Rate Home Ownership Program (the “Program”) Guidelines set forth the eligibility criteria and application requirements for prospective Below Market Rate (BMR) home buyers, as well as long-term BMR home ownership requirements and related Program requirements as listed below. These Guidelines are established by the City of Sunnyvale Housing Division and may be revised and/or updated periodically, as determined necessary by the Housing Officer, to accomplish the objectives of the Program and to guide Program administration. The City of Sunnyvale Housing Division, part of the Community Development Department, is the agency authorized to administer the Below Market Rate Home Ownership Program. Please refer to the Program’s website at *BMR.inSunnyvale.com* for the most current version of these Guidelines and related Program information.

Purpose:

The Program was established to provide affordable home ownership opportunities to moderate- and lower-income, first-time home buyer households. The Program provides priority to purchase available BMR homes to those eligible home buyer households who currently live or work in Sunnyvale, as explained herein.

Enabling Legislation:

The Program was established by and is governed by Chapter 19.66 of the Sunnyvale Municipal Code (the “Ordinance”), which authorized the Director of Community Development or his/her designee (i.e., the Housing Officer) to develop and maintain these Program Guidelines to establish detailed Program requirements and administrative procedures. All BMR homes, BMR home owners, and BMR home buyer applicants are subject to the requirements of the Ordinance and these Guidelines, to the extent allowed by law. Requirements for developers of BMR homes, such as sales procedures and pricing, are set forth in the Ordinance and in project-specific developer agreements.

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Section A. DEFINITIONS

As used in these Below Market Rate Home Ownership Program Guidelines, the following words and terms have the meaning set forth below:

Applicant/Co-Applicant: a Head of Household and any adult members of his/her household aged 18 or older (“Co-Applicant(s)”) who is/are interested in purchasing and residing in a BMR home, as evidenced by their signature(s) on a BMR program application submitted to the City. “Applicant” may be used herein to refer to the Applicant’s entire Household and/or all adults in the Household, as the context requires. Primary Applicant refers to the first-named party on the application form, who must be the Head of Household, as defined herein. Co-Applicants are all other adult members of the Household aged 18 years or older.

Area Median Income: the median household/family income for Santa Clara County, adjusted for actual household size, as determined annually by the California Department of Housing and Community Development (HCD).

Asset: a cash or non-cash item that can readily be converted to cash. The value of ordinary (i.e. non-investment) personal or household items, such as furniture and personal vehicles, are not considered assets for the purpose of BMR Program eligibility.

Below Market Rate (BMR) Home: a home developed and provided for sale to moderate- or lower-income households pursuant to the Ordinance, at a price affordable to moderate income households, as specified in the Ordinance and each Developer Agreement.

City: the City of Sunnyvale, a municipal corporation and political subdivision of the State of California.

Eligible Household: a Household (*see definition below*) that is eligible to purchase a BMR home, as follows:

- A Household which is living together in the same dwelling unit at the time of, and has been living together in the same dwelling unit for at least six months prior to the date of Program application. This must be proven with Valid Third-party Documents, as defined herein and listed as required attachments in Program applications forms, to verify that each member of the Household resides, and has been residing for six months, at the same dwelling unit and street address; and
- A verified Moderate Income Household: Total gross (pre-tax) annual income and assets of all adult Household members aged 18 or older combined do not exceed the Program's income and asset limits provided in Exhibit I, adjusted for the size of the Household; and
- All adult Household members, except elderly, disabled, or young adults who are listed as financial dependents on the federal tax returns of another Household member, must provide evidence of membership in the Household, which includes sharing financial resources and responsibility for basic housing expenses, including rent and utilities. Such evidence shall be provided in Program application forms, as described in application forms and/or instructions;

- All of the current members of Applicant’s household must individually meet all Program eligibility requirements applicable to individuals, such as First Time Home Buyer status and Permanent Residency, as explained in **Section B** of these Guidelines.

First Time Home Buyer: an individual or individuals, or an individual and his or her spouse, who have not owned a home during the three-year period prior to the date of application to purchase a BMR Home, except that the following individual or individuals may not be excluded from consideration as a first-time home buyer under this definition:

1. A “displaced homemaker” who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family;
2. A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant; or
3. An individual or individuals who owns or owned, as a principal residence during the three-year period before the purchase of a BMR Home, a dwelling unit whose structure is:
 - i. Not permanently affixed to a permanent foundation in accordance with local or state regulations; or
 - ii. Not in compliance with state, local, or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

From Title 25, California Code of Regulations §8201(l)

Guidelines: these City of Sunnyvale Below Market Rate Home Ownership Program Guidelines.

Head of Household: an adult who is the primary tenant (i.e., first listed lessee) on a current lease for a rental dwelling or mobile home park space that is the adult’s primary residence, and is financially and/or legally responsible in full or part for all members of his/her household, if any. In the case of households headed by a couple (married, domestic partners, common law spouses, etc.), the adult who files federal tax returns on behalf of most or all of the dependents in the household is generally considered the head of household, however either member of the couple may apply as the household head, as long as he/she meets Program eligibility requirements and can obtain the financing and down-payment needed to purchase a BMR home. The Head of Household shall be listed as the Primary Applicant on the application to purchase a BMR home.

Household: all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements. (*Code of Federal Regulations Title 24, Section 570.3*). Household, for the purposes of determining Household eligibility and establishing Gross Household Income and assets, includes any and all owner-occupants, temporary occupants, and other occupants, regardless of such household member’s interest in purchasing or occupying a BMR home, as explained in Section B.

HCD: the California Department of Housing and Community Development.

HUD: the United States Department of Housing and Urban Development.

Gross Household Income: the gross (pre-tax) amount of income of all adult household members that is anticipated to be received during the coming 12-month period, as further defined in Code of Federal Regulations Title 24, Part 5 (the “Part 5 method”). The Part 5 definition of gross household income is based on a list of income and asset inclusions and exclusions used to determine gross annual income. This list is included as **Exhibit II** to these Guidelines. Program staff will follow the most current edition of the “Technical Guide for Determining Income and Allowances for the HOME Program” (currently the Third Edition, January 2005), published by HUD, to determine applicants’ income eligibility for the First-Time Home Buyer Program. This publication is available for review at City Hall.

Living in Sunnyvale: occupying and renting, at time of application and for at least six months prior to application date, a bona fide rental dwelling unit (or owning and occupying a manufactured home and renting a mobile home space in a mobile home park) within the Sunnyvale city limits, as evidenced by Valid Third-party Documentation (lease, a California driver’s license or identification card showing street address (not post office box) of such residence, current California vehicle registration card, or gas/electric/water bills).

Moderate Income Household: a Household with total income of all Household members combined, as determined using the Part 5 method, that does not exceed the Program's income limits, adjusted for actual Household size, which are based on 120% of Area Median Income for Santa Clara County; and whose total combined assets do not exceed the Program’s asset limits. The current Program Income and Asset Limits are provided in **Exhibit I** to these Guidelines and are updated annually.

Occupancy Standards: the minimum and maximum number of household members eligible to purchase and occupy a BMR home of a certain number of bedrooms. The Occupancy Standards, when applied to each Applicant Household, take into account the characteristics of the household members listed in the application, such as age, gender, and familial relationship, if any, to determine the size of BMR home (number of bedrooms) an Eligible Household may purchase. These Standards are provided in **Exhibit III**.

Primary Applicant: the Head of Household (see definition) of any Household which has submitted a Program application of any kind. The Primary Applicant is the first listed Applicant on a Program application, must be the primary borrower on the first mortgage loan, must take title to the BMR home, and will be the primary point of contact for Program staff when communicating with the Household during the application process and (if approved) escrow period.

Priority Household: an Eligible Household which is Living in Sunnyvale as defined herein, or an Eligible Household of which the Head of Household/Applicant, and/or a co-Applicant who

will also take title to the Home and be a Borrower on the first mortgage used to purchase the home, is Working in Sunnyvale, as defined herein.

Purchase-Ready: able to qualify for adequate financing to purchase a BMR home; able to provide a minimum down-payment of at least 5% or greater amount if required by the first mortgage lender, plus closing costs; and completion of a HUD-certified home buyer course. Adequate financing shall include a conventional first-mortgage loan provided by an established residential lender that meets the requirements described in **Section F** of those guidelines, and may also include public-sector junior loans, such as the City of Sunnyvale First Time Home Buyer loan, or other down-payment assistance loans or grants secured by the Applicant and approved by the City and the first lender. Down-payment may include gift funds if seasoned and documented as explained in application forms. Applicants with recent foreclosures, bankruptcies, credit scores below 620, or inadequate down-payment funds do not qualify as Purchase-Ready.

Reasonable Accommodation: accommodations in Program rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person, or a household with a disabled member, equal opportunity to apply for, use and enjoy a BMR home, including public and common use areas, as would be available to non-disabled persons or households in similar circumstances. The requested accommodation must be reasonably related to the particular disability of the household member, and must be necessary in order to provide the household with equal access to housing. For instance, if a disabled household member requires a separate bedroom due to their disability, when the Occupancy Standards would otherwise require them to share a bedroom with another household member, they may request a Reasonable Accommodation to the Program Occupancy Standards in order to purchase a BMR home with an adequate number of bedrooms.

Valid Third-Party Documentation: documents issued directly by a public agency, private utility company, taxing entity, creditor, financial institution, school, employer, business, or Certified Public Accountant on such entity's own letterhead, verifying one or more eligibility criteria of any Applicant, Co-Applicant, or their dependents. Such documentation may be verified by Program staff through direct contact with such agency/issuer by phone, email, or written inquiry to verify accuracy of document's contents. Written statements of parties with any direct or indirect interest in the BMR home purchase (i.e., persons related to Applicant by blood/family relationship, marriage, business ties (other than Certified Public Accountant, in the case of self-employment income) or other close personal relationship, do not qualify as Valid Third-party Documentation.

Working in Sunnyvale: earning one's primary source of annual income (salary, wages, commissions) through employment by a Sunnyvale employer licensed and permitted by the City, at a primary work-site in Sunnyvale; or through operation of a Sunnyvale-based business that is licensed and permitted by the City. Working in Sunnyvale does NOT include volunteer or unpaid work, or self-employment consisting solely of operating a business entity established solely for the purposes of investment in a rental property. Income earned in Sunnyvale must be verified by your paycheck stubs, tax returns, and/or other documentation described in the application forms.

Section B. Buyer Eligibility Criteria

Applicants must meet the following criteria to be eligible to purchase a BMR home, either individually as Primary Applicant or Co-Applicant(s), or collectively as a Household, as specified herein:

- 1. First Time Home Buyer**
- 2. Eligible Household**
- 3. Moderate Income Household**
- 4. Purchase-Ready**
- 5. Permanent Resident(s)**

The five eligibility criteria terms are defined in **Section A** of these Guidelines. Applicants must fully document that their Household meets each eligibility requirement by providing all forms of Valid Third-party Documentation requested in the Program application forms.

1. First Time Home Buyer Status

All adults living in the same dwelling unit as the Primary Applicant (“Applicant’s Household”) at time of application must individually and collectively qualify as a First Time Home Buyer, pursuant to the definition provided in **Section A** of these Guidelines, adapted from Title 25 of the California Code of Regulations §8201(l). First-time home buyer status is verified by each adult’s federal and state tax returns, and current lease of the Applicant’s primary residence.

If Applicant resides in an owner-occupied home, whether as guest, family member of owner, or as a boarder/renter of a portion of the home, or if any member of Applicant’s current household owns any home (residential real property), Applicant and his/her household shall not be eligible for the Program, unless such home owner meets one of the exceptions listed in the definition of first-time homebuyer (displaced homemaker, mobile home owner, etc.) provided in **Section A**. This is for three reasons: a) Applicant’s Household includes all occupants of his/her current residence, including any home owner(s), who would not meet the First Time Home Buyer status requirement and therefore would disqualify the entire Household; b) if Applicant resides in an owner-occupied home because he/she cannot afford to rent an apartment or other *bona fide* dwelling unit, he/she will not be able to afford to purchase and maintain a BMR home; and c) if Applicant resides in an owner-occupied home because he/she simply prefers it to renting or buying a home of his/her own, it is presumed Applicant has adequate housing and is not in need of Program assistance, at least not to the same extent as renter households who do not have a local family member or other owner-occupant to live with, and may be facing possible displacement from the area due to generally increasing Sunnyvale rents.

The Program is intended to provide those prospective first time home buyer households who could not otherwise afford to buy any home in Sunnyvale, and have demonstrated the ability to rent a *bona fide* rental dwelling unit and pay all household expenses independently for at least six months, and who may be facing significant rent increases threatening their ability to remain in Sunnyvale, with an opportunity to purchase a home in Sunnyvale for long-term occupancy.

Applicants who own a home meeting the description provided in Exception 3 of the First Time Home Buyer definition (**Section A**) must sell such home prior to or concurrent with closing escrow on the BMR home purchase. If Applicant's net proceeds of the sale would cause Applicant's Household to exceed the Program's asset limits as shown on **Exhibit I**, the household will not be eligible for the Program.

2. Eligible Household

In order to be determined eligible for the BMR Program, the Applicant must demonstrate in its application that it is an Eligible Household as defined in **Section A**, and must verify the household composition and other eligibility requirements, as explained further below and in Program application instructions.

Verification of Household Composition

The Program application requires submittal of Valid Third-Party Documentation, as defined in **Section A**, to prove that each member of Applicant's Household resides and has resided at the same residential address for at least six months. Documents which show only a post office box as an address are not acceptable for the purpose of verifying an applicant's primary residence. The documents required are listed in Program application forms. In the event an applicant is not able to provide a particular document, Program staff may agree to accept a legitimate alternative form of Valid Third-Party Documentation, or in the absence of a legitimate alternative, may determine that applicant has not provided sufficient documentation and therefore will not be considered part of the Household. The Housing Officer is authorized to make the final determination of what constitutes "legitimate alternative" documentation to substantiate primary residential address or any other eligibility criteria, consistent with these Guidelines.

Only those household members who have adequately verified their membership and residency in the Household will be counted for the purpose of determining the size(s) of BMR home (number of bedrooms) the Applicant may purchase, although the income and assets of all household members listed by Applicant on application form (including any temporary or unverified occupants) must be counted toward the Household's gross income, as explained below. To be considered part of Applicant's household, any children under the age of 18 (including foster children) must be under full or partial (at least 50%) custody or legal guardianship of Primary Applicant or another Co-Applicant taking title to the BMR home, and/or must be listed as a dependent child on that party's tax returns.

3. Moderate Income Household

In order to qualify as an Eligible Household to purchase a BMR home, Households must qualify as Moderate Income Households, which means that the total combined income and assets of all adult household members does not exceed the Program's income and asset limits, provided in **Exhibit I** to these Guidelines. The City uses HCD's "Moderate Income Limits" as the household income limit for the BMR Program. Moderate income is defined as a Gross Household Income that does not exceed one hundred twenty percent (120%) of the Area Median Income (AMI) for Santa Clara County, adjusted for household size, computed using the Part 5

method described in **Section A**. Income earned (or imputed) from assets, such as dividends, interest, rental income, etc., is included in the household's annual income pursuant to the Part 5 Method. These income limits are generally updated by HCD on an annual basis. The Program income limits are updated annually on the City's Housing Division homepage shortly after HCD publishes the latest Moderate Income Limits. Applicants must meet the income limits in effect on the date of their application to purchase a BMR home.

In addition to meeting the income limits, the household's assets may not exceed the Program's asset limits provided in **Exhibit I**. Total household assets are compared to the asset limits using a six-month average of the Household's total assets according to monthly statements and/or other valuations for each of the six months prior to application date. The six-month average is used to avoid Applicant "asset dumping" (asset liquidation or transfer to other parties) just prior to Program application, in order to meet the asset limits. Assets held in IRS-recognized retirement accounts (401-k's, IRA's, etc.) are not included for the purpose of determining whether an Applicant meets the Program asset limits.

Applicant eligibility determinations are valid for 90 days from the date of the Program eligibility letter. If the Applicant is still in escrow to purchase a BMR home within 90 days of the date of the Program eligibility letter, Applicant must provide additional income and asset documentation for the intervening months since the Program eligibility letter was issued. If Applicant is not in escrow when the 90-day period expires, the eligibility letter will expire, and Applicant must complete and submit a new application, and pay the application fee again, in order to make a subsequent offer on a BMR home. Applicants may submit updated eligibility documentation prior to the expiration of the eligibility letter, in order to extend the term of their eligibility by 60 days, to allow additional time to submit an offer on a home.

4. Purchase-Ready

Applicant must be Purchase-Ready at the time they apply, as follows:

- a. Mortgage Qualification: Applicant must provide a current loan pre-qualification letter from a conventional residential lender for a thirty-year, fixed-rate mortgage in an amount equal to at least 80% of BMR home price, which also meets the financing requirements described in **Section F**, and be able to obtain final approval for such loan by close of escrow;
- b. Down Payment: Sufficient savings available for a down payment of at least five percent (5%) of the home price, plus closing costs of approximately three percent (3%) of the home price (collectively "Down Payment"). Gift funds may be used to provide not more than the lesser of: 50% of Applicant's total Down Payment, or 10% of the BMR home price. Any gift funds must be documented in Program application with a gift letter and all Down Payment funds must be "seasoned", as described further in application form. Program approval to purchase will be conditioned upon Applicant's deposit of Down Payment, in the amount stated in Application to Purchase, into escrow by the closing date noted in purchase contract. If lender requires a higher down payment, Applicant must meet requirement as stated in loan pre-qualification letter.

- c. Credit Score/History: Credit score(s) of 620 or higher, and no bankruptcies or foreclosures within three years prior to application date. Lenders may require higher scores or higher standards regarding credit history.
- d. Homebuyer Education: Primary applicant must have taken a HUD-certified home buyer course and provide a certificate or proof of completion in Program application. Various online and in-person HUD-approved home buyer education providers are listed in Program outreach materials and website. Course must be completed prior to making an offer on a BMR home.

All Purchase-Ready requirements must be fully documented as described in Application form. If any co-Applicant(s), due to his/her poor credit history or low credit score, would adversely affect Primary Applicant's ability to qualify for a mortgage, such co-Applicant may be exempted from the requirement to jointly apply for the first mortgage as a borrower, however such co-Applicant must take joint title to the home with Applicant upon close of escrow. Co-Applicants who are listed as financial dependents of Primary Applicant, or of another co-Applicant included as borrower on the loan, on such Applicant's tax returns need not be listed as borrowers on the loan application, nor take title to the home (unless desired by Applicant), except any financial dependent spouses of Primary Applicant, who are required to at least take title as community property or joint tenants.

5. Permanent Resident(s). All members of Applicant's household must provide acceptable documentation in Program application to verify that they are permanent legal residents of the U.S.: either U.S.-born or naturalized citizens, permanent legal residents (holders of permanent "green cards"), or spouses with pending permanent residency due to marriage to an Applicant who is a U.S. citizen or permanent legal resident. Acceptable documentation is described in Program application forms. Visas of any kind and/or temporary residency (temporary green cards) do not constitute permanent legal residency, except for temporary green cards of spouses as described above. Refugees and asylum-seekers may submit documentation from the federal immigration agency or a court order granting admission for permanent legal residency based on such status.

Household members without proof of permanent legal residency in the U.S. are not prohibited from occupying the BMR home as guest of Applicant. If such household members have been residing in Applicant's household for more than 30 days at time of application, such household members must also be listed in Applicant's application, and must provide all required income and asset documentation for inclusion in Applicant's Gross Household Income and Assets. However, due to the temporary nature and/or uncertainty about duration of their stay in the U.S., such household members (visa-holders, etc.) will not be counted toward Applicant's Household size for the purpose of determining the size of BMR home (number of bedrooms) Applicant may purchase, in accordance with the Program Occupancy Standards provided in **Exhibit III**.

Section C. Geographic Preference (Priority)

The Program provides a geographic preference (“Priority”) to purchase BMR homes to Applicants Living or Working in Sunnyvale, or in Santa Clara County, as follows:

Geographic Preferences, in order of Priority:

1. Live or work in Sunnyvale
2. Live or work in Santa Clara County

Applicants who have been determined by Program staff to be either Living in Sunnyvale or Working in Sunnyvale, as defined in **Section A** of these Guidelines, receive First Priority to purchase available BMR homes. To qualify for Second Priority, applicants must meet the definition of Living or Working in Sunnyvale, substituting “Santa Clara County” for “Sunnyvale” in the applicable definition. Applicant(s) must provide Valid Third-Party Documentation as described in application forms, in their Eligibility Applications to support their request for either Priority status.

Priority to purchase will be provided to first Priority (Sunnyvale) Applicants through a sixty (60) day “Priority Application Period,” during which offers to purchase any particular BMR home will be accepted only from Applicants with a valid First Priority Eligibility letter issued by Program staff. This period consists of the first sixty calendar days that a BMR home has been offered and marketed for sale to the general public by the City and/or Seller, using reasonable and customary residential real estate marketing methods. The beginning date of this Period shall be mutually established by City and Seller. The Priority period dates will be noted in any notices or advertisements for sale issued by the City or Seller.

The second priority period will run for thirty (30) days following the First Priority period, or longer as may be established mutually between City and Seller. If the home remains available for sale after the Second Priority period, non-Priority households may submit offers at that point. Generally most BMR homes are sold to Sunnyvale applicants during the First Priority period. Occasionally homes remain available long enough for those who live or work in Santa Clara County to buy them.

Applicants who do not qualify for First Priority status may submit an Eligibility Application at any time for potential approval as a second- or non-Priority Eligible Household, however Sellers may not accept an offer to Purchase from such Applicants until the appropriate Priority period(s) have expired for that particular home or development.

Section D. Application Process

The main steps of the BMR home buyer application process are described in this Section. Assistance is available upon request to applicants requiring interpretive services and/or other accommodations due to limited English proficiency and/or disabilities, pursuant to the City's Language Access Plan, disabled access, and reasonable accommodations procedures. Detailed application instructions are provided in Program application forms. The Program currently uses a two-step application procedure, each of which has a separate form and application fee, as explained further below:

- A. **Eligibility Application:** To determine whether Applicant is eligible for the Program.
- B. **Application to Purchase:** Submitted when eligible Applicant has made an offer on a BMR home, to determine that proposed financing and other purchase transaction details meet Program requirements.

The main steps required to buy a BMR home are explained below, listed in the order in which they typically occur:

1. Receive program outreach materials and/or attend City Home Buyer presentation

The City provides various Program outreach materials online, in print at City facilities, or upon request, and holds bi-monthly or more frequent workshops to introduce the Program to the public and provide prospective buyers with an overview of the Program, to help them determine if a BMR home is right for them and if they might qualify. Applicants should review these materials and/or attend a presentation to determine if they are interested in the Program.

2. View available BMR homes

While this step is not mandatory, Applicants are encouraged to view one or more available BMR homes prior to submitting an application, to make sure they are interested in the available BMR homes and the neighborhoods where they are located. Once Applicants have been determined eligible, they may view available homes again prior to selecting and making an offer on any particular home.

- New homes: Applicants may view model homes, or plans and drawings provided by the City and/or Developer, or the actual BMR home if its construction has been completed.
- Resale homes: Applicants may view the home's exterior and/or interior prior to submitting an application. To view the interior, applicants must contact the listing real estate agent to make a viewing appointment.

3. Obtain pre-qualification for a first mortgage loan

Applicant(s) must obtain a pre-qualification letter for a thirty-year, fixed-rate first mortgage from a financial institution or lender providing conventional, non-predatory, residential mortgages. The letter must state the maximum amount Applicant could borrow in a conventional first mortgage that meets the loan requirements explained in **Section F**, and the amount of down payment required by lender. All adult Applicants

must be named on the pre-qualification letter and must take joint title to the home, unless Program staff has granted an exception for one or more adults, as described in **Section B**.

4. Complete and Submit Program Eligibility Application

Applicants may obtain the Eligibility Application from Program staff at City Hall, or download an Eligibility Application from the Program's website. Application periods for particular developments or homes may be limited to specific dates, or may be open indefinitely until the home(s) are no longer available for sale. Dates of Priority application periods are also noted in the listings. Applicants must complete the application according to the instructions provided, pay the required application fee, and submit the application to the Program office. If the application is determined to be incomplete, staff will return the entire package to the Applicant for completion. Until staff has determined the application to be complete, staff will not review the application or issue any determination of eligibility. Staff makes every effort to review all completed applications and issue a determination letter within 21 days or less of the date of submittal of a complete application. Often a letter can be issued in a much shorter time period, depending on volume of applications and related factors.

Households or individual applicants unable to produce any particular document required in the application form for legitimate reasons beyond their control (natural disaster, military service, refugee status, domestic violence, witness protection program, disability etc.) may request an exception for that particular document, pursuant to the exception procedures explained in **Section E** of these Guidelines. Upon such request, Program staff may request a reasonably equivalent alternative document and/or any additional supporting documentation deemed necessary by the Housing Officer to verify eligibility of the Applicant/Co-Applicant and/or their entire Household.

5. Receive Program Letter of Eligibility/Ineligibility

Upon completing review of an application, Program staff will provide all Applicants with a written letter stating whether their household is eligible, and if so, the size(s) of BMR home (minimum and maximum number of bedrooms) for which their household qualifies, and any relevant information or instructions regarding available BMR homes. Each eligibility determination letter (eligible or ineligible) is valid for 90 days, after which time it expires and is no longer valid for any purpose.

Applicants determined ineligible may reapply 90 days after receipt of the Program eligibility determination letter, if they believe their circumstances related to the reason for ineligibility have changed (i.e., significant changes in income, assets, household composition, credit score, down payment funds, etc.). In that case applicants must submit an entirely new complete application and pay the fee again. Each application must verify that Applicant meets all eligibility criteria at the time of submittal, independently of any verification provided in prior application(s).

Applicants wishing to appeal an eligibility determination may do so in accordance with the appeal procedure described in **Section E**. Applicants making fraudulent statements or

intentionally misrepresenting the facts in any application shall be permanently ineligible for the Program.

6. Attend HUD-approved Home Buyer Class

Applicants shall complete a HUD-approved home buyer education class prior to submitting an offer to purchase a BMR home. This is for the benefit of the home buyer to ensure that they fully understand the process of home buying, the various options available in selecting a home and a loan, and the potential consequences of each decision. A list of HUD-approved home buyer classes is provided on the Program website, and is available upon request from the Housing Division. Online and in-person classes are available. Most classes provide a certificate of completion to attendees. Applicants shall include this certificate, or equivalent written verification from the provider, with their Application to Purchase. Applicants shall also make an appointment with Program staff to review all BMR home buyer disclosures and agreements after being determined eligible for the Program and prior to submitting an offer to purchase a BMR home.

7. Select an available BMR home and sign offer to purchase

After receiving the Program eligibility determination letter verifying that the Applicant is eligible, Applicant may view available homes and submit an offer on the available BMR home of their choice, within the size range for which they qualify. Seller shall request and Applicant shall provide Seller with a copy of applicant's eligibility letter from Program staff prior to accepting an offer to purchase a BMR home. Sellers accept offers on a first-come, first-served basis (among applicants with an eligibility letter for the appropriate home size). Multiple applicants may possess an eligibility letter at the same time, therefore if an applicant is interested in a particular BMR home, he/she should make every effort to submit an offer as soon as possible following receipt of eligibility letter, by communicating directly with seller or seller's agent to arrange an appointment to submit.

8. Submit Application to Purchase, with accepted purchase contract, to City

Applicant completes and submits Application to Purchase form, attachments and fee. Attachments include a copy of the purchase contract signed by buyer and seller, with contingencies for final Program approval, loan approval, and inspections, original BMR Addendum, a copy of the workshop certification, and a \$500 non-refundable fee. If the Application to Purchase is being submitted more than 90 days after the date of any income and asset documentation provided in Eligibility Application (but eligibility letter has not yet expired), current documents (such as pay stubs and bank statements) must also be included with the Application to Purchase.

9. Application to Purchase conditionally approved or denied by City

The city will review the Application to Purchase to verify that the terms of the purchase contract, proposed financing, and associated application contents meet all program requirements, and that Applicant's household remains eligible, prior to issuing a conditional letter of approval to permit the opening of escrow.

10. **Final Approval and City instructions to Escrow**

Final approval is provided after the Applicant and Applicant's Lender complete the Application to Purchase by providing copies of Applicant's first mortgage loan application forms, required lending and settlement disclosures from the lender, and conditional approval of first mortgage and any junior loans. If proposed financing does not meet the Program's financing requirements (**Section F**), application will be denied until/unless Applicant can secure adequate financing, or loan terms are adjusted by Lender, before the loan contingency must be released under the Purchase Contract.

If Applicant has applied and been conditionally approved for a City First Time Home Buyer (FTHB) loan, the City will make its final determination of FTHB loan amount at this point. This amount may be adjusted prior to close of escrow if the first lender subsequently changes the amount of the first loan, or buyer obtains additional down payment funds from any source, to the extent possible within FTHB Program loan limits and requirements.

The City will provide its final closing conditions and instructions to escrow, along with the FTHB loan funds, if any. The first lender (and any approved junior lenders) will provide final loan approval, buyer will deposit any outstanding down payment funds into escrow, and lender will fund the first mortgage loan. Escrow officer will record deed and other recordable documents and close escrow. Applicant is now a BMR home owner!

Section E. PROGRAM ADMINISTRATION

The Housing Division is authorized to administer the Program and to establish, maintain, and modify periodically as needed, a reasonable application process to solicit prospective buyers and determine the eligibility or ineligibility of applicants based on information provided in applications and/or obtained from third parties authorized to release such information, as provided in Program application and release forms. A summary of administrative procedures is provided below. Some of these procedures are described in more detail in administrative documents maintained by Program staff and made available upon request.

- 1. Public Outreach and Marketing**
- 2. Application Review and Determination of Eligibility**
- 3. Exceptions and Appeals**

1. Public Outreach and Marketing

Outreach and Marketing

Program staff provides Program information online, via email and print brochures, and at various public presentations and seminars.

Interest List

Program staff maintains an interest list for prospective buyers and other interested parties to request current information about BMR homes available for sale and other Program news. The interest list is the primary means of providing interested parties with current listings and Program news. Anyone wishing to receive such notices may sign up to be on the interest list by completing and submitting either the online form on the Program's website, or a paper copy of the form, available at City Hall or upon request. Email is the primary form of communication with those on the list however persons unable to use email due to disabilities or other hardships may request another form of notification, subject to budget limitations. Program announcements are generally sent to those on the interest list weekly or less often, as needed. Persons on the list are responsible for notifying Program staff if/when their email address or primary contact information has changed.

The interest list is not a waiting list, and it does not provide any priority, preferences, eligibility, or any other special status or rights to anyone on the list. Being on the interest list does not provide any party with any rights to or interests in a BMR home in particular or in general, or to any other BMR program benefits.

Staff will notify those on the interest list when new or resale BMR homes become available for sale, along with seller's contact information and any scheduled open house dates, and any special eligibility requirements, application processes, and/or Priority period dates. Upon receipt of such notices, prospective applicants may submit applications according to the instructions in the email notice, application forms, and these Guidelines. Applications are reviewed in the order in which

they are received and determined complete. Those applicants deemed eligible may proceed with the remainder of the application process as described in **Section D**.

Waiting Lists

Currently the Housing Division does not maintain a waiting list for BMR homes. However, Program staff may establish a waiting list(s) for a particular development, multiple developments, and/or particular home type or size (such as all three-bedroom homes, or all single family homes, etc.), if demand for particular home type or location, or BMR homes in general, warrants. The Housing Officer shall determine if and when buyer demand warrants establishment of a waiting list, in order to avoid confusion and/or disputes among sellers and buyers regarding home sales. In that event, Applicants will be placed on the waiting list for which they have applied, in the order that their Eligibility Applications were received and determined eligible for the Program and the particular waiting list. If unusually high demand is anticipated for a particular development, home, or group of homes, staff may hold a lottery to establish a waiting list for such homes. A preliminary (i.e., abbreviated or self-verified) application process may be used solely for placement on the waiting list and/or to enter a lottery pool, to be followed by the standard application process described in **Section E**, for those at the top of the list.

2. Application Review and Determination of Eligibility

The City of Sunnyvale will accept and review applications for completeness upon receipt. Incomplete applications will be returned to the applicant with instructions for completion. Upon determination of completeness, staff will determine applicant's eligibility based on the contents of the application. Staff will provide an eligibility determination letter within twenty-one (21) days of receipt of a complete application. This letter will state whether the Applicant is eligible or ineligible, and if eligible, the size(s) of BMR home his/her Household may purchase. Staff will schedule an appointment with Applicant to answer any questions, discuss available listings, and explain the next steps in the process of buying a BMR home. At the same time or at a subsequent appointment, staff will review all of the Program's disclosure forms and legal agreements with the Applicant.

Determination of BMR Home Size

The Program's Occupancy Standards provided in **Exhibit III** set forth the minimum and maximum number of bedrooms allowed by household size. These standards are applied to each Applicant with consideration of the age, gender, and familial relationships, if any, of the actual household members as listed in Applicant's in Eligibility Application, in order to determine the size of BMR home that Applicant may purchase.

Generally, two household members of the same gender may share a bedroom (children, siblings, unrelated or related adults, etc.) but those of opposite gender will qualify for separate bedrooms. Couples of any kind (married, domestic partner, or unmarried couple) qualify for one bedroom. Children are not required to share a bedroom with a parent or other adult of any gender. Children of the same gender with an age difference of three or more years may qualify for their own bedroom, or may share, depending on the size of homes available and Applicant's preferences. Applicants with a live-in home health care aide or other special needs related to

home size may request a reasonable accommodation to the Occupancy Standards if needed, as described in subsection 3 below. Depending on the particulars of Applicant's household composition, Applicant may qualify for a range of home sizes (i.e., a five-person household might qualify for homes of 2-4 bedrooms), or just one size (i.e., a single adult household of 1 will only qualify for a 1-bedroom). Larger homes are generally priced higher than smaller homes, therefore Applicant must also verify that they can afford the price of the BMR home they wish to purchase, in addition to meeting the Occupancy Standards.

3. Exceptions and Appeals

Exception Requests

Any applicant believing that his/her situation warrants an exception to any part of these guidelines due to circumstances outside of his/her Household's control, such as refugee status, special needs, or other hardships or special circumstances, may request an exception by submitting a written letter to the Housing Officer prior to submitting an application of any kind. The exception request must specify which particular guideline or requirement the Household cannot meet for reasons beyond their control or other valid reasons, and/or describe the Household's unique circumstances which warrant one or more specific exceptions to be identified in the letter, referencing the page(s) and section(s) of these Guidelines and/or application form related to the request. Exceptions to the Program's Moderate Income Household requirement are not granted, in order to comply with the Ordinance.

If the need for an exception arises while an application is being reviewed, a request may be submitted at such time. If the need for an exception arises only after receipt of a determination letter issued by Program staff, it shall be submitted as an appeal of such determination, according to the appeal process described below.

Exceptions related to disabilities (reasonable accommodations) may be requested according to this procedure, with a brief description of the exception(s) needed due to the Applicant's disability, and will be handled in accordance with the City's reasonable accommodations policy and these Guidelines.

The City's Housing Officer will consider the requested exception and will provide a letter response within 10 calendar days, stating if the requested exception can be granted in full or part and the reason for such decision. The Housing Officer may approve or deny such request. If denied, Applicants may submit an appeal of such denial to the Community Development Director, as explained below.

Appeals Procedure

Applicants may appeal any determination letter, including denial of a requested exception, by providing a written explanation of the reasons for their appeal, and any supporting evidence the applicant wishes to provide. The appeal letter must be delivered to the Housing Officer by mail or personal delivery within ten calendar days of issuance of the determination letter being appealed. City staff is not authorized to assist applicants in drafting appeal letters, nor in determining appropriate grounds for appeal or appropriate forms of supporting evidence, beyond

advising them of the contents of these Guidelines, application forms, and other published Program materials. Applicants may refer to these Guidelines and application forms, and/or seek their own advisors/counsel for guidance in determining what types of documentation would be reasonable. The Community Development Director shall review the appeal letter and issue a final determination within thirty calendar days or less of receipt. Appeal to the Community Development Director is the final administrative appeal.

Unless appellant opened escrow to purchase a BMR home prior to submittal of an appeal letter, no BMR home will be held or reserved for Applicant while an appeal is being considered, and offers from other prospective buyers may be accepted by Seller(s) of BMR home(s) during this time. If appellant is in escrow to purchase a BMR home, City shall not issue any escrow instructions until the Director has made a final determination regarding the appeal, other than to inform the escrow officer that he/she may not close until further written notice from the City. Upon the Director's determination of the appeal, Program staff shall proceed to either approve closing (if appeal was granted) or inform escrow that Applicant has been denied approval to purchase and buyer may not close on that home. City shall not be responsible for any actions of seller, lender, or other parties regarding the escrow during the appeal period which may jeopardize buyer's ability to purchase the BMR home.

Section F. BMR Home Financing and Affordability Standards

This section sets forth the Program’s underwriting standards related to affordability and risk mitigation, as well as financing requirements. Certain requirements apply to any loans or encumbrances against a BMR home during the entire term of restrictions, while some requirements apply at the point of initial purchase, and other prohibitions and/or requirements apply only to refinancing.

1. Affordability Standards
2. Financing Requirements
 - a. Initial Purchase financing
 - b. Refinancing

1. Affordability Standards

Housing is considered affordable, according to most public-sector housing agencies, including the City Housing Division, HCD, and HUD, when total monthly housing costs do not exceed approximately 30% of a household’s gross monthly income. This ratio varies slightly depending on if the home is owned or rented, and on the household’s income level. These affordability standards apply at time of home purchase and upon any proposed refinancing.

The BMR Program affordability standards, used to review proposed home financing for affordability and risk avoidance, are shown on the table below:

Income Level	Maximum Percentage of Monthly Gross Income	
	Monthly Housing Cost (Front Ratio)	Total Monthly Debt (Back Ratio)
Very Low	30	45
Low	35	50
Moderate	40	50

These standards show the maximum amounts home buyers can spend on monthly housing costs (“front ratio”) and secured monthly debt (“back ratio) in order to qualify to buy a BMR home. The buyer’s actual income level determines which front ratio applies, not the income level used to set the price for the BMR home, which may be slightly different than buyer’s actual income level. Program staff will determine buyer’s actual income level upon completing review of their application. Lenders may use a slightly different definition of “front ratio” for their own underwriting purposes.

The Program includes the expenses listed below to determine a buyer’s monthly housing costs. The amount of each cost item is based on information provided in the buyer’s application to purchase, including information provided by lender, and/or estimates based on customary costs for the area.

- Monthly principal and interest payments on first mortgage and any other mortgage/home financing with monthly payments due

- Property taxes
- Homeowner's association dues (may include some or a portion of home owner's property insurance and/or utilities)
- Homeowner's insurance (for condominiums: at a minimum fire/hazard insurance for contents/interiors, and personal liability; for single family: standard homeowner's policy)

The total monthly debt, or "back ratio", includes monthly housing cost plus any other secured monthly debt payments, such as car loans, student loans, child support/alimony, credit card or other personal loan debt, outstanding medical debts, etc. that appear on Applicant's credit report, loan applicant and/or Program application. Regular monthly expenses that have not yet been incurred (i.e., regular monthly child care/health care expenses, food, utilities etc. for current or future months) are not debt, and therefore are not included in the back ratio.

2. Financing Requirements

The following financing requirements apply both at time of home purchase, and to any subsequent refinancing:

- Total encumbrances (liens, mortgages, loans or debts of any kind secured by the home) may not amount to more than 95% of the home's maximum (restricted) BMR home price, or actual appraised value, if less than the BMR price, at the time the encumbrance is incurred (when the loan is made to home buyer/owner). Another way to say this is that the combined loan-to-value (CLTV) ratio on a BMR home may not exceed 95% of the then-current BMR home price determined by Program staff. Liens include tax liens, court judgments, and other non-voluntary liens imposed by any party.
- No mortgage or other residential loan secured by a BMR home (including home equity loans or lines of credit, etc.) may include any of the following terms or rates:
 - Prepayment penalty
 - Balloon payments
 - Negative amortization (such as interest-only payments, etc.)
 - Adjustable and/or non-prime interest rate
- Home equity lines of credit (HELOCs) are prohibited.
- Front and back ratios may not exceed the limits set forth above in the Affordability Standards subsection, using the ratios corresponding to the borrower's actual income level at time of loan application.
- All first mortgage loans must be provided by a conventional residential lender with standard underwriting and loan servicing capabilities.

a. Initial Purchase Financing

All of the financing requirements listed above apply at time the BMR home is purchased, in addition to the following:

- i. Applicant must buy the home using a first mortgage loan equal to at least 70% and not more than 95% of the purchase price, provided by a conventional residential lender (including

- ii. Public sector and/or non-profit loans or grants may be used (FHA, Housing Trust, Cal-HFA, VA, etc.) for any combination of the following: first mortgage, junior financing, or down-payment/closing cost assistance, as long as CLTV does not exceed 95%.
- iii. Any loans requiring repayment, and secured by a deed of trust against the BMR home, including non-profit or public sector “soft loans”, whether deferred or forgivable in full or in part, are considered loans, not grants. Such loans are included in the CLTV and subject to the 95% limit on CLTV noted above. Actual *bona fide* grants and/or gifts (no deed of trust and no repayment due) are not included in the 95% CLTV limit.

b. Refinancing Requirements

Refinancing requirements include all of the requirements listed under subsection 2, Financing Requirements, in addition to the following:

- i. Home owners must obtain the City's written approval to refinance prior to refinancing or encumbering their BMR home with any new debt at any time after their purchase of the home. In order to obtain written approval, home owners must complete and submit a refinance approval request form and pay the Program's processing fee at least ten days before City approval is needed. Submittal of the form and the fee does not guarantee approval of the home owner's proposed loan.
- ii. Refinancing includes refinancing any outstanding mortgages or loans on the home, taking out a new loan (junior loan, home equity line of credit, second or third mortgage, reverse mortgage, personal loan, etc.) to be secured by the home, and/or otherwise encumbering the home with any lien.
- iii. Refinancing may not cause the total combined loan-to-value (CLTV) ratio of all encumbrances on the home to exceed 95% of the BMR home price, as determined by Program staff at the time of the proposed refinancing.
- iv. All proposed refinance loans must meet the all of the Financing Requirements listed in subsection 2, which prohibit terms such as negative amortization, adjustable interest rates, balloon payments, and lines of credit.
- v. Home owners are strongly encouraged to contact the Program staff for current Program refinancing requirements prior to paying any loan application fees, credit check fees, or other non-refundable fees, to find out whether their desired refinancing is allowable on a BMR home. Current information on refinance approval procedures, loan requirements, Program forms, and fees, is available upon request from Program staff. Lenders may also contact the Program staff for this information.

Section G. Long-Term BMR Ownership and Occupancy Requirements

Once a home buyer has purchased a BMR home, they must comply with the requirements of these Guidelines, the Ordinance, the BMR Program's "Home Owner's Resale and Occupancy Agreement" (the Agreement) and BMR Deed of Trust recorded against their home, for a term of thirty years or until/unless they sell the home during the thirty-year term. If the home is sold prior to the end of the thirty-year term, the new buyer will be subject to a new thirty-year term. The Agreement and a disclosure summarizing its requirements is provided to all buyers prior to purchase. This section provides a brief summary of the long-term Program requirements contained in the Agreement. In case of any difference between these Guidelines and the buyer's recorded BMR Agreement, the Agreement recorded against buyer's home shall prevail.

1. Term of Restrictions.

BMR homes are restricted for 30 years, or other term stated in the Home Owner's recorded Agreement.

2. Primary Residence & Owner Occupancy

Within 30 days of close of escrow, Applicant and his/her entire household ("Home Owner") must move into and establish the BMR home as their primary residence. Home Owner and all co-owners listed on title must occupy the BMR home as their primary residence for the entire term or until home is sold. Children aged less than 18 years and any adult household members not on title are not subject to this requirement.

Primary residence consists of living in the home (and not residing in any other home) for at least ten months of each calendar year. Exceptions for individual home owners can be requested in case of hardship, such as illness/special needs requiring extended stays in health care facilities, or active duty military service, pursuant to the exception procedures in Section E of these Guidelines. Exceptions apply to the individual involved, not the entire household. If the entire household needs to move permanently from the home with no definite date of return, it must be sold pursuant to the Agreement and these Guidelines.

Home Owner must maintain a homeowner's property tax exemption on the BMR home, and may not claim a homeowner's exemption on any other home, for the duration of their ownership of the BMR home. If Home Owner fails to maintain a homeowner's property tax exemption for the BMR home, the home will no longer be considered his/her primary place of residence for Program compliance monitoring purposes.

Should Home Owner or any co-Owner cease to occupy the unit and/or be removed from title, any remaining owner, heir or occupant should notify the Housing Division immediately in writing. Program staff will inform the notifying party about their options for maintaining, transferring, or selling the home in compliance with Program requirements.

3. Annual Certification of Owner Occupancy

Home Owners must provide the City with an annual written certification that they continue to occupy their home as their primary residence, with Valid Third Party Documentation (such as property tax statement, utility bill) of such occupancy. Program staff will provide Home

Owners with a certification form annually for Home Owner to complete and submit to the Housing Division. The City may request additional documentation from the owner(s) if needed to verify primary residency in the home. In the event Program staff fails to provide any Home Owner with the certification form in a given year, Home Owners are still required to provide written verification of their occupancy on an annual basis, using the form provided by the City in a prior year, or by writing a letter to the Housing Division, attention BMR Program Manager.

4. Rental of BMR Home Prohibited

Home owners may not rent out the home or any portion of it to any party, including family, friends, or other tenants, whether for actual paid rent or gifts, bartered services, assistance or any other form of compensation. Other occupants staying in the home as guest of owner (i.e., for no compensation whatsoever) may not substitute for Home Owner(s)' required occupancy and primary residence in the home. Total occupancy of the BMR home may not exceed the maximum provided in the Occupancy Standards (Exhibit III) at any time.

In the event of a hardship (involuntary event) requiring Home Owner's entire household to move for a certain time period, and Home Owner is unable to sell the home without incurring a loss, or Home Owner wishes to return and re-occupy the home as their primary residence, home Owner may request City approval to rent out the home for up to two years at a rent affordable to a lower-income household, pursuant to the BMR program rents or other lower-income rent limit utilized by the Housing Division. Home Owner must obtain the City's prior written approval prior to renting out the BMR home, pursuant to the exception procedures in Section D. If the exception is granted by the City, the approval letter will inform the Home Owner of the applicable rent limit and any associated requirements.

5. Unauthorized Sale or Transfer of Home Prohibited

According to the terms of the Agreement, the City has first right of refusal to purchase the home for the then-current BMR price, if a Home Owner wishes to sell during the term. If Home Owner wishes to sell the home or transfer any ownership in the home to or from any party, or into a trust of any kind during the Term of restrictions, Home Owner must contact Program staff prior to completing the proposed transfer, for written authorization, if the proposed transfer is allowable, or to verify that transfer is prohibited. Exceptions to this prohibition against sale or transfer may be made in very limited cases such as marriage, divorce, or death of a Home Owner (for certain types of heirs only), as set forth in more detail in Home Owner's Agreement and Deed of Trust. Additional detail is provided in the Agreement and in the BMR disclosures, copies of which are available from the Housing Division upon request.

Home Owners are strongly encouraged to contact Program staff in case of any desired or necessary transfer, for assistance in determining whether the proposed Transfer is allowable or prohibited, and for written approval if such transfer may be approved. Transfers include selling the home outright to another party, adding or removing any party from title to the home, including actual persons, trusts, and, in the case of refinancing, lenders or other institutions, and leasing of any portion of the home, or leasing the entire home.

6. Resale Procedures

If Home Owner wishes to sell the BMR home during the Term, Home Owner shall complete and submit the “Notice of Intent to Sell” (NIS) form, available upon request, to the Housing Division. Upon receipt of a completed NIS form, Program staff will notify Home Owner of the current BMR price limit for his/her home, whether the City is interested in exercising its first right of refusal, whether or not there is currently a waiting list or interest list of interested buyers, and related resale procedures. If City does not opt to exercise its option, it may refer buyers from its waiting list and/or interest list to Seller. If no buyers are interested and/or referred to Home Owner, he/she must either identify a prospective buyer, or list the home with a realtor.

Once Home Owner has identified a prospective buyer, Home Owner shall refer such buyer to the Program staff for application instructions and eligibility certification. If the initial buyer(s) are not eligible, Home Owner shall continue to refer prospective buyers until one is determined eligible. The first buyer to be determined eligible by Program staff, and to have his/her offer accepted by Home Owner, shall complete the remainder of the standard application and purchase procedures described in **Section D**. Upon closing, a new thirty-year Agreement executed by the new Buyer will be recorded against the home. Home Owner (seller) will receive any proceeds due from close of escrow as in a standard sale, except that the home price shall not exceed the then-current maximum BMR price as determined by Program staff.

If Home Owner is unable to obtain a valid purchase offer from any Eligible Household (verified by Program staff) after marketing the home for 180 days, using standard real estate marketing procedures, including listing the home with a realtor and on the MLS for at least 180 days, the City may opt to either purchase it at the BMR price, or release it from the BMR restrictions.

7. Maintenance of Home

Home Owner is required to maintain home in a decent, safe and sanitary condition, free of hazards, code violations, and nuisances, in compliance with the Agreement, Deed of Trust, Homeowners’ Association covenants, if any, the Sunnyvale Municipal Code, and other applicable health and safety codes and laws. Home may not be used for any non-residential use, or as a vacation home, vacation rental, or any use other than as Home Owner’s primary residence. Home Owner may operate a home-based business in the home to the extent permissible according to the Sunnyvale Municipal Code, if licensed and permitted by the City, and if ancillary to the primary use of the home as Home Owner’s primary residence.

Home Owner must pay any and all assessments levied against the home when due, including homeowners’ association dues and special assessments, property taxes, parcel taxes, special district assessments, etc., just as any other property owner must pay such taxes and assessments. The BMR program does not provide Home Owner any protection, exemption, waiver, or reduction of any such taxes, fees or assessments legally charged to Home Owner. Home Owner must adequately budget for such expenses like any other home owner.

8. Default and/or Foreclosure

In the event that Home Owner receives a notice of default from any entity other than the City, this will be considered a default under the City's BMR deed of trust as well, and City may pursue any available legal remedies to avoid loss of the home to the Program through foreclosure, including exercising its option to purchase, and/or assigning such option to an eligible buyer prior to foreclosure. City will cooperate with Home Owner and lender to the extent possible to resolve a default under any other deed of trust, in order to avoid foreclosure and maintain the home in the BMR program. City shall not be obligated to take any actions to preserve Home Owner's ownership interest in the home, nor to pay any sums owed by Home Owner or take any legal action in favor of either party related to a default or foreclosure. In the event City does not exercise its option and a foreclosure occurs, the Agreement will be released by the City and such home will no longer be bound by the Program restrictions. Home Owner may be obligated to pay excess proceeds, if any are obtained through foreclosure sale, to the City, as described in the Agreement. Terms of default under the Agreement and BMR deed of trust are defined in more detail in those documents recorded against each home.

9. End of BMR Term

If Home Owner has complied with the Agreement through the end of the Term and has not sold or transferred the BMR home prior to the termination date, the home shall be released from the Agreement, and a Release of Agreement shall be recorded by the City upon request of Home Owner. After recordation of such release, home shall be a market-rate home and Home Owner shall no longer be subject to the Program restrictions, including these Guidelines, the Ordinance, and the Agreement.

Section H. Program Compliance

Burden of Proof of Eligibility

Participation in the Program is a privilege, not a right, as there are not enough BMR homes for all Eligible Households. All applicants bear the burden of proof to demonstrate that their Household meets all of the Program Eligibility Requirements by submitting complete applications with all required Valid Third-Party Documentation. Failure to adequately demonstrate such eligibility, by providing incomplete applications or otherwise not complying with these Guidelines or associated application instructions, will result in a determination of Ineligibility and denial of Program benefits.

Program staff is not required to prove that Applicants are ineligible, only that they failed to adequately demonstrate their eligibility in their application, and/or failed to submit a complete application, or failed to secure adequate financing, or failed to deposit required down-payment and closing cost funds into escrow.

The City of Sunnyvale may contact any source provided by Applicant or included in his/her application to verify Applicant information, and/or request information from those sources named or described generally on the Program's Authorization to Release Information Form included in application forms.

False Statements or Misrepresentations

Any false statement(s), intentional misrepresentation of the facts, or false representations submitted as part of any Program application, occupancy certification, or other Program submittal in order to obtain an eligibility determination or verify Program compliance constitutes an act of fraud and may be prosecuted accordingly. Submittal of intentionally false, misleading or incomplete information in a Program application will result in denial of eligibility to participate in the Program, and the applicant(s) will be permanently banned from the Program.

If the City should discover that a purchase was completed by a owner(s) who intentionally made false statements or misrepresented the facts in order to appear eligible to purchase the property, this will constitute fraud and/or default under the Agreement, and the City will use all available legal remedies to bring the home into compliance, and/or impose any criminal or civil penalties allowed by law.

If the City determines that BMR owner(s) have made intentionally false statements or misrepresentations in their annual occupancy certification in order to appear compliant with Program requirements, it will use any enforcement measures available under the Ordinance, these Guidelines, the Deed of Trust, and/or Agreement to restore compliance.

Unauthorized Rental, Sale, or Transfer of BMR Home

If any portion of the BMR home is rented out, sold or otherwise transferred in full or part without prior City approval, the City may use all available legal remedies to bring the home into compliance, and/or impose any criminal or civil penalties allowed by law, including possible sale of the property and/or requiring Home owner(s) to reimburse the City for all rent that was collected in violation of Program requirements, or the amount of any presumed rent, based upon

prevailing market-rate rents for a comparable rental unit, or for any excess sale proceeds, as explained further in the BMR Agreement recorded against the home.

Severability

If any one or more of the provisions contained in these Program Guidelines shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provisions shall be deemed severable from the remaining provisions contained in the Guidelines, and the Guidelines shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

I. EXHIBITS

- I. Program Income and Asset Limits**
- II. HUD Income and Assets Inclusions and Exclusions List**
- III. Occupancy Standards**
- IV. BMR Program Fee Schedule**

**Exhibit I
Program Income and Asset Limits**

A. Household Income Limits

The Household Income Limits used for the BMR Home Buyer Program are the Moderate Income Limits established annually by HCD. These are maximum, not minimum, income limits, and include the incomes of all adults in the Household, of various types (see Exhibit II for details). An Applicant's gross (pre-tax) annual household income, at the time of application, may not exceed the then-current Moderate Income Limits for Applicant's actual household size, as provided below:

Table A: Moderate Income Limits (120% of Area Median Income)

Household Size (Number of People)							
1	2	3	4	5	6	7	8
\$88,200	\$100,800	\$113,400	\$126,000	\$136,100	\$146,150	\$156,250	\$166,300

Updated annually by HCD, generally in April or May. The current limits are available on the City's website at: BMR.inSunnyvale.com

B. Household Asset Limits

Applicants' total combined household assets (as defined in Exhibit II, Asset Inclusions and Exclusions) may not exceed the following amounts, based on the age of the Primary Applicant:

Table B: Sunnyvale BMR Home Buyer Program Asset Limits

Age of Primary Applicant	Maximum Gross Household Assets Allowed:
54 years or younger	\$75,000
55 years or older	\$100,000

Assets in IRS-recognized retirement accounts (IRA's, 401-k's, 403-b's, etc.), and future/potential pension benefits or insurance proceeds held in accounts not currently owned and controlled by the Applicant or Co-Applicant(s), are not counted toward the BMR Program Asset Limits (but must be listed on Application for determining gross household income, in accordance with Part 5, as explained in Exhibit II).

In determining whether Household's assets are within the Asset Limits, staff will average each account's balance from the prior six monthly statements for each monetary asset (bank, credit union, non-retirement investment account statements) to determine current value of each asset. Non-monetary assets, such as stock options, mobile homes, commercial real estate, etc., will be valued based on a current valuation (not less than 90 days old) to be provided by a qualified third-party appraiser or estimator, which must be included in Applicant's Program application. The Household's current total combined household assets, both on the application date (most recent monthly statements/valuations in application), and using the average balance over the preceding six months, must be within these asset limits.

Exhibit II

Income and Asset Inclusions and Exclusions

BMR Program staff follows the HOME Program Technical Guide (also known as the “Part 5” method) to determine gross household income of Program Applicants. This Guide includes a list of income and asset inclusions and exclusions used to determine gross household income. This Guide is available online at HUD’s website, and a copy is available for review at the City:

<http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/1780.pdf>

The income and asset inclusions and exclusions are included in this Exhibit. The current version of this list is also available online at:

<http://www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/definitions/part5.cfm#types>

In the event the Part 5 inclusions and exclusions may be modified by the federal government, the current language in the Code of Federal Regulations and/or Federal Register shall prevail over the list provided in this Exhibit.

Note: Applicants must declare all assets listed in the Asset Inclusions list on Program Application forms. Retirement and insurance assets are used to determine gross household income per the Part 5 method, however these assets are not included in the household’s “total household assets” for the purposes of determining whether the household’s assets are within the BMR Program Asset Limits (as shown on Table B in Exhibit I).

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Income and Asset Inclusions and Exclusions

Income Inclusions and Exclusions

Part 5 Inclusions

This table presents the Part 5 income inclusions as stated in the Code of Federal Regulations.

General Category	Statement from 24 CFR 5.609 paragraph (b) (April 1, 2004)
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in number 14 of Income Exclusions).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except as provided in number 3 of Income Exclusions).
6. Welfare Assistance	<p>Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income:</p> <ul style="list-style-type: none"> Qualify as assistance under the TANF program definition at 45 CFR 260.31; and Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c). <p>If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be</p>

Exhibit II
Income and Asset Inclusions and Exclusions

	<p>included as income shall consist of:</p> <p style="padding-left: 40px;">the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; <i>plus</i></p> <p style="padding-left: 40px;">the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage.</p>
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special day and allowances of a member of the Armed Forces (except as provided in number 7 of Income Exclusions).

Part 5 exclusions

This table presents the Part 5 income exclusions as stated in the Code of Federal Regulations.

General Category	Statement from 24 CFR 5.609 paragraph (c) (April 1, 2004)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in number 5 of Income Inclusions).
4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in Aides	Income of a live-in aide (as defined in 24 CFR 5.403).
6. Disabled Persons	Certain increases in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671(a)).

Exhibit II
Income and Asset Inclusions and Exclusions

7. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.
8. Armed Forces Hostile Fire Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9. Self-Sufficiency Program Income	<ul style="list-style-type: none"> a. Amounts received under training programs funded by HUD. b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS). c. Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program. d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time. e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.
10. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
11. Reparations	Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
12. Income from Full-time Students	Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse).
13. Adoption Assistance Payments	Adoption assistance payments in excess of \$480 per adopted child.
14. Social Security & SSI Income	Deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.

Exhibit II
Income and Asset Inclusions and Exclusions

15. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17. Other Federal Exclusions	<p>Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions of 24 CFR 5.609(c) apply, including:</p> <ul style="list-style-type: none"> The value of the allotment made under the Food Stamp Act of 1977; Payments received under the Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions); Payments received under the Alaskan Native Claims Settlement Act; Income derived from the disposition of funds to the Grand River Band of Ottawa Indians; Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes; Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program; Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721); The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands; Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal workstudy program or under the Bureau of Indian Affairs student assistance programs; Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, Older American Community Service Employment Program); Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.); Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments; The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990; Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, state job training programs and

Exhibit II
Income and Asset Inclusions and Exclusions

	<p>career intern programs, AmeriCorps);</p> <p>Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;</p> <p>Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;</p> <p>Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;</p> <p>Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and</p> <p>Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.</p>
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Exhibit II
Income and Asset Inclusions and Exclusions

Asset Inclusions and Exclusions

from 24 CFR Part 5, April 1, 1998

Inclusions

- Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average 6-month balance.
- Cash value of revocable trusts available to the applicant.
- Equity in rental property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g., broker fees) that would be incurred in selling the asset. Under HOME, equity in the family's primary residence is not considered in the calculation of assets for owner-occupied rehabilitation projects.
- Cash value of stocks, bonds, Treasury bills, certificates of deposit and money market accounts.
- Individual retirement and Keogh accounts (even though withdrawal would result in a penalty).
- Retirement and pension funds.
- Cash value of life insurance policies available to the individual before death (e.g., surrender value of a whole life or universal life policy).
- Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
- Lump sum or one-time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements and other amounts not intended as periodic payments.
- Mortgages or deeds of trust held by an applicant.

Exclusions

- Necessary personal property, except as noted in number 8 of Inclusions, such as clothing, furniture, cars and vehicles specially equipped for persons with disabilities.
- Interest in Indian trust lands.
- Assets not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household and that other person is responsible for income taxes incurred on income generated by the asset.
- Equity in cooperatives in which the family lives.
- Assets not accessible to and that provide no income for the applicant.
- Term life insurance policies (i.e., where there is no cash value).
- Assets that are part of an active business. "Business" does not include rental of properties that are held as an investment and not a main occupation.

Current as of 10/2011

Exhibit III:
Occupancy Standards

To determine the size of BMR home (number of bedrooms) an Applicant may be eligible to purchase, the number of people in his/her household, and their age, gender and familial relationships (siblings, couples/spouses, parent, child, etc.) are considered. The maximum occupancy allowed in a BMR home is two people per bedroom, plus one additional person. The minimum allowed is no fewer than one person per bedroom, however couples and/or household members (particularly young siblings) of similar age and same gender may be required to share a bedroom. Reasonable accommodations to these standards may be requested in the case of medical or disability needs, and will be considered on a case-by-case basis.

Number of Bedrooms in BMR Home	Minimum Household Size	Maximum Household Size
One	1	3
Two	2	5
Three	3	7
Four	4	9
Five	5	11

Some households may qualify for a range of bedroom sizes (e.g., a 3-person household may qualify for a 1-, 2- or 3-bedroom home), depending on specific household characteristics, and may choose to buy whichever sized home they prefer, among those for which they qualify, assuming they can afford the home's price. Program staff will review household composition details provided in Eligibility Applications and notify Applicants in their initial Eligibility Determination letter what home sizes they are eligible to buy. If Applicant's household size and/or composition changes between date of Eligibility Application and date of Application to Purchase (according to information provided in Applications), Applicant may be determined to qualify for a different home size(s) than that stated in initial Eligibility Determination Letter.

Exhibit IV

BMR HOME OWNERSHIP PROGRAM FEE SCHEDULE

All Fees Are Non-Refundable and subject to Annual Adjustment

Fee Name	Purpose	Amount
BMR Home Buyer Eligibility Verification Fee	Review applicant's Eligibility Application to determine if they are eligible to buy a BMR home, and if so, the size(s) of BMR home for which the household qualifies.	\$50
BMR Application to Purchase Processing Fee	Review and verify the applicant's BMR Application to Purchase, which includes the proposed Purchase and Sale Contract, proposed financing terms and amounts, including any request for a City First Time Home Buyer loan, proposed down-payment amount, and current eligibility documentation (if documentation in initial Eligibility Application is more than 90 days old). This review also determines if Applicant's household is eligible to purchase the size of home (number of bedrooms) indicated in the Purchase Contract.	\$500
BMR Purchase and Escrow Approval Fee	Preparation of City escrow instructions; final coordination with loan and escrow officers, buyer and seller, real estate agents; preparation of the BMR covenants, deeds of trust, and other legal forms; and long-term compliance monitoring costs.	\$500
Refinance Processing Fee	Review and approve applications for approval to refinance a BMR home from home owners who wish to refinance existing loans. Provide education on refinance process, coordinate with lender and escrow office, prepare and have recorded a Deed of Trust and a Request for Notice of Default.	\$300

Note: Program fees may be adjusted annually upon adoption of the City Budget and City-wide Fee Schedule. The most current fees are listed in the City-wide Fee Schedule, and are available online at the Finance Department website below, or upon request by calling the Housing Division at 730-7250.

<http://sunnyvale.ca.gov/Departments/Finance/BudgetDocuments.aspx>

Exhibit II

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