

CITY OF SUNNYVALE

BELOW MARKET RATE (BMR) PROGRAM

**OCCUPANCY, RESALE, AND REFINANCING RESTRICTION AGREEMENT, WITH
OPTION TO PURCHASE AT RESTRICTED PRICE**

ADMINISTRATIVE CHECKLIST

(Remove Upon Completion)

BLANK LINES: CHECKLIST

- _____ Owner's Name and Address of Home Purchased, p. 1
- _____ Income Category of Owner, p. 1
- _____ Purchase Price Paid for Home by Owner, p. 1
- _____ Median Income for 4 Person Household at Time of Purchase, p. 1
- _____ Date, p. 1, first paragraph
- _____ Owner's Name, p. 1, first paragraph
- _____ First Lender(s) Name(s), Amount of Loan(s), Date Deed(s) of Trust Recorded,
Number of Deed(s) of Trust, p. 2, Recital E
- _____ Home Address, p. 5, Section 2
- _____ Address of First Lender, p. 24, Section 29
- _____ Owner(s) Initials, p. 26, Section 34
- _____ Signatures, p. 26
- _____ Include Exhibit A, Legal Description
- _____ Notary

RECORDING REQUESTED PURSUANT TO GOVERNMENT
CODE SECTION 27383

When Recorded Mail To:

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

Record at No Fee per Government
Code Section 6103

**OCCUPANCY, RESALE, AND REFINANCING RESTRICTION AGREEMENT, WITH
OPTION TO PURCHASE AT RESTRICTED PRICE**

CITY OF SUNNYVALE
Below Market Rate (BMR) Program

Owner: _____

Address of Home:

Income Category of Owner: _____

Purchase Price Paid for Home by Owner:

\$ _____

Median Income at Time of Purchase
(Household Size of 4): _____

This Occupancy, Resale, and Refinancing Restriction Agreement, with Option to Purchase at Restricted Price (the "Agreement") is entered into as of this ___ day of _____, 20___ by and between the City of Sunnyvale, a municipal corporation of the State of California (the "City") and _____ ("Owner").

RECITALS

A. The City has developed a program (the "BMR Program") under the City's Below Market Rate Ordinance, Chapter 19.66 of the Sunnyvale Municipal Code (the "BMR Ordinance") to provide housing opportunities to persons with low or moderate incomes to purchase homes at prices which are below market rates prevailing in the community. The intent

of the City is to preserve and increase the number and availability of affordable homes in the BMR Program (the "BMR Units") for persons with low or moderate incomes for as long as possible;

B. Owner intends to purchase a BMR Unit, which is more particularly described in Exhibit A attached hereto and incorporated herein (the "Home").

C. Pursuant to the BMR Ordinance, the City is required to record covenants against the Home to ensure its continued affordability for thirty (30) years, and therefore requires the Owner to execute this Agreement as a condition of the Owner's purchase of the Home. The Owner has agreed to execute and comply with this Agreement in consideration of purchasing the Home at an affordable price which is below the fair market value of the Home.

D. The purpose of this Agreement is to place resale controls on the Home, require the payment of any excess proceeds of sale to the City, and ensure the Home remains affordable pursuant to the BMR Program. In consideration of the economic benefits to the Owner resulting from purchase of the Home at a below market price under the City's BMR Program, the Agreement provides the City an option to purchase the Home at a restricted price upon transfer or upon the occurrence of certain events of default.

E. The Owner is receiving the following purchase money loans:

	<u>Name of Lender</u>	<u>Amount</u>	<u>Date Deed of Trust Recorded</u>
a.	_____	\$ _____	_____
b.	_____	\$ _____	_____
c.	_____	\$ _____	_____
d.	_____	\$ _____	_____

All purchase money loans are, collectively, the "First Lender Loan." All lenders of purchase money loans are, collectively, the "First Lender." The First Lender Loan is secured by _____ **[number]** deeds of trust executed by the Owner in favor of the First Lender and recorded in Santa Clara County concurrently with this Agreement (collectively, the "First Lender Deed of Trust").

F. This Agreement is accompanied by a promissory note from the Owner to the City (the "City Note") pursuant to which the Owner agrees to pay any excess proceeds of sale or excess rents to the City. This Agreement and the City Note shall be secured by a deed of trust on the Home (the "City Deed of Trust"). This Agreement and the City Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust.

NOW, THEREFORE, in consideration of the benefits received by the Owner and the City hereunder, the Owner and the City agree, as follows:

1. DEFINITIONS

The following terms are specially defined for this Agreement and their definitions can be found in the sections indicated below:

- A. "Advances" – Section 12B
- B. "BMR Units" – Recital A
- C. "City" – First sentence of the Agreement on page 1
- D. "City Deed of Trust" – Recital F
- E. "City Designated Purchaser" – Section 7B
- F. "City Note" – Recital F
- G. "Affordable Rent" – Section 4A
- H. "Agreement" – First sentence of the Agreement on page 1
- I. "Domestic Partners" – Section 6B
- J. "Eligible Capital Improvements" – Section 13A
- K. "Eligible Purchaser" – Section 14B
- L. "Excess Rents" – Section 4B
- M. "Excess Sales Proceeds" – Section 15
- N. "Fair Market Value" – Section 13B
- O. "First City Response Notice" – Section 10
- P. "First Lender" – Recital E
- Q. "First Lender Deed of Trust" – Recital E
- R. "First Lender Loan" – Recital E
- S. "Home" – Recital B and Section 2

- T. "HUD" – Section 14B
- U. "Indexed Price" – Section 13A
- V. "Inheriting Owner" – Section 6C
- W. "Market Purchaser" – Section 14E
- X. "Marketing Period" – Section 14A
- Y. "Maximum Restricted Resale Price" – Section 13
- Z. "Option" – Section 7A
- AA. "Option Acceleration" – Section 12D
- BB. "Owner" – First sentence of the Agreement on Page 1
- CC. "Owner's Notice of Failure to Locate Eligible Purchaser" – Section 14E
- DD. "Owner's Notice of Intent to Transfer" – Section 9A
- EE. "Permitted Encumbrance Amount" – Section 24B
- FF. "Proposed Purchaser" – Section 14A
- GG. "Second City Response Notice" – Section 14E
- HH. "Term" – Section 21
- II. "Transfer" – Section 6A

The following exhibits are attached to this Agreement:

- Exhibit A: Legal Description of the Home
- Exhibit B: Form of Owner Occupancy Certification
- Exhibit C: Form of Owner's Notice of Intent to Transfer
- Exhibit D: Form of First City Response Notice
- Exhibit E: Form of Owner Acknowledgement of First City Response Notice
- Exhibit F: Form of Request for City Approval of Improvements to the Home
- Exhibit G: Form of Owner's Notice of Failure to Locate Eligible Purchaser
- Exhibit H: Form of Second City Response Notice
- Exhibit I: Form of Owner Request to Refinance Notice

2. DESCRIPTION OF PROPERTY

This Agreement concerns the real property commonly known as _____, _____, California _____, which is more fully described in Exhibit A attached hereto and incorporated in this Agreement by reference (the "Home").

3. OWNER CERTIFICATIONS; OWNER OCCUPANCY REQUIREMENT

The Owner certifies that the financial and other information previously provided in order to qualify to purchase the Home is true and correct as of the date first written above. The Owner shall occupy the Home as the Owner's principal place of residence. The Owner shall be considered as occupying the Home if the Owner occupies in the Home within thirty (30) days after execution of this Agreement and occupies the Home for at least ten (10) months out of each calendar year. On or before March 1 of each calendar year, the Owner shall provide an annual written certification to the City, in the form shown on Exhibit B of this Agreement, that the Owner is occupying the Home as his or her principal place of residence, unless the City has approved the rental of the Home pursuant to Section 4 below. The Owner will fully cooperate with the City in promptly providing all information requested by the City to assist the City in monitoring Owner's compliance with this Agreement.

4. LEASING OF HOME

A. The Owner shall not lease the Home to another party, unless the Owner has a hardship and such lease is first approved in writing, in its sole discretion, by the City. In the event the City provides written approval to Owner for the lease of the Home to another party, the Owner shall provide a copy of the executed lease to the City prior to occupancy of the lessee and the rent of the Home shall not exceed the lesser of: (i) thirty percent (30%) of the income of the tenant household that is renting the Home, or (ii) the Owner's monthly cost of principal and interest on the First Lender Loan, and property insurance, property taxes, and homeowners association dues, if any, associated with the Home (the lesser rent is the "Affordable Rent").

B. Any lease of the Home in violation of this Agreement is prohibited, and shall be a Default under this Agreement and the City Deed of Trust. The Owner further agrees that, in the event the Owner leases the Home to a third party in violation of this Section 4, any excess rents ("Excess Rents") paid to the Owner by the lessee over the Affordable Rent shall be due and payable to the City immediately upon receipt thereof by the Owner. Such Excess Rents shall be considered a recourse debt of the Owner to the City, which the City may collect by legal action against the Owner and/or by foreclosure under the City Deed of Trust.

5. MAINTENANCE, INSURANCE AND TAX REQUIREMENTS

A. The Owner shall maintain the Home, including landscaping, in good repair and in a neat, clean and orderly condition and will not commit waste or permit deterioration of the Home.

B. The Owner shall maintain a standard all-risk property insurance policy equal to the replacement value of the Home (adjusted every five (5) years by appraisal, if requested by City), naming the City as an additional insured. Additional insurance requirements are set forth in the City Deed of Trust.

C. Owner shall continuously claim a homeowner's exemption for property taxes of the Home with the Santa Clara County Assessor's Office. Failure to claim the homeowner's exemption shall be a Default under this Agreement and the City Deed of Trust.

6. RESTRICTIONS ON RESALE AND TRANSFER OF THE HOME

A. Transfer. Any Transfer of the Home will be subject to the provisions of this Agreement including, without limitation, the Option described in Section 7 below. "Transfer" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest (unless approved pursuant to Section 4 of this Agreement), or an interest evidenced by a land contract by which possession of the Home is transferred and Owner retains title, or a deed of trust. Any Transfer without satisfaction of the provisions of this Agreement is prohibited and shall constitute a Default for which the City may exercise its Option.

B. Permitted Transfers. Notwithstanding Section 6A and subject to the provisions of Section 6C below, the following shall not be considered a Transfer for the purposes of this Agreement, but all such transferees shall continue to be bound by the requirements of this Agreement: (i) transfers by devise or inheritance to an existing spouse, Domestic Partner, child, surviving joint tenant, or a spouse as part of a dissolution proceeding or in connection with marriage or (ii) refinance of the First Lender Loan in accordance with Section 24 of this Agreement, provided, however, that Owner shall provide written notice of all such transfers to the City pursuant to Section 6D, and all owners of the Home shall continue to occupy the Home as his or her principal place of residence. For purposes of this Section 6, "Domestic Partners" shall mean two unmarried people, at least eighteen (18) years of age, (i) who have lived together continuously for at least one (1) year and who are jointly responsible for basic living expenses incurred during their domestic partnership or (ii) who have registered as domestic partners with the State of California. Domestic Partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of California. For purposes of this section, an individual shall be considered a Domestic Partner of Owner upon presentation of an affidavit, proof of registration or other acceptable evidence by Owner to the City.

C. Inheritance. In the event a Transfer occurs or a person receives the Home by devise, inheritance, or operation of law due to death of the Owner, the following procedures shall apply:

(1) The person inheriting the Home (the "Inheriting Owner") shall provide the City with income information, to be verified by the City, so that the City may determine if (other than being a purchaser) the Inheriting Owner qualifies as an Eligible Purchaser pursuant to Section 14B below and must occupy the Home as his or her principal residence within thirty (30) days of the transfer to the Inheriting Owner. If the Inheriting Owner fails to provide required

financial information and/or documentation, he or she shall be deemed not to qualify as an Eligible Purchaser for the purposes of this Section 6C(1). If the Inheriting Owner qualifies as an Eligible Purchaser, he or she shall succeed to the Owner's interest and obligations under this Agreement, the City Note, and the City Deed of Trust and new documents, evidencing the foregoing, shall be executed between the Inheriting Owner and the City and recorded against the Home. If the Inheriting Owner fails to qualify as an Eligible Purchaser or fails to occupy the Home as set forth in subsection, he or she shall be required to Transfer the Home to an Eligible Purchaser at a price not exceeding the Maximum Restricted Resale Price, pursuant to the procedures set forth in Sections 9 through 15 below or the City may exercise the City Option pursuant to Section 12 below. Notwithstanding the foregoing, the Inheriting Owner may own and occupy the Home for up to six (6) months prior to providing an Owner's Notice of Intent to Sell to the City pursuant to Section 9 below, provided the Inheriting Owner remains in compliance with the requirements of this Agreement and the City Deed of Trust. The Inheriting Owner shall not be required to occupy the Home during this six (6)-month time period, but shall not rent the Home except as provided in Section 4 above.

(2) Failure of an Inheriting Owner to follow the procedures and file the notices described in this Section 6 shall constitute a Default under this Agreement and the City may then exercise any of the remedies set forth in Section 16B below, including, without limitation, exercise of the City Purchase Option upon Default.

D. Notice of Permitted Transfer. Owner shall provide notice to the City of any transfers described in Sections 6B(i) and(ii) of this Agreement no later than thirty (30) days before the sale, assignment, or other transfer occurs. Where the transfer is by devise, inheritance, or operation of law after death of the Owner, the administrator of the Owner's estate or the Inheriting Owner shall provide written notice to the City of the Owner's death within sixty (60) days of the date of death.

7. GRANT OF OPTION TO PURCHASE; ASSIGNMENT OF OPTION BY CITY

A. In consideration of the economic benefits received by the Owner resulting from purchase and ownership of the Home at a price below fair market value, Owner hereby grants and gives to the City a right to purchase all of Owner's right, title, and interest in and to the Home ("Option") for the Maximum Restricted Resale Price, calculated pursuant to Section 13 below, upon the occurrence of the events specified in Section 8 of this Agreement, and subject to the terms and conditions included in this Agreement. The term of the Option extends for the Term of this Agreement.

B. The City may, instead of purchasing the Home itself, assign its right to purchase the Home pursuant to the Option to another public agency, a nonprofit corporation, or to an Eligible Purchaser (a "City Designated Purchaser"). Upon such assignment to a City Designated Purchaser, the City shall be released of its obligations under the Option.

C. The City acknowledges and agrees that the Option shall only be exercised by the City or a City Designated Purchaser for the purpose of retaining the Home as an affordable housing unit and that the Home may only be resold by the City or a City Designated Purchaser as

an affordable housing unit in compliance with the BMR Ordinance and/or other City affordable housing programs.

D. In no event shall the City become liable or obligated in any manner to Owner by reason of the assignment of the Option, nor shall the City be in any way liable or obligated to Owner for any failure of the City Designated Purchaser to consummate a purchase of the Home or to comply with the terms of this Option, or any escrow instructions or agreement for the purchase of the Home.

8. EVENTS GIVING RISE TO RIGHT TO EXERCISE OPTION

A. The City shall have the right to exercise or to assign its Option if either of the following events occurs:

(1) The City receives an Owner's Notice of Intent to Transfer (defined in Section 9 of this Agreement) or Owner's Notice of Failure to Locate Eligible Purchaser (defined in Section 14E of this Agreement); or

(2) The City declares a Default pursuant to Section 16 of this Agreement.

B. If the City receives an Owner's Notice of Intent to Transfer, the City may exercise its Option pursuant to the procedures in Sections 9 through 13 of this Agreement. If a Default occurs, the City may exercise its Option pursuant to the procedures in Sections 16 and 17 of this Agreement.

C. The City's rights to exercise its Option shall survive any Transfer of the Home by the Owner in violation of this Agreement. As long as the Option has not be terminated, any actual or attempted Transfer of the Home in violation of the terms and conditions of this Agreement shall be a Default and shall be voidable at the election of the City.

9. NOTICE OF INTENDED TRANSFER; PREPARATION OF HOME FOR SALE

A. In the event the Owner intends to Transfer or vacate the Home, the Owner shall promptly give the City written notice of such intent (the "Owner's Notice of Intent to Transfer"), in the form shown in Exhibit C attached to this Agreement. The Owner shall give the City the Owner's Notice of Intent to Transfer prior to notifying real estate brokers or lenders of Owner's intent to Transfer the Home and prior to listing of the Home on the Multiple Listing Service. The Owner's Notice of Intent to Transfer shall be sent to the City by certified mail, return receipt requested at the address provided in Section 29 of this Agreement. The Owner's Notice of Intent to Transfer shall include the information necessary for the City to determine the Indexed Price of the Home, including the following information:

(1) The address of the Home;

(2) the date of purchase of the Home by the Owner;

(3) the purchase price of the Home paid by the Owner at the time of his/her purchase;

(4) a copy of the HUD-1 Settlement Statement or equivalent document from the close of escrow on the Owner's purchase of the Home;

(5) if Owner has made Eligible Capital Improvements to the Home that he/she wishes to include in the calculation of Indexed Price, a description of the improvements, the date the improvements were made, a copy of the letter granting prior City approval of the improvements, evidence of cost of the improvements, and an appraisal of the value added to the Home by the Eligible Capital Improvements;

(6) the date on which Owner intends to vacate Home;

(7) the date Home will be placed on the market; and

(8) the name and phone number of the person to contact to schedule inspection of the Home by the City.

B. The Owner should not contract with a real estate broker to sell the Home until the Owner has received the First City Response Notice pursuant to Section 10A below, as the services of a broker will not be required if the City exercises the Option to purchase the Home.

C. Following delivery to the City of the Owner's Notice of Intent to Transfer, the Owner shall prepare the Home for sale, as follows:

(1) within thirty (30) days of delivery of the Owner's Notice of Intent to Transfer, the Owner shall obtain and deliver to the City a current written report of inspection of the Home by a licensed structural pest control operator;

(2) within the sooner of (a) sixty (60) days from the date of delivery of the Owner's Notice of Intent to Transfer, or (b) prior to close of escrow on the Transfer, the Owner shall repair all damage noted in the pest report including damage caused by infestation or infection by wood-destroying pests;

(3) within thirty (30) days of the date of the Owner's Notice of Intent to Transfer, the Owner shall allow the City, or its designee, to inspect the Home to determine its physical condition, and, if requested by the City, following such inspection, the Owner shall obtain and deliver to the City a home inspection report prepared by a licensed home inspector no later than ten (10) days following the City's request;

(4) if the Home is vacant, the Owner shall maintain the Home, including the exterior landscaping, in good condition and shall maintain utility connections until the close of escrow on the Transfer; and

(5) in the event of exercise of the Option by the City, the Owner shall permit a final walk-through of the Home by the City, or the City's designee, in the final three (3) days prior to close of escrow on the Transfer.

10. CITY RESPONSE TO OWNER'S NOTICE OF INTENDED TRANSFER

The City shall respond in writing, in the form shown in Exhibit D attached to this Agreement (the "First City Response Notice"), to the Owner's Notice of Intent to Transfer within ninety (90) days of City receipt of a complete Owner's Notice of Intent to Transfer that includes all information required under Section 9, including City receipt of the pest control report and home inspection report (if any) required pursuant to Section 9C above.

The First City Response Notice shall inform the Owner of the City's election to proceed under one of the following two alternatives:

A. City Exercise of City Purchase Option. The First City Response Notice may notify the Owner that the City elects to exercise the Option, or assign its right to a City Designated Purchaser, and shall include the City's calculation of the Maximum Restricted Resale Price to be paid by the City pursuant to Section 13 below to be paid by the Owner. The City may choose to assign its Option to a City Designated Purchaser at any time after the City has decided to exercise its Option but before the close of escrow.

B. Owner Sale at Restricted Sale Price to Eligible Purchaser. Alternatively, the First City Response Notice may notify the Owner that the City will not at this time exercise the Option to purchase the Home and that the Owner may proceed to sell the Home to an Eligible Purchaser at a price not to exceed the Maximum Restricted Resale Price, pursuant to the procedure set forth in Section 14 below. In this event, the First City Response Notice shall include the following information: (1) the maximum qualifying income for an Eligible Purchase; (2) the certifications required of an Eligible Purchaser; and (3) the Maximum Restricted Resale Price the Owner may receive for the Home, calculated by the City pursuant to Section 13 below.

11. OWNER ACKNOWLEDGMENT OF CITY RESPONSE NOTICE

No later than seven (7) days following the date of the First City Response Notice, the Owner shall acknowledge in writing to the City, in the form shown in Exhibit E attached to this Agreement, that he/she has received the City Response Notice and intends to Transfer the Home.

12. EXERCISE OF CITY OPTION

A. Escrow. If the First City Response Notice notifies the Owner that the City intends to exercise the Option, the City or the City Designated Purchaser shall open an escrow account for its purchase of the Home. Close of escrow shall take place no later than ninety (90) days after the date of the First City Response Notice, unless both parties mutually agree, in writing to an extension of time.

B. Deposit of Funds Into Escrow. Prior to the close of escrow, the City or the City Designated Purchaser shall ensure that funds are deposited into escrow to pay the Maximum Restricted Resale Price of the Home, as defined in Section 13 of this Agreement. All Advances previously paid by the City shall be repaid from escrow. "Advances" include any payment by the City of costs including, but not limited to, principal, interest, taxes, assessments, insurance premiums, homeowners' fees, and associated late fees, costs, interest, attorneys' fees, costs of investigation (including but not limited to costs of investigating compliance with the owner occupancy requirements of Section 3), costs incurred in connection with the negotiation or drafting of any agreement among the City, Owner, and any third party, pest inspections, resale inspections, and other expenses related to the Home, which Owner has failed to pay or has permitted to become delinquent or which are required to remove liens and encumbrances pursuant to subsection C below or which are otherwise due to the City. Closing costs shall be equally paid by the City or its City Designated Purchaser and Owner. Title insurance shall be paid by City or its City Designated Purchaser and Owner pursuant to the custom and practice in Santa Clara County at the time of the opening of escrow, or as may be provided otherwise by mutual agreement. Owner agrees to do all acts and execute all documents necessary to enable the close of escrow and Transfer of the Home to the City or its City Designated Purchaser.

C. Deferred Maintenance. In the event, the Home is to be sold for the Indexed Price pursuant to Section 13A and the City or its designee determines that there are items of deferred maintenance beyond normal use requiring repair or replacement, the Owner shall obtain estimates to cure such deficiencies. The Owner shall cure such deficiencies in a reasonable manner acceptable to the City or its designee no later than ten (10) days prior to the close of escrow. At the option of the City or its designee, the escrow holder shall be instructed to retain funds necessary to pay for curing such deficiencies (based upon written estimates obtained by the City or its designee), and the City shall cause such deficiencies to be cured. Upon certification of completion of work by the City, the escrow holder shall utilize the retained funds to pay for said work. Any remaining funds shall be paid to the Owner.

D. Removal of Exceptions to Title. The Owner shall convey title to the Home at the close of escrow free and clear of any mortgage, lien, or other encumbrance, unless approved in advance in writing by the City or its City Designated Purchaser. If the amounts deposited into escrow by the City or its City Designated Purchaser are not sufficient to satisfy all liens and encumbrances recorded against the Home, then the Owner shall deposit into escrow the additional sums that are required to remove the liens and encumbrances.

E. Acceleration of Time Periods for Substantial Hardship. The City may approve the acceleration of the time periods for the delivery of the First City Response Notice, as set forth in Section 10A, or for the City to exercise the Option, as set forth in Section 12A, to a date no later than sixty (60) days following receipt of the Owner's Notice of Intent to Transfer (the "Option Acceleration"), if the following conditions are met: (i) the Owner provides evidence of substantial hardship, including, but not limited to, evidence of a hardship caused by an extraordinary or significant loss of funds or an unexpected and sudden loss of employment, job transfer, or death of a spouse or immediate family member, or loss of an opportunity to qualify or otherwise purchase a new home, and (ii) the City's Director of Community Development, in his or her sole discretion, determines that the evidence provided by the Owner demonstrates that

if the Option Acceleration is not granted the Owner suffers or will suffer substantial hardship. Any request for an Option Acceleration shall be requested in writing by the Owner no later than thirty (30) days from the date of City receipt of the Owner's Notice of Intent to Transfer. No later than ten (10) business days following receipt of the Owner's request for an Option Acceleration, the City's Director of Community Development shall provide the Owner with notice that the request has been approved or denied, or that additional information is required. In the event the request is denied, the Owner may submit further evidence and request a reconsideration of the denial decision. No later than fifteen (15) days following receipt of additional information or a request for reconsideration, the City shall notify the Owner whether the request for the Option Acceleration is approved or denied.

F. Termination of Conditions. If the City or its City Designated Purchaser fail to notify the Owner of its intent to exercise the Option within one hundred and eighty (180) days following receipt of the Owner's Notice of Intent to Transfer, all restrictions, resale controls, and other terms of this Agreement shall terminate.

13. DETERMINATION OF RESTRICTED SALE PRICE FOR CITY PURCHASE OR RESTRICTED SALE

If the City or a City Designated Purchaser exercises the Option, or if the Owner sells to an Eligible Purchaser, the maximum sales price (the "Maximum Restricted Resale Price") that the Owner shall receive from the City, the City Designated Purchaser, or the Eligible Purchaser for purchase of the Home shall be the LESSER of the Indexed Price or the Fair Market Value.

A. Indexed Price.

(1) The "Indexed Price" of the Home means the sales price of the Home at the time of purchase by the Owner increased by an amount, if any, to compensate for any increase in the cost of living as measured by the housing component of the San Francisco Area Consumer Price Index ("Index") for all urban consumers as published periodically by the United States Department of Labor, Bureau of Labor Statistics. For that purpose, the Index prevailing on the date of the purchase of the Home by the Owner shall be compared with the latest Index available on the date of receipt by City of the Owner's Notice of Intent to Transfer. The percentage increase in the Index, if any, shall be computed and the original purchase price of the Home shall be increased by one third (1/3rd) of that percentage; provided, however, that the Indexed Price shall in no event be lower than the sales price of the Home at the time of purchase by the Owner.

(2) Where applicable, the Indexed Price shall include an upward adjustment reflecting the cost for services of a real estate professional to sell the Home and the value of any substantial structural or permanent fixed improvements which the Owner has made to the Home after purchase of the Home. No such adjustment shall be made except for improvements: (a) made or installed by the Owner which conformed with applicable building codes at the time of installation; (b) approved in writing in advance by the City or its designee; and (c) whose initial costs exceed one percent (1%) of the purchase price paid for the Home by the Owner. A form for use in requesting City approval of a capital improvement is attached to this Agreement as Exhibit F. Improvements meeting the above requirements are referred to in this Agreement as

"Eligible Capital Improvements." The adjustment to the Indexed Price for such Eligible Capital Improvements shall be limited to appraised increases in value to the Home as a result of the improvements (pursuant to an appraisal performed as described in Section 13B below), including any depreciation in value of the capital improvements since the time of installation, and not the cost of construction of the improvements to the Home.

(3) The Indexed Price shall include a downward adjustment, where applicable, in an amount necessary to repair any violations of applicable building, plumbing, electric, fire or housing codes or any other provisions of the Sunnyvale Municipal Code, as well as any other repairs needed to put the Home into a "sellable condition." Items necessary to put a Home into sellable condition shall be determined by the City or its designee, and may include cleaning, painting and making needed structural, mechanical, electrical, plumbing and fixed appliance repairs and other deferred maintenance repairs.

B. Fair Market Value. In certain circumstances it may be necessary to determine the fair market value of the Home without taking account of the resale restrictions imposed by this Agreement (the "Fair Market Value"). These circumstances include: (1) where the parties wish to determine if the Indexed Price exceeds the Fair Market Value in order to determine the Maximum Restricted Resale Price pursuant to Section 13; (2) where the Owner is selling the Home to an Market Purchaser at an unrestricted price pursuant to Section 14E; and (3) where the parties wish to determine the value of Eligible Capital Improvements in order to calculate the Indexed Price pursuant to Section 13A. If it is necessary to determine the Fair Market Value of the Home, it shall be determined by a certified MAI or other qualified real estate appraiser approved in advance by the City. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. The cost of the appraisal shall be shared equally by the City and the Owner, unless the appraisal is obtained from a new purchaser, or unless the appraisal is necessary because the Owner wishes to refinance the First Lender Loan or to obtain junior mortgage loans or equity lines of credit pursuant to Section 24 below, in which event the Owner shall pay the cost of the appraisal. In the event that the Owner has made capital improvements to the Home (which have been approved in advance by the City pursuant to Section 13A of this Agreement) which have increased the value of the Home or if damage or deferred maintenance has occurred while the Owner owned the Home which has decreased the value of the Home, the appraisal shall specifically ascribe a value to these adjustment factors and state what the fair market value of the Home would be without such adjustments by utilizing the procedures outlined in Section 13A above for calculating the Indexed Price. Nothing in this Section shall preclude the Owner and the City from establishing the Fair Market Value of the Home by mutual agreement in lieu of an appraisal pursuant to this Section.

14. SALE OF HOME BY OWNER IF CITY DOES NOT EXERCISE OPTION TO PURCHASE

In the event the First City Response Notice notifies the Owner to proceed to sell the Home to an Eligible Purchaser at a price not exceeding the Maximum Restricted Resale Price, the Owner may proceed to sell the Home in compliance with the following requirements:

A. Marketing Period. The Owner shall have sixty (60) days from the date of the First City Response Notice (the "Marketing Period") to market the Home and find an Eligible Purchaser. During the Marketing Period, the Owner shall use bona fide good faith efforts to sell the Home to an Eligible Purchaser in compliance with this Section 14, including keeping the Home in an orderly condition, making the Home available to show to agents and prospective buyers, and providing buyers with Eligible Purchaser requirements, including income qualifications. If the Owner has not located an Eligible Purchaser within this sixty (60)-day marketing period, the Owner may request an additional sixty (60)-day marketing period. A proposed purchaser ("Proposed Purchaser"), whom the Owner believes will qualify as an Eligible Purchaser, shall be referred to the City or its designee for an eligibility determination.

B. Eligible Purchaser. A Proposed Purchaser shall qualify as an "Eligible Purchaser" if he or she meets the following requirements, as determined by the City:

(1) Intent to Owner Occupy. The Proposed Purchaser shall certify that he or she will occupy the Home as his or her principal place of residence throughout his or her ownership.

(2) Willingness to Sign City Agreements and to Cooperate with City. The Proposed Purchaser shall agree to sign a resale restriction agreement, promissory note, deed of trust, and other documents as required by the City restricting the future resale price of the Home and shall further agree to cooperate fully with the City in promptly providing all information requested by the City to verify the Proposed Purchaser's eligibility.

(3) Income Eligibility. The combined income for all household members of the Proposed Purchaser shall not be less than seventy percent (70%) and no greater than one hundred and twenty percent (120%) of the area median income as adjusted for household size, and revised from time to time, as published by the United States Department of Housing and Urban Development ("HUD"). In the event such income determinations are no longer published by HUD, or are not updated for a period of at least eighteen (18) months, the City shall provide other income determinations which are reasonably similar with respect to method of calculation to those previously published by HUD.

C. Maximum Sales Price. The purchase price for the sale of the Home by the Owner to the Eligible Purchaser shall not exceed the Maximum Restricted Resale Price calculated by the City pursuant to Section 13 above, as set forth in the First City Response Notice.

D. Disclosure and Submittals. The Owner and the Proposed Purchaser shall provide the following information and documents to the City:

(1) The name, address and telephone number in writing of the Proposed Purchaser.

(2) A signed financial statement of the Proposed Purchaser in a form acceptable to the City and any other supporting documentation requested by the City. The

financial information shall be used by the City to determine the income eligibility of the Proposed Purchaser.

(3) The proposed sales contract and all other related documents which shall set forth all the terms of the sale of the Home. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Proposed Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.

(4) A written certification, from the Owner and the Proposed Purchaser in a form acceptable to the City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the Proposed Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Proposed Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to foreclose on the Home or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Proposed Purchaser for the return of any moneys paid or received in violation of this Agreement or for any of the Owner's and/or the Proposed Purchaser's costs and legal expenses, shall be borne by the Owner and/or the Proposed Purchaser and they shall hold the City and its designee harmless and reimburse the City's and its designee's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(5) An executed buyer's resale agreement and deed of trust from the Proposed Purchaser in forms provided by the City. The recordation of the new deed of trust and buyer's resale agreement shall be a condition of the City's approval of the proposed sale.

(6) The name of the title company escrow holder for the sale of the Home, the escrow number, and name, address, and phone number of the escrow officer.

(7) Upon the close of the proposed sale, certified copies of the recorded City deed of trust and buyer's resale agreement, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

E. Failure To Locate Eligible Purchaser; Unrestricted Sale. If, despite bona fide good faith documented marketing efforts (including listing the Home on the Multiple Listing Service for the entire time Marketing Period), the Owner is unable to locate an Eligible Purchaser during the Marketing Period and any extensions to the Marketing Period granted by the City, the Owner shall provide written notice to the City of this fact (including documentation of the Owner's marketing efforts and the Multiple Listing Service listing), in the form shown in Exhibit G attached to this Agreement (the "Owner's Notice of Failure to Locate Eligible Purchaser"). Within fifteen (15) days of receipt of the Owner's Notice of Failure to Locate

Eligible Purchaser, the City shall provide a second response notice to the Owner, in the form shown in Exhibit H attached to this Agreement (the "Second City Response Notice") stating either (1) that the City will exercise the Option to purchase the Home, or (2) that the Owner may Transfer the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, at an unrestricted price which is at or near Fair Market Value (supported by a MAI or other qualified appraisal), but shall pay any Excess Sales Proceeds to the City as set forth in Section 15 below.

F. If the City chooses to exercise its Option in response to the Owner's Notice of Failure to Locate Eligible Purchaser, then the Option shall be exercised pursuant to the provisions of Section 12, except that close of escrow shall take place no later seventy-five (75) days after the date of the Second City Response Notice.

G. If the Owner Transfers the Home to a Market Purchaser, the purchaser shall not be required to execute a resale agreement nor any other City document, and the City shall reconvey the liens of this Agreement and the City Deed of Trust, provided that the Owner pays the Excess Sales Proceeds to the City pursuant to Section 15 below. The Owner shall provide the City with the following documentation associated with such a Transfer:

(1) The name and address of the purchaser;

(2) The final sales contract and all other related documents which shall set forth all the terms of the sale of the Home, including a HUD-1 Settlement Statement. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Market Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.

(3) A written certification, from the Owner and the Market Purchaser in a form acceptable to the City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the Market Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Market Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to foreclose on the Home or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Market Purchaser for the return of any moneys paid or received in violation of this Agreement or for any costs and legal expenses, shall be borne by the Owner and/or the Market Purchaser and they shall hold the City and its designee harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(4) A copy of the MAI or other qualified appraisal for the Home.

(5) Upon the close of the proposed sale, a copy of the final sales contract, HUD-1 Settlement Statement, escrow instructions, and any other documents which the City may reasonably request.

15. PAYMENT TO CITY OF EXCESS SALES PROCEEDS

A. If the Owner Transfers the Home at an unrestricted price pursuant to Section 14E above, or if the Owner makes a Transfer in violation of this Agreement, the Owner shall pay the Excess Sales Proceeds to the City. For purposes of this Agreement, "Excess Sales Proceeds" shall mean the amount by which the gross sales proceeds received by the Owner from the new purchaser exceed the Maximum Restricted Resale Price for the Home. However, if the Owner Transfers the Home pursuant to Section 14E and is otherwise not in Default under this Agreement, the amount of Excess Sales Proceeds due to the City shall be reduced by the amount of any downpayment monies paid by the Owner at the original purchase of the Home and any actual real estate commission paid by the Owner at Transfer, up to a maximum of six percent (6%) of gross sales proceeds.

B. The amount of any Excess Sales Proceeds shall be a debt of the Owner to the City, evidenced by this Agreement and the City Note, secured by the City Deed of Trust. The Owner acknowledges that the City shall have no obligation to cause reconveyance of this Agreement or of the City Deed of Trust until the Excess Sales Proceeds are paid to the City. The City shall utilize the Excess Sales Proceeds for City affordable housing programs. The Owner and the City acknowledge that the formula for calculation of the amount of Excess Sales Proceeds due from the Owner to the City is intended to cause the Owner to receive the same net sales proceeds from sale of the Home at an unrestricted price to an Market Purchaser in conformance with this Agreement as the Owner would receive from sale of the Home to the City or to an Eligible Purchaser at the Maximum Restricted Resale Price.

16. DEFAULTS

A. The following events shall constitute a Default by the Owner under this Agreement:

(1) The City determines that the Owner has made a misrepresentation to obtain the benefits of purchase of the Home or in connection with its obligations under this Agreement;

(2) The Owner fails to owner occupy the Home, as required pursuant to Section 3 above;

(3) The Owner rents or leases the Home, not in compliance with Section 4 above;

(4) The Owner fails to claim a homeowner's exemption for property taxes, as required pursuant to Section 5 above;

- (5) The Owner actually Transfers, or attempts to Transfer, the Home in violation of this Agreement;
- (6) The Owner fails to provide information to the City necessary to determine Owner's compliance with the requirements of this Agreement;
- (7) Judicial foreclosure proceedings are commenced regarding the Home;
- (8) A notice of default is issued under any financing secured by the Home, or the City receives any other notice of default pursuant to Civil Code Section 2924b, or the Owner is in default on any other financing secured by the Home.
- (9) The Owner executes any deed in lieu of foreclosure transferring ownership of the Home;
- (10) A lien is recorded against the Home other than the lien of the First Lender Loan or a junior mortgage loan or equity line of credit approved by the City pursuant to Section 24; or
- (11) The Owner otherwise fails to comply with the requirements of this Agreement, the City Note, or the City Deed of Trust.

B. Upon a declaration of Default by the City under this Agreement, the City may exercise any remedies at law or in equity, including without limitation any or all of the following, none of which shall be an exclusive remedy:

- (1) Declare all sums due under the City Note immediately due and payable without further demand;
- (2) Declare a default under the City Note;
- (3) Invoke the power of sale under the City Deed of Trust;
- (4) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;
- (5) Take such enforcement action as is authorized under the Sunnyvale Municipal Code;
- (6) Declare a Default under the City Note and City Deed of Trust and pursue all City remedies under the City Deed of Trust; and
- (7) Exercise the Option.

C. The City shall notify the First Lender in the manner set forth in Section 29 of this Agreement if the City has declared a Default under this Agreement or under the City Note or the City Deed of Trust.

D. The Owner shall cause the requests for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Home to be recorded in the Office of the Recorder of Santa Clara County for the benefit of the City. The City may declare a Default under this Agreement upon receipt of any notice given to the City pursuant to Civil Code Section 2924b or through any other means and may exercise its rights as provided in this Section.

17. EXERCISE OF OPTION UPON DEFAULT

A. Notice and Cure. Upon Default, the City may give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of City within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as the City determines is necessary to correct the violation, the City may declare a Default under this Agreement. However, if the Owner is in default under any financing secured by the Home, the City may declare a Default upon receipt of any notice given to the City pursuant to Civil Code Section 2924b or through any other means and may exercise its rights as provided in Section 16 and this Section.

B. Declaration of Default and Exercise of Option Upon Default. If Owner has not cured a Default within any applicable cure period, or if there is no applicable cure period, the City may declare a Default by written notice to Owner and shall have thirty (30) days after declaration of the Default to notify Owner and First Lender of its intent to exercise its Option. Not later than ninety (90) days after the City has notified the Owner of its intent to exercise the Option under this Section, Owner and the City shall complete all acts and execute all documents necessary to enable the close of escrow and transfer of the Home to the City, including but not limited to removal of all exceptions to title as required by Section 12. If Owner has cured all Defaults prior to close of escrow, City and Owner, at City's sole discretion, may by written agreement determine that City shall not exercise its Option.

C. Court Order. If there is a stay or injunction imposed by court order precluding the City from exercising the Option within the applicable time period, then the running of such period shall be tolled until such time as the stay is lifted or injunction dissolved and the City has been given written notice thereof, at which time the period for exercise of the Option shall again begin to run.

D. Right of City to Reinstate Mortgages. In the event of default and foreclosure, the City shall have the same right as the Owner to cure defaults and redeem the Home prior to the foreclosure sale and shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor sections) solely for the purposes of reinstating any mortgage on the Home that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the City shall be entitled, but not required, to pay all amounts of principal, interest, taxes, assessments, insurance premiums, advances, costs, attorneys' fees and expenses

required to cure the default. Nothing herein shall be construed as creating any obligation of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

18. NONLIABILITY OF THE CITY No Obligation to Exercise Option. The City shall have no obligation to exercise any option granted it under this Agreement. In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its Option, nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its Option.

B. Nonliability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and the City is solely that of an owner and an administrator of a City affordable housing program, and that the City does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Home or any other matter. The City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Home, and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Home and will hold the City harmless from any liability, loss or damage for these things.

C. Indemnity. Owner agrees to defend, indemnify, and hold the City and its officers, employees, agents, board members and/or council members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the City may incur as a direct or indirect consequence of: (1) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the City Deed of Trust; or (2) the failure at any time of any of Owner's representations to the City to be true and correct.

19. RESTRICTIONS ON FORECLOSURE PROCEEDS

If a creditor acquires title to the Home through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Owner when added to the proceeds paid or credited to the creditor exceed the Maximum Restricted Resale Price. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to the City (in addition to any other amounts due the City from the Owner pursuant to this Agreement), in consideration of the benefits received by the Owner through purchase of the Home at a price below fair market value.

20. RESTRICTION ON INSURANCE, CONDEMNATION, AND ASSET PROCEEDS

If the Home is damaged or destroyed and the Owner elects not to rebuild or repair the Home, in the event of condemnation, or in the event of distribution of assets resulting from the termination of a condominium wherein the Home is located, if the proceeds thereof are distributed to Owner, the Owner shall pay the City the portion of any such proceeds which is in excess of the Maximum Restricted Resale Price calculated pursuant to Section 13 above.

21. TERM OF AGREEMENT

All the provisions of this Agreement, including the benefits and burdens, run with the Home and this Agreement shall bind, and the benefit hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the City and its successors, until the earlier of (i) thirty (30) years from the date of purchase of the Home by Owner, or (ii) the date of Transfer of the Home to the City or another purchaser in compliance with this Agreement (including execution by the purchaser of a new copy of this Agreement), or (iii) the date of Transfer of the Home to another purchaser at an unrestricted price and payment of all principal and interest due under the City Note pursuant to the terms of the City Note, including but not limited to payment of all Excess Sales Proceeds (the "Term").

22. SUPERIORITY OF AGREEMENT

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

23. SUBORDINATION

Notwithstanding any other provision hereof, the provisions of this Agreement and the City Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the City Deed of Trust shall be forever terminated and shall have no further effect as to the Home or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquires title to the Home pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the City Deed of Trust shall automatically terminate upon such acquisition of title, only if (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the City or its designee shall not have cured the default within such sixty (60)-day period.

24. REFINANCE OF FIRST LENDER LOAN; SUBORDINATE LOANS

A. City Consent Required. The Owner covenants and agrees not to place any additional mortgage or deed of trust, including any line of credit, on the Home without obtaining prior written consent of the City. In the event the Owner desires to refinance the First Lender Loan or borrow a mortgage loan or equity line of credit junior in lien priority to this Agreement, the Owner shall submit to the City the Owner Request to Refinance Notice attached as Exhibit I to this Agreement.

B. Permitted Encumbrance Amount. The "Permitted Encumbrance Amount" shall not exceed ninety-five percent (95%) of the loan to value ratio for the Home at the time of initial purchase by the Owner.

C. Refinance of First Lender Loan. The City shall permit a prepayment and refinance of the First Lender Loan and shall agree to subordinate this Agreement and the City Deed of Trust to the refinanced First Lender Loan provided that:

(1) following such refinance, the principal amount of all debt secured by the Home does not exceed the Permitted Encumbrance Amount;

(2) the refinanced First Lender Loan is a fully amortized fixed rate loan, has a fifteen (15) year or thirty (30) year term, is fully documented, requires no balloon payments, and carries a rate of interest no higher than the original First Lender Loan; and

(3) the refinanced First Lender Loan lowers the interest rate and/or the term of the First Lender Loan; and

(4) at the time of refinance of the First Lender Loan, the total monthly housing cost to the Owner does not exceed one twelfth of thirty-five percent (35%) of the Owner's household monthly gross income.

D. Junior Loans and Equity Lines of Credit. After the initial sale of the Home to Owner, mortgage loans or equity lines of credit junior in lien priority to this Agreement and the City Deed of Trust are not permitted. However, the City may approve a junior mortgage that is not an equity line of credit if the Owner is not in Default under or otherwise in violation of this Agreement. The City shall only approve junior mortgage loans after the initial sale of the Home to Owner if such loans will not cause the total of all debt secured by the Home to exceed the Permitted Encumbrance Amount. The City will not approve any mortgage loan which includes negative amortization, a mortgage loan with interest only payments or balloon payments, or a mortgage loan that may cause the Owner's monthly housing costs, as determined by the City, to exceed the Affordable Cost at any time during the term of such loan.

E. Request for Notice of Default. As a condition for subordination of the City Deed of Trust, the Owner shall cause a request for notice of default and notice of sale regarding the refinanced First Lender Loan to be recorded in the Office of the Recorder of Santa Clara County for the benefit of the City.

F. Purpose of Restrictions. Mortgage loans or equity lines of credit junior in liens priority to the City deed of trust are not permitted, except for the junior loans approved by the City pursuant to Section 24D. above. The City and the Owner agree that the requirements of this Section 24 are necessary to ensure the continued affordability of the Home to Owner and to minimize the risk of loss of the Home by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section 24 shall constitute a Default under this Agreement.

25. NONDISCRIMINATION

The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Home, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Home. The foregoing covenant shall run with the land.

26. INVALID PROVISIONS

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

27. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of California. The venue for any legal action pertaining to this Agreement shall be Santa Clara County, California.

28. NO WAIVER

No delay or omission in the exercise of any right or remedy of City upon any default by Owner shall impair such right or remedy or be construed as a waiver. The City's failure to insist in any one or more instance upon the strict observance of the terms of this Agreement shall not be considered a waiver of the City's right thereafter to enforce the provisions of the Agreement. The City shall not waive its rights to enforce any provision of this Agreement unless it does so in writing, signed by an authorized agent of the City.

29. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested, express delivery service with a delivery receipt, or personal delivery with a delivery receipt and shall be deemed to be effective as of the date received, the date delivery was refused, or the date returned as undeliverable as indicated on the return receipt as follows:

To the Owner:

At the address of the Home.

To the City:

City of Sunnyvale

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

To the First Lender:

[To be inserted]

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section.

30. INTERPRETATION OF AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid speculation on the Home and to insure to the extent possible that its sales price and mortgage payment remain affordable to persons and families of lower and moderate income.

31. EXHIBITS

Any exhibits referred to in this Agreement are incorporated in this Agreement by such reference.

32. COVENANTS RUNNING WITH THE LAND

A. Owner hereby subjects the Home to the covenants and restrictions set forth in this Agreement. Owner hereby declares its express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon all parties having any interest in the Home throughout the Term of this Agreement. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Home or any interest therein, as the case may be, shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties to such contract have actual knowledge of this Agreement.

B. The Owner and the City hereby declare their understanding and intent that: (i) the covenants and restrictions contained in this Agreement shall be construed as covenants running with the land pursuant to California Civil Code Section 1468 and not as conditions which might result in forfeiture of title by Owner; (ii) the burden of the covenants and restrictions set forth in this Agreement touch and concern the Home in that the Owner's legal interest in the Home may be rendered less valuable thereby; and (iii) the benefit of the covenants and restrictions set forth in this Agreement touch and concern the land by enhancing and increasing the enjoyment and use of the Home by Eligible Purchasers, the intended beneficiaries of such covenants and restrictions.

C. All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon Owner for the benefit of the City and Eligible

Purchasers and such covenants and restrictions shall run in favor of such parties for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the City is an owner of any land or interest therein to which such covenants and restrictions relate.

33. SPECIFIC PERFORMANCE

Owner acknowledges that any breach in Owner's performance of Owner's obligations under this Agreement shall cause irreparable harm to the City. Owner agrees that the City is entitled to equitable relief in the form of specific performance upon its exercise of the Option, and that an award of damages shall not be adequate to compensate the City for Owner's failure to perform according to the terms of this Agreement.

34. OWNER'S ACKNOWLEDGEMENT OF RESALE RESTRICTION

Owner hereby acknowledges and agrees that:

A. Owner hereby subjects the Home to certain restrictions and limits the price for which Owner may sell the Home and the persons to whom Owner may sell the Home. The resale price limitation, and other provisions contained in this Agreement, restrict the full benefits of owning the Home. Owner may not enjoy the same economic or other benefits from owning the Home that Owner would enjoy if this Agreement did not exist.

B. Absent the provisions of this Agreement, the Home could not be made available to Eligible Purchasers, including Owner.

C. Owner understands all of the provisions of this Agreement. In recognition of the acknowledgments and agreements stated in this Section 34, Owner accepts and agrees to the provisions of this Agreement with the understanding that this Agreement will remain in full force and effect as to the Home throughout the Term of this Agreement.

D. OWNER UNDERSTANDS THAT THE DETERMINATION OF THE MAXIMUM RESTRICTED RESALE PRICE OF THE PROPERTY CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INCREASES IN AREA MEDIAN INCOME, WHICH CANNOT BE ACCURATELY PREDICTED, AND THAT THE SALES PRICE MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS AGREEMENT. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALES PRICE OF THE PROPERTY THE PRIMARY OBJECTIVE OF THE CITY AND THIS AGREEMENT IS TO PROVIDE HOUSING TO ELIGIBLE PURCHASERS AT AFFORDABLE HOUSING COST. THE MAXIMUM RESTRICTED RESALE PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES THAT HAVE NO RESTRICTIONS.

[initialed by Owner(s)]

IN WITNESS WHEREOF, the parties have executed this Agreement on or as of the date first written above.

CITY:

CITY OF SUNNYVALE, a municipal corporation

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

Its: _____

OWNER:

Print Name: _____

OWNER:

Print Name: _____

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT A

Legal Description of the Home

EXHIBIT B

Form of Owner Occupancy Certification



**City of Sunnyvale - Below Market Rate (BMR)
Home Ownership Program**

456 W. Olive Avenue
Sunnyvale, CA 94086
408-730-7250

ANNUAL CERTIFICATION OF OWNER OCCUPANCY (Form O-11)

By signature below, I/WE _____ [insert name or names of Owner] ("OWNER ON TITLE") hereby certify to the City of Sunnyvale (the "City") under the penalty of perjury that I/WE occupy the Home located at _____ [insert address] (the "Home") as MY/OUR principal place of residence and that I/WE have occupied the Home for _____ () [insert number] months of the calendar year _____ [insert previous calendar year].

PLEASE VERIFY ALL INFORMATION BELOW

Owner Cell: _____ Co-Owner Cell _____
Owner Work: _____ Co-Owner Work _____
Home Phone: _____

1. The following documentation is **required** as proof of continuous occupancy and **copies** must be attached:

- _____ 20____-20____. Santa Clara County Secured Property Tax Bill for the Home.
- _____ PG&E Statement/Utility Bill showing Home address. (Pgs. 1 & 3 of PG&E Statement **including** payment coupon on pg. 1)
- _____ Valid Vehicle Registration or Driver's License **FOR EACH OWNER ON TITLE** showing Home address. If not applicable, initial here _____ (Owner Initials) / _____ (Co-Owner Initials)

2. Provide copies of **ALL** pages of mortgage statement(s) for the Home as **required** proof of financing:

_____ **ALL** current mortgage statement(s) / _____ 20____ Year-End Mortgage Statement, with balanced owed _____ Mortgage Paid _____ (Owner Initials) / _____ (Co-Owner Initials)

Please answer **all** of the following questions:

3. Name and Phone Number of HOA, if applicable?

4. Have you refinanced, added a mortgage or opened any Lines of Credit against the Home since **June 20**____? _____ If **YES**, explain:

5. Have you received a Notice of Default on any mortgage? _____ If **YES**, explain:

[Signature(s) On Next Page]

The Owner hereby certifies that the above information is true and correct and this Owner Occupancy Certification is signed under penalty of perjury on _____, 20__.

By: _____
(Owner Signature)

Print Name Clearly

By: _____
(Co-Owner Signature)

Print Name Clearly

Attach Documentation Required in Section 1 Above.

EXHIBIT C

Form of Owner's Notice of Intent to Transfer

To: City of Sunnyvale ("City")

From: _____ ("Owner")

Home Address: _____ ("Home")

Date: _____

Please be notified that the Owner intends to transfer the Home listed above.

A. The following information is provided to the City pursuant to Section 9 of the Resale Agreement:

1. Address of Home: _____
2. Date Owner purchased Home: _____
3. Purchase Price paid by Owner when Home was purchased: _____
4. Date Owner intends to vacate Home: _____
5. Date Home will be placed on market: _____
6. Name and phone number of person for City to contact to schedule inspection:
_____ and _____
(name) (phone number)

B. As required by Section 9 of the Resale Restriction Agreement, the following documents are attached to this Notice:

1. Copy of HUD-1 Settlement Statement from Owner's purchase of the Home
2. If Owner has made Eligible Capital Improvements to the Home that Owner wishes to include in the City's calculation of Indexed Price, check box below

Yes, I have made Eligible Capital Improvements pursuant to Section 13 of the Resale Agreement. They are _____ [describe improvements] and were completed on _____ [insert date]. I attach the following documents to this letter:

- a. copy of City letter granting prior approval of these improvements;
- b. evidence of cost of these improvements;
- c. appraisal showing value added to Home by the improvements.

C. I have not yet listed the Home for sale with a multiple listing service, or contacted a real estate broker or financial institution. I agree to prepare the Home for sale by:

- 1. obtaining a pest control report within thirty (30) days of the date of this notice,
- 2. repairing all damage noted in the pest report within the sooner of: (i) sixty (60) days from the date of this notice, or (ii) two (2) weeks prior to close of escrow or the transfer of the Home,
- 3. allowing the City or its designee to inspect the Home within thirty (30) days of this notice,
- 4. if requested by the City following the City's inspection, I will obtain a home inspection report from a licensed home inspector,
- 5. maintaining utility connections until the Home is transferred,
- 6. permitting a walk through by the City prior to close of escrow or the transfer.

This Owner's Notice of Intent to Transfer is certified by Owner to be true and correct and is signed on _____ **[insert date]** under penalty of perjury.

By: _____
Owner

By: _____
Owner

EXHIBIT D

Form of First City Response Notice

To: _____ ("Owner")

From: City of Sunnyvale ("City")

Home Address: _____ ("Home")

Date: _____

On _____, the City received the Owner's Notice of Intent to Transfer (as described in Section 10 of the Resale Restriction Agreement.) Pursuant to Section 10 of the Resale Restriction Agreement and as of the date written above, the City hereby:

Elects to exercise the Option under the Resale Restriction Agreement (or assign its right to a City Designated Purchaser), and purchase the Home for **[Insert Amount]** (Maximum Restricted Sale Price). The Home shall be purchased by **[Insert Date]**.

OR

Elects to NOT exercise the Option under the Resale Restriction Agreement and the Owner may proceed to sell the Home to an Eligible Purchaser with a maximum qualifying income of **[Insert Maximum qualifying income]** at a price not to exceed the amount of **[Insert Amount]** (the Maximum Restricted Resale Price).

Prior to the sale of the Home to an Eligible Purchaser shall:

1. certify that he or she will occupy the Home as his or her principal place of residence throughout his or her ownership;
2. certify that the financial and other information provided to the City to qualify to purchase the Home is true and correct;
3. sign a resale restriction agreement, promissory note, deed of trust, and other documents as required by the City restricting the future resale price of the Home;
4. cooperate fully with the City in promptly providing all information requested by the City to verify his or her eligibility; and
5. have a combined income for all of the Eligible Purchaser's household members that is not less than seventy percent (70%) and no greater than one hundred and twenty percent (120%).

City of Sunnyvale, a municipal corporation

By: _____

Its: _____

EXHIBIT E

Form of Owner Acknowledgement of First City Response Notice

Name: _____

Address of Home: _____

Date: _____

I, _____ (insert name) hereby acknowledge that I received the First City Response Notice (as described in Section 10 of the Resale Restriction Agreement on _____ (insert date) and still desire to transfer my Home.

By: _____

EXHIBIT F

Form of Request for City Approval of Improvements to the Home

To: City of Sunnyvale ("City")
From: _____ ("Owner")
Home Address: _____ ("Home")
Date: _____

I hereby request City approval of the following capital improvements I intend to make to my Home:

Description of Improvements: _____

Estimated Cost: _____

Original Purchase Price: _____

A copy of the building permit (if required) is attached.

The City will respond in writing to this request.

NOTE: Owner should retain copies of contracts, invoices, and receipts for all completed capital improvements. These documents will be necessary to establish the restricted resale price of the Home upon subsequent transfer.

* Notice: In addition to meeting other requirements imposed by the City, the Proposed Improvements must cost at least one percent (1%) of the purchase price paid for the Home by the Owner and must be approved by the City in writing prior to construction.

EXHIBIT G

Form of Owner's Notice of Failure to Locate Eligible Purchaser

To: City of Sunnyvale ("City")
From: _____ ("Owner")
Home Address: _____ ("Home")
Date: _____

The Owner hereby certifies to the City that he/she has made bona fide good faith efforts (including listing the Home in the Multiple Listing Service) to locate an Eligible Purchaser for the Home, but has been unable to locate an Eligible Purchaser.

A copy of the multiple listing for the Home is attached.

Signed under penalty of perjury:

By: _____

EXHIBIT H

Form of Second City Response Notice

To: _____ ("Owner")
From: City of Sunnyvale ("City")
Home Address: _____ ("Home")
Date: _____

On _____, the City received the Owner's Notice of Failure to Locate Eligible Purchaser (as described in Section 14.E of the Resale Restriction Agreement.) Pursuant to Section 14 of the Resale Restriction Agreement and as of the date written above, the City hereby:

Elects to exercise the Option under the Resale Restriction Agreement (or assign its right to a City Designated Purchaser) and purchase the Home for **Insert Amount** (Maximum Restricted Resale Price).

OR

Elects to NOT exercise the Option under the Resale Restriction Agreement and the Owner may proceed to sell the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, at an unrestricted price which is at or near the Fair Market Value (supported by a MAI or other qualified appraisal), **but must pay any Excess Sales Proceeds** to the City as set forth in Section 15 of the Resale Restriction Agreement. The Owner must provide the City with the documentation required in Section 14.G of the Resale Restriction Agreement.

City of Sunnyvale, a municipal corporation

By: _____

Its: _____

EXHIBIT I

Form of Owner Request to Refinance Notice

To: City of Sunnyvale ("City")

From: _____ ("Owner")

Home Address: _____ ("Home")

Date: _____

A. FOR PROPOSED REFINANCE OF FIRST LENDER LOAN

The Owner hereby requests the City to approve the Owner's refinance of the existing First Lender Loan (first mortgage loan) on the Home. The Owner provides the following information and documentation which it certifies to be true and correct:

1. Copy of a HUD -1 Settlement Statement
2. Copy of new First Lender Loan documents, including escrow instructions
3. Contact information for proposed new First Lender

Name: _____

Address: _____

Phone Number: _____

Contact Person: _____

4. Anticipated closing date of new First Lender Loan: _____
5. Copy of recent preliminary title report for the Home
6. Copy of existing First Lender Loan documents and any other loan documents secured by a deed of trust that has been recorded against the Home.
7. Monthly Housing Payment on First Lender Loan: _____
8. Monthly Housing Payment on all other loans secured by a deed of trust that has been recorded against the Home: _____
9. Contact Information for Title Company

Name: _____

Address: _____

Phone Number: _____

Contact Person: _____

B. FOR PROPOSED REFINANCE OF FIRST LENDER LOAN THAT EXCEEDS PERMITTED REFINANCE AMOUNT

The Owner hereby requests the City to approve the Owner's refinance of the existing First Lender Loan (first mortgage loan) on the Home in excess of the Permitted Refinance Amount. The Owner shall complete Section A of this Owner's Request for Refinance Notice. The Owner also provides the following information and documentation which it certifies to be true and correct:

1. Description of required repairs _____

2. Explanation of why repairs are necessary, including the source of damage necessitating repairs _____

3. Copy of two bids evidencing cost repair.

4. Contact information for contractors making bids

Contractor 1:

Name: _____

Address: _____

Phone Number: _____

Contact Person: _____

Contractor 2:

Name: _____

Address: _____

Phone Number: _____

Contact Person: _____

5. Copy of proposed Construction Contract

C. FOR PROPOSED JUNIOR LOAN

The Owner hereby requests the City to approve the Owner's proposed junior financing. The Owner also provides the following information and documentation which it certifies to be true and correct:

1. Copy of a HUD -1 Settlement Statement
2. Copy of new junior loan documents, including escrow instructions
3. Contact information for proposed new junior lender

Name: _____

Address: _____

Phone Number: _____

Contact Person: _____

4. Anticipated closing date of new junior loan: _____

5. Copy of recent preliminary title report for the Home

6. Copy of existing First Lender Loan documents and any other loan documents secured by a deed of trust that has been recorded against the Home.

7. Monthly Housing Payment on First Lender Loan: _____

8. Monthly Housing Payment on all other loans secured by a deed of trust that has been recorded against the Home: _____

9. Contact Information for Title Company

Name: _____

Address: _____

Phone Number: _____

Contact Person: _____

The Owner hereby certifies the above information is true and correct and this Owner Request to Refinance Notice is executed under penalty of perjury on _____ **[insert date]**.

By: _____
Owner

By: _____
Owner