

Buyer's Disclosure Statement

CITY OF SUNNYVALE BELOW MARKET RATE (BMR) PROGRAM

The City of Sunnyvale (the "City") provides housing that is affordable to low and moderate income households. The City has made it possible for low and moderate income households like yours to buy a house at a price that is affordable. The price that you are paying for your house is below its fair market value.

In exchange for giving you the opportunity to buy your house at a below-market affordable price, the City will require you to sign a Promissory Note (the "Note"), a Deed of Trust (the "Deed of Trust"), and an Occupancy, Resale, and Refinancing Restriction Agreement and Option to Purchase at Restricted Price (the "Resale Agreement"). **The Deed of Trust and the Resale Agreement will be recorded against your property.**

The purpose of the Resale Agreement and the Deed of Trust is to ensure that the City's goal of helping low and moderate income households own their own homes continues to be met by keeping your house affordable to other low and moderate-income households should you choose to sell or move.

This Disclosure Statement explains the major provisions of the Promissory Note, Deed of Trust, and Resale Agreement so that you will understand their requirements. **You should, of course, read the entire Resale Agreement, Promissory Note, and the Deed of Trust and become completely familiar with them.** The Resale Agreement, Deed of Trust, and Note are together called the "Agreements." If there is any conflict between this Disclosure Statement and the Agreements, the terms of the Agreements will prevail.

A. **REQUIREMENTS IN EFFECT FOR 30-YEAR TERM**

The requirements that are in the Agreements apply until the earlier of (i) 30 years from the date you purchased your home, or (ii) the date you sell or transfer your home in accordance with the Agreements. If you own and live in your home for the whole 30-year term, all of the requirements of the Agreements go away.

B. **PRIMARY RESIDENCE AND PROHIBITION FROM LEASING YOUR HOME**

Your home in must be your main place of residence. This means you must live in your home within 30 days of purchasing your home and at least 10 months out of each calendar year. On or before March 1 of each year, you must tell the City in writing that you are meeting this requirement. You are not allowed to lease or rent the house to anyone, except with prior written City approval. If the City permits you to rent out your home, the rent you may charge is restricted by the City to the lesser of thirty percent (30%) of the tenant's gross household income or the cost of your mortgage payments, taxes, homeowners association dues, and insurance.

If you violate these requirements, the City may sue to prevent you from renting out your home, and you will owe the City the difference between the rent you charged and the allowable rent. (These are called "Excess Rents.") You will also be in default under the Agreements, and the City may exercise its option to purchase your home and require you to sell your home to the City.

C. MAINTAINING YOUR HOME/ PROPERTY INSURANCE

By signing the Agreements, you agree to keep your home and landscaping in good repair and in neat, clean, and orderly condition and to prevent deterioration of the home. You also agree to keep a standard homeowner's insurance policy, with the City named as an additional insured. In addition you are required to continuously claim a homeowner's exemption for property taxes.

D. THE AGENCY HAS THE OPTION TO PURCHASE YOUR HOME

In exchange for the opportunity given to you to buy your home at an affordable, below-market price, you agree that the City has an option to buy your home at a restricted price if you decide to sell your home or transfer it to someone else during the 30-year term of the Resale Agreement. In other words, the City has the first opportunity to buy your home before anyone else. The City may also give the option to purchase your home to another public agency, a nonprofit organization, or a person or household meeting income and other requirements.

The City also has an option to purchase your home at a restricted price if you do not comply with the terms of the Agreements.

E. SALES PRICE OF HOME IS RESTRICTED: MAXIMUM SALES PRICE

The City has helped make the cost of buying a home affordable to you. The City also wants to help another low and moderate income household own a home by keeping your home affordable when you choose to sell or move. Therefore, the Resale Agreement limits the sales price of your home if you sell within the 30-year term of the Resale Agreement. The maximum sales price that you can receive is the **lower** of the result of the Indexed Price formula in Section E.1 below and the Fair Market Value as described in Section E.2.

1. INDEXED PRICE

- (a) Original Sales Price of the Home (price at which you bought it);
 - (b) increased by one third (1/3rd) of the percentage increase of the Consumer Price Index for San Francisco Area urban consumers, as published by the United States Department of Labor, Bureau of Labor Statistics;
- plus
- (c) increase in the appraised value of the Home (**not** cost) for any Eligible Capital Improvements, which conformed with applicable building codes,

whose initial costs exceeded 1% of the original sales price, and were approved in writing by the city before they were installed;

plus

- (d) the costs of services of a real estate professional to sell the Home.

minus

- (e) deferred maintenance and costs needed to put the home into a "sellable condition." (Unless, the deferred maintenance was beyond normal use and you failed to repair or replace such items before closing, in which case the City would retain the funds from escrow necessary to pay for such work.)

Example 1 shows how the Indexed Price formula works.¹

EXAMPLE 1: You sell your house at the end of eight years. The original sales price of your home was \$267,000. The Consumer Price Index for Bay Area urban consumers when you bought the property was 192 and when you sell the property it is 235. The increase in the Consumer Price Index is 43 and one-third percentage of that increase is approximately 14%. Five years after buying your home, you remodel your kitchen (with prior City written approval) and an appraiser finds that the remodeling work increases the appraised value of the home by \$10,000 at the time you sell. Termite work totaling \$3,000 is needed. A broker did not assist you in selling the home.

(a)	Original Price of Home	\$267,000
(b)	Consumer Price Index Increase	14%
(c)	multiply (a) by (b)	<u>+\$37,380</u>
(d)	add (c) to (a)	\$304,380
(e)	add Appraised Value Increase of Eligible Capital Improvements	+\$10,000
(f)	subtract termite work	<u>-\$3,000</u>
	<u>INDEXED PRICE</u>	\$311,380

Between 2000 and 2007, the Consumer Price Index (CPI) for Bay Area urban consumers increased 43 points. However, you should be aware that there is no guarantee that the Consumer Price Index for Bay Area urban consumers will increase every year. Consequently, the Indexed Price may be the same as the original price of your home. If that is the case, it is possible that you could lose money when you sell your home because of closing and other transaction costs.

¹ Numerical examples are included in this Disclosure Statement to help you better understand the concepts, terms, and provisions of the Buyer's Resale Agreement. Please be aware that these are simply to show how things work and that they are not intended to represent your specific situation. If you follow along with a calculator, you may not get exactly the same answers. Any differences are probably due to how your calculator "rounds-off" numbers.

2. FAIR MARKET VALUE

Under the Resale Agreement, the Fair Market Value can be determined in one of two ways. First, it can be established by a real estate appraiser approved in advance by the City. If possible, the appraisal will be based on sales prices of homes similar to yours that are sold in your market area during the preceding three-month period. The added value to the home of any Eligible Capital Improvements that you have made to your home that meet the requirements of the Resale Agreement, or damage or deferred maintenance that occurred while you owned the house that decreased its value shall be included as separate values in the appraisal. In this case, the appraisal will state what the Fair Market Value of the home would be without either the improvements or the damage or deferred maintenance. The value of Eligible Capital Improvements or damage or deferred maintenance, if any, will have a direct impact on the Fair Market Value.

The cost of the appraisal used to determine Fair Market Value will be shared equally between you and the City. For example, if the appraisal costs \$500, you will be responsible for \$250 and the City will have to pay \$250. However, if you need an appraisal in connection with refinancing your first mortgage loan or junior mortgage loans or equity lines of credit, you must pay the total amount of such appraisal costs.

The Resale Agreement also allows you and the City to set the Fair Market Value of your home by mutual agreement instead of relying on an appraiser.

Example 2 shows how the Indexed Price and the Fair Market Value of the home are compared to determine the Maximum Restricted Resale Price at which you can offer your house for sale.

EXAMPLE 2: The assumptions are the same as Example 1. The Fair Market Value of your home is determined by appraisal. The appraisal determines the Fair Market Value at \$400,000. This amount includes the value of the kitchen improvements at \$10,000 and the deduction for \$3,000 in termite work.

<u>INDEXED PRICE</u>	is less than	<u>FAIR MARKET VALUE</u>	then	<u>MAXIMUM RESTRICTED RESALE PRICE</u>
\$311,380	<	\$400,000	⇒	\$311,380

Since the Fair Market Value of the home is greater than the Indexed Price of the house, the Maximum Restricted Resale Price which you can receive from the sale of your home is \$311,380.

F. SELLING YOUR HOME

Under the terms of the Resale Agreement, when you decide to sell your home within the 30-year term, you must notify the City. As described below, there are three different ways that the sale of your home can take place. Under all three methods, you will receive approximately the same net amount from the sale of your home.

1. THE AGENCY MAY EXERCISE THE OPTION TO PURCHASE YOUR HOME

When you decide to sell your home, you must let the City know in writing before you contact a real estate broker or lender and before you list the home in the Multiple Listing Service. This notice is called the "Owner's Notice of Intent to Transfer." If you fail to send this notice, you will be in default under the Resale Agreement, and the sale of your home may be delayed.

Upon receipt of a complete Owner's Notice of Intent to Transfer, the City will then let you know within 90 days, in a notice called the "First City Response Notice," whether or not it will use its option to purchase your home at the Maximum Restricted Resale Price. If the City chooses to use its option to purchase your home at the restricted price, it may also assign its rights to a public agency, nonprofit sponsor, or another household meeting income and other requirements. You are responsible for putting the home in good condition for its sale.

2. SALE TO AN "ELIGIBLE PURCHASER" AT THE RESTRICTED SALES PRICE

If the City does not choose to buy your home, you have a 60-day "Marketing Period" in which to make a good faith effort to find an Eligible Purchaser to buy the home at the Maximum Restricted Resale Price. An Eligible Purchaser is an individual or household who will live in the home, who meets income requirements, and who is willing to sign new Agreements. The City will provide you with the Maximum Restricted Resale Price and current income limits in the First City Response Notice.

Once you find a potential Eligible Purchaser, you will refer the proposed buyer to the City so that the City can determine if in fact he or she meets the requirements of an Eligible Purchaser. When the sale of your home to the Eligible Purchaser is completed, you must submit to the City the information and documents listed in the Resale Agreement. However, the sale of your home will be handled by you and the buyer rather than the City. You are responsible for putting the home in good condition for its sale.

3. SALE TO A "MARKET PURCHASER"; PAYMENT OF "EXCESS SALES PROCEEDS" TO THE AGENCY

If you are unable to locate an Eligible Purchaser within the 60-day Marketing Period, you may ask the City to extend the Marketing Period so that you can find an Eligible Purchaser, or you can send a written notice to the City called the "Owner's Notice of Failure to Locate Eligible Purchaser."

When you send the City the Owner's Notice of Failure to Locate Eligible Purchaser, the City is again given the opportunity to use the option to purchase your home. The City will let you know within 15 days in the "Second City Response Notice" if it will buy your home or assign the right to purchase the home to another party or if it will allow you to sell the house at an unrestricted sales price to a Market Purchaser. If the City decides to purchase your home, the purchase by the City or its designee will take place within 75 days of the date the Second City Response Notice is sent to you, unless you have not completed all actions needed for close of escrow.

If the Second City Response Notice permits the sale to a Market Purchaser at an unrestricted price, you will be required to give the City specific documents and information as described in the Resale Agreement. The unrestricted sales price at which you sell the house to the Market Purchaser must be supported by an appraisal as described in the Resale Agreement. In addition, you must pay to the City any "Excess Sales Proceeds" that result from the sale of your house to a Market Purchaser.

The term "Excess Sales Proceeds" is defined in the Resale Agreement as the amount by which the gross sales proceeds you receive from the buyer exceed the Maximum Restricted Resale Price for the home minus any downpayment monies you initially provided to purchase the home and the actual real estate commission you pay when you sell the home.

Any Excess Sales Proceeds are used by the City to provide affordable housing. You were given the opportunity to buy your home at a price that was below-market and affordable to you. If you are required to pay Excess Sales Proceeds, those funds will help other low and moderate income households who, like you, would not be able to obtain affordable housing without City assistance.

Example 3 shows how the Excess Sales Proceeds are calculated.

EXAMPLE 3 You sell your house at the end of eight years. The original sales price of your home was \$267,000. The Maximum Restricted Resale Price is at \$311,380. When you are unable to find an Eligible Purchaser, the City permits you to sell your house to a Market Purchaser at an unrestricted price. You sell the house for its fair market value of \$400,000. You must pay the City Excess Sales Proceeds as follows:

Sales Price of House	\$400,000
MINUS	
Maximum Restricted Resale Price	<u>\$311,380</u>
	\$88,620
MINUS	
Owner Downpayment, if applicable	- \$3,000
MINUS	
Actual Real Estate Commission	<u>- \$9,341</u>
Amount of Excess Sales Proceeds You Pay to City	\$ 76,279

When the sale of your home to the Market Purchaser is completed, you must submit to the City the information and documents listed in the Resale Agreement.

G. SALE IN VIOLATION OF THE RESALE AGREEMENT

If you sell your home without notifying the City and/or for more than the Maximum Restricted Resale Price, you will have to pay all Excess Sales Proceeds to the City. In addition, you will be responsible for all costs incurred by the City, including attorneys fees, in enforcing

the Resale Agreement, and the City may declare a default under its City Deed of Trust and exercise its option to purchase the home.

The City may check title to your home from time to time to see if you are complying with the Resale Agreement.

H. CAPITAL IMPROVEMENTS AND DEFERRED MAINTENANCE

If you make improvements to the home, and you want the value of the capital improvements to be taken into account when the Maximum Restricted Resale Price is calculated, you must obtain written approval of the improvements by the City before the improvements are made, the initial cost of such improvements must be at least one percent (1%) of the original purchase price, and they must conform with the building code, including any required building permit.

If there are any violations of the building code when you sell your home, or if other repairs (such as plumbing, cleaning, painting, appliance repairs, and pest control repairs) are needed to put the home in a sellable condition, these costs will be deducted from the Maximum Restricted Resale Price. In the event, you sell your home for the Indexed Price, as discussed in Section E.1. above, the City may require you to repair or replace items of deferred maintenance that are beyond normal use prior to selling the home or may cause the escrow agent to retain the funds from the sale proceeds of the home in order to pay for such work.

I. REFINANCE OF YOUR FIRST MORTGAGE; JUNIOR LIENS/LOANS

The Resale Agreement allows you to refinance your first mortgage loan but places restrictions on the amount received by you from the refinancing. You may not place any additional mortgage or deed of trust on the property *unless you obtain the prior written consent of the City*. A form for requesting approval of refinancing is included as Exhibit I of the Resale Agreement. The Resale Agreement does not permit subordinate junior loans, unless first approved in writing by the City and the additional restrictions set forth in the Resale Agreement are met. Home equity-lines of credit loans are not permitted.

As a requirement of refinancing your first mortgage loan, lenders usually require that the City subordinate its Agreements to them. The City will only subordinate its Resale Agreement and Deed of Trust if the following conditions are met:

- Following the refinance, all the debt on your property must not exceed ninety-five (95%) of the loan to value ratio for the home at the initial purchase (the "Permitted Encumbrance Amount").
- The new first mortgage loan must be fully amortized with a fixed rate of interest with a 15 year or 30 year term. The City will not subordinate to interest-only loans, "no documentation" loans, loans that require a balloon payment after a period of time, or loans that carry an interest rate higher than the original first mortgage loan.

- The new first mortgage loan must lower the interest rate or term of your original first mortgage loan.
- At the time you refinance the first mortgage loan, your total monthly housing cost does not exceed one twelfth of thirty-five percent (35%) of your household's actual monthly income.

If you are considering a refinance of your first mortgage, you should notify the City. The City will provide you with a calculation of the Permitted Encumbrance Amount before you contact your financial institution. Example 4 shows how this would work.

EXAMPLE 4 The assumptions are the same as in Example 1.

(a)	Original Purchase Price	\$267,000
(b)	95% of Original Purchase Price	$\frac{x}{.95}$ \$253,650

Assuming that payments on a loan of \$253,650 meets the other requirements described above, the City will subordinate its Resale Agreement for a loan of up to \$253,650.

J. DEFAULT PROVISIONS

When you sign the Resale Agreement, you agree to meet all of the conditions of the Resale Agreement, Deed of Trust, and Promissory Note. If you violate any provisions of these documents, you are considered to be in default. Also, if you default under any other loan on the home, such as the first mortgage, you are also considered to be in default under the Resale Agreement. If you do not correct the violation, you must pay any amounts due under the Resale Agreement. The City can also exercise its option and buy your home or get a court order to enforce the provisions of the Resale Agreement, or the City could foreclose and take your home.

Please sign this Buyer's Disclosure Statement in the space provided below, and keep a signed copy for your records, and return the original to the City at the following address:

City of Sunnyvale
Housing Division
P.O. Box 3707
Sunnyvale, CA 94088—3707
Attention: Housing Officer

I have received, read and understand the above Buyer's Disclosure Statement. I also understand the following:

1. The restrictions last for 30 years.
2. The home may be sold only to a low or moderate income household for 30 years, and the price will be restricted so it is affordable to a low or moderate income household.
3. The resale restrictions will usually substantially reduce my home's sale price compared to the sales price of other homes. There is no guarantee that the sales price of my house will be greater than its purchase price.
4. Refinancing of the property is restricted, and junior loans are not permitted unless first approved in writing by the City. Home equity lines of credit loans are not permitted.
5. I must contact the City before any sale or refinancing of the property. Any sale or refinancing must be approved by the City.
6. I must live in the home for at least ten (10) months out of each calendar year. I cannot lease or rent it unless first approved by the City.
7. The City has the right to buy my home at the restricted price when I decide to sell it or if I violate any of the provisions of the Agreements.

I have read and understand the above Buyer's Disclosure Statement.

By: _____
Signature of Buyer

Dated: _____

Print Name of Buyer

By: _____
Signature of Buyer

Dated: _____

Print Name of Buyer