



 **BELOW MARKET RATE
HOUSING PROGRAM
ADMINISTRATIVE PROCEDURES
FOR DEVELOPERS**



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**City of Sunnyvale
Below Market Rate Housing Program
Administrative Procedures – Developer**

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BELOW MARKET RATE PROGRAM DEFINITIONS

Area Median Income: Income eligibility limits are established by the U.S. Department of Housing and Urban Development (HUD). "Area" means metropolitan area or non-metropolitan County.

Family: (1) Two or more persons related by birth, marriage, or adoption [Source: U.S. Bureau of the Census]. (2) An individual or a group of persons living together who constitute a *bona fide* single-family housekeeping unit in a dwelling unit, not including a fraternity, sorority, club, or other group of persons occupying a hotel, lodging house or institution of any kind [Source: California] Department of Housing and Community Development.

Household: All those persons – related or unrelated – who occupy a single housing unit. (See "Family.")

Low Income Household: A household with an annual income no greater than 80 percent of the area median income for the number of people in the household and based on the latest available eligibility limits established annually by the U.S. Department of Housing and Urban Development (HUD).

Moderate Income Household: A household with an annual income between the lower income eligibility limits of 80 percent of the area median family income and 120 percent of the area median family income, as established by the U.S. Department of Housing and Urban Development (HUD).

Very Low Income Household: A household with an annual income no greater than 50 percent of the area median family income, based on the latest available eligibility limits established by the U.S. Department of Housing and Urban Development (HUD)



City of Sunnyvale Below Market Rate Housing Program Administrative Procedures - Developer/Owner

Requirements for Developers/Owners of Rental and Ownership Units

The following document contains the procedures related to Developers/Owners of BMR Rental and Home Ownership units. The procedures may be amended and updated from time to time. An online version of this document can be found on the City's website at www.sunnyvale.ca.gov/housing. Please refer to the City's website for the most current version.

A. Basic Requirements – BMR Units and Fee

1. Developer/Owner Participation in the BMR Program

Section 19.66.020 of the Sunnyvale Municipal Code states the requirements for the number of units in residential developments to be dedicated to the Below Market Rate Program.

- There are no BMR requirements for developments of less than nine parcels or units.
- For developments of between nine and nineteen parcels or units, the Director of Community Development, may waive the requirements to provide BMR units in exchange for the payment of a BMR in-lieu fee as described in Section 19.66.090 of the Sunnyvale Municipal Code.
- All residential developments consisting of nine or more units designed and intended for permanent occupancy, located in any zoning district other than R-0, R-1, R-1.5 or R-1.7/PD (or as outlined in Section 19.66.020 of the Sunnyvale Municipal Code), shall maintain a percentage of the total number of dwelling units or parcels within the development as BMR units.

Any tentative map, use permit or special development permit approving residential construction projects shall describe the total BMR units required in the project to meet the BMR percentage criteria.

2. How to Calculate the Number of Units Required

- Ownership Projects (including condominium conversions): 12.5% of units (excluding any density bonus units).
- Rental Projects: 15% of units (excluding any density bonus units).

The conditions of approval will specify the number, bedroom composition and plan type of BMR units together with other compliance requirements contained in Chapter 19.66 of the Sunnyvale Municipal Code (Attachment 1) and these Administrative Procedures.

Fractions of BMR units: In calculating the number of units required based on the applicable percentage, any fraction of a dwelling unit or parcel less than five-tenths shall be disregarded and any fraction greater than or equal to five-tenths shall be construed as one dwelling unit.



Density Bonus Units: Sections 19.66.080, 19.66.100 and 19.66.110 of the Sunnyvale Municipal Code describe the circumstances under which the City may permit an increase in the number of housing units in a proposed residential development and how the number of BMR units provided is affected.

3. How to Determine In-Lieu Fee (Developments under 20 units)

For developments of between nine and nineteen parcels or units, the Director of Community Development, upon request by the Developer/Owner, may waive the requirements to provide BMR units in exchange for the payment of a BMR in-lieu fee as described in Section 19.66.090 of the Sunnyvale Municipal Code. The Developer/Owner shall file the request for the in-lieu fee at the time a development permit application is filed. The Housing Officer or Affordable Housing Manager will calculate the in-lieu fee based on the following:

Ownership Projects: The BMR in-lieu fee for individually owned units shall equal the difference between the fair market value of the BMR unit as determined by impartial appraisal and the BMR unit price established under Section 19.66.040 of the Sunnyvale Municipal Code.

Rental Projects: The BMR in-lieu fee for rental units shall be the difference between the market rent for the units (determined by comparable rental units) and the established BMR rent capitalized over fifty-five years. The Consumer Price Index for Housing shall be used to establish the inflation rate for market rate units and BMR rents from the most current Sunnyvale Vacancy and Rent Survey shall be used to calculate the estimated increase in rental rates.

4. Size of Units, Distribution and Quality of Construction

This section applies to both ownership and rental projects.

All BMR units in a project or phase of a project shall be constructed concurrently with non-BMR units, shall be dispersed throughout the project, reflect the square footage of the units in the project and the variety of plan types on a pro-rata share and shall not be distinguished by interior or exterior design, amenities, construction or materials. The equal distribution of BMR units throughout the property shall reflect the variety of relative advantages and disadvantages of locations on the site.

Section 19.66.020(c) of the Sunnyvale Municipal Code also provides that the type of BMR units (number of bedrooms) for both ownership and rental projects must reflect the proportion of unit sizes in all plan types offered in the total project.

For example: If there are 10 percent one-bedroom/one-bathroom market rate units, 10 percent one-bedroom/1.5 bathroom market rate units, 20 percent two-bedroom/two-bathroom market rate units, 10 percent two-bedroom/2.5 bathroom market rate units and 50 percent three-bedroom/three-bathroom market rate units in the project, then the same distribution shall apply to the below market rate units of the project on a pro-rata basis by plan type.

To facilitate this process, each Developer/Owner must complete the Table of Plan Types for New Development Form (Attachment 2).



B. Steps in the Development and Permit Process

This section applies to both homeowner and rental projects.

Step 1. Submission of BMR Standard Permit Condition to Housing

Prior to submitting a permit application to the Planning Division, the property Developer/Owner is encouraged to consult with the Housing Officer or Affordable Housing Manager to discuss the current sales price/initial rent for the BMR units or the in-lieu fee provision. The Housing Division will issue a BMR Standard Permit Conditions Form (Attachment 3) to attach to the development permit application. The BMR Standard Permit Condition Form will specify the total number of units to be built, the total number of BMR units required, the sales price for each BMR ownership unit (by bedroom size) or the initial base rent for rental complexes. This form must be completed and signed by both the Developer/Owner and the Housing Officer before the Development Permit Application is considered complete.

Development permit applications (e.g. Use permits, Special Development Permits, or subdivision map) submitted to the City for approval of residential construction projects of nine or more dwelling units as described in Section 19.66.020 of the Sunnyvale Municipal Code shall contain the BMR Standard Permit Conditions Form (Attachment 3) in order to ensure the following is specified in the development permit application:

- the number of BMR units (include in Planning Division form, "Residential Project Data Sheet")
- the sales price/initial rent of the BMR units
- the bedroom composition of BMR units

In order for a development permit application to be complete and to proceed to Planning Review Committee, the Developer/Owner must complete and sign the BMR Standard Permits Condition Form (Attachment 3)

Step 2. Preparation of the BMR Developer Agreement

The Standard Permit Condition Form (Attachment 3) as agreed by the Developer/Owner and Housing Officer are incorporated into an Agreement for BMR Rental Housing Development Form (Attachment 4) or an Agreement for BMR Ownership Housing Development Form (Attachment 5). Prior to issuance of building permits, the Developer/Owner and City must determine which locations will be committed as BMR units.

Each Developer/Owner shall provide the following documentation to the Housing Division to assist in determining which locations will be identified as BMR units:

- an 8.5X11 site map of the property, which identifies the units, plan type and shows all site amenities of the project
- a completed Table of Plan Types for New Development Form (Attachment 2)
- a legal description of the project



Step 3. Submission and Execution of the BMR Developer Agreement

The BMR Development Agreement is a condition of approval in the development permit process. The Developer/Owner shall submit the following documents to the Affordable Housing Manager or Housing Officer for final review and execution of the Developer Agreement:

- **Ownership projects:**
 - Two original signed and notarized Agreements for BMR Ownership Housing Development Form (Attachment 5) and all required attachments for recordation on the property.
 - One copy of the Sales Agreement to be used when the unit is purchased by the owner.
- **Rental projects:**
 - Two original signed and notarized Agreements for BMR Rental Housing Development Form (Attachment 4) and all required attachments for recordation on the property.
 - One copy of the Rental Agreement to be used when the unit is rented.

Step 4. Notifying the Housing Division 60-days Prior to Occupancy Permit Issuance

Periodically, the Housing Division will contact each Developer/Owner to confirm the estimated completion dates for the BMR units in your development and request that you complete a BMR Estimated Completion Date Form (Attachment 6). However, no later than 60 days prior to the request for an Occupancy Permit, the Developer/Owner shall notify the Affordable Housing Manager or Housing Programs Analyst using the BMR Estimated Completion Date Form (Attachment 6). This enables the City to notify eligible purchasers and renters of the forthcoming availability of the units.

Step 5. Prior to Final Approval for Occupancy

Ownership Projects: After the Developer/Owner notifies the City of units becoming available for sale using the BMR Estimated Completion Date Form (Attachment 6), the City will notify eligible households on the BMR Wait List using a City-approved Realtor. The Developer/Owner will sell the unit to the eligible household in the same manner that they would transact any other type of sale. The Developer/Owner and the Buyer shall execute an Addendum to Purchase Offer Form (Attachment 7) and shall provide an executed copy to the City. Prior to the close of escrow, the buyer of each unit shall execute a Deed of Trust to secure resale and occupancy restrictions for a 30-year period and shall provide other documentation as required by the City.

Rental Projects: Developer/Owner or its successor shall endorse a Deed of Trust to secure the BMR restrictions to be recorded on the property immediately prior to issuance of a Certificate of Occupancy by the City of Sunnyvale Building Division. All declarations, covenants and obligations shall pertain to and run with the land, and shall apply to and bind all subsequent purchasers and/or successors in interest to the land. The Deed of Trust and a preliminary title report shall be submitted to the Housing Officer for execution,



approval of the City Attorney and recordation with the Santa Clara County Records Office. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

Step 6. Occupancy by BMR Eligible Households

Ownership Project: Households of 70% to 120% of Area Median Income (AMI) shall be eligible for the ownership program. The City will supply eligible purchasers to the Developer/Owner. As described in the Below Market Rate Home Ownership Administrative Guidelines, the City shall accept applications from prospective purchasers, shall determine the qualifications of such persons, and shall compile and maintain a list of qualified purchasers. Sale prices of below market rate residential units shall be established by the City and revised annually at levels affordable to households at eighty percent to one hundred twenty percent of area median income with consideration for construction costs.

Rental Projects: Households below 70% of AMI shall be eligible for the Rental Program. The Property Owner, Managing Partner or designee shall be responsible for the initial and ongoing certifications of the households occupying BMR units. Detailed procedures are provided in Below Market Rate Housing Program Administrative Procedures for Renters.

C. Management Requirements - Rental Projects

1. Control and Restriction Period

Controls and restrictions on rental units shall apply for a period of fifty-five years from the date of recordation as stated in Section 19.66.020(g) of the Sunnyvale Municipal Code.

2. Determination of Initial Rent

The rental price for each BMR unit is established when the Developer Agreement is signed by both the City and the Developer/Owner and it has been recorded with the Santa Clara County Records Office.

3. How to Calculate Initial Rental Rates

Section 19.66.040(d) of the Sunnyvale Municipal Code states that rental prices of BMR units shall be established at levels affordable to households with an AMI of 70% or less. Base rents are calculated utilizing the following two methods **and the lower rent calculated is the initial base rent:**

a) Initial Rents are calculated based on HUD AMI for San Jose Metropolitan Statistical Area as follows: The U.S. Department of Housing and Urban Development (HUD) publishes annual AMI data for 1-8 person households. Monthly rents are equal to 30% of 65% of AMI divided by twelve based upon number of bedrooms.

As an example, if AMI is at \$95,000 for a three person household, the maximum monthly rent for a two bedroom unit would be:

$$\$95,000 \times 65\% = \$61,750 \times 30\% = \$18,525 \text{ (total yearly rent)}$$

$$\$18,525 \text{ divided by } 12 \text{ months} = \$1,543 \text{ per month}$$



b) Initial Rents are calculated in January of each year and are based on twelve months of data utilizing the City of Sunnyvale Rent and Vacant Survey Report published in July (January through June) and January (July through December). The semi-annual report surveys approximately 100 complexes containing approximately 15,000 rental units. The report contains current market median rents per unit size (number of bedrooms). Initial rents for the BMR units are 80% of the median rents as contained in the most recent Rent and Vacancy Survey Report.

As an example, if the current report states that median rent for a two bedroom rental is \$1,335, then the base rent is:

$$\$1,335 \times 80\% = \$1,068$$

4. Changes/Adjustments in Rents

As stated in Section 19.66040(d) of the Sunnyvale Municipal Code, the annual change in the maximum BMR rental prices to be charged by applicants or project owners not participating in federal "Section 8" or similar programs shall be either a maximum increase of 5% percent or the increased percentage of median annual rent based on the Sunnyvale Vacancy and Rent Survey, whichever is less.

Results of the vacancy and rent survey for January-June are released in July and results from July through December are released in January of the following year. Rents and subsequent adjustments are calculated in January of each year, using the data gathered from the last two Vacancy and Rent Survey Reports issued by the City. Owners and Property Managers are notified by the City in March of each year of the allowable changes in rents. Rents can only be increased once in any 12-month period.

Example:

Apartment Size	Current Monthly Rent	5% Increase (New Monthly Rent)
Studio	\$750	\$788
One Bedroom	\$900	\$945
Two Bedroom	\$1,050	\$1,103
Three Bedroom	\$1,200	\$1,260

Twelve-months of Initial Occupancy: Initial rents for all new developments are maintained for one full year (12-months) after the BMR units have become fully occupied. Increases to the initial rents will not be allowed until the recalculation mentioned above is determined in January following the full year the units were fully occupied.

5. Decreased Rents – Economic Downturn

Should median rents decrease by 10% or more annually, based on the Sunnyvale Vacancy and Rent Survey, then BMR rents shall be decreased by that percentage greater than 10%



and subsequently by the total percentage of any further consecutive decreases that occur, until median rents, per the Vacancy and Rent Survey, stabilize or increase.

Example:

Year	BMR Rent	City Median Rent	Median Rent – Survey Results	Effect on BMR Rent
Year I	\$800	\$1000	-	Set BMR Initial Rent @ 80%
Year II	\$800	\$950	-5%	BMR 0 increase-no decrease
Year III	\$784	\$836	-12%	BMR decrease 2%- 2% over 10%
Year IV	\$745	\$794	-5%	-5% consecutive decrease
Year V	\$782	\$850	+7%	BMR max increase 5%
Year VI	\$821	\$952	+12%	BMR max increase 5%
Year VII	\$837	\$971	+2%	BMR increase 2%
Year VIII	\$845	\$981	+1%	BMR increase 1%

6. Developer/Owner Certifications

Property owner(s), managing partner(s), and property manager(s) (if different) will certify receipt of these Administrative Procedures with statement of intent to manage the BMR units according to these Procedures. Once completed, the Certification Form (Attachment 8) shall be maintained by the City.

7. Forms

The most current forms are available online at our website www.ci.sunnyvale.ca.us/housing. The attached forms are samples for your reference and are subject to change.

D. Ownership Projects–Terms and Conditions

1. Control and Restriction Period

Controls and restrictions on homeownership units shall apply for a period of thirty years from the date of recordation as stated in Section 19.66.020(f) of the Sunnyvale Municipal Code.

2. Record Covenants on Terms of Restrictions

As stated in Section 19.66.020(e) of the Sunnyvale Municipal Code, identification and designation of BMR units and appropriate resale controls shall be recorded as a Deed of Trust imposing program restrictions with the county recorder of Santa Clara County. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.



3. Process for Sales of Units

A detailed description of the sales process is contained in the BMR Housing Program Administrative Procedures.

4. Determination of Initial Sales Price

The price of the units will be established in the BMR Standard Permit Conditions Form (Attachment 3). As stated in Section 19.66.040(c) of the Sunnyvale Municipal Code, sale prices of below market rate residential units shall be established by the City and revised annually at levels affordable to households at eighty percent to one hundred twenty percent of AMI with consideration for construction costs. Any developer requesting an adjustment to the established BMR sales price based on construction costs, must submit a proforma and supporting documentation outlining hard and soft costs (per square foot) to construct each unit. All documents must be submitted to either the Affordable Housing Manager or the Housing Officer for review and consideration.

The current sales price ranges are posted on the Housing website at <http://www.sunnyvale.ca.gov/housing>. Prices are adjusted annually based upon increases/decreases to the AMI and other factors related to affordability.

5. Liquidated Damages

The Sales Contract signed by the Developer/Owner and the Buyer(s) must not contain a Liquidated Damages Clause. If a liquidated damages clause is contained in the Agreement, then it must be stricken from the document and signed by both the Developer/Owner and Buyer(s).

6. Forbidden Uses of the BMR Unit

Properties identified as BMR units shall remain unoccupied and shall not be used for any other purpose such as, a sales office, model and/or storage during construction of the development.

7. Upgrades

BMR Buyers purchasing a BMR unit may purchase additional upgrades as long as the total of the upgrades/options do not exceed 5% of the BMR sales price. Upgrades must be paid for in cash and may not be financed. The amount of upgrades may not be included in the BMR purchase price and must be shown separately on the Purchase Contract.

For example:

3-bedroom BMR unit sales price is \$246,821; the amount of upgrades/options not to exceed \$12,341.05

8. Identification of a BMR unit

Identification of the BMR unit in your development or publications is forbidden.



9. Developer/Owner Certifications

Property owner(s), managing partner(s), and property manager(s) (if different) will certify receipt of these Administrative Procedures with statement of intent to manage the BMR units according to these Procedures. Once completed, the Certification Form (Attachment D-8) shall be maintained by the City.

10. Forms

The most current forms are available online at our website www.ci.sunnyvale.ca.gov/housng. The attached forms are samples for your reference and are subject to change.

11. Exceptions

Exceptions to the Administrative Procedures must be made in writing and addressed to the City's Housing Officer. The Housing Officer has 30 days to review the exception and render a decision to the applicant(s). The Housing Officer's determination may be appealed to the Community Development Director, whose decision is final.

Chapter 19.66 AFFORDABLE HOUSING AND SINGLE ROOM OCCUPANCIES

19.66.010. Purpose.

The purpose of this chapter is to enhance the public welfare by ensuring that future housing development contributes to the attainment of the housing goals set forth in the general plan of the city of Sunnyvale by increasing the production of residential units affordable by households of very low, low and moderate income. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.010).

19.66.020. General requirements.

(a) All residential developments consisting of nine or more parcels or dwelling units designed and intended for permanent occupancy located in any zoning district other than R-0, R-I, R-1.5 or R-I.7/PD shall maintain below market rate units according to the terms of this chapter and as more fully outlined in the administrative procedures promulgated by the director of community development.

(1) For ownership units, twelve and one-half percent of the total number of dwelling units or parcels within the development shall be maintained as below market rate. The foregoing requirement shall be applied no more than once to a given development, regardless of changes in the character or ownership of the development, with the exception that all new condominium conversions shall maintain twelve and one-half percent of the total number of dwelling units as below market rate and in accordance with Section 19.70.050.

(2) For rental units, ten percent of the total number of dwelling units shall be maintained as below market rate. In the event that apartment vacancy rates reach levels of three percent or less and rents show a net increase of twenty percent or more during a twenty-four month period based on the Sunnyvale vacancy and rent survey, all new rental developments shall maintain fifteen percent of the total number of dwelling units as below market rate.

(3) In calculating the applicable percentage, no bonus units as described in Section 19.66.080 shall be considered, any fraction of a dwelling unit or parcel less than five-tenths shall be disregarded and any fraction greater than or equal to five-tenths shall be construed as one dwelling unit.

(b) Any tentative map, use permit or special development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of below market rate (BMR) units, the number of BMR units (whether for sale or rental) and their prices, and appropriate resale controls.

(c) All BMR units in a project or phase of a project shall be constructed concurrently with non-BMR units, shall be dispersed throughout such project and reflect the range of numbers of

bedrooms provided in the project as a whole, and shall not be distinguished by interior or exterior design, amenities, construction, or materials.

(d) All BMR units shall be sold or rented only to moderate, low or very low income households.

(e) Identification and designation of BMR units and appropriate resale controls shall be recorded as a deed of trust imposing program restrictions with the county recorder of Santa Clara County. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

(f) Controls and restrictions on ownership units shall apply for a period of thirty years from the date of recordation.

(g) Controls and restrictions on rental units shall apply for a period of fifty-five years from the date of recordation.

(h) The director of community development, or the director's designee, shall create and maintain administrative procedures that more fully outline the terms and conditions of the BMR program, consistent with this chapter. (Ord. 2810-06 § 9; Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.030).

19.66.030. Density limitations.

The limitations upon residential density contained in Chapter 19.18 shall be deemed modified to the extent required by the terms of this chapter. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.040).

19.66.040. BMR unit sales prices and procedures; rental prices and procedures.

(a) Households at seventy percent to one hundred twenty percent of area median income shall be eligible for the ownership program. The city or its designee shall advertise the existence and terms of the BMR housing program to the general public, shall accept applications from prospective purchasers and tenants, shall determine the qualifications of such persons, and shall compile and maintain a list of qualified purchasers. The city shall have access to the seller's records and books pertaining to any unit covered by this chapter.

(b) The owner of a development governed by this chapter shall give written notice to city or its designee, prior to the issuance of an occupancy permit, stating the availability of all such units, the number of bedrooms in each, the estimated construction cost of each, whether each unit is to be sold or rented, and such other information as may be required in order to establish a sales or rental price and arrange for qualified occupants.

(c) Sale prices of below market rate residential units shall be established by the city or its designee and revised annually at levels affordable to households at eighty percent to one hundred

twenty percent of area median income with consideration for construction costs, as more fully outlined in the administrative procedures.

(d) Rental prices of below market rate units shall be established at levels affordable to households at seventy percent or less of area median income, as more fully outlined in the administrative procedures. The annual change in the BMR rental prices to be charged by applicants or project owners not participating in federal "Section 8" or similar programs shall be either an increase of five percent or the increased percentage of average annual rent based on the Sunnyvale vacancy and rent survey, whichever is less. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.050).

19.66.050. Eligibility requirements for BMR unit occupants.

(a) The city or its designee shall select potential occupants of BMR purchase and rental units from a list of those persons qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size of available units, and further appropriate criteria and an equitable selection method to be established in conformance with the terms of this chapter. No distinction shall be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall receive priority placement as more fully outlined in the administrative procedures: qualified public school employees, city employees, childcare workers, persons who live in the city of Sunnyvale, and persons who work in the city of Sunnyvale.

(b) Each purchaser of a BMR dwelling unit shall certify, prior to close of escrow and on an annual basis, in a form acceptable to the city or its designee, that the unit is being purchased and shall be maintained as the purchaser's primary place of residence. Failure of the purchaser to maintain a homeowner's property tax exemption shall be construed as evidence that the BMR unit is not the primary place of residence of the purchaser.

(c) Fees for processing BMR ownership and rental application and fees for loan refinancing shall be established by resolution of the city council. (Ord. 2751-04 § 1; Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.060).

19.66.060. Resale controls for BMR units.

(a) In order to maintain the availability of the housing units constructed pursuant to the requirements of this chapter, the following resale controls shall apply. The price received by the seller of a BMR unit shall be limited to:

(1) The original purchase price plus a percentage increase equal to one-third of any increase in the housing component of the Bay Area Consumer Price Index since the date of the previous sale, plus the adjusted amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, plus any applicable transaction fee charged by a real estate professional, minus any costs necessary to bring the unit into conformity with Title

16 of this code in the event that the occupant has allowed the unit to deteriorate due to deferred maintenance; or

(2) The fair market value, whichever is less.

(b) BMR units constructed, offered for sale, or sold pursuant to the requirements of this chapter by the original purchaser and all subsequent purchasers shall be offered for sale first to the city or its designee. Seller shall ensure that the unit is clean and in good repair and available to be shown to prospective buyers. No time periods shall begin to run until the city has inspected the unit and is satisfied the seller has complied with all program conditions and requirements. In the event that an offer of sale of any BMR unit is not accepted by city or its designee within one hundred eighty days after tender, or once accepted, if an escrow account contemplating sale of such unit shall not have been opened within ninety days after acceptance, the offer shall terminate. Seller shall not refuse an offer by a qualified buyer if the offer conforms with the monetary restrictions of this chapter. Buyer shall pay its own points, if any. Closing costs shall be shared equally between buyer and seller. During the one hundred eighty day period when the property is offered to the city, the city may propose more than one purchaser. Once opened, an escrow must be closed within ninety days, unless both parties agree to an extension of time. If the city or its designee does not accept an offer of sale within one hundred eighty days, all restrictions, resale controls, and other terms of this chapter shall cease and become null and of no further effect as to such unit. The BMR units shall be sold and resold only to persons determined to be eligible for BMR units according to the terms of this chapter.

(c) The buyer shall record the deed of trust imposing BMR restrictions, stating each of the restrictions and resale controls imposed pursuant to this chapter. The deed of trust shall afford the city the right to enforce all restrictions and resale controls in the manner provided by law. The city or its designee shall facilitate the resale of BMR units, for purposes of preventing any abuse or violation of resale controls. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.070).

19.66.070. Availability of government subsidies.

It is the intent of this chapter that its requirements of construction and maintenance of BMR units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units will be available from HUD throughout the operation of this chapter. This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth in Sections 19.66.080, 19.66.120 and 19.66.130. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.080).

19.66.080. Density bonus.

(a) The city upon request shall approve an increase in the number of units permitted in a proposed residential development governed by this chapter, provided all applicable zoning regulations are satisfied. Except as provided in subsection (b), the increase may represent no more than fifteen percent of the maximum number of units otherwise permitted by applicable zoning

regulations, in addition to the maximum, except for those developments which meet the requirements set forth in Sections 19.66.100 or 19.66.110.

(b) For housing developments proposed to contain between nine and nineteen units, inclusive, the maximum increase in the number of units permitted shall be the number of BMR units required by Section 19.66.020, plus one unit. This subsection shall not apply to housing developments subject to Section 19.66.100 or 19.66.110. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.090).

19.66.090. BMR in-lieu fee for certain developments.

(a) The director of community development, upon request by the developer, may waive the requirements to provide BMR units pursuant to Section 19.66.020 in exchange for the payment of a BMR in-lieu fee as described below provided the proposed development consists of between nine and nineteen parcels or units. There is no BMR requirement for developments of less than nine parcels or units.

(b) The BMR in-lieu fee for individually owned units shall equal the difference between the fair market value of the BMR unit and the BMR unit price established under 19.66.040.

(c) The BMR in-lieu fee for rental units shall be the difference between the market rent for the units and the established BMR rent capitalized over fifty-five years. The Consumer Price Index shall be used to establish the inflation rate, and the rental rates from the Sunnyvale vacancy and rent survey shall be used to calculate the estimated increase in rental rates. (Ord. 2751-04 § Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.091).

19.66.100. Density bonus for lower income housing.

(a) Notwithstanding any other provision in this chapter for providing a density bonus in conjunction with an application to develop a housing project of five or more units, a developer shall be entitled to a density bonus of at least twenty-five percent over the otherwise maximum allowable residential density for the applicable zoning district, where the developer agrees or proposes to construct:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code; or

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code; or

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code, all as set forth in Section 65915 of the Government Code.

(b) In determining the number of units to be designated under the ten or twenty percent categories, the density bonus to be granted shall not be included. A developer who agrees to

construct more than one of the foregoing categories of affordable housing shall be entitled to only one, twenty-five percent density bonus.

(c) Within ninety days of receipt of a preliminary, written proposal for the development of housing pursuant to this section, the city shall notify the housing developer, in writing, of the procedures required for compliance with this section. It is contemplated that such preliminary proposals may be submitted prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals.

(d) The affordable units designated and constructed by the developer in consideration for the grant of the density bonus pursuant to this section shall remain affordable for a period of at least fifty-five years.

(e) Units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty percent of sixty percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty percent of fifty percent of area median income.

(f) Identification and designation of the affordable units and appropriate resale controls shall be incorporated as a part of the grant deed of a residential development regulated by this chapter. All such controls or restrictions applicable thereto shall run with the land for a period of fifty-five years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program, and shall be recorded as a part of the grant deed with the county recorder. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

(g) The procedures for establishing unit sales prices, eligibility requirements and resale controls for affordable units designated pursuant to this section shall be the same as for below market rate units as set forth in Sections 19.66.040, 19.66.050, and 19.66.060.

(h) A housing developer who seeks to waive or modify development or zoning standards which would otherwise inhibit the utilization of the density bonus on a specific site must request a variance pursuant to Chapter 19.84. In addition to the showing required by Chapter 19.84, the housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

(i) It is the intent of this section to meet the requirements imposed by Section 65915 of the Government Code, and amendments thereto. Interpretation of requirements, definitions and standards as set forth in this section shall be construed so as to be consistent with Chapter 19.66, to the extent they are not inconsistent with Section 65915 of the Government Code. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.093).

19.66.110. An applicant's density bonus for senior citizen housing.

(a) Upon request, the city shall approve an increase in the number of units permitted in a proposed residential development governed by this chapter, where the entire development is designated and intended for exclusive occupancy by senior citizens. The increase in density may not exceed forty percent of the maximum number of units otherwise permitted by applicable zoning restrictions, and shall not apply to developments of less than twenty units.

(b) The density bonus described in subsection (a) shall be granted only on the condition that the owner enter into a binding, written agreement with the city that twenty percent of the units would be rented at an affordable rate for very low income seniors, and ten percent of the units would be rented at an affordable rate for low income seniors, as defined by the HUD Section 8 program income limits, or its successor or equivalent program. The agreement between the owner and the city would be in effect for the life of the project, and would be recorded with the deed.

(c) Notwithstanding any other provision of this code, and subject to the approval by the director of community development, upon a showing by the applicant that the development is located close to public transportation, parking requirements may be reduced to one space per unit. Factors which shall be considered in determining whether or not to grant a request for reduced parking requirements shall include proximity, accessibility, suitability, practicability and variety of the form or forms of available public transportation.

(d) For purposes of this section, a senior citizen is a person sixty-two years old or older. If two persons occupy a single unit, at least one person must be a senior citizen. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.095).

19.66.120. Priority processing.

All residential developments providing ten percent BMR units or more shall receive "priority processing," by which housing developments shall be reviewed and checked for all required city permit and other approvals in advance of other pending developments. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.100).

19.66.130. Technical and financial assistance.

The city or its designee shall provide assistance to applicants concerning financial subsidy programs, environmental review procedures and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.120).

19.66.140. Enforcement.

(a) The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing a residential development governed by this chapter. No tentative map, use

permit, special development permit or occupancy permit shall be issued for any such development unless exempt from or in compliance with the terms of this chapter.

(b) The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval. The city shall be entitled to all attorneys fees arising out of any action or proceeding to ensure compliance.

(c) Any individual who sells or rents a restricted unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such amounts shall be added to the city's housing fund.

(d) Any individual who violates the terms of this chapter or any deed restrictions may be forced to vacate or sell the unit to the next eligible participant. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.140).

19.66.150. Appeals.

(a) Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension, or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 19.98.

(b) Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by city as its administrative agent, may notify the chief executive officer of the agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by the agency in accordance with such procedures as it may establish. In instances in which violations of this chapter or any agreement with the city on the part of the agency is alleged, the city shall take appropriate investigative and corrective actions. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.140).

19.66.160. Single room occupancy (SRO) living unit facility.

(a) A conditional use permit may be issued for an SRO living unit facility only if the following criteria are met:

(1) Excluding the closet and the bathroom area, an SRO living unit must be a minimum of one hundred fifty square feet in floor area. The average unit size in a living unit facility shall be no greater than two hundred seventy-five square feet and no individual living unit may exceed four hundred square feet;

(2) Each SRO living unit shall be designed to accommodate a maximum of two persons;

(3) An SRO living unit may contain partial kitchen facilities;

(4) Individual SRO living units may not have separate external entryways;

(5) The SRO living unit facility must have a management plan approved by the director of community development. The management plan shall contain management policies, operations, rental procedures, maintenance plans, staffing needs and security procedures. An on-site, twenty-four-hour manager is required in every living unit project. The rental procedures must allow for both weekly and monthly tenancies and specify deposit requirements for each type of tenancy. A manager's unit shall be a complete dwelling unit and so designated on all plans;

(6) Laundry facilities must be provided in a separate room in compliance with Chapter 16.16, at the ratio of one washer and one dryer for every twenty units or fractional number thereof. The laundry facility must be located near the interior common space. Washers and dryers may be coin operated;

(7) A closet and separate storage space, as approved by the director of community development, is required in every SRO living unit facility;

(8) A cleaning supply storeroom and/or utility closet with at least one laundry tub with hot and cold running water must be provided on each floor of the living unit building;

(9) The SRO living unit facility shall provide interior common space at a minimum of four square feet per unit. An SRO living unit facility must provide at least two hundred square feet in area of interior common space, excluding janitorial storage, laundry facilities and common hallways.

(b) The planning commission or the city council shall deny the application for a use permit hereunder where the information submitted by the applicant and/or presented at the public hearing fails to substantiate that the project will comply with these criteria. (Ord. 2623-99 § 1 (part): prior zoning code § 19.32.160)

19.66.170. Single room occupancy (SRO) residential hotel.

(a) A conditional use permit may be issued for an SRO residential hotel only if the following criteria are met:

(1) Excluding the closet and any bathroom space, an SRO residential hotel unit must be at least seventy square feet in floor area;

(2) An SRO residential hotel room designed to accommodate a maximum of one person shall not exceed one hundred fifty square feet in floor area, and an SRO residential hotel room designed to accommodate a maximum of two persons shall be between one hundred twenty and two hundred nineteen square feet in floor area;

(3) An SRO residential hotel unit may contain partial kitchen and bath facilities. If individual bath and/or kitchen facilities are not provided, common bath facilities and/or common laundry and kitchen facilities must be provided in accordance with Chapter 16.16;

(4) Individual SRO residential hotel units may not have separate external entryways;

(5) The SRO residential hotel must have a management plan approved by the director of community development. The management plan shall contain management policies, operations, rental procedures, maintenance plans, staffing needs and security procedures. An on-site twenty-four-hour manager is required in every SRO residential hotel. The rental procedures must allow for both weekly and monthly tenancies and specify deposit requirements for each type of tenancy. A manager's unit shall be a complete dwelling unit and so designated on all plans;

(6) Laundry facilities must be provided in a separate room, at the ratio of one washer and one dryer for every twenty units or fractional number thereof. The laundry facility must be located near the interior common space. Washers and dryers may be coin operated;

(7) A closet and separate storage space, as approved by the director of community development, is required in every SRO residential hotel room;

(8) A cleaning supply storeroom and/or utility closet with at least one laundry tub with hot and cold running water must be provided on each floor of the residential hotel building;

(9) The SRO residential hotel shall provide interior common space at a minimum of four square feet per unit. The SRO residential hotel shall provide a minimum of two hundred square feet of interior common area.

(b) The planning commission or the city council shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate that the project will comply with these criteria. (Ord. 2623-99 § 1 (part); prior zoning code § 19.32.162).

City of Sunnyvale - BMR Home Ownership Program

Table of Plan Types for New Development

Developers Name: _____ Date Submitted: _____

Address: _____ Phone: _____

Name of Development: _____

Location: _____

*8 x 11 Site Map to be
NOTE: Included*

Plan Types	List Unit / Lot #	Lot Size	Livable Area Sq. Ft.	Garage Sq. Ft.	Total Sq. Ft.	# of Units	# of Bdrms	# of Baths

Total: _____

<i>Example:</i>								
<i>Plan Type</i>	<i>Lot #'s</i>	<i>Lot Size</i>	<i>Livable Area Sq. Ft.</i>	<i>Garage Sq. Ft.</i>	<i>Total Sq. Ft.</i>	<i># of Units</i>	<i># of Bdrms</i>	<i># of Baths</i>
<i>Plan 1</i>	<i>43,53</i>	<i>1452</i>	<i>1,738</i>	<i>274</i>	<i>2012</i>	<i>2</i>	<i>3</i>	<i>3.5</i>
<i>Plan 1A</i>	<i>41,44,45,&46</i>	<i>1453</i>	<i>1,762</i>	<i>274</i>	<i>2,036</i>	<i>4</i>	<i>3</i>	<i>3.5</i>
<i>Plan 2</i>	<i>32,35</i>	<i>1450</i>	<i>1,658</i>	<i>433</i>	<i>2,091</i>	<i>6</i>	<i>4</i>	<i>3.5</i>

Total: 8



City of Sunnyvale
 456 W. Olive Avenue
 Sunnyvale, CA 94088-3707
 Phone: 408-730-7250 - Fax: 408-737-4906

**Below Market Rate (BMR) Housing Program
 BMR STANDARD PERMIT CONDITIONS**

Owner / Developer: _____ Date: _____
 Address: _____
 Contact Person: _____ Phone: _____

Property Location: _____ APN: _____

Units Per Application	_____	Units	_____	Bdrm. Size
	_____	Units	_____	Bdrm. Size
	_____	Units	_____	Bdrm. Size
	_____	Units	_____	Bdrm. Size
	_____	Units	_____	Bdrm. Size
	_____	Units	_____	Bdrm. Size
	_____	Units	_____	Bdrm. Size
	_____	Units	_____	Bdrm. Size
TOTAL	_____	Units	_____	Bdrm. Size

Notice to Applicant

If approved, your project will be subject to certain conditions affecting the Below Market Rate units in your project. The purpose of this document is to inform you of the standard BMR conditions at the time of application. Depending upon the nature and location of your project, these conditions will become a part of your Use Permit, Special Development Permit, or Tentative Map and building permit. The Conditions will be incorporated into an Agreement to be entered into after approval of your project and prior to issuance of a building permit.

A. Conditions applying both to ownership and rental projects

1. Developer shall build:
- | | |
|-------|-------------------------|
| _____ | Studio BMR units |
| _____ | One-bedroom BMR units |
| _____ | Two-bedroom BMR units |
| _____ | Three-bedroom BMR units |
| _____ | Four-bedroom BMR units |

Of the foregoing units, _____ will be rental or _____ will be ownership units which shall be permanently designated as such and maintained in compliance with the terms of this permit.

2. Sixty (60) days prior to the estimated occupancy date, Developer shall provide notice of BMR estimated completion date to the Housing Officer.
3. Prior to the issuance of an occupancy permit for any part or phase of the development, Developer/or/Owner shall execute a Deed of Trust in a form approved by the City Attorney, which shall affect title to the designated BMR units. The City will record the Deed of Trust containing the deed restrictions. Such restrictions shall be designed and intended to bind successors in interest. For rental developments, the controls will run with the land for the period of 55 years from the date of recordation thereof; for ownership developments, the controls will run for 30 years.

The recordation of the Deed of Trust shall be a condition precedent to issuance of a permit to occupy the development.

B. Conditions applying to all Ownership units:

1. The initial sales price of Ownership BMR units shall not exceed:

_____ - _____	Studio unit(s)
_____ - _____	One-bedroom unit(s)
_____ - _____	Two-bedroom unit(s)
_____ - _____	Three-bedroom unit(s)
_____ - _____	Four-bedroom unit(s)

2. Developer shall offer said BMR units for sale only to persons qualified under the terms of Sunnyvale Municipal Code Chapter 19.66, as amended. Offers shall be in writing and shall be held open for no less than 90 days.
3. Following acceptance of an offer of sale, Developer shall execute all necessary sales documents, and shall use its best efforts to complete each sale transaction.

A Deed of Trust shall be recorded on each unit, which shall affect resale and occupancy of the designated BMR unit. The restrictions of the Deed of Trust shall bind the purchaser for the period of 30 years from the date of recordation. Should the property be transferred prior to the expiration of the thirty year period, future transferees will be required to enter into a new Deed of Trust and an additional thirty year term, or as may be amended from time to time by revisions to Chapter 19.66.

C. Conditions applying to all rental units:

1. BMR Rental units shall be held and maintained by Developer and its successors in interest as BMR rental units. They shall be made available to and occupied only by persons qualified therefore under the provisions of Sunnyvale Municipal Code Chapter 19.66, as amended.
2. Developer shall permit reasonable access to the development to City or its designee for purpose of monitoring and verifying continuous compliance with Sunnyvale Municipal Code Chapter 19.66, as amended.
3. The initial base rental prices of such units shall not exceed:

_____ Studio unit(s)
_____ One-bedroom unit(s)
_____ Two-bedroom unit(s)
_____ Three-bedroom unit(s)
_____ Four-bedroom unit(s)

4. In the event that any BMR unit or portion thereof is destroyed by fire or other cause, all insurance proceeds there from shall be used to rebuild such units.

Any material breach of these BMR conditions shall constitute grounds for the revocation of this permit, in addition to other remedies provided by law.

Laura Simpson, Housing Officer

Date

Owner / Developer

Date

City of Sunnyvale Agreement for Below Market Rate Rental Housing Development

Date:

Site:

Unit No. and composition:

Composition of BMR Units							Unit #		
Type:	(		Bedroom/		Bath)	Total of	Units (s)	Unit	
Type:	(		Bedroom/		Bath)	Total of	Units (s)	Unit	
Type:	(		Bedroom/		Bath)	Total of	Units (s)	Unit	
Type:	(		Bedroom/		Bath)	Total of	Units (s)	Unit	

1. BMR rental units shall be held and maintained by developer and its successors in interest as BMR rental units for a period of fifty-five years from the date of occupancy and recordation of the Deed of Trust securing BMR restrictions. Developer and its successors shall comply with the provisions of Sunnyvale Municipal Code Chapter 19.66 as amended and the administrative procedures for the operation of Below Market Rate rental units.
2. All BMR units in the project or phase of the project shall be constructed concurrently with non-BMR units, shall be dispersed throughout such project, reflect the range of numbers of bedrooms provided in the project as a whole, reflect the square footage of the units in the project, and shall not be distinguished by exterior or interior design, construction, or materials.
3. The following described rental units are hereby designated as Below Market Rate (BMR) rental units and shall be subject to the terms and conditions of the Below Market Rate Program.

a.	The following units are studio BMR units:	
b.	The following units are one-bedroom BMR units:	
c.	The following units are two-bedroom BMR units:	
d.	The following units are three-bedroom BMR units:	

A site map identifying the location of the BMR units is attached. City staff will review and determine acceptance of the location of the BMR units.

4. The City of Sunnyvale may specifically enforce the terms and conditions of the BMR program, by any means or process permitted by law. Eligibility criteria applicable to prospective tenants

and all information pertaining to the administration and enforcement of Chapter 19.66 of the Sunnyvale Municipal Code provisions may be obtained from:

Department of Community Development
Housing Division
City Hall
456 West Olive Avenue
P.O. Box 3703
Sunnyvale, CA 94088-3707

5. This Agreement contemplates that from time to time, the Developer or its successor may designate different units as BMR rentals rather than the units described in Item 3. The changes may be made provided the following conditions are satisfied:
 - a. The total number of BMR units shall not be less than the _____ () initial BMR rental units as set forth in this Agreement.
 - b. All designated BMR units shall be dispersed through-out the project so that the distribution of designated units is substantially the same as set forth in Item 3 with at least:

_____ () of studio BMR units
_____ () of one-bedroom BMR units
_____ () of two-bedroom BMR units
_____ () of three-bedroom BMR units
 - c. Developer or its successor shall send written notification to the Director of Community Development of the City of Sunnyvale of any changes in the designation of BMR units within thirty (30) days of such change.
6. All of the designated BMR units shall be maintained in accordance with all applicable provisions of Sunnyvale Municipal Code Chapter 19.66 and the administrative procedures for the Below Market Rate Rental Program.
7. None of the terms set forth herein is intended or shall be construed to prohibit or regulate the encumbrance of title to any part of the real property which is the subject of this Agreement. In the event of foreclosure or transfer of deed in lieu thereof, title to such property shall be taken subject to these restrictions.

8. Developer or its successor shall endorse a Deed of Trust to secure the BMR restrictions and to be recorded on the property at issuance of a Certificate of Occupancy by the City of Sunnyvale Building Division. Base rents for the BMR units will be established, at initial occupancy of the units. Base rents are calculated utilizing the following methods and the lower rent calculated is the initial base rent :

a) Initial Rents are calculated based on HUD Area Median Income for San Jose Metropolitan Statistical Area as follows: HUD publishes annual Area Median Income (AMI) data for 1-8-person households. Monthly rents would be equal to 30% of 65% of AMI divided by twelve based upon number of bedrooms; i.e., 1 Bedroom equals two-person household income, 2 Bedroom equals three person household income. Therefore, if AMI is at 95,000 for a three person household, the maximum monthly rent for a two bedroom unit would be:

$$95,000 \times .65 = 61,750 \times .30 = 18,525 \text{ divided by } 12 \text{ (months)} = \$1,543.75$$

b) Initial Rents are calculated utilizing the City of Sunnyvale Rent and Vacancy Survey Report published in July (January through June) and January (July through December). The semi-annual survey conducted by Realfacts, Inc. surveys approximately 100 complexes containing approximately 15,000 rental units. The report contains current market median rents per number of bedrooms. The initial rents for the BMR units are set at 80 % of median rents as contained in the most recent Rent and Vacancy Survey Report. Therefore if the current report contains information that median rent for a two bedroom rental is \$1,335, then the base rent would be:

$$1,335 \times .20 = 267 \quad 1335 - 267 = \$1,068$$

, Developer

Date

Laura Simpson, Housing Officer
on behalf of the City of Sunnyvale

Date

RECORDING REQUESTED BY:

Attachment 5

City of Sunnyvale – Housing Division
Record at No Fee per Government Code #6103

WHEN RECORDED MAIL TO:

City of Sunnyvale-Housing Division
456 West Olive Avenue
Sunnyvale, CA 94088-3707
Phone: 408-730-7250

**Below Market Rate Developer Agreement - Ownership
City of Sunnyvale**

I, _____ (“Owner” herein), declare that its interest in the real property described as _____, located at _____, Sunnyvale, California, of which a site map is included as **Attachment A**, is and shall be subject to the terms of this agreement. This agreement (“Agreement”) when fully executed by the "Owner" and the City of Sunnyvale represents the agreement between the parties on the number, type, size, location and initial sale price for the Below Market Rate units contained in the _____ development.

1. That certain residential dwelling units described herein are hereby designated as a Below-Market Rate (BMR) unit, and shall be subject to the terms and conditions herein set forth. In the event that the parcel shall be subdivided, into condominium "airspace" units or otherwise, the terms and conditions hereof shall apply exclusively to said designated units, and not to any common area or other undesignated unit.

Ownership BMR Units									Unit #
Type:		(	Bedroom/	Bath)	Total of	Unit(s)	Unit	
Type:		(	Bedroom/	Bath)	Total of	Unit(s)	Unit	
Type:		(	Bedroom/	Bath)	Total of	Unit(s)	Unit	

All BMR units in the project or phase of the project shall be constructed concurrently with non-BMR units, shall be dispersed throughout such project, reflect the range of number of bedrooms, provided in the project as a whole, reflect the square footage of the units in the project, and shall not be distinguished by exterior or interior design, construction, or materials.

2. In consideration of certain valuable land use and economic benefits conferred by the City of Sunnyvale upon the parcel, Owner, for itself, its successors, heirs, grantees and assigns, hereby obligates itself to construct and maintain the above described units as a Below Market Rate (BMR) residential dwelling unit as further defined in Chapter 19.66 of the Sunnyvale Municipal Code, in accordance with the provisions thereof and in accordance with the administrative guidelines pertaining to the implementation and management of the Below Market Rate Program as may be amended from time to time. Such units shall be purchased and shall be occupied only by persons or

households (“Qualified Purchaser”), selected and approved by the City of Sunnyvale, in compliance with the provisions of Chapter 19.66 as amended, and any other terms and conditions set forth herein. Each Qualified Purchaser shall be required to endorse and record a Deed of Trust to secure the BMR restrictions for a period of thirty years from the date of purchase, a sample of which is included in **Attachment B**.

3. The specified BMR unit shall remain unoccupied and shall not be used for any other purpose **such as, a sales office, model and/or storage during construction of the development** during the escrow period. Owner and Qualified Purchaser will make every effort possible to close escrow by the date agreed to **in the Purchase Contract and BMR Addendum**.

4. The Below Market Rate Purchase Prices, effective and accepted as of the date of this agreement are as follows:

One Bedroom Units	\$
Two Bedroom Units	\$
Three Bedroom Units	\$
Four Bedroom Units	\$

The estimated completion date for all the designated units is: _____

The price charged to any Qualified Purchaser of the BMR unit above described shall be limited to the original purchase/sales price set forth in this agreement, the Special Development Permit, Use Permit or Tentative Map applicable.

5. At least 60 days prior to completion of a BMR unit, _____, **Owner** will provide the Housing Officer with a written notice as to the unit available for purchase. Notice shall be addressed to: Housing Officer, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, CA. The Housing Division will then deliver a previously Qualified Purchaser to the Owner. The Qualified Purchaser will be responsible for securing and qualifying for financing. The Owner is not required to finance any portion of the sales price. Owner shall provide the earliest dates that unit(s) may be shown to BMR applicants, information for sales contact. (**Attachment “C” Notice to City of Estimated Construction Completion Date.**)

6. Each BMR unit shall first be offered for sale, in writing, to the City of Sunnyvale or its designee. The City or its designee must accept the offer of sale within ninety (90) days of the offer. Once the offer has been accepted, an escrow shall be opened in a timely manner. The duration of escrow shall not exceed ninety (90) days in the event that the City's designee opens the escrow; Owner shall reserve the right to limit the duration of escrow to ninety (90) days. (**Attachment “C” Notice to City of Estimated Construction Completion Date.**)

Owner shall give notice to City of any intent to dissolve escrow at least 10 days prior to dissolution. City shall retain the right to purchase the BMR unit for an additional period of fifteen (15) days commencing from the date of dissolution of escrow.

Nothing herein shall prevent the City from substituting one Qualified Purchaser for another, provided that the Owner shall not be bound by these restrictions for a period exceeding one hundred and ninety (190) days from the date the property is offered for sale.

If the city or its designee does not accept an offer of sale within one hundred and eighty days, all restrictions, resale controls, and other terms of Sunnyvale Municipal Code 19.66 shall cease and become null and of no further effect as to such unit.

7. The City of Sunnyvale or its designee may specifically enforce the terms and conditions contained herein, by any means or process permitted by law. Administrative guidelines pertaining to the computation of prices, eligibility criteria applicable to prospective purchasers and further information related to the administration and enforcement of the Sunnyvale Municipal Code provisions pursuant to which the terms of this agreement have been applied may be obtained from the Housing Division, Department of Community Development, P.O. 3707, Sunnyvale, California 94086-3707.
8. None of the terms set forth herein neither is intended nor shall be construed to prohibit, extend time periods, or otherwise regulate any foreclosure or transfer of title occasioned by the default of the Owner. Any notice of default shall constitute a notice of intent to sell by the Owner and the City reserves the right to cure any such default in order to preserve the unit in the BMR program.
9. The total aggregate amount of indebtedness that may be secured by a BMR unit shall not exceed the purchase price for the BMR unit or the right of the City of Sunnyvale to acquire the BMR unit on certain terms in the event of a pending foreclosure sale of the property.
10. In the event of foreclosure or transfer of deed in lieu thereof for a BMR unit, title to such BMR unit shall be taken subject to these restrictions.
11. Qualified Purchasers shall advise lenders of BMR Program Requirements. Each Qualified Purchaser shall provide each lender to which Qualified Purchaser applies for financing of the purchase of the BMR unit a complete copy of the Contract including this Agreement and advise each lender that the BMR Ordinance and administrative regulations include requirements with which any financing documents provided must comply and limit the amount of loan that can be secured on the BMR unit.
12. No liability of BMR Program (as defined in this paragraph). The City of Sunnyvale, including all of its' employees, agents, contractors, representatives and counsel shall have no liability to either party and are hereby unconditionally and forever released from any and all liability whatever in connection with the purchase and sale of the BMR unit pursuant to this agreement. Owner and Qualified Purchaser expressly acknowledge that each of them intends the BMR Program to be the beneficiary of such release.
13. The terms and conditions set forth herein are intended to run with the land and shall bind Owner and all successors, heirs, grantees, and assigns. These terms and conditions shall be made part of each

deed subsequently recorded and shall bind each successor in interest for a separate period of thirty years from the date of recordation.

- 14. The Owner and all successors, heirs, grantees, and assigns shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of the Act, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program.

Federal Fair Housing laws prohibit discrimination in the sale, rental, lease or negotiation for real property based on race, color, religion, sex national origin, familial status, and disability. California Fair Housing laws built on the federal laws and added marital status, ancestry and “any arbitrary discrimination” as the protected categories under the laws.

Fair Housing is defined by HUD in 24 CFR 570.904 {c}{1} to mean the ability of persons of similar income levels to have the same housing choices regardless of race, color, religion, sex, handicap, familial status or national origin. Discrimination in the sale or rental of housing is prohibited against these protected classes. Fair housing laws are intended to further equal opportunity in housing, mortgage lending and purchase of mortgage insurance.

, Developer

Date

Laura Simpson, Housing Officer
City of Sunnyvale

Date

Affix Notarization of Signatures

Attachments:

- a. Legal Description
- b. Map of Site – Attachment “A”
- c. BMR Purchase Deed of Trust – Attachment “B”
- d. Notice to City of Estimated Construction Completion Date – Attachment “C”
- e. Sunnyvale Municipal Code Chapter 19.66 – Attachment “D”

ACKNOWLEDGEMENT REQUIRED

STATE OF CALIFORNIA)
)ss.
COUNTY OF SANTA CLARA)

On _____ before me _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that 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.

Signature of Notary

(This area for official notarial seal)

ACKNOWLEDGEMENT REQUIRED

STATE OF CALIFORNIA)
)ss.
COUNTY OF SANTA CLARA)

On _____ before me _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that 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.

Signature of Notary

(This area for official notarial seal)

'ATTACHMENT "B"'

RECORDING REQUESTED BY

CITY OF SUNNYVALE

Record at No Fee per Government
Code Section 6103

AND WHEN RECORDED MAIL TO

Housing Division Phone: 408-730-7250

CITY OF SUNNYVALE

456 W. Olive Avenue
P.O. Box 3707
SUNNYVALE, CA 94088-3707

_____SPACE ABOVE THIS LINE FOR RECORDER'S USE_____

APN#: _____

DEED OF TRUST

Securing Deed Restrictions that control the resale of the Below Market Rate Property, including obligations and restrictions limiting the use and occupancy, the resale value of the property and the ability to transfer title to the property.

THIS DEED OF TRUST is made as of _____, 20 _____ between _____, _____, ("Trustor"), and the CITY OF SUNNYVALE, a Municipal Corporation of the State of California ("Trustee" and Beneficiary), whose address is: 456 West Olive Avenue, P.O. Box 3707, Sunnyvale, California, 94088-3707.

This Deed of Trust is security to insure compliance with the provisions of the Sunnyvale Below Market Rate Ordinance Chapter 19.66 and is secured on _____, SUNNYVALE, CALIFORNIA a below market rate property and is entered into as of this ____ day of _____, 20 _____, by and between the **CITY OF SUNNYVALE**("City")and _____, ("Owner"). The covenants run with the land and the terms and conditions of the Deed of Trust are intended to bind the Owner for thirty (30) years from the date of the recordation of the Deed of Trust.

RECITALS

WHEREAS, the City has developed a program 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; and

WHEREAS, the intent of the City is to preserve the number and availability of affordable homes in the program for persons with low or moderate incomes for as long as possible;

Whereas, the parties understand and agree that owner will take out a purchase money loan secured by a First Deed of Trust on the property. This purchase money loan may not exceed 97% of the Below Market Rate value of the property. In order to protect the City of Sunnyvale interest in the property, further encumbrancing of the property, after the purchase money loan, including refinancing of the First Deed of Trust, second or subsequent loans and/or any other encumbrances or liens against the property shall be limited such that the total encumbrances of the property does not exceed 95% of the Below Market Rate value of the property. Violation of this provision shall be considered a prohibited transfer and will constitute a breach of the Deed of Trust. The Below Market Rate value is \$_____ and may be adjusted by the City of Sunnyvale, from time to time, as described in the Purchase Price formula adjustment contained in Section 15(B).__

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

1. Premises. The real property which is the subject of this Deed of Trust is commonly known as (street address), SUNNYVALE, CALIFORNIA more fully described in the legal description attached hereto and incorporated herein by reference as Exhibit "A." Said real property ("Premises") is hereby designated as a Below-Market Rate Unit ("BMR unit") and shall be subject to the terms and conditions herein set forth, as well as the applicable provisions of Sunnyvale Municipal Code Chapter 19.66, and administrative procedures together with any amendments, which may be adopted from time to time.

2. Supersession. This Deed of Trust shall supersede any and all resale Deed of Trusts, deed restrictions and other similar conditions and/or restrictions previously imposed on the Premises pursuant to the provisions of Chapter 19.66 of the Sunnyvale Municipal Code, whether or not such previous Deed of Trusts or restrictions were recorded.

3. Owner Representations and Warranties. The Owner represents and warrants to the City that the financial and other information previously provided to the City by the Owner for the purpose of qualifying to purchase the BMR unit was true and correct at the time it was given and remains true and correct as of the date of the Deed of Trust. Owner shall be in default if Owner, during the loan application process, gave materially false or inaccurate information or statements to City (or failed to provide City with any material information) including, but not limited to, representations concerning (i) Owner's occupancy of the Property as a principal residence and (ii) Owner's income. Owner further understands that any material misstatement or misrepresentation shall be deemed to be a material breach of this Deed of Trust.

4. Occupancy of Property: Owner shall occupy, establish and maintain the use of the Property as Owner's principal residence within thirty (30) days after the execution of this Deed of Trust. Owner's principal residence shall mean the Property is occupied by the Owner for at least ten (10) months out of each year. The Owner shall not lease the Property without the express written consent of the City of Sunnyvale during any twelve-month period and shall not lease the property without providing the City with a copy of the lease. Owner shall continuously claim a homeowner's exemption for property taxes with

the Santa Clara County Assessor's Office on the Property. Failure to claim the homeowner's exemption is a breach of the terms and conditions of the Deed of Trust.

5. Transfer by Owner. Any attempt by the Owner to make a Prohibited Transfer to or any interest in the Property in violation of the terms of the Deed of Trust shall be void and subject to exercise by the City of it's right of first refusal to purchase.

(A) "Transfer" means any voluntary or involuntary sale, assignment or transfer of or any interest in the Property, including fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate, leasehold interest or any rental of the Property, or any interest evidenced by a land contract, or any encumbrance or liens exceeding 95% of the Below Market Rate value of the property. Any Transfer without satisfaction of the conditions of this Deed of Trust shall be deemed a "Prohibited Transfer".

(B) The following Transfers are not considered Prohibited Transfers and therefore are not subject to the City's right to exercise it's right of first refusal to purchase: (a) Transfer by devise, or inheritance to the Owner's spouse; (b) Transfer of title by an Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property; (c) Transfer of title to a spouse as part of divorce or dissolution proceedings; (d) Transfer of title or an interest in the Property to the spouse in conjunction with marriage; providing, however; that these covenants shall continue to run with the title to the Property following said Transfers; and that an instrument be executed, acknowledge and recorded by the Transferee containing the following covenant: "This Property is subject to the Deed of Trust securing deed restrictions that restrict the resale, refinance, occupancy and contain City's right of first refusal to purchase and Transfer on behalf of Transferee, and Transferee's successors and assigns, covenants and agrees to be bound by and perform according to the terms and conditions of the Deed of Trust, and to include in any further Transfer of the Property the covenant required by Section 5(B) of the Deed of Trust." A Transferee who satisfies the conditions of this Section 5(b) shall then be the Owner.

(C) Transfers by devise or inheritance will be permitted under the following terms and conditions of transfer: (a) Transferee will reside in the Property and within thirty (30) days of the transfer the Transferee shall occupy, establish and maintain the use of the Property as Transferee's principal residence; (b) The Transferee shall provide all information related to household income necessary for the purpose of determining the financial qualifications of the transferee to own a BMR unit; and (c) The Transferee will execute a Deed of Trust securing the covenants and conditions of the City of Sunnyvale Below Market Rate Program including any and all conditions contained in Sunnyvale Municipal Code Chapter 19.66, including any amendments thereto which may be adopted from time to time and this instrument will include a full renewal of the term of the restrictions of the Below Market Rate Program as provided for in Sunnyvale Municipal Code Chapter 19.66, as related to the purchase of units.

6. Notice of Prohibited Transfer Within thirty (30) days after receiving notification of a Prohibited Transfer, the City of Sunnyvale shall give written notice to the Owner, specifying the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of the City within ten (10) days after the date of the notice or within such further time as the City determines is necessary to correct the violation, the City may declare a default under the terms of this Deed of Trust. Upon the declaration of a default, the City may exercise its right of first refusal to purchase, may apply to a court of competent jurisdiction for specific performance under the terms of the Deed of Trust, for an injunction prohibiting a proposed sale or transfer in violation of the terms of the Deed of Trust, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.

7. Fannie Mae. Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage held by the Federal National Mortgage Association (FNMA—"Fannie Mae") pursuant to the Community Partnership Program as described in Part V, section 224 of the Fannie Mae Selling Guide. In the event of a foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral Deed of Trust restricting the use of the Premises to low or moderate income households or otherwise restricting the Owner's ability to sell the Premises shall have no further force or effect on subsequent owners or purchasers of the Premises. Any person, including his or her successors or assigns (other than the Owner or a related entity of the Owner), receiving title to the Premises through a foreclosure of the First Deed of Trust shall receive title to the Premises free and clear from such restrictions. Provided that (i) the City has been given written notice of a default under the First Deed of Trust and (ii) the City shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the 60-day period provided in such notice sent to the City.

8. Attorneys' Fees. Owner hereby agrees to reimburse City the full cost and expense, including staff time and attorneys' fees and costs, incurred by City in an effort to correct any default or enforce any violation of the terms of this Deed of Trust, and Owner further understands and agrees that if such funds are not reimbursed, City may deduct same from the proceeds upon resale of the Premises.

9. Covenant Running with the Land. The terms and conditions set forth herein are intended to run with the land and shall bind Owner and all successors, heirs and grantees. These terms and conditions shall be made part of each deed subsequently recorded and shall bind each successor in interest until the earlier of (a) **thirty (30) years** from the date of recordation; or (b) the recordation of a subsequent and superseding Deed of Trust covenant.

10. Right of First Refusal. Except as provided herein, Owner hereby grants and gives to the City of Sunnyvale or its designee a right to purchase the Premises under conditions set forth below. City, at its sole discretion, may assign this right to an individual buyer who meets the City's eligibility qualifications to participate in the program.

City reserves the right to reassign the right to another eligible, qualified buyer in the event the initial designee fails or is unable to complete the transaction. Any assignment or reassignment of this right shall extend the time limits for performance under this Deed of Trust.

11. Resale Procedures.

A. Notice of Offer to Sell. Whenever the Owner no longer desires to own the Premises, Owner shall notify City of their intent to offer the property for sale in accordance with the terms of this Deed of Trust. Such notice shall be in writing, and may be personally delivered or sent by first class mail through the United States Postal Service, addressed to the Director of Community Development, **City of Sunnyvale, P.O. Box 3707, Sunnyvale, California 94088-3707**. Owner's offer to sell may be withdrawn by Owner, provided that notice of withdrawal has been received by City or its Designee, in writing, prior to acceptance by City or its Designee.

B. Acceptance. City, its designee or assignee shall accept offer within one hundred eighty (180) days from the date of receipt of Owner's notice of offer to sell the Premises. This acceptance shall be in writing, and personally delivered or sent by first class mail through the United States Postal Service, addressed to the Owner of record at the official address of the Premises. For purposes of fulfillment of the terms of this procedure, the notice of intent to sell the premises shall be deemed to be an offer to sell, and the exercise of the right to purchase by the City or its designee or assignee shall be deemed to be an acceptance of that offer. Acceptance by City or its Designee shall constitute a legally binding contract for the transfer of title, and once accepted, the offer to sell may not be withdrawn without the express, written consent of the party who accepted the offer.

C. Escrow. Within ninety (90) days of the date of acceptance, the City or its designee shall open an escrow account. City reserves the right, at any time during this process, to subsequently assign its right to purchase to an individual who is eligible and qualified to participate in the program. Once opened, an escrow must be closed within ninety (90) days, unless both parties mutually agree, in writing, to an extension of time. In no case shall the time between receipt of an offer to sell and the date of close of escrow exceed three hundred and sixty (360) days, unless both parties mutually agree, in writing, to extend that date, or if for any reason the time periods herein are tolled pursuant to the administrative procedures.

D. Acceleration of Time Period for Hardship. Owner may request the City to accelerate the time period specified in subsection B. for a party to accept the offer to sell, or for the City to exercise its right of first refusal, to not exceed ninety (90) days from the receipt of the offer to sell. The Owner would be entitled to accelerate the time period if, in the determination of the Director of Community Development, the Owner can establish that failure to accept the offer to sell, or for the City to otherwise fail to exercise its right of first refusal within ninety (90) days would result in a hardship to the Owner. For purposes of this Deed of Trust, the Owner shall establish that a hardship would result by submission of competent evidence, of a

significant loss of funds, loss of an opportunity to qualify or otherwise purchase a new home, or due to an unexpected and sudden loss of employment, job transfer, or death of a spouse or immediate family member. The determination of the existence of a hardship shall be at the sole discretion of the Director of Community Development. Examples of possible grounds for establishing a hardship shall include, but not be limited to, an extraordinary and significant loss of funds, loss of an opportunity to qualify or otherwise purchase a new home, or an unexpected and sudden loss of employment, job transfer, or death of a spouse or immediate family member. Any request for acceleration due to hardship shall be requested by the Owner, in writing, not later than thirty (30) days from the date of receipt of the notification of intent to sell. The Director shall make a determination and notify the owner within ten (10) business days of receipt of the request for a hardship acceleration that the request has been approved, denied, or that additional information is required to make the determination. In the event the request is denied, or if additional information is required, the Owner may submit further evidence and request a reconsideration. In any case, the City shall have a minimum of sixty (60) days from the date of receipt of the new evidence or of the request for reconsideration of a previously issued denial to accept the offer to sell.

12. Termination of Conditions. If the City or its designee does not accept an offer of sale within one hundred eighty (180) days of the date of receipt of Owner's notice, or an escrow account is not opened within ninety (90) days of the date the offer has been accepted, all restrictions, resale controls, and other terms of this Deed of Trust shall cease and become null and void and of no further effect as to the Premises, unless the time period has been tolled, or extended by mutual, written Deed of Trust of the parties.

13. Owner's Obligation to Cooperate. At all times, Owner shall ensure that the Premises are clean and in good repair, and available to be shown to prospective buyers. Owner shall cooperate with the City of Sunnyvale and its respective officers, employees and representatives. Failure to comply with these conditions shall be deemed a material breach of Owner's obligations pursuant to the terms of this Deed of Trust, and upon determination by the City that Owner has failed to comply with any of the above conditions, City shall notify Owner that the time periods stated herein shall be tolled, and the applicable time periods extended accordingly, until Owner has complied with all of the conditions of this Deed of Trust. Acts by Owner which shall be deemed to be a breach of this obligation include, but are not limited to, failure to make the unit available for showing to prospective buyers upon reasonable notice, willful or deliberate actions to dissuade prospective buyers from purchasing the unit, and failure or refusal to return telephone calls, complete forms, provide required reports, or perform other actions ordinarily required by a party to a real estate transaction in a timely manner. In addition to tolling the applicable time periods, the City may pursue any other remedies for breach based upon this paragraph, or as pursuant to the administrative procedures.

14. Closing Costs. Closing costs, home inspections and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of such escrow. All work recommended in said report to repair damage caused by infestation

or infection of wood-destroying pests or organisms found and all work to correct conditions that caused such infestation or infection shall be done at the expense of the Seller. Any work to correct conditions usually deemed likely to lead to infestation or infection of wood-destroying pests or organisms, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of the Seller, and such work shall be done only if requested by the Buyer and then at the expense of the Buyer. The purchase price shall be paid in cash at the close of escrow or as may be otherwise provided by mutual agreement of Buyer and Seller.

15. Purchase Price. The purchase price of the Premises shall be fixed at the lower amount as determined by using the following two methods:

A. Fair Market Value. City or its designee shall have an appraisal made by an appraiser of its choice to establish the fair market value. The Owner, at his or her own expense, may also have an appraisal made by a qualified appraiser of Owner's choice to establish the market value. If Owner elects to obtain their own appraisal, the time period during which the City has the option to perform pursuant to this Deed of Trust shall be tolled for the period of time between the time the City obtains an appraisal and Owner submits a separate appraisal. If an Deed of Trust cannot be reached as to the fair market value, the average of the two appraisals shall be deemed the market price, unless the difference between the two appraisals is greater than ten (10) percent of the amount of the higher appraisal, in which case City has the option of requesting a third appraisal be conducted by a qualified appraiser agreed upon by both City and Owner, who will make an independent appraisal without knowledge of the results of the first two appraisals. The amount of the first two appraisals which is closer to the amount determined by the third appraiser shall be deemed the fair market value for purposes of this Deed of Trust.

B. Adjusted by Consumer Price Index. **Base Price:**
Dollars (), plus an amount, if any, to compensate for any increase in the cost of living as measured by the housing component of the Bay Area or closest metropolitan area Consumer Price Index ("Index") for all Urban consumers (CPI-V) as published periodically by the United States Department of Housing and Urban Development. For that purpose, the Index prevailing on the date of the purchase by the selling Owner of said Premises shall be compared with the latest Index available on the date of receipt by City of notice of intent to sell. The percentage increase in the Index, if any, shall be computed and the base price shall be increased by one-third (1/3) of that percentage; provided, however, that the price shall in no event be lower than the purchase price paid by the selling Owner when that Owner purchased the Premises. The purchase price shall be adjusted to include the amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, costs for the services of a real estate professional to administer the transaction, minus any costs necessary to bring said unit into conformity with all applicable provisions of the Sunnyvale Municipal Code.

16. Improvements. The adjusted price described in Paragraph 15.B above shall be increased by the value of any substantial structural or permanent fixed improvements which cannot be removed without substantial damage to the Premises or substantial or total loss of value of said improvements, and by the value of any appliances, fixtures, or equipment which were originally acquired as part of the Premises by Owner; provided that such price adjustment for replacement appliances, fixtures, or equipment shall be allowed only when the expenditure is necessitated by the non-operative or other deteriorated condition of the original appliance, fixture, or equipment.

A. If at the time of replacement the original appliance, fixture, or equipment had in excess of twenty percent (20%) of its original estimated useful life remaining, Owner shall document to the City's satisfaction the condition of the appliance, fixture, or equipment which necessitated its replacement.

B. No such price adjustment shall be made significantly in excess of the reasonable cost to replace the original appliance, fixture, or equipment with a new appliance, fixture, or equipment of comparable quality as hereinafter provided.

(1) No such adjustment shall be made except for improvements, appliances, fixtures, or equipment made or installed by the selling Owner.

(2) No improvements, appliances, fixture, or equipment shall be deemed substantial unless the actual initial cost thereof to the Owner exceeds one percent (1.0%) of the purchase price paid

by the Owner for the Premises; provided that this minimum limitation shall not apply in either of the following situations:

(a.) Where the expenditure was made pursuant to a mandatory assessment levied by the Homeowners' association for the development in which the Premises is located, whether levied for improvements or maintenance to the Premises, the common area, or related purposes.

(b.) Where the expenditure was made for the replacement of appliances, fixtures, or equipment which were originally acquired as part of the Premises by Owner.

C. No adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless the Owner shall present to the City valid written documentation of the cost of said improvements. The value of such improvements by which the sale price shall be adjusted shall be determined as follows:

(1) The value of any improvement, appliance, fixture, or equipment, the original cost of which was less than Five Thousand Dollars (\$5,000), shall be the depreciated value of the improvement, appliance, fixture or equipment calculated in accordance with principles of straight-line depreciation applied to the original cost of the improvement, appliance, fixture or equipment based upon the estimated original useful life of the improvement, appliance, fixture or equipment.

(2) The value of any improvement, appliance, fixture, or equipment, the original cost of which was Five Thousand Dollars (\$5,000) or more, shall be the appraised market value of the improvement, appliance, fixture or equipment when considered as an addition or fixture to the premises (i.e., the amount by which said improvement, appliance, fixture or equipment enhances the market value of the premises) at the time of sale. Said value shall be determined in the same manner as the market value of the premises in method 1 above.

(3) On January 1, 1988 and every two years thereafter, regardless of the date of execution or recordation hereof, the amount of Five Thousand Dollars (\$5,000) referred to in paragraphs 1) and (2) immediately above shall be automatically adjusted for the purpose of those paragraphs in the following manner. On each adjustment date, the Consumer Price Index for the San Francisco - Oakland area published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") prevailing on January 1, 1986, shall be compared with the Index prevailing on the date of recordation of this deed. The percentage increase in the Index, if any, shall be computed and the sum of Five Thousand Dollars (\$5,000) shall be increased in the same percentage. In no event shall the sum be reduced below Five Thousand Dollars (\$5,000).

(4) No price adjustment will be made except upon presentation to City of written documentation of all expenditures made by Owner for whom an adjustment is requested.

D. Notwithstanding any other provision herein, no adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless said improvements were completed with required permits and in accordance with applicable provisions of the municipal code. Moreover, no adjustment shall be made for any improvements, appliance, fixtures, or equipment, which were installed or completed in violation of any applicable provision of the homeowners' association by-laws, CC&Rs, or other similar restrictions or regulations.

17. Deferred Maintenance. Any purchase price determined through the use of this method shall be adjusted by decreasing said price by an amount to compensate for deferred maintenance costs, which amount shall be determined in the following manner. Upon receipt of notice of Owner's intent to sell, City or its designee shall be entitled to inspect the Premises. The owner shall provide the City with a copy of a home inspection report conducted by a licensed home inspection service within 10 days of seller's acceptance of the purchase offer. City or its designee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire, or housing codes exist or any other provisions of Title 16 of the Sunnyvale Municipal Code. Additionally, City or its designee shall determine if there are other items of deferred maintenance beyond normal use requiring repair or replacement. In the event deficiencies are noted, the Owner shall obtain estimates to cure the observed deficiencies. The Owner shall cure the deficiencies in a reasonable manner acceptable to City or designee no later than ten (10) days prior to the close of escrow. Should Owner fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of City, or its designee, the escrow holder will

be instructed to retain funds necessary to pay for curing such deficiencies (based upon written estimates obtained by City, or its designee), and City shall cause such deficiencies to be cured, and upon certification of completion of work by City, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the selling Owner.

18. Assignment of Right to Purchase. In no event shall City become in any way liable to Owner, nor become obligated in any manner, by reason of the assignment of its right to purchase, nor shall City be in any way obligated or liable to Owner for any failure of City's assignee to consummate a purchase of the premises or to comply with the terms of any purchase and sale Deed of Trust. Nothing in this Deed of Trust shall be construed to obligate City to purchase any unit in the event that a buyer participating in the BMR program fails to complete actions to close escrow.

19. City Consent to Lease. Until such time as the City's right to purchase is exercised, waived, or expired, the Premises and any interest in title thereto shall not be sold, leased, rented, assigned, or otherwise transferred to any person or entity except with the express written consent of City or its designee, which consent shall be consistent with the City's goal of creating, preserving, maintaining, and protecting housing in Sunnyvale for persons of low and moderate income.

20. Default and Foreclosure. City shall file for record in the Office of the Recorder of the County of Santa Clara a request for a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering said premises pursuant to Section 2924 (b) of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to the **Director of Community Development, City of Sunnyvale, 456 W. Olive Avenue, P.O. Box 3707, Sunnyvale, California 94088-3707.** Any notice of sale given pursuant to Civil Code, Section 2924 (f) shall constitute a notice of intent to sell hereunder and City may exercise its preemptive right prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure. City's right to purchase shall run from the date City obtains actual knowledge of a sale or proposed sale. In the event City elects not to exercise its right to purchase upon default, any surplus to which Owner may be entitled pursuant to Code of Civil Procedure, Section 727, shall be paid as follows:

(A) That portion of surplus (after payment of encumbrances), if any, up to but not exceeding the net amount that Owner would have received after payment of encumbrances under the formula set forth above had City exercised its right to purchase the property on the date of the foreclosure sale, shall be paid to Owner on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the City to fund the cost to the City for increasing the City's low-income and moderate-income housing stock.

(B) City or its designee shall be entitled to recover all costs incurred in curing such default from Owner. Such costs shall be paid through escrow from the proceeds of sale if the sale is consummated. If the sale is not consummated and Owner retains ownership of the Premises,

City, or it's designee, shall be entitled to recover its costs directly from Owner.

(C) In the event City fails to exercise its preemptive rights to purchase or prevent foreclosure or trustee's sale, a completed action of foreclosure or trustee's sale shall render this Deed of Trust and the restrictions imposed thereby to be null and void and of no further force or effect.

21. Acceleration: Remedies Upon Owner's breach of any covenants or agreement of the Owner in this Deed of Trust, including but not limited to, the covenants to pay, when due, any sums secured by the First Deed of Trust or subsequent Deeds of Trust, all taxes, liens, homeowners association dues, assessments or any other obligation secured on the Property, occupancy of the property by the Owner(s) of record as the principal residence, or any prohibited transfer as specified in Section 5 (A), the City, prior to acceleration, will mail by express delivery, return receipt requested notice to Owner specifying; (1) the breach; (2) the action required to cure such breach; (3) a date, not less than (30) days from the date the notice is received Owner as shown on the return receipt, by which such breach is to be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in the City's exercise of it's first right of refusal to purchase the Property. The notice will also inform Owner of Owner's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of the Owner to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the City, at the City's option may: (a) Declare a default under the covenants contained in the Deed of Trust, and exercise it's right of first refusal to purchase the Property and may invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof, and the entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in the Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose the Deed of Trust, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et al., as amended from time to time; or (e) exercise all other rights and remedies provided herein, in the instruments by which the Owner acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations and covenants secured hereby, or provided by law.

The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to reasonable attorney's fees.

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

23. Distribution of Insurance and Condemnation Proceeds. In the event that the Premises is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild, or in the event of condemnation, if proceeds thereof are distributed to Owner, or in the event of termination of the condominium, liquidation of the association and distribution of the assets of the association to the members thereof, including Owner, any surplus of proceeds so distributed remaining after payment of encumbrances of said Premises shall be distributed as follows:

That portion of surplus up to but not to exceed the net amount that Owner would have received under the formula set forth above had City exercised its right to purchase the property on the date of the destruction, condemnation valuation date, or liquidation, shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to City.

24. Nonwaiver. With the exception of the City's right to exercise a right of first refusal to accept an offer to sell the Premises, the failure of the City to take an action to enforce a right or to seek a remedy under the terms and conditions of this Deed of Trust shall not be deemed to be a waiver by the City to take such action or enforce any rights it may otherwise have pursuant to this Deed of Trust.

25. Compliance with the Sunnyvale Municipal Code. It is the purpose and intent of this Deed of Trust to fulfill and be consistent with the requirements set forth in Chapter 19.66 of the Sunnyvale Municipal Code, which is incorporated by reference herein, as presently written and as amended from time to time hereafter. In the event of a discrepancy or conflict between a particular provision of this Deed of Trust and any provision of Chapter 19.66 of the Sunnyvale Municipal Code, the provisions of the Sunnyvale Municipal Code shall be controlling.

26. Reconveyance. Upon expiration of the terms of the Deed of Trust, the City will request Trustee to reconvey the Security and will surrender the Deed of Trust to the Trustee. Trustee will reconvey the Security without warranty to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

27. Notices. All notices required herein shall be sent to the following address:

CITY:

OWNER:

Housing Officer,
Community Development Department
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

By acceptance of this Deed of Trust, Owner accepts and agrees to be bound by the covenants contained herein.

DATED: _____

Signature of Owner

Print name

Sunnyvale, CA 94086
Print address of unit

ACKNOWLEDGEMENT REQUIRED
STATE OF CALIFORNIA)
)ss.
COUNTY OF SANTA CLARA)

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me to be the person(s) (or proved to me on the basis of satisfactory evidence) 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.

WITNESS my hand and official seal.

Signature of Notary Public

per GC Sec. 40814; CC Sec. 1181

(Notary Seal)



ATTACHMENT "C"

City of Sunnyvale
BELOW MARKET RATE HOUSING PROGRAM
456 W. Olive Avenue, Sunnyvale, CA 94088-3707
Phone (408) 730 - 7250 Fax (408) 737 - 4906

Notice to City of Estimated Construction Completion Date Per Designated BMR Unit

(Complete and submit 60-days prior to final inspection and request for Occupancy Permit.)

DEVELOPER'S NAME:
Company Name:
Company Address:
Name of Contact:
Phone:
Fax:
Email:

This form, when executed by the Developer and the City of Sunnyvale, represents the agreement between the parties for the 60-Day Notice and when completed and signed on the Offer of Sale. (Complete and submit to begin the sale period.)

Name of Development:
Address of Development:

Table with 5 columns: Unit Size, Unit Address & Lot #, Sales Price, 60-Day Notice Yes or No, Estimated Date of Certificate of Occupancy Issuance. Rows include Studio, 1-Bedroom, 2-Bedroom, 3-Bedroom, 4-Bedroom.

Date unit can be shown to BMR applicants:

Sales Contact Person: Phone:

City of Sunnyvale (Developer Name)

By: (Signature)

Print: Annabel Yurutucu

Title: Housing Officer Date:

Initial Copy sent to Developer

ATTACHMENT "D"

19.66.010

Chapter 19.66

AFFORDABLE HOUSING AND SINGLE ROOM OCCUPANCIES

- 19.66.010. Purpose.
- 19.66.020. General requirements.
- 19.66.030. Density limitations.
- 19.66.040. BMR unit sales prices and procedures; rental prices and procedures.
- 19.66.050. Eligibility requirements for BMR unit occupants.
- 19.66.060. Resale controls for BMR units.
- 19.66.070. Availability of government subsidies.
- 19.66.080. Density bonus.
- 19.66.090. BMR in-lieu fee for certain developments.
- 19.66.100. Density bonus for lower income housing.
- 19.66.110. An applicant's density bonus for senior citizen housing.
- 19.66.120. Priority processing.
- 19.66.130. Technical and financial assistance.
- 19.66.140. Enforcement.
- 19.66.150. Appeals.
- 19.66.160. Single room occupancy (SRO) living unit facility.
- 19.66.170. Single room occupancy (SRO) residential hotel.

19.66.010. Purpose.

The purpose of this chapter is to enhance the public welfare by ensuring that future housing development contributes to the attainment of the housing goals set forth in the general plan of the city of Sunnyvale by increasing the production of residential units affordable by households of very low, low and moderate income. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.010).

19.66.020. General requirements.

(a) All residential developments consisting of nine or more parcels or dwelling units designed and intended for permanent occupancy located in any zoning district other than R-0, R-I, R-1.5 or R-1.7/PD shall maintain below market rate units according to the terms of this chapter and as more fully outlined in the administrative procedures promulgated by the director of community development.

(1) For ownership units, twelve and one-half percent of the total number of dwelling units or parcels within the development shall be maintained as below market rate. The foregoing requirement shall be applied no more than once to a given development, regardless of changes in the char-

acter or ownership of the development, with the exception that all new condominium conversions shall maintain twelve and one-half percent of the total number of dwelling units as below market rate.

(2) For rental units, ten percent of the total number of dwelling units shall be maintained as below market rate. In the event that apartment vacancy rates reach levels of three percent or less and rents show a net increase of twenty percent or more during a twenty-four month period based on the Sunnyvale vacancy and rent survey, all new rental developments shall maintain fifteen percent of the total number of dwelling units as below market rate.

(3) In calculating the applicable percentage, no bonus units as described in Section 19.66.080 shall be considered, any fraction of a dwelling unit or parcel less than five-tenths shall be disregarded and any fraction greater than or equal to five-tenths shall be construed as one dwelling unit.

(b) Any tentative map, use permit or special development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of below market rate (BMR) units, the number of BMR units (whether for sale or rental) and their prices, and appropriate resale controls.

(c) All BMR units in a project or phase of a project shall be constructed concurrently with non-BMR units, shall be dispersed throughout such project and reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by interior or exterior design, amenities, construction, or materials.

(d) All BMR units shall be sold or rented only to moderate, low or very low income households.

(e) Identification and designation of BMR units and appropriate resale controls shall be recorded as a deed of trust imposing program restrictions with the county recorder of Santa Clara County. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

(f) Controls and restrictions on ownership units shall apply for a period of thirty years from the date of recordation.

(g) Controls and restrictions on rental units shall apply for a period of fifty-five years from the date of recordation.

(h) The director of community development, or the director's designee, shall create and maintain administrative procedures that more fully outline the terms and conditions of the BMR program, consistent with this chapter. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.030).

19.66.030. Density limitations.

The limitations upon residential density contained in Chapter 19.18 shall be deemed modified to the extent required by the terms of this chapter. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.040).

19.66.040. BMR unit sales prices and procedures; rental prices and procedures.

(a) Households at seventy percent to one hundred twenty percent of area median income shall be eligible for the ownership program. The city or its designee shall advertise the existence and terms of the BMR housing program to the general public, shall accept applications from prospective purchasers and tenants, shall determine the qualifications of such persons, and shall compile and maintain a list of qualified purchasers. The city shall have access to the seller's records and books pertaining to any unit covered by this chapter.

(b) The owner of a development governed by this chapter shall give written notice to city or its designee, prior to the issuance of an occupancy permit, stating the availability of all such units, the number of bedrooms in each, the estimated construction cost of each, whether each unit is to be sold or rented, and such other information as may be required in order to establish a sales or rental price and arrange for qualified occupants.

(c) Sale prices of below market rate residential units shall be established by the city or its designee and revised annually at levels affordable to households at eighty percent to one hundred twenty percent of area median income with consideration for construction costs, as more fully outlined in the administrative procedures.

(d) Rental prices of below market rate units shall be established at levels affordable to households at seventy percent or less of area median income, as more fully outlined in the administrative procedures. The annual change in the BMR rental prices to be charged by applicants or project owners not participating in federal "Section 8" or similar programs shall be either an increase of five percent or the increased percentage of average annual rent based on the Sunnyvale vacancy and rent survey, whichever is less. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.050).

19.66.050. Eligibility requirements for BMR unit occupants.

(a) The city or its designee shall select potential occupants of BMR purchase and rental units from a list of those persons qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size

of available units, and further appropriate criteria and an equitable selection method to be established in conformance with the terms of this chapter. No distinction shall be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall receive priority placement as more fully outlined in the administrative procedures: qualified public school employees, city employees, childcare workers, persons who live in the city of Sunnyvale, and persons who work in the city of Sunnyvale.

(b) Each purchaser of a BMR dwelling unit shall certify, prior to close of escrow and on an annual basis, in a form acceptable to the city or its designee, that the unit is being purchased and shall be maintained as the purchaser's primary place of residence. Failure of the purchaser to maintain a homeowner's property tax exemption shall be construed as evidence that the BMR unit is not the primary place of residence of the purchaser.

(c) Fees for processing BMR ownership and rental application and fees for loan refinancing shall be established by resolution of the city council. (Ord. 2751-04 § 1; Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.060).

19.66.060. Resale controls for BMR units.

(a) In order to maintain the availability of the housing units constructed pursuant to the requirements of this chapter, the following resale controls shall apply. The price received by the seller of a BMR unit shall be limited to:

(1) The original purchase price plus a percentage increase equal to one-third of any increase in the housing component of the Bay Area Consumer Price Index since the date of the previous sale, plus the adjusted amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, plus any applicable transaction fee charged by a real estate professional, minus any costs necessary to bring the unit into conformity with Title 16 of this code in the event that the occupant has allowed the unit to deteriorate due to deferred maintenance; or

(2) The fair market value, whichever is less.

(b) BMR units constructed, offered for sale, or sold pursuant to the requirements of this chapter by the original purchaser and all subsequent purchasers shall be offered for sale first to the city or its designee. Seller shall ensure that the unit is clean and in good repair and available to be shown to prospective buyers. No time periods shall begin to run until the city has inspected the unit and is satisfied the seller has complied with all program conditions and requirements. In the event that an offer of sale of any BMR unit is not accepted by city or its designee within one hundred eighty days after tender, or once accepted, if

19.66.060

an escrow account contemplating sale of such unit shall not have been opened within ninety days after acceptance, the offer shall terminate. Seller shall not refuse an offer by a qualified buyer if the offer conforms with the monetary restrictions of this chapter. Buyer shall pay its own points, if any. Closing costs shall be shared equally between buyer and seller. During the one hundred eighty day period when the property is offered to the city, the city may propose more than one purchaser. Once opened, an escrow must be closed within ninety days, unless both parties agree to an extension of time. If the city or its designee does not accept an offer of sale within one hundred eighty days, all restrictions, resale controls, and other terms of this chapter shall cease and become null and of no further effect as to such unit. The BMR units shall be sold and resold only to persons determined to be eligible for BMR units according to the terms of this chapter.

(c) The buyer shall record the deed of trust imposing BMR restrictions, stating each of the restrictions and resale controls imposed pursuant to this chapter. The deed of trust shall afford the city the right to enforce all restrictions and resale controls in the manner provided by law. The city or its designee shall facilitate the resale of BMR units, for purposes of preventing any abuse or violation of resale controls. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.070).

19.66.070. Availability of government subsidies.

It is the intent of this chapter that its requirements of construction and maintenance of BMR units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units will be available from HUD throughout the operation of this chapter. This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth in Sections 19.66.080, 19.66.120 and 19.66.130. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.080).

19.66.080. Density bonus.

(a) The city upon request shall approve an increase in the number of units permitted in a proposed residential development governed by this chapter, provided all applicable zoning regulations are satisfied. Except as provided in subsection (b), the increase may represent no more than fifteen percent of the maximum number of units otherwise permitted by applicable zoning regulations, in addition to the maximum, except for those developments which meet the requirements set forth in Sections 19.66.100 or 19.66.110.

(b) For housing developments proposed to contain between nine and nineteen units, inclusive, the maximum increase in the number of units permitted shall be the number of BMR units required by Section 19.66.020, plus one unit. This subsection shall not apply to housing developments subject to Section 19.66.100 or 19.66.110. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.090).

19.66.090. BMR in-lieu fee for certain developments.

(a) The director of community development, upon request by the developer, may waive the requirements to provide BMR units pursuant to Section 19.66.020 in exchange for the payment of a BMR in-lieu fee as described below provided the proposed development consists of between nine and nineteen parcels or units. There is no BMR requirement for developments of less than nine parcels or units.

(b) The BMR in-lieu fee for individually owned units shall equal the difference between the fair market value of the BMR unit and the BMR unit price established under 19.66.040.

(c) The BMR in-lieu fee for rental units shall be the difference between the market rent for the units and the established BMR rent capitalized over fifty-five years. The Consumer Price Index shall be used to establish the inflation rate, and the rental rates from the Sunnyvale vacancy and rent survey shall be used to calculate the estimated increase in rental rates. (Ord. 2751-04 § Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.091).

19.66.100. Density bonus for lower income housing.

(a) Notwithstanding any other provision in this chapter for providing a density bonus in conjunction with an application to develop a housing project of five or more units, a developer shall be entitled to a density bonus of at least twenty-five percent over the otherwise maximum allowable residential density for the applicable zoning district, where the developer agrees or proposes to construct:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code; or

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code; or

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code, all as set forth in Section 65915 of the Government Code.

(b) In determining the number of units to be designated under the ten or twenty percent categories, the density bonus to be granted shall not be included. A developer who agrees to construct more than one of the foregoing categories of affordable housing shall be entitled to only one, twenty-five percent density bonus.

(c) Within ninety days of receipt of a preliminary, written proposal for the development of housing pursuant to this section, the city shall notify the housing developer, in writing, of the procedures required for compliance with this section. It is contemplated that such preliminary proposals may be submitted prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals.

(d) The affordable units designated and constructed by the developer in consideration for the grant of the density bonus pursuant to this section shall remain affordable for a period of at least fifty-five years.

(e) Units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty percent of sixty percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty percent of fifty percent of area median income.

(f) Identification and designation of the affordable units and appropriate resale controls shall be incorporated as a part of the grant deed of a residential development regulated by this chapter. All such controls or restrictions applicable thereto shall run with the land for a period of fifty-five years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program, and shall be recorded as a part of the grant deed with the county recorder. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

(g) The procedures for establishing unit sales prices, eligibility requirements and resale controls for affordable units designated pursuant to this section shall be the same as for below market rate units as set forth in Sections 19.66.040, 19.66.050, and 19.66.060.

(h) A housing developer who seeks to waive or modify development or zoning standards which would otherwise inhibit the utilization of the density bonus on a specific site must request a variance pursuant to Chapter 19.84. In addition to the showing required by Chapter 19.84, the housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

(i) It is the intent of this section to meet the requirements imposed by Section 65915 of the Government Code, and amendments thereto. Interpretation of requirements, definitions and standards as set forth in this section shall be construed so as to be consistent with Chapter 19.66, to the extent they are not inconsistent with Section 65915 of the Government Code. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.093).

19.66.110. An applicant's density bonus for senior citizen housing.

(a) Upon request, the city shall approve an increase in the number of units permitted in a proposed residential development governed by this chapter, where the entire development is designated and intended for exclusive occupancy by senior citizens. The increase in density may not exceed forty percent of the maximum number of units otherwise permitted by applicable zoning restrictions, and shall not apply to developments of less than twenty units.

(b) The density bonus described in subsection (a) shall be granted only on the condition that the owner enter into a binding, written agreement with the city that twenty percent of the units would be rented at an affordable rate for very low income seniors, and ten percent of the units would be rented at an affordable rate for low income seniors, as defined by the HUD Section 8 program income limits, or its successor or equivalent program. The agreement between the owner and the city would be in effect for the life of the project, and would be recorded with the deed.

(c) Notwithstanding any other provision of this code, and subject to the approval by the director of community development, upon a showing by the applicant that the development is located close to public transportation, parking requirements may be reduced to one space per unit. Factors which shall be considered in determining whether or not to grant a request for reduced parking requirements shall include proximity, accessibility, suitability, practicability and variety of the form or forms of available public transportation.

(d) For purposes of this section, a senior citizen is a person sixty-two years old or older. If two persons occupy a single unit, at least one person must be a senior citizen. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.095).

19.66.120. Priority processing.

All residential developments providing ten percent BMR units or more shall receive "priority processing," by which housing developments shall be reviewed and checked for all required city permit and other approvals in advance of other pending developments. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.100).

19.66.130. Technical and financial assistance.

The city or its designee shall provide assistance to applicants concerning financial subsidy programs, environmental review procedures and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.120).

19.66.140. Enforcement.

(a) The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing a residential development governed by this chapter. No tentative map, use permit, special development permit or occupancy permit shall be issued for any such development unless exempt from or in compliance with the terms of this chapter.

(b) The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval. The city shall be entitled to all attorneys fees arising out of any action or proceeding to ensure compliance.

(c) Any individual who sells or rents a restricted unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such amounts shall be added to the city's housing fund.

(d) Any individual who violates the terms of this chapter or any deed restrictions may be forced to vacate or sell the unit to the next eligible participant. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.140).

19.66.150. Appeals.

(a) Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension, or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 19.98.

(b) Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by city as its administrative agent, may notify the chief executive officer of the agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by the agency in accordance with such procedures as it may establish. In instances in which violations of this chapter or any agreement with the city on the part of the agency is alleged, the city shall take appropriate investi-

gative and corrective actions. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.140).

19.66.160. Single room occupancy (SRO) living unit facility.

(a) A conditional use permit may be issued for an SRO living unit facility only if the following criteria are met:

(1) Excluding the closet and the bathroom area, an SRO living unit must be a minimum of one hundred fifty square feet in floor area. The average unit size in a living unit facility shall be no greater than two hundred seventy-five square feet and no individual living unit may exceed four hundred square feet;

(2) Each SRO living unit shall be designed to accommodate a maximum of two persons;

(3) An SRO living unit may contain partial kitchen facilities;

(4) Individual SRO living units may not have separate external entryways;

(5) The SRO living unit facility must have a management plan approved by the director of community development. The management plan shall contain management policies, operations, rental procedures, maintenance plans, staffing needs and security procedures. An on-site, twenty-four-hour manager is required in every living unit project. The rental procedures must allow for both weekly and monthly tenancies and specify deposit requirements for each type of tenancy. A manager's unit shall be a complete dwelling unit and so designated on all plans;

(6) Laundry facilities must be provided in a separate room in compliance with Chapter 16.16, at the ratio of one washer and one dryer for every twenty units or fractional number thereof. The laundry facility must be located near the interior common space. Washers and dryers may be coin operated;

(7) A closet and separate storage space, as approved by the director of community development, is required in every SRO living unit facility;

(8) A cleaning supply storeroom and/or utility closet with at least one laundry tub with hot and cold running water must be provided on each floor of the living unit building;

(9) The SRO living unit facility shall provide interior common space at a minimum of four square feet per unit. An SRO living unit facility must provide at least two hundred square feet in area of interior common space, excluding janitorial storage, laundry facilities and common hallways.

(b) The planning commission or the city council shall deny the application for a use permit hereunder where the information submitted by the applicant and/or presented at the public hearing fails to substantiate that the project will

comply with these criteria. (Ord. 2623-99 § 1 (part); prior zoning code § 19.32.160)

19.66.170. Single room occupancy (SRO) residential hotel.

(a) A conditional use permit may be issued for an SRO residential hotel only if the following criteria are met:

(1) Excluding the closet and any bathroom space, an SRO residential hotel unit must be at least seventy square feet in floor area;

(2) An SRO residential hotel room designed to accommodate a maximum of one person shall not exceed one hundred fifty square feet in floor area, and an SRO residential hotel room designed to accommodate a maximum of two persons shall be between one hundred twenty and two hundred nineteen square feet in floor area;

(3) An SRO residential hotel unit may contain partial kitchen and bath facilities. If individual bath and/or kitchen facilities are not provided, common bath facilities and/or common laundry and kitchen facilities must be provided in accordance with Chapter 16.16;

(4) Individual SRO residential hotel units may not have separate external entryways;

(5) The SRO residential hotel must have a management plan approved by the director of community development. The management plan shall contain management policies, operations, rental procedures, maintenance plans, staffing needs and security procedures. An on-site twenty-four-hour manager is required in every SRO residential hotel. The rental procedures must allow for both weekly and monthly tenancies and specify deposit requirements for each type of tenancy. A manager's unit shall be a complete dwelling unit and so designated on all plans;

(6) Laundry facilities must be provided in a separate room, at the ratio of one washer and one dryer for every twenty units or fractional number thereof. The laundry facility must be located near the interior common space. Washers and dryers may be coin operated;

(7) A closet and separate storage space, as approved by the director of community development, is required in every SRO residential hotel room;

(8) A cleaning supply storeroom and/or utility closet with at least one laundry tub with hot and cold running water must be provided on each floor of the residential hotel building;

(9) The SRO residential hotel shall provide interior common space at a minimum of four square feet per unit. The SRO residential hotel shall provide a minimum of two hundred square feet of interior common area.

(b) The planning commission or the city council shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate that the project will comply with these criteria. (Ord. 2623-99 § 1 (part): prior zoning code § 19.32.162).



City of Sunnyvale
BELOW MARKET RATE HOUSING PROGRAM
 456 W. Olive Avenue, Sunnyvale, CA 94088-3707
 Phone (408) 730 – 7250 Fax (408) 737 - 4906

Notice to City of Estimated Construction Completion Date Per Designated BMR Unit

(Complete and submit 60-days prior to final inspection and request for Occupancy Permit.)

DEVELOPER'S NAME: _____
 Company Name: _____
 Company Address: _____
 Name of Contact: _____
 Phone: _____
 Fax: _____
 Email: _____

This form, when executed by the Developer and the City of Sunnyvale, represents the agreement between the parties for the 60-Day Notice and when completed and signed on the Offer of Sale. *(Complete and submit to begin the sale period.)*

Name of Development: _____
 Address of Development: _____

Unit Size	Unit Address & Lot #	Sales Price	60-Day Notice Yes or No	Estimated Date of Certificate of Occupancy Issuance
Studio	_____	_____	_____	_____
1-Bedroom	_____	_____	_____	_____
2-Bedroom	_____	_____	_____	_____
3-Bedroom	_____	_____	_____	_____
4-Bedroom	_____	_____	_____	_____

Date unit can be shown to BMR applicants: _____

Sales Contact Person: _____ Phone: _____

City of Sunnyvale _____
 (Developer Name)

By: _____ By: _____
 (Signature) (Signature)

Print: **Ernie DeFrenchi** _____ Print: _____

Affordable Housing

Title: **Manager** Date: _____ Title: _____ Date: _____

Initial Copy sent to Developer

II. Buyer and Seller mutually agree, any other provisions of the Contract to the contrary notwithstanding, that the following provisions are hereby incorporated into the Contract:

1. **Purchase Price.** The purchase price (the "Purchase Price") of the property is \$_____ The Purchase Price has been established in accordance with the provisions of the City of Sunnyvale Below Market Rate Purchase Program as set forth in Chapter 19.66 of the Sunnyvale Municipal Code, as amended by Ordinance No. 2717-03 on February 4, 2003, and administrative regulations established with respect thereto, as the same may be amended from time to time (such ordinance provisions and regulations are collectively referred to as the "Ordinance").
2. **Notice of Principal Residence.** Buyer hereby acknowledges and agrees that the Buyer will occupy the Property as Buyer's principal residence in accordance with the provisions of the Ordinance.
3. **Compliance with Below Market Rate Program Ordinance.** It is agreed and understood that the Property is subject to the terms and conditions of the Ordinance, including, with limitation, price controls, occupancy requirements, financing and sales restrictions applicable to the Property. In addition, it is acknowledged and understood by the Buyer that the property is subject to the provisions of the Ordinance and administrative regulations, as amended from time to time.
4. **Deed of Trust Provisions.** Buyer acknowledges and agrees that he/she has read and understood the provisions of Ordinance No. 2717-03 amending Chapter 19.66 of the Sunnyvale Municipal Code pertaining to Affordable Housing and Single Room Occupancies attached as **Exhibit A**. Buyer acknowledges and agrees that the provisions of the Ordinance will be secured on the property and contained in a Deed of Trust to be conveyed by the Buyer as Trustor and the City of Sunnyvale as Beneficiary.
5. **Escrow to Close.** Buyer and Seller agree to close escrow on or before _____ Buyer and Seller both agree that the specified BMR unit shall remain unoccupied and shall not be used for any other purpose during the escrow period. Both will make every effort possible to close escrow by the date agreed to.

THE DEED OF TRUST PROVISIONS, AMONG OTHER THINGS, INCLUDE RESTRICTIONS ON FUTURE TRANSFERS, OCCUPANCY AND REFINANCING AND PROVIDE THAT DURING THE CONTROL PERIODS (AS DEFINED THEREIN) THE PROPERTY HEREBY CONVEYED SHALL BE SUBJECT TO ALL THE PROVISIONS OF THE ORDINANCE, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

THE TOTAL AGGREGATE AMOUNT OF INDEBTEDNESS THAT MAY BE SECURED BY THE PROPERTY HEREBY CONVEYED SHALL NOT EXCEED THE PURCHASE PRICE FOR THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, A RIGHT OF THE CITY OF SUNNYVALE TO ACQUIRE THE PROPERTY HEREBY CONVEYED ON CERTAIN TERMS IN THE EVENT OF A PENDING FORECLOSURE SALE OF THE PROPERTY.

RECORDING REQUESTED BY

CITY OF SUNNYVALE

Record at No Fee per Government
Code Section 6103

AND WHEN RECORDED MAIL TO

Housing Division Phone: 408-730-
7250

CITY OF SUNNYVALE

456 W. Olive Avenue
P.O. Box 3707
SUNNYVALE, CA 94088-3707

_____SPACE ABOVE THIS LINE FOR RECORDER'S USE_____

APN#: _____

DEED OF TRUST

Securing Deed Restrictions that control the resale of the Below Market Rate Property, including obligations and restrictions limiting the use and occupancy, the resale value of the property and the ability to transfer title to the property.

THIS DEED OF TRUST is made as of _____, 20 _____ between _____, _____, ("Trustor"), and the CITY OF SUNNYVALE, a Municipal Corporation of the State of California ("Trustee" and Beneficiary), whose address is: 456 West Olive Avenue, P.O. Box 3707, Sunnyvale, California, 94088-3707.

This Deed of Trust is security to insure compliance with the provisions of the Sunnyvale Below Market Rate Ordinance Chapter 19.66 and is secured on _____, SUNNYVALE, CALIFORNIA a below market rate property and is entered into as of this ____ day of _____, 20 _____, by and between the CITY OF SUNNYVALE ("City") and _____, ("Owner"). The covenants run with the land and the terms and conditions of the Deed of Trust are intended to bind the Owner for thirty (30) years from the date of the recordation of the Deed of Trust.

RECITALS

WHEREAS, the City has developed a program 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; and

WHEREAS, the intent of the City is to preserve the number and availability of affordable homes in the program for persons with low or moderate incomes for as long as possible;

Whereas, the parties understand and agree that owner will take out a purchase money loan secured by a First Deed of Trust on the property. This purchase money loan may not exceed **97%** of the Below Market Rate value of the property. In order to protect the City of Sunnyvale interest in the property, further encumbrancing of the property, after the purchase money loan, including refinancing of the First Deed of Trust, second or subsequent loans and/or any other encumbrances or liens against the property shall be limited such that the total encumbrances of the property does not exceed 95% of the Below Market Rate value of the property. Violation of this provision shall be considered a prohibited transfer and will constitute a breach of the Deed of Trust. The Below Market Rate value is \$_____ and may be adjusted by the City of Sunnyvale, from time to time, as described in the Purchase Price formula adjustment contained in Section 15(B).__

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

1. Premises. The real property which is the subject of this Deed of Trust is commonly known as (street address), SUNNYVALE, CALIFORNIA more fully described in the legal description attached hereto and incorporated herein by reference as Exhibit "A." Said real property ("Premises") is hereby designated as a Below-Market Rate Unit ("BMR unit") and shall be subject to the terms and conditions herein set forth, as well as the applicable provisions of Sunnyvale Municipal Code Chapter 19.66, and administrative procedures together with any amendments, which may be adopted from time to time.

2. Supersession. This Deed of Trust shall supersede any and all resale Deed of Trusts, deed restrictions and other similar conditions and/or restrictions previously imposed on the Premises pursuant to the provisions of Chapter 19.66 of the Sunnyvale Municipal Code, whether or not such previous Deed of Trusts or restrictions were recorded.

3. Owner Representations and Warranties. The Owner represents and warrants to the City that the financial and other information previously provided to the City by the Owner for the purpose of qualifying to purchase the BMR unit was true and correct at the time it was given and remains true and correct as of the date of the Deed of Trust. Owner shall be in default if Owner, during the loan application process, gave materially false or inaccurate information or statements to City (or failed to provide City with any material information) including, but not limited to, representations concerning (i) Owner's occupancy of the Property as a principal residence and (ii) Owner's income. Owner further understands that any material misstatement or misrepresentation shall be deemed to be a material breach of this Deed of Trust.

4. Occupancy of Property: Owner shall occupy, establish and maintain the use of the Property as Owner's principal residence within thirty (30) days after the execution of this Deed of Trust. Owner's principal residence shall mean the Property is occupied by the Owner for at least ten (10) months out of each year. The Owner shall not lease the Property without the express written consent of the City of Sunnyvale during any twelve-month period and shall not lease the property without providing the City with a copy of the lease. Owner shall continuously claim a homeowner's exemption for property taxes with the Santa Clara County Assessor's Office on the Property. Failure to claim the homeowner's exemption is a breach of the terms and conditions of the Deed of Trust.

5. Transfer by Owner. Any attempt by the Owner to make a Prohibited Transfer to or any interest in the Property in violation of the terms of the Deed of Trust shall be void and subject to exercise by the City of its right of first refusal to purchase.

(A) "Transfer" means any voluntary or involuntary sale, assignment or transfer of or any interest in the Property, including fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entirety, life estate, or other limited estate, leasehold interest or any rental of the Property, or any interest evidenced by a land contract, or any encumbrance or liens exceeding 95% of the Below Market Rate value of the property. Any Transfer without satisfaction of the conditions of this Deed of Trust shall be deemed a "Prohibited Transfer".

(B) The following Transfers are not considered Prohibited Transfers and therefore are not subject to the City's right to exercise its right of first refusal to purchase: (a) Transfer by devise, or inheritance to the Owner's spouse; (b) Transfer of title by an Owner's death to a surviving joint tenant, tenant by entirety, or a surviving spouse of community property; (c) Transfer of title to a spouse as part of divorce or dissolution proceedings; (d) Transfer of title or an interest in the Property to the spouse in conjunction with marriage; providing, however; that these covenants shall continue to run with the title to the Property following said Transfers; and that an instrument be executed, acknowledge and recorded by the Transferee containing the following covenant: "This Property is subject to the

Deed of Trust securing deed restrictions that restrict the resale, refinance, occupancy and contain City's right of first refusal to purchase and Transfer on behalf of Transferee, and Transferee's successors and assigns, covenants and agrees to be bound by and perform according to the terms and conditions of the Deed of Trust, and to include in any further Transfer of the Property the covenant required by Section 5(B) of the Deed of Trust." A Transferee who satisfies the conditions of this Section 5(b) shall then be the Owner.

(C) Transfers by devise or inheritance will be permitted under the following terms and conditions of transfer: (a) Transferee will reside in the Property and within thirty (30) days of the transfer the Transferee shall occupy, establish and maintain the use of the Property as Transferee's principal residence; (b) The Transferee shall provide all information related to household income necessary for the purpose of determining the financial qualifications of the transferee to own a BMR unit; and (c) The Transferee will execute a Deed of Trust securing the covenants and conditions of the City of Sunnyvale Below Market Rate Program including any and all conditions contained in Sunnyvale Municipal Code Chapter 19.66, including any amendments thereto which may be adopted from time to time and this instrument will include a full renewal of the term of the restrictions of the Below Market Rate Program as provided for in Sunnyvale Municipal Code Chapter 19.66, as related to the purchase of units.

6. Notice of Prohibited Transfer Within thirty (30) days after receiving notification of a Prohibited Transfer, the City of Sunnyvale shall give written notice to the Owner, specifying the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of the City within ten (10) days after the date of the notice or within such further time as the City determines is necessary to correct the violation, the City may declare a default under the terms of this Deed of Trust. Upon the declaration of a default, the City may exercise it's right of first refusal to purchase, may apply to a court of competent jurisdiction for specific performance under the terms of the Deed of Trust, for an injunction prohibiting a proposed sale or transfer in violation of the terms of the Deed of Trust, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.

7. Fannie Mae. Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage held by the Federal National Mortgage Association (FNMA—"Fannie Mae") pursuant to the Community Partnership Program as described in Part V, section 224 of the Fannie Mae Selling Guide. In the event of a foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral Deed of Trust restricting the use of the Premises to low or moderate income households or otherwise restricting the Owner's ability to sell the Premises shall have no further force or effect on subsequent owners or purchasers of the Premises. Any person, including his or her successors or assigns (other than the Owner or a related entity of the Owner), receiving title to the Premises through a foreclosure of the

First Deed of Trust shall receive title to the Premises free and clear from such restrictions. Provided that (i) the City has been given written notice of a default under the First Deed of Trust and (ii) the City shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the 60-day period provided in such notice sent to the City.

8. Attorneys' Fees. Owner hereby agrees to reimburse City the full cost and expense, including staff time and attorneys' fees and costs, incurred by City in an effort to correct any default or enforce any violation of the terms of this Deed of Trust, and Owner further understands and agrees that if such funds are not reimbursed, City may deduct same from the proceeds upon resale of the Premises.

9. Covenant Running with the Land. The terms and conditions set forth herein are intended to run with the land and shall bind Owner and all successors, heirs and grantees. These terms and conditions shall be made part of each deed subsequently recorded and shall bind each successor in interest until the earlier of (a) **thirty (30) years** from the date of recordation; or (b) the recordation of a subsequent and superseding Deed of Trust covenant.

10. Right of First Refusal. Except as provided herein, Owner hereby grants and gives to the City of Sunnyvale or its designee a right to purchase the Premises under conditions set forth below. City, at its sole discretion, may assign this right to an individual buyer who meets the City's eligibility qualifications to participate in the program. City reserves the right to reassign the right to another eligible, qualified buyer in the event the initial designee fails or is unable to complete the transaction. Any assignment or reassignment of this right shall extend the time limits for performance under this Deed of Trust.

11. Resale Procedures.

A. Notice of Offer to Sell. Whenever the Owner no longer desires to own the Premises, Owner shall notify City of their intent to offer the property for sale in accordance with the terms of this Deed of Trust. Such notice shall be in writing, and may be personally delivered or sent by first class mail through the United States Postal Service, addressed to the Director of Community Development, **City of Sunnyvale, P.O. Box 3707, Sunnyvale, California 94088-3707**. Owner's offer to sell may be withdrawn by Owner, provided that notice of withdrawal has been received by City or its Designee, in writing, prior to acceptance by City or its Designee.

B. Acceptance. City, its designee or assignee shall accept offer within one hundred eighty (180) days from the date of receipt of Owner's notice of offer to sell the Premises. This acceptance shall be

in writing, and personally delivered or sent by first class mail through the United States Postal Service, addressed to the Owner of record at the official address of the Premises. For purposes of fulfillment of the terms of this procedure, the notice of intent to sell the premises shall be deemed to be an offer to sell, and the exercise of the right to purchase by the City or its designee or assignee shall be deemed to be an acceptance of that offer. Acceptance by City or its Designee shall constitute a legally binding contract for the transfer of title, and once accepted, the offer to sell may not be withdrawn without the express, written consent of the party who accepted the offer.

C. Escrow. Within ninety (90) days of the date of acceptance, the City or its designee shall open an escrow account. City reserves the right, at any time during this process, to subsequently assign its right to purchase to an individual who is eligible and qualified to participate in the program. Once opened, an escrow must be closed within ninety (90) days, unless both parties mutually agree, in writing, to an extension of time. In no case shall the time between receipt of an offer to sell and the date of close of escrow exceed three hundred and sixty (360) days, unless both parties mutually agree, in writing, to extend that date, or if for any reason the time periods herein are tolled pursuant to the administrative procedures.

D. Acceleration of Time Period for Hardship. Owner may request the City to accelerate the time period specified in subsection B. for a party to accept the offer to sell, or for the City to exercise its right of first refusal, to not exceed ninety (90) days from the receipt of the offer to sell. The Owner would be entitled to accelerate the time period if, in the determination of the Director of Community Development, the Owner can establish that failure to accept the offer to sell, or for the City to otherwise fail to exercise its right of first refusal within ninety (90) days would result in a hardship to the Owner. For purposes of this Deed of Trust, the Owner shall establish that a hardship would result by submission of competent evidence, of a significant loss of funds, loss of an opportunity to qualify or otherwise purchase a new home, or due to an unexpected and sudden loss of employment, job transfer, or death of a spouse or immediate family member. The determination of the existence of a hardship shall be at the sole discretion of the Director of Community Development. Examples of possible grounds for establishing a hardship shall include, but not be limited to, an extraordinary and significant loss of funds, loss of an opportunity to qualify or otherwise purchase a new home, or an unexpected and sudden loss of employment, job transfer, or death of a spouse or immediate family member. Any request for acceleration due to hardship shall be requested by the Owner, in writing, not later than thirty (30) days from the date of receipt of the notification of intent to sell. The Director shall make a determination and notify the owner within ten (10) business days of receipt of the request for a hardship acceleration that the request has been approved, denied, or that additional information is required to make the determination. In the event the request is denied, or if additional information is required,

the Owner may submit further evidence and request a reconsideration. In any case, the City shall have a minimum of sixty (60) days from the date of receipt of the new evidence or of the request for reconsideration of a previously issued denial to accept the offer to sell.

12. Termination of Conditions. If the City or its designee does not accept an offer of sale within one hundred eighty (180) days of the date of receipt of Owner's notice, or an escrow account is not opened within ninety (90) days of the date the offer has been accepted, all restrictions, resale controls, and other terms of this Deed of Trust shall cease and become null and void and of no further effect as to the Premises, unless the time period has been tolled, or extended by mutual, written Deed of Trust of the parties.

13. Owner's Obligation to Cooperate. At all times, Owner shall ensure that the Premises are clean and in good repair, and available to be shown to prospective buyers. Owner shall cooperate with the City of Sunnyvale and its respective officers, employees and representatives. Failure to comply with these conditions shall be deemed a material breach of Owner's obligations pursuant to the terms of this Deed of Trust, and upon determination by the City that Owner has failed to comply with any of the above conditions, City shall notify Owner that the time periods stated herein shall be tolled, and the applicable time periods extended accordingly, until Owner has complied with all of the conditions of this Deed of Trust. Acts by Owner which shall be deemed to be a breach of this obligation include, but are not limited to, failure to make the unit available for showing to prospective buyers upon reasonable notice, willful or deliberate actions to dissuade prospective buyers from purchasing the unit, and failure or refusal to return telephone calls, complete forms, provide required reports, or perform other actions ordinarily required by a party to a real estate transaction in a timely manner. In addition to tolling the applicable time periods, the City may pursue any other remedies for breach based upon this paragraph, or as pursuant to the administrative procedures.

14. Closing Costs. Closing costs, home inspections and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of such escrow. All work recommended in said report to repair damage caused by infestation or infection of wood-destroying pests or organisms found and all work to correct conditions that caused such infestation or infection shall be done at the expense of the Seller. Any work to correct conditions usually deemed likely to lead to infestation or infection of wood-destroying pests or organisms, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of the Seller, and such work shall be done only if requested by the Buyer and then at the expense of the Buyer. The purchase price shall be paid in cash at the close of escrow or as may be otherwise provided by mutual agreement of Buyer and Seller.

15. Purchase Price. The purchase price of the Premises shall be fixed at the lower amount as determined by using the following two methods:

A. Fair Market Value. City or its designee shall have an appraisal made by an appraiser of its choice to establish the fair market value. The Owner, at his or her own expense, may also have an appraisal made by a qualified appraiser of Owner's choice to establish the market value. If Owner elects to obtain their own appraisal, the time period during which the City has the option to perform pursuant to this Deed of Trust shall be tolled for the period of time between the time the City obtains an appraisal and Owner submits a separate appraisal. If an Deed of Trust cannot be reached as to the fair market value, the average of the two appraisals shall be deemed the market price, unless the difference between the two appraisals is greater than ten (10) percent of the amount of the higher appraisal, in which case City has the option of requesting a third appraisal be conducted by a qualified appraiser agreed upon by both City and Owner, who will make an independent appraisal without knowledge of the results of the first two appraisals. The amount of the first two appraisals which is closer to the amount determined by the third appraiser shall be deemed the fair market value for purposes of this Deed of Trust.

B. Adjusted by Consumer Price Index. Base Price:
Dollars (), plus an amount, if any, to compensate for any increase in the cost of living as measured by the housing component of the Bay Area or closest metropolitan area Consumer Price Index ("Index") for all Urban consumers (CPI-V) as published periodically by the United States Department of Housing and Urban Development. For that purpose, the Index prevailing on the date of the purchase by the selling Owner of said Premises shall be compared with the latest Index available on the date of receipt by City of notice of intent to sell. The percentage increase in the Index, if any, shall be computed and the base price shall be increased by one-third (1/3) of that percentage; provided, however, that the price shall in no event be lower than the purchase price paid by the selling Owner when that Owner purchased the Premises. The purchase price shall be adjusted to include the amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, costs for the services of a real estate professional to administer the transaction, minus any costs necessary to bring said unit into conformity with all applicable provisions of the Sunnyvale Municipal Code.

16. Improvements. The adjusted price described in Paragraph 15.B above shall be increased by the value of any substantial structural or permanent fixed improvements which cannot be removed without substantial damage to the Premises or substantial or total loss of value of said improvements, and by the value of any appliances, fixtures, or equipment which were originally acquired as part of the Premises by Owner; provided that such price adjustment for replacement

appliances, fixtures, or equipment shall be allowed only when the expenditure is necessitated by the non-operative or other deteriorated condition of the original appliance, fixture, or equipment.

A. If at the time of replacement the original appliance, fixture, or equipment had in excess of twenty percent (20%) of its original estimated useful life remaining, Owner shall document to the City's satisfaction the condition of the appliance, fixture, or equipment which necessitated its replacement.

B. No such price adjustment shall be made significantly in excess of the reasonable cost to replace the original appliance, fixture, or equipment with a new appliance, fixture, or equipment of comparable quality as hereinafter provided.

(1) No such adjustment shall be made except for improvements, appliances, fixtures, or equipment made or installed by the selling Owner.

(2) No improvements, appliances, fixture, or equipment shall be deemed substantial unless the actual initial cost thereof to the Owner exceeds one percent (1.0%) of the purchase price paid

by the Owner for the Premises; provided that this minimum limitation shall not apply in either of the following situations:

(a.) Where the expenditure was made pursuant to a mandatory assessment levied by the Homeowners' association for the development in which the Premises is located, whether levied for improvements or maintenance to the Premises, the common area, or related purposes.

(b.) Where the expenditure was made for the replacement of appliances, fixtures, or equipment which were originally acquired as part of the Premises by Owner.

C. No adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless the Owner shall present to the City valid written documentation of the cost of said improvements. The value of such improvements by which the sale price shall be adjusted shall be determined as follows:

(1) The value of any improvement, appliance, fixture, or equipment, the original cost of which was less than Five Thousand Dollars (\$5,000), shall be the depreciated value of the improvement, appliance, fixture or equipment calculated in accordance with principles of straight-line depreciation applied to the original cost

of the improvement, appliance, fixture or equipment based upon the estimated original useful life of the improvement, appliance, fixture or equipment.

(2) The value of any improvement, appliance, fixture, or equipment, the original cost of which was Five Thousand Dollars (\$5,000) or more, shall be the appraised market value of the improvement, appliance, fixture or equipment when considered as an addition or fixture to the premises (i.e., the amount by which said improvement, appliance, fixture or equipment enhances the market value of the premises) at the time of sale. Said value shall be determined in the same manner as the market value of the premises in method 1 above.

(3) On January 1, 1988 and every two years thereafter, regardless of the date of execution or recordation hereof, the amount of Five Thousand Dollars (\$5,000) referred to in paragraphs 1) and (2) immediately above shall be automatically adjusted for the purpose of those paragraphs in the following manner. On each adjustment date, the Consumer Price Index for the San Francisco - Oakland area published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") prevailing on January 1, 1986, shall be compared with the Index prevailing on the date of recordation of this deed. The percentage increase in the Index, if any, shall be computed and the sum of Five Thousand Dollars (\$5,000) shall be increased in the same percentage. In no event shall the sum be reduced below Five Thousand Dollars (\$5,000).

(4) No price adjustment will be made except upon presentation to City of written documentation of all expenditures made by Owner for whom an adjustment is requested.

D. Notwithstanding any other provision herein, no adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless said improvements were completed with required permits and in accordance with applicable provisions of the municipal code. Moreover, no adjustment shall be made for any improvements, appliance, fixtures, or equipment, which were installed or completed in violation of any applicable provision of the homeowners' association by-laws, CC&Rs, or other similar restrictions or regulations.

17. Deferred Maintenance. Any purchase price determined through the use of this method shall be adjusted by decreasing said price by an amount to compensate for deferred maintenance costs, which amount shall be determined in the following manner. Upon receipt of notice of Owner's intent to sell, City or its designee shall be entitled to inspect the Premises. The owner shall provide the City with a copy of a home inspection report conducted by a licensed home inspection

service within 10 days of seller's acceptance of the purchase offer. City or its designee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire, or housing codes exist or any other provisions of Title 16 of the Sunnyvale Municipal Code. Additionally, City or its designee shall determine if there are other items of deferred maintenance beyond normal use requiring repair or replacement. In the event deficiencies are noted, the Owner shall obtain estimates to cure the observed deficiencies. The Owner shall cure the deficiencies in a reasonable manner acceptable to City or designee no later than ten (10) days prior to the close of escrow. Should Owner fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of City, or its designee, the escrow holder will be instructed to retain funds necessary to pay for curing such deficiencies (based upon written estimates obtained by City, or its designee), and City shall cause such deficiencies to be cured, and upon certification of completion of work by City, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the selling Owner.

18. Assignment of Right to Purchase. In no event shall City become in any way liable to Owner, nor become obligated in any manner, by reason of the assignment of its right to purchase, nor shall City be in any way obligated or liable to Owner for any failure of City's assignee to consummate a purchase of the premises or to comply with the terms of any purchase and sale Deed of Trust. Nothing in this Deed of Trust shall be construed to obligate City to purchase any unit in the event that a buyer participating in the BMR program fails to complete actions to close escrow.

19. City Consent to Lease. Until such time as the City's right to purchase is exercised, waived, or expired, the Premises and any interest in title thereto shall not be sold, leased, rented, assigned, or otherwise transferred to any person or entity except with the express written consent of City or its designee, which consent shall be consistent with the City's goal of creating, preserving, maintaining, and protecting housing in Sunnyvale for persons of low and moderate income.

20. Default and Foreclosure. City shall file for record in the Office of the Recorder of the County of Santa Clara a request for a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering said premises pursuant to Section 2924 (b) of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to the **Director of Community Development, City of Sunnyvale, 456 W. Olive Avenue, P.O. Box 3707, Sunnyvale, California 94088-3707.** Any notice of sale given pursuant to Civil Code, Section 2924 (f) shall constitute a notice of intent to sell hereunder and City may exercise its preemptive right prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure. City's right to purchase shall run from the date City obtains actual knowledge of a sale or proposed sale. In the event City elects not to

exercise its right to purchase upon default, any surplus to which Owner may be entitled pursuant to Code of Civil Procedure, Section 727, shall be paid as follows:

(A) That portion of surplus (after payment of encumbrances), if any, up to but not exceeding the net amount that Owner would have received after payment of encumbrances under the formula set forth above had City exercised its right to purchase the property on the date of the foreclosure sale, shall be paid to Owner on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the City to fund the cost to the City for increasing the City's low-income and moderate-income housing stock.

(B) City or its designee shall be entitled to recover all costs incurred in curing such default from Owner. Such costs shall be paid through escrow from the proceeds of sale if the sale is consummated. If the sale is not consummated and Owner retains ownership of the Premises, City, or it's designee, shall be entitled to recover its costs directly from Owner.

(C) In the event City fails to exercise its preemptive rights to purchase or prevent foreclosure or trustee's sale, a completed action of foreclosure or trustee's sale shall render this Deed of Trust and the restrictions imposed thereby to be null and void and of no further force or effect.

21. Acceleration: Remedies Upon Owner's breach of any covenants or agreement of the Owner in this Deed of Trust, including but not limited to, the covenants to pay, when due, any sums secured by the First Deed of Trust or subsequent Deeds of Trust, all taxes, liens, homeowners association dues, assessments or any other obligation secured on the Property, occupancy of the property by the Owner(s) of record as the principal residence, or any prohibited transfer as specified in Section 5 (A), the City, prior to acceleration, will mail by express delivery, return receipt requested notice to Owner specifying; (1) the breach; (2) the action required to cure such breach; (3) a date, not less than (30) days from the date the notice is received Owner as shown on the return receipt, by which such breach is to be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in the City's exercise of it's first right of refusal to purchase the Property. The notice will also inform Owner of Owner's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of the Owner to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the City, at the City's option may: (a) Declare a default under the covenants contained in the Deed of Trust, and exercise it's right of first refusal to purchase the Property and may invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take

possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof, and the entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in the Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose the Deed of Trust, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et al., as amended from time to time; or (e) exercise all other rights and remedies provided herein, in the instruments by which the Owner acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations and covenants secured hereby, or provided by law.

The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to reasonable attorney's fees.

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

23. Distribution of Insurance and Condemnation Proceeds. In the event that the Premises is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild, or in the event of condemnation, if proceeds thereof are distributed to Owner, or in the event of termination of the condominium, liquidation of the association and distribution of the assets of the association to the members thereof, including Owner, any surplus of proceeds so distributed remaining after payment of encumbrances of said Premises shall be distributed as follows:

That portion of surplus up to but not to exceed the net amount that Owner would have received under the formula set forth above had City exercised its right to purchase the property on the date of the destruction, condemnation valuation date, or liquidation, shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to City.

24. Nonwaiver. With the exception of the City's right to exercise a right of first refusal to accept an offer to sell the

Premises, the failure of the City to take an action to enforce a right or to seek a remedy under the terms and conditions of this Deed of Trust shall not be deemed to be a waiver by the City to take such action or enforce any rights it may otherwise have pursuant to this Deed of Trust.

25. Compliance with the Sunnyvale Municipal Code. It is the purpose and intent of this Deed of Trust to fulfill and be consistent with the requirements set forth in Chapter 19.66 of the Sunnyvale Municipal Code, which is incorporated by reference herein, as presently written and as amended from time to time hereafter. In the event of a discrepancy or conflict between a particular provision of this Deed of Trust and any provision of Chapter 19.66 of the Sunnyvale Municipal Code, the provisions of the Sunnyvale Municipal Code shall be controlling.

26. Reconveyance. Upon expiration of the terms of the Deed of Trust, the City will request Trustee to reconvey the Security and will surrender the Deed of Trust to the Trustee. Trustee will reconvey the Security without warranty to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

27. Notices. All notices required herein shall be sent to the following address:

CITY:

OWNER:

Housing Officer,
Community Development Department
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

By acceptance of this Deed of Trust, Owner accepts and agrees to be bound by the covenants contained herein.

DATED: _____

Signature of Owner

Print name

Sunnyvale, CA 94086

Print address of unit

ACKNOWLEDGEMENT REQUIRED

STATE OF CALIFORNIA)
)ss.

COUNTY OF SANTA CLARA)

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me to be the person(s) (or proved to me on the basis of satisfactory evidence) 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.

WITNESS my hand and official seal.

Signature of Notary Public

per GC Sec. 40814; CC Sec. 1181

(Notary Seal)

Chapter 19.66

AFFORDABLE HOUSING AND SINGLE ROOM
OCCUPANCIES

- 19.66.010. Purpose.
- 19.66.020. General requirements.
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- 19.66.040. BMR unit sales prices and procedures; rental prices and procedures.
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- 19.66.150. Appeals.
- 19.66.160. Single room occupancy (SRO) living unit facility.
- 19.66.170. Single room occupancy (SRO) residential hotel.

19.66.010. Purpose.

The purpose of this chapter is to enhance the public welfare by ensuring that future housing development contributes to the attainment of the housing goals set forth in the general plan of the city of Sunnyvale by increasing the production of residential units affordable by households of very low, low and moderate income. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.010).

19.66.020. General requirements.

(a) All residential developments consisting of nine or more parcels or dwelling units designed and intended for permanent occupancy located in any zoning district other than R-0, R-I, R-1.5 or R-1.7/PD shall maintain below market rate units according to the terms of this chapter and as more fully outlined in the administrative procedures promulgated by the director of community development.

(1) For ownership units, twelve and one-half percent of the total number of dwelling units or parcels within the development shall be maintained as below market rate. The foregoing requirement shall be applied no more than once to a given development, regardless of changes in the char-

acter or ownership of the development, with the exception that all new condominium conversions shall maintain twelve and one-half percent of the total number of dwelling units as below market rate.

(2) For rental units, ten percent of the total number of dwelling units shall be maintained as below market rate. In the event that apartment vacancy rates reach levels of three percent or less and rents show a net increase of twenty percent or more during a twenty-four month period based on the Sunnyvale vacancy and rent survey, all new rental developments shall maintain fifteen percent of the total number of dwelling units as below market rate.

(3) In calculating the applicable percentage, no bonus units as described in Section 19.66.080 shall be considered, any fraction of a dwelling unit or parcel less than five-tenths shall be disregarded and any fraction greater than or equal to five-tenths shall be construed as one dwelling unit.

(b) Any tentative map, use permit or special development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of below market rate (BMR) units, the number of BMR units (whether for sale or rental) and their prices, and appropriate resale controls.

(c) All BMR units in a project or phase of a project shall be constructed concurrently with non-BMR units, shall be dispersed throughout such project and reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by interior or exterior design, amenities, construction, or materials.

(d) All BMR units shall be sold or rented only to moderate, low or very low income households.

(e) Identification and designation of BMR units and appropriate resale controls shall be recorded as a deed of trust imposing program restrictions with the county recorder of Santa Clara County. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

(f) Controls and restrictions on ownership units shall apply for a period of thirty years from the date of recordation.

(g) Controls and restrictions on rental units shall apply for a period of fifty-five years from the date of recordation.

(h) The director of community development, or the director's designee, shall create and maintain administrative procedures that more fully outline the terms and conditions of the BMR program, consistent with this chapter. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.030).

19.66.030. Density limitations.

The limitations upon residential density contained in Chapter 19.18 shall be deemed modified to the extent required by the terms of this chapter. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.040).

19.66.040. BMR unit sales prices and procedures; rental prices and procedures.

(a) Households at seventy percent to one hundred twenty percent of area median income shall be eligible for the ownership program. The city or its designee shall advertise the existence and terms of the BMR housing program to the general public, shall accept applications from prospective purchasers and tenants, shall determine the qualifications of such persons, and shall compile and maintain a list of qualified purchasers. The city shall have access to the seller's records and books pertaining to any unit covered by this chapter.

(b) The owner of a development governed by this chapter shall give written notice to city or its designee, prior to the issuance of an occupancy permit, stating the availability of all such units, the number of bedrooms in each, the estimated construction cost of each, whether each unit is to be sold or rented, and such other information as may be required in order to establish a sales or rental price and arrange for qualified occupants.

(c) Sale prices of below market rate residential units shall be established by the city or its designee and revised annually at levels affordable to households at eighty percent to one hundred twenty percent of area median income with consideration for construction costs, as more fully outlined in the administrative procedures.

(d) Rental prices of below market rate units shall be established at levels affordable to households at seventy percent or less of area median income, as more fully outlined in the administrative procedures. The annual change in the BMR rental prices to be charged by applicants or project owners not participating in federal "Section 8" or similar programs shall be either an increase of five percent or the increased percentage of average annual rent based on the Sunnyvale vacancy and rent survey, whichever is less. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.050).

19.66.050. Eligibility requirements for BMR unit occupants.

(a) The city or its designee shall select potential occupants of BMR purchase and rental units from a list of those persons qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size

of available units, and further appropriate criteria and an equitable selection method to be established in conformance with the terms of this chapter. No distinction shall be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall receive priority placement as more fully outlined in the administrative procedures: qualified public school employees, city employees, childcare workers, persons who live in the city of Sunnyvale, and persons who work in the city of Sunnyvale.

(b) Each purchaser of a BMR dwelling unit shall certify, prior to close of escrow and on an annual basis, in a form acceptable to the city or its designee, that the unit is being purchased and shall be maintained as the purchaser's primary place of residence. Failure of the purchaser to maintain a homeowner's property tax exemption shall be construed as evidence that the BMR unit is not the primary place of residence of the purchaser.

(c) Fees for processing BMR ownership and rental application and fees for loan refinancing shall be established by resolution of the city council. (Ord. 2751-04 § 1; Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.060).

19.66.060. Resale controls for BMR units.

(a) In order to maintain the availability of the housing units constructed pursuant to the requirements of this chapter, the following resale controls shall apply. The price received by the seller of a BMR unit shall be limited to:

(1) The original purchase price plus a percentage increase equal to one-third of any increase in the housing component of the Bay Area Consumer Price Index since the date of the previous sale, plus the adjusted amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, plus any applicable transaction fee charged by a real estate professional, minus any costs necessary to bring the unit into conformity with Title 16 of this code in the event that the occupant has allowed the unit to deteriorate due to deferred maintenance; or

(2) The fair market value, whichever is less.

(b) BMR units constructed, offered for sale, or sold pursuant to the requirements of this chapter by the original purchaser and all subsequent purchasers shall be offered for sale first to the city or its designee. Seller shall ensure that the unit is clean and in good repair and available to be shown to prospective buyers. No time periods shall begin to run until the city has inspected the unit and is satisfied the seller has complied with all program conditions and requirements. In the event that an offer of sale of any BMR unit is not accepted by city or its designee within one hundred eighty days after tender, or once accepted, if

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an escrow account contemplating sale of such unit shall not have been opened within ninety days after acceptance, the offer shall terminate. Seller shall not refuse an offer by a qualified buyer if the offer conforms with the monetary restrictions of this chapter. Buyer shall pay its own points, if any. Closing costs shall be shared equally between buyer and seller. During the one hundred eighty day period when the property is offered to the city, the city may propose more than one purchaser. Once opened, an escrow must be closed within ninety days, unless both parties agree to an extension of time. If the city or its designee does not accept an offer of sale within one hundred eighty days, all restrictions, resale controls, and other terms of this chapter shall cease and become null and of no further effect as to such unit. The BMR units shall be sold and resold only to persons determined to be eligible for BMR units according to the terms of this chapter.

(c) The buyer shall record the deed of trust imposing BMR restrictions, stating each of the restrictions and resale controls imposed pursuant to this chapter. The deed of trust shall afford the city the right to enforce all restrictions and resale controls in the manner provided by law. The city or its designee shall facilitate the resale of BMR units, for purposes of preventing any abuse or violation of resale controls. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.070).

19.66.070. Availability of government subsidies.

It is the intent of this chapter that its requirements of construction and maintenance of BMR units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units will be available from HUD throughout the operation of this chapter. This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth in Sections 19.66.080, 19.66.120 and 19.66.130. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.080).

19.66.080. Density bonus.

(a) The city upon request shall approve an increase in the number of units permitted in a proposed residential development governed by this chapter, provided all applicable zoning regulations are satisfied. Except as provided in subsection (b), the increase may represent no more than fifteen percent of the maximum number of units otherwise permitted by applicable zoning regulations, in addition to the maximum, except for those developments which meet the requirements set forth in Sections 19.66.100 or 19.66.110.

(b) For housing developments proposed to contain between nine and nineteen units, inclusive, the maximum increase in the number of units permitted shall be the number of BMR units required by Section 19.66.020, plus one unit. This subsection shall not apply to housing developments subject to Section 19.66.100 or 19.66.110. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.090).

19.66.090. BMR in-lieu fee for certain developments.

(a) The director of community development, upon request by the developer, may waive the requirements to provide BMR units pursuant to Section 19.66.020 in exchange for the payment of a BMR in-lieu fee as described below provided the proposed development consists of between nine and nineteen parcels or units. There is no BMR requirement for developments of less than nine parcels or units.

(b) The BMR in-lieu fee for individually owned units shall equal the difference between the fair market value of the BMR unit and the BMR unit price established under 19.66.040.

(c) The BMR in-lieu fee for rental units shall be the difference between the market rent for the units and the established BMR rent capitalized over fifty-five years. The Consumer Price Index shall be used to establish the inflation rate, and the rental rates from the Sunnyvale vacancy and rent survey shall be used to calculate the estimated increase in rental rates. (Ord. 2751-04 § Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.091).

19.66.100. Density bonus for lower income housing.

(a) Notwithstanding any other provision in this chapter for providing a density bonus in conjunction with an application to develop a housing project of five or more units, a developer shall be entitled to a density bonus of at least twenty-five percent over the otherwise maximum allowable residential density for the applicable zoning district, where the developer agrees or proposes to construct:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code; or

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code; or

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code, all as set forth in Section 65915 of the Government Code.

(b) In determining the number of units to be designated under the ten or twenty percent categories, the density bonus to be granted shall not be included. A developer who agrees to construct more than one of the foregoing categories of affordable housing shall be entitled to only one, twenty-five percent density bonus.

(c) Within ninety days of receipt of a preliminary, written proposal for the development of housing pursuant to this section, the city shall notify the housing developer, in writing, of the procedures required for compliance with this section. It is contemplated that such preliminary proposals may be submitted prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals.

(d) The affordable units designated and constructed by the developer in consideration for the grant of the density bonus pursuant to this section shall remain affordable for a period of at least fifty-five years.

(e) Units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty percent of sixty percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty percent of fifty percent of area median income.

(f) Identification and designation of the affordable units and appropriate resale controls shall be incorporated as a part of the grant deed of a residential development regulated by this chapter. All such controls or restrictions applicable thereto shall run with the land for a period of fifty-five years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program, and shall be recorded as a part of the grant deed with the county recorder. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

(g) The procedures for establishing unit sales prices, eligibility requirements and resale controls for affordable units designated pursuant to this section shall be the same as for below market rate units as set forth in Sections 19.66.040, 19.66.050, and 19.66.060.

(h) A housing developer who seeks to waive or modify development or zoning standards which would otherwise inhibit the utilization of the density bonus on a specific site must request a variance pursuant to Chapter 19.84. In addition to the showing required by Chapter 19.84, the housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

(i) It is the intent of this section to meet the requirements imposed by Section 65915 of the Government Code, and amendments thereto. Interpretation of requirements, definitions and standards as set forth in this section shall be construed so as to be consistent with Chapter 19.66, to the extent they are not inconsistent with Section 65915 of the Government Code. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.093).

19.66.110. An applicant's density bonus for senior citizen housing.

(a) Upon request, the city shall approve an increase in the number of units permitted in a proposed residential development governed by this chapter, where the entire development is designated and intended for exclusive occupancy by senior citizens. The increase in density may not exceed forty percent of the maximum number of units otherwise permitted by applicable zoning restrictions, and shall not apply to developments of less than twenty units.

(b) The density bonus described in subsection (a) shall be granted only on the condition that the owner enter into a binding, written agreement with the city that twenty percent of the units would be rented at an affordable rate for very low income seniors, and ten percent of the units would be rented at an affordable rate for low income seniors, as defined by the HUD Section 8 program income limits, or its successor or equivalent program. The agreement between the owner and the city would be in effect for the life of the project, and would be recorded with the deed.

(c) Notwithstanding any other provision of this code, and subject to the approval by the director of community development, upon a showing by the applicant that the development is located close to public transportation, parking requirements may be reduced to one space per unit. Factors which shall be considered in determining whether or not to grant a request for reduced parking requirements shall include proximity, accessibility, suitability, practicability and variety of the form or forms of available public transportation.

(d) For purposes of this section, a senior citizen is a person sixty-two years old or older. If two persons occupy a single unit, at least one person must be a senior citizen. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.095).

19.66.120. Priority processing.

All residential developments providing ten percent BMR units or more shall receive "priority processing," by which housing developments shall be reviewed and checked for all required city permit and other approvals in advance of other pending developments. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.100).

19.66.130. Technical and financial assistance.

The city or its designee shall provide assistance to applicants concerning financial subsidy programs, environmental review procedures and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.120).

19.66.140. Enforcement.

(a) The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing a residential development governed by this chapter. No tentative map, use permit, special development permit or occupancy permit shall be issued for any such development unless exempt from or in compliance with the terms of this chapter.

(b) The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval. The city shall be entitled to all attorneys fees arising out of any action or proceeding to ensure compliance.

(c) Any individual who sells or rents a restricted unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such amounts shall be added to the city's housing fund.

(d) Any individual who violates the terms of this chapter or any deed restrictions may be forced to vacate or sell the unit to the next eligible participant. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.140).

19.66.150. Appeals.

(a) Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension, or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 19.98.

(b) Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by city as its administrative agent, may notify the chief executive officer of the agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by the agency in accordance with such procedures as it may establish. In instances in which violations of this chapter or any agreement with the city on the part of the agency is alleged, the city shall take appropriate investi-

gative and corrective actions. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.140).

19.66.160. Single room occupancy (SRO) living unit facility.

(a) A conditional use permit may be issued for an SRO living unit facility only if the following criteria are met:

(1) Excluding the closet and the bathroom area, an SRO living unit must be a minimum of one hundred fifty square feet in floor area. The average unit size in a living unit facility shall be no greater than two hundred seventy-five square feet and no individual living unit may exceed four hundred square feet;

(2) Each SRO living unit shall be designed to accommodate a maximum of two persons;

(3) An SRO living unit may contain partial kitchen facilities;

(4) Individual SRO living units may not have separate external entryways;

(5) The SRO living unit facility must have a management plan approved by the director of community development. The management plan shall contain management policies, operations, rental procedures, maintenance plans, staffing needs and security procedures. An on-site, twenty-four-hour manager is required in every living unit project. The rental procedures must allow for both weekly and monthly tenancies and specify deposit requirements for each type of tenancy. A manager's unit shall be a complete dwelling unit and so designated on all plans;

(6) Laundry facilities must be provided in a separate room in compliance with Chapter 16.16, at the ratio of one washer and one dryer for every twenty units or fractional number thereof. The laundry facility must be located near the interior common space. Washers and dryers may be coin operated;

(7) A closet and separate storage space, as approved by the director of community development, is required in every SRO living unit facility;

(8) A cleaning supply storeroom and/or utility closet with at least one laundry tub with hot and cold running water must be provided on each floor of the living unit building;

(9) The SRO living unit facility shall provide interior common space at a minimum of four square feet per unit. An SRO living unit facility must provide at least two hundred square feet in area of interior common space, excluding janitorial storage, laundry facilities and common hallways.

(b) The planning commission or the city council shall deny the application for a use permit hereunder where the information submitted by the applicant and/or presented at the public hearing fails to substantiate that the project will

comply with these criteria. (Ord. 2623-99 § 1 (part); prior zoning code § 19.32.160)

19.66.170. Single room occupancy (SRO) residential hotel.

(a) A conditional use permit may be issued for an SRO residential hotel only if the following criteria are met:

(1) Excluding the closet and any bathroom space, an SRO residential hotel unit must be at least seventy square feet in floor area;

(2) An SRO residential hotel room designed to accommodate a maximum of one person shall not exceed one hundred fifty square feet in floor area, and an SRO residential hotel room designed to accommodate a maximum of two persons shall be between one hundred twenty and two hundred nineteen square feet in floor area;

(3) An SRO residential hotel unit may contain partial kitchen and bath facilities. If individual bath and/or kitchen facilities are not provided, common bath facilities and/or common laundry and kitchen facilities must be provided in accordance with Chapter 16.16;

(4) Individual SRO residential hotel units may not have separate external entryways;

(5) The SRO residential hotel must have a management plan approved by the director of community development. The management plan shall contain management policies, operations, rental procedures, maintenance plans, staffing needs and security procedures. An on-site twenty-four-hour manager is required in every SRO residential hotel. The rental procedures must allow for both weekly and monthly tenancies and specify deposit requirements for each type of tenancy. A manager's unit shall be a complete dwelling unit and so designated on all plans;

(6) Laundry facilities must be provided in a separate room, at the ratio of one washer and one dryer for every twenty units or fractional number thereof. The laundry facility must be located near the interior common space. Washers and dryers may be coin operated;

(7) A closet and separate storage space, as approved by the director of community development, is required in every SRO residential hotel room;

(8) A cleaning supply storeroom and/or utility closet with at least one laundry tub with hot and cold running water must be provided on each floor of the residential hotel building;

(9) The SRO residential hotel shall provide interior common space at a minimum of four square feet per unit. The SRO residential hotel shall provide a minimum of two hundred square feet of interior common area.

(b) The planning commission or the city council shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate that the project will comply with these criteria. (Ord. 2623-99 § 1 (part): prior zoning code § 19.32.162).

EXHIBIT "A"

19.66.060

an escrow account contemplating sale of such unit shall not have been opened within ninety days after acceptance, the offer shall terminate. Seller shall not refuse an offer by a qualified buyer if the offer conforms with the monetary restrictions of this chapter. Buyer shall pay its own points, if any. Closing costs shall be shared equally between buyer and seller. During the one hundred eighty day period when the property is offered to the city, the city may propose more than one purchaser. Once opened, an escrow must be closed within ninety days, unless both parties agree to an extension of time. If the city or its designee does not accept an offer of sale within one hundred eighty days, all restrictions, resale controls, and other terms of this chapter shall cease and become null and of no further effect as to such unit. The BMR units shall be sold and resold only to persons determined to be eligible for BMR units according to the terms of this chapter.

(c) The buyer shall record the deed of trust imposing BMR restrictions, stating each of the restrictions and resale controls imposed pursuant to this chapter. The deed of trust shall afford the city the right to enforce all restrictions and resale controls in the manner provided by law. The city or its designee shall facilitate the resale of BMR units, for purposes of preventing any abuse or violation of resale controls. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.070).

19.66.070. Availability of government subsidies.

It is the intent of this chapter that its requirements of construction and maintenance of BMR units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units will be available from HUD throughout the operation of this chapter. This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth in Sections 19.66.080, 19.66.120 and 19.66.130. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.080).

19.66.080. Density bonus.

(a) The city upon request shall approve an increase in the number of units permitted in a proposed residential development governed by this chapter, provided all applicable zoning regulations are satisfied. Except as provided in subsection (b), the increase may represent no more than fifteen percent of the maximum number of units otherwise permitted by applicable zoning regulations, in addition to the maximum, except for those developments which meet the requirements set forth in Sections 19.66.100 or 19.66.110.

(b) For housing developments proposed to contain between nine and nineteen units, inclusive, the maximum increase in the number of units permitted shall be the number of BMR units required by Section 19.66.020, plus one unit. This subsection shall not apply to housing developments subject to Section 19.66.100 or 19.66.110. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.090).

19.66.090. BMR in-lieu fee for certain developments.

(a) The director of community development, upon request by the developer, may waive the requirements to provide BMR units pursuant to Section 19.66.020 in exchange for the payment of a BMR in-lieu fee as described below provided the proposed development consists of between nine and nineteen parcels or units. There is no BMR requirement for developments of less than nine parcels or units.

(b) The BMR in-lieu fee for individually owned units shall equal the difference between the fair market value of the BMR unit and the BMR unit price established under 19.66.040.

(c) The BMR in-lieu fee for rental units shall be the difference between the market rent for the units and the established BMR rent capitalized over fifty-five years. The Consumer Price Index shall be used to establish the inflation rate, and the rental rates from the Sunnyvale vacancy and rent survey shall be used to calculate the estimated increase in rental rates. (Ord. 2751-04 § Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.091).

19.66.100. Density bonus for lower income housing.

(a) Notwithstanding any other provision in this chapter for providing a density bonus in conjunction with an application to develop a housing project of five or more units, a developer shall be entitled to a density bonus of at least twenty-five percent over the otherwise maximum allowable residential density for the applicable zoning district, where the developer agrees or proposes to construct:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code; or

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code; or

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code, all as set forth in Section 65915 of the Government Code.

19.66.030. Density limitations.

The limitations upon residential density contained in Chapter 19.18 shall be deemed modified to the extent required by the terms of this chapter. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.040).

19.66.040. BMR unit sales prices and procedures; rental prices and procedures.

(a) Households at seventy percent to one hundred twenty percent of area median income shall be eligible for the ownership program. The city or its designee shall advertise the existence and terms of the BMR housing program to the general public, shall accept applications from prospective purchasers and tenants, shall determine the qualifications of such persons, and shall compile and maintain a list of qualified purchasers. The city shall have access to the seller's records and books pertaining to any unit covered by this chapter.

(b) The owner of a development governed by this chapter shall give written notice to city or its designee, prior to the issuance of an occupancy permit, stating the availability of all such units, the number of bedrooms in each, the estimated construction cost of each, whether each unit is to be sold or rented, and such other information as may be required in order to establish a sales or rental price and arrange for qualified occupants.

(c) Sale prices of below market rate residential units shall be established by the city or its designee and revised annually at levels affordable to households at eighty percent to one hundred twenty percent of area median income with consideration for construction costs, as more fully outlined in the administrative procedures.

(d) Rental prices of below market rate units shall be established at levels affordable to households at seventy percent or less of area median income, as more fully outlined in the administrative procedures. The annual change in the BMR rental prices to be charged by applicants or project owners not participating in federal "Section 8" or similar programs shall be either an increase of five percent or the increased percentage of average annual rent based on the Sunnyvale vacancy and rent survey, whichever is less. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.050).

19.66.050. Eligibility requirements for BMR unit occupants.

(a) The city or its designee shall select potential occupants of BMR purchase and rental units from a list of those persons qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size

of available units, and further appropriate criteria and an equitable selection method to be established in conformance with the terms of this chapter. No distinction shall be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall receive priority placement as more fully outlined in the administrative procedures: qualified public school employees, city employees, childcare workers, persons who live in the city of Sunnyvale, and persons who work in the city of Sunnyvale.

(b) Each purchaser of a BMR dwelling unit shall certify, prior to close of escrow and on an annual basis, in a form acceptable to the city or its designee, that the unit is being purchased and shall be maintained as the purchaser's primary place of residence. Failure of the purchaser to maintain a homeowner's property tax exemption shall be construed as evidence that the BMR unit is not the primary place of residence of the purchaser.

(c) Fees for processing BMR ownership and rental application and fees for loan refinancing shall be established by resolution of the city council. (Ord. 2751-04 § 1; Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.060).

19.66.060. Resale controls for BMR units.

(a) In order to maintain the availability of the housing units constructed pursuant to the requirements of this chapter, the following resale controls shall apply. The price received by the seller of a BMR unit shall be limited to:

(1) The original purchase price plus a percentage increase equal to one-third of any increase in the housing component of the Bay Area Consumer Price Index since the date of the previous sale, plus the adjusted amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, plus any applicable transaction fee charged by a real estate professional, minus any costs necessary to bring the unit into conformity with Title 16 of this code in the event that the occupant has allowed the unit to deteriorate due to deferred maintenance; or

(2) The fair market value, whichever is less.

(b) BMR units constructed, offered for sale, or sold pursuant to the requirements of this chapter by the original purchaser and all subsequent purchasers shall be offered for sale first to the city or its designee. Seller shall ensure that the unit is clean and in good repair and available to be shown to prospective buyers. No time periods shall begin to run until the city has inspected the unit and is satisfied the seller has complied with all program conditions and requirements. In the event that an offer of sale of any BMR unit is not accepted by city or its designee within one hundred eighty days after tender, or once accepted, if

Chapter 19.66

AFFORDABLE HOUSING AND SINGLE ROOM
OCCUPANCIES

- 19.66.010. Purpose.
- 19.66.020. General requirements.
- 19.66.030. Density limitations.
- 19.66.040. BMR unit sales prices and procedures;
rental prices and procedures.
- 19.66.050. Eligibility requirements for BMR unit
occupants.
- 19.66.060. Resale controls for BMR units.
- 19.66.070. Availability of government subsidies.
- 19.66.080. Density bonus.
- 19.66.090. BMR in-lieu fee for certain
developments.
- 19.66.100. Density bonus for lower income housing.
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citizen housing.
- 19.66.120. Priority processing.
- 19.66.130. Technical and financial assistance.
- 19.66.140. Enforcement.
- 19.66.150. Appeals.
- 19.66.160. Single room occupancy (SRO) living unit
facility.
- 19.66.170. Single room occupancy (SRO) residen-
tial hotel.

19.66.010. Purpose.

The purpose of this chapter is to enhance the public welfare by ensuring that future housing development contributes to the attainment of the housing goals set forth in the general plan of the city of Sunnyvale by increasing the production of residential units affordable by households of very low, low and moderate income. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.010).

19.66.020. General requirements.

(a) All residential developments consisting of nine or more parcels or dwelling units designed and intended for permanent occupancy located in any zoning district other than R-0, R-I, R-1.5 or R-1.7/PD shall maintain below market rate units according to the terms of this chapter and as more fully outlined in the administrative procedures promulgated by the director of community development.

(1) For ownership units, twelve and one-half percent of the total number of dwelling units or parcels within the development shall be maintained as below market rate. The foregoing requirement shall be applied no more than once to a given development, regardless of changes in the char-

acter or ownership of the development, with the exception that all new condominium conversions shall maintain twelve and one-half percent of the total number of dwelling units as below market rate.

(2) For rental units, ten percent of the total number of dwelling units shall be maintained as below market rate. In the event that apartment vacancy rates reach levels of three percent or less and rents show a net increase of twenty percent or more during a twenty-four month period based on the Sunnyvale vacancy and rent survey, all new rental developments shall maintain fifteen percent of the total number of dwelling units as below market rate.

(3) In calculating the applicable percentage, no bonus units as described in Section 19.66.080 shall be considered, any fraction of a dwelling unit or parcel less than five-tenths shall be disregarded and any fraction greater than or equal to five-tenths shall be construed as one dwelling unit.

(b) Any tentative map, use permit or special development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of below market rate (BMR) units, the number of BMR units (whether for sale or rental) and their prices, and appropriate resale controls.

(c) All BMR units in a project or phase of a project shall be constructed concurrently with non-BMR units, shall be dispersed throughout such project and reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by interior or exterior design, amenities, construction, or materials.

(d) All BMR units shall be sold or rented only to moderate, low or very low income households.

(e) Identification and designation of BMR units and appropriate resale controls shall be recorded as a deed of trust imposing program restrictions with the county recorder of Santa Clara County. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

(f) Controls and restrictions on ownership units shall apply for a period of thirty years from the date of recordation.

(g) Controls and restrictions on rental units shall apply for a period of fifty-five years from the date of recordation.

(h) The director of community development, or the director's designee, shall create and maintain administrative procedures that more fully outline the terms and conditions of the BMR program, consistent with this chapter. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.030).

(b) In determining the number of units to be designated under the ten or twenty percent categories, the density bonus to be granted shall not be included. A developer who agrees to construct more than one of the foregoing categories of affordable housing shall be entitled to only one, twenty-five percent density bonus.

(c) Within ninety days of receipt of a preliminary, written proposal for the development of housing pursuant to this section, the city shall notify the housing developer, in writing, of the procedures required for compliance with this section. It is contemplated that such preliminary proposals may be submitted prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals.

(d) The affordable units designated and constructed by the developer in consideration for the grant of the density bonus pursuant to this section shall remain affordable for a period of at least fifty-five years.

(e) Units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty percent of sixty percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty percent of fifty percent of area median income.

(f) Identification and designation of the affordable units and appropriate resale controls shall be incorporated as a part of the grant deed of a residential development regulated by this chapter. All such controls or restrictions applicable thereto shall run with the land for a period of fifty-five years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program, and shall be recorded as a part of the grant deed with the county recorder. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

(g) The procedures for establishing unit sales prices, eligibility requirements and resale controls for affordable units designated pursuant to this section shall be the same as for below market rate units as set forth in Sections 19.66.040, 19.66.050, and 19.66.060.

(h) A housing developer who seeks to waive or modify development or zoning standards which would otherwise inhibit the utilization of the density bonus on a specific site must request a variance pursuant to Chapter 19.84. In addition to the showing required by Chapter 19.84, the housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

(i) It is the intent of this section to meet the requirements imposed by Section 65915 of the Government Code, and amendments thereto. Interpretation of requirements, definitions and standards as set forth in this section shall be construed so as to be consistent with Chapter 19.66, to the extent they are not inconsistent with Section 65915 of the Government Code. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.093).

19.66.110. An applicant's density bonus for senior citizen housing.

(a) Upon request, the city shall approve an increase in the number of units permitted in a proposed residential development governed by this chapter, where the entire development is designated and intended for exclusive occupancy by senior citizens. The increase in density may not exceed forty percent of the maximum number of units otherwise permitted by applicable zoning restrictions, and shall not apply to developments of less than twenty units.

(b) The density bonus described in subsection (a) shall be granted only on the condition that the owner enter into a binding, written agreement with the city that twenty percent of the units would be rented at an affordable rate for very low income seniors, and ten percent of the units would be rented at an affordable rate for low income seniors, as defined by the HUD Section 8 program income limits, or its successor or equivalent program. The agreement between the owner and the city would be in effect for the life of the project, and would be recorded with the deed.

(c) Notwithstanding any other provision of this code, and subject to the approval by the director of community development, upon a showing by the applicant that the development is located close to public transportation, parking requirements may be reduced to one space per unit. Factors which shall be considered in determining whether or not to grant a request for reduced parking requirements shall include proximity, accessibility, suitability, practicability and variety of the form or forms of available public transportation.

(d) For purposes of this section, a senior citizen is a person sixty-two years old or older. If two persons occupy a single unit, at least one person must be a senior citizen. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.095).

19.66.120. Priority processing.

All residential developments providing ten percent BMR units or more shall receive "priority processing," by which housing developments shall be reviewed and checked for all required city permit and other approvals in advance of other pending developments. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.100).

19.66.130. Technical and financial assistance.

The city or its designee shall provide assistance to applicants concerning financial subsidy programs, environmental review procedures and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.120).

19.66.140. Enforcement.

(a) The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing a residential development governed by this chapter. No tentative map, use permit, special development permit or occupancy permit shall be issued for any such development unless exempt from or in compliance with the terms of this chapter.

(b) The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval. The city shall be entitled to all attorneys fees arising out of any action or proceeding to ensure compliance.

(c) Any individual who sells or rents a restricted unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such amounts shall be added to the city's housing fund.

(d) Any individual who violates the terms of this chapter or any deed restrictions may be forced to vacate or sell the unit to the next eligible participant. (Ord. 2717-03 (part); Ord. 2623-99 § 1 (part); prior zoning code § 19.88.140).

19.66.150. Appeals.

(a) Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension, or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 19.98.

(b) Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by city as its administrative agent, may notify the chief executive officer of the agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by the agency in accordance with such procedures as it may establish. In instances in which violations of this chapter or any agreement with the city on the part of the agency is alleged, the city shall take appropriate investi-

gative and corrective actions. (Ord. 2623-99 § 1 (part); prior zoning code § 19.88.140).

19.66.160. Single room occupancy (SRO) living unit facility.

(a) A conditional use permit may be issued for an SRO living unit facility only if the following criteria are met:

(1) Excluding the closet and the bathroom area, an SRO living unit must be a minimum of one hundred fifty square feet in floor area. The average unit size in a living unit facility shall be no greater than two hundred seventy-five square feet and no individual living unit may exceed four hundred square feet;

(2) Each SRO living unit shall be designed to accommodate a maximum of two persons;

(3) An SRO living unit may contain partial kitchen facilities;

(4) Individual SRO living units may not have separate external entryways;

(5) The SRO living unit facility must have a management plan approved by the director of community development. The management plan shall contain management policies, operations, rental procedures, maintenance plans, staffing needs and security procedures. An on-site, twenty-four-hour manager is required in every living unit project. The rental procedures must allow for both weekly and monthly tenancies and specify deposit requirements for each type of tenancy. A manager's unit shall be a complete dwelling unit and so designated on all plans;

(6) Laundry facilities must be provided in a separate room in compliance with Chapter 16.16, at the ratio of one washer and one dryer for every twenty units or fractional number thereof. The laundry facility must be located near the interior common space. Washers and dryers may be coin operated;

(7) A closet and separate storage space, as approved by the director of community development, is required in every SRO living unit facility;

(8) A cleaning supply storeroom and/or utility closet with at least one laundry tub with hot and cold running water must be provided on each floor of the living unit building;

(9) The SRO living unit facility shall provide interior common space at a minimum of four square feet per unit. An SRO living unit facility must provide at least two hundred square feet in area of interior common space, excluding janitorial storage, laundry facilities and common hallways.

(b) The planning commission or the city council shall deny the application for a use permit hereunder where the information submitted by the applicant and/or presented at the public hearing fails to substantiate that the project will

comply with these criteria. (Ord. 2623-99 § 1 (part); prior zoning code § 19.32.160)

19.66.170. Single room occupancy (SRO) residential hotel.

(a) A conditional use permit may be issued for an SRO residential hotel only if the following criteria are met:

(1) Excluding the closet and any bathroom space, an SRO residential hotel unit must be at least seventy square feet in floor area;

(2) An SRO residential hotel room designed to accommodate a maximum of one person shall not exceed one hundred fifty square feet in floor area, and an SRO residential hotel room designed to accommodate a maximum of two persons shall be between one hundred twenty and two hundred nineteen square feet in floor area;

(3) An SRO residential hotel unit may contain partial kitchen and bath facilities. If individual bath and/or kitchen facilities are not provided, common bath facilities and/or common laundry and kitchen facilities must be provided in accordance with Chapter 16.16;

(4) Individual SRO residential hotel units may not have separate external entryways;

(5) The SRO residential hotel must have a management plan approved by the director of community development. The management plan shall contain management policies, operations, rental procedures, maintenance plans, staffing needs and security procedures. An on-site twenty-four-hour manager is required in every SRO residential hotel. The rental procedures must allow for both weekly and monthly tenancies and specify deposit requirements for each type of tenancy. A manager's unit shall be a complete dwelling unit and so designated on all plans;

(6) Laundry facilities must be provided in a separate room, at the ratio of one washer and one dryer for every twenty units or fractional number thereof. The laundry facility must be located near the interior common space. Washers and dryers may be coin operated;

(7) A closet and separate storage space, as approved by the director of community development, is required in every SRO residential hotel room;

(8) A cleaning supply storeroom and/or utility closet with at least one laundry tub with hot and cold running water must be provided on each floor of the residential hotel building;

(9) The SRO residential hotel shall provide interior common space at a minimum of four square feet per unit. The SRO residential hotel shall provide a minimum of two hundred square feet of interior common area.

(b) The planning commission or the city council shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate that the project will comply with these criteria. (Ord. 2623-99 § 1 (part); prior zoning code § 19.32.162).

EXHIBIT 'B'

RECORDING REQUESTED BY

CITY OF SUNNYVALE

Record at No Fee per Government
Code Section 6103

AND WHEN RECORDED MAIL TO

Housing Division Phone: 408-730-7250

CITY OF SUNNYVALE

456 W. Olive Avenue

P.O. Box 3707

SUNNYVALE, CA 94088—3707

_____SPACE ABOVE THIS LINE FOR RECORDER'S USE_____

APN#: _____

DEED OF TRUST

Securing Deed Restrictions that control the resale of the Below Market Rate Property, including obligations and restrictions limiting the use and occupancy, the resale value of the property and the ability to transfer title to the property.

THIS DEED OF TRUST is made as of ----- 2004, between -----, (“Trustor”), and the City of Sunnyvale, a Municipal Corporation of the State of California (“Trustee” and Beneficiary”), whose address is: 466 West Olive Avenue, P.O. Box 3707, Sunnyvale, California 94088-3707.

This Deed of Trust is security to insure compliance with the provisions of the Sunnyvale Below Market Rate Ordinance Chapter 19.66 and is secured on _____, **SUNNYVALE, CALIFORNIA** a below market rate property and is entered into as of this ____ day of _____, 20____, by and between the **CITY OF SUNNYVALE**(“City”)and _____, (“Owner”). The covenants run with the land and the terms and conditions of the Deed of Trust are intended to bind the Owner for **thirty (30) years** from the date of the recordation of the Deed of Trust.

RECITALS

WHEREAS, the City has developed a program 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; and

WHEREAS, the intent of the City is to preserve the number and availability of affordable homes in the program for persons with low or moderate incomes for as long as possible;

Whereas, the parties understand and agree that owner will take out a purchase money loan secured by a First Deed of Trust on the property. This purchase money loan may not exceed 97% of the Below Market Rate value of the property. In order to protect the City of Sunnyvale interest in the property, further encumbrancing of the property, after the purchase money loan, including refinancing of the First Deed of Trust, second or subsequent loans and/or any other encumbrances or liens against the property shall be limited such that the total encumbrances of the property does not exceed 95% of the Below Market Rate value of the property. Violation of this provision shall be considered a prohibited transfer and will constitute a breach of the Deed of Trust. The Below Market Rate value is \$_____ and may be adjusted by the City of Sunnyvale, from time to time, as described in the Purchase Price formula adjustment contained in Section 15(B).__

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

1. Premises. The real property which is the subject of this Deed of Trust is commonly known as (street address), SUNNYVALE, CALIFORNIA more fully described in the legal description attached hereto and incorporated herein by reference as Exhibit "A." Said real property ("Premises") is hereby designated as a Below-Market Rate Unit ("BMR unit") and shall be subject to the terms and conditions herein set forth, as well as the applicable provisions of Sunnyvale Municipal Code Chapter 19.66, and administrative procedures together with any amendments, which may be adopted from time to time.

2. Supersession. This Deed of Trust shall supersede any and all resale Deed of Trusts, deed restrictions and other similar conditions and/or restrictions previously imposed on the Premises pursuant to the provisions of Chapter 19.66 of the Sunnyvale Municipal Code, whether or not such previous Deed of Trusts or restrictions were recorded.

6. Owner Representations and Warranties. The Owner represents and warrants to the City that the financial and other information previously provided to the City by the Owner for the purpose of qualifying to purchase the BMR unit was true and correct at the time it was given and remains true and correct as of the date of the Deed of Trust. Owner shall be in default if Owner, during the loan application process, gave materially false or inaccurate information or statements to City (or failed to provide City with any material information) including, but not limited to, representations concerning (i) Owner's occupancy of the Property as a principal residence and (ii) Owner's income. Owner further understands that any material misstatement or misrepresentation shall be deemed to be a material breach of this Deed of Trust.

7. Occupancy of Property: Owner shall occupy, establish and maintain the use of the Property as Owner's principal residence within thirty (30) days after the execution of this Deed of Trust. Owner's principal residence shall mean the Property is occupied by the Owner for at least ten (10) months out of each year. The Owner shall not lease the Property without the express written consent of the City of Sunnyvale during any twelve-month period and shall not lease the property without providing the City with a copy of the lease. Owner shall continuously claim a homeowner's exemption for property taxes with the Santa Clara County Assessor's Office on the Property. Failure to claim the homeowner's exemption is a breach of the terms and conditions of the Deed of Trust.

8. Transfer by Owner. Any attempt by the Owner to make a Prohibited Transfer to or any interest in the Property in violation of the terms of the Deed of Trust shall be void and subject to exercise by the City of its right of first refusal to purchase.

(D) "Transfer" means any voluntary or involuntary sale, assignment or transfer of or any interest in the Property, including fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entirety, life estate, or other limited estate, leasehold interest or any rental of the Property, or any interest evidenced by a land contract, or any encumbrance or liens exceeding 95% of the Below Market Rate value of the property. Any Transfer without satisfaction of the conditions of this Deed of Trust shall be deemed a "Prohibited Transfer".

(E) The following Transfers are not considered Prohibited Transfers and therefore are not subject to the City's right to exercise its right of first refusal to purchase: (a) Transfer by devise, or inheritance to the Owner's spouse; (b) Transfer of title by an Owner's death to a surviving joint tenant, tenant by entirety, or a surviving spouse of community property; (c) Transfer of title to a spouse as part of divorce or dissolution proceedings; (d) Transfer of title or an interest in the Property to the spouse in conjunction with marriage; providing, however, that these covenants shall continue to run with the title to the Property following said Transfers; and that an instrument be executed, acknowledge and recorded by the Transferee containing the following covenant: "This Property is subject to the Deed of Trust securing deed restrictions that restrict the resale, refinance, occupancy and contain City's right of first refusal to purchase and Transfer on behalf of Transferee, and Transferee's successors and assigns, covenants and agrees to be bound by and perform according to the terms and conditions of the Deed of Trust, and to include in any further Transfer of the Property the covenant required by Section 5(B) of the Deed of Trust." A Transferee who satisfies the conditions of this Section 5(b) shall then be the Owner.

(F) Transfers by devise or inheritance will be permitted under the following terms and conditions of transfer: (a) Transferee will reside in the Property and within thirty (30) days of the transfer the Transferee shall occupy, establish and maintain the use of the Property as Transferee's principal residence; (b) The Transferee shall provide all information related to household income necessary for the purpose of determining the financial qualifications of the transferee to own a BMR unit; and (c) The Transferee will execute a Deed of Trust securing the covenants and conditions of the City of Sunnyvale Below Market Rate Program including any and all conditions contained in Sunnyvale Municipal Code Chapter 19.66, including any amendments thereto which may be adopted from time to time and this instrument will include a full renewal of the term of the restrictions of the Below Market Rate Program as provided for in Sunnyvale Municipal Code Chapter 19.66, as related to the purchase of units.

6. Notice of Prohibited Transfer Within thirty (30) days after receiving notification of a Prohibited Transfer, the City of Sunnyvale shall give written notice to the Owner, specifying the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of the City within ten (10) days after the date of the notice or within such further time as the City determines is necessary to correct the violation, the City may declare a default under the terms of this Deed of Trust. Upon the declaration of a default, the City may exercise its right of first refusal to purchase, may apply to a court of competent jurisdiction for specific performance under the terms of the Deed of Trust, for an injunction prohibiting a proposed sale or transfer in violation of the terms of the Deed of Trust, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.

7. Fannie Mae. Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage held by the Federal National Mortgage Association (FNMA—"Fannie Mae") pursuant to the

Community Partnership Program as described in Part V, section 224 of the Fannie Mae Selling Guide. In the event of a foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral Deed of Trust restricting the use of the Premises to low or moderate income households or otherwise restricting the Owner's ability to sell the Premises shall have no further force or effect on subsequent owners or purchasers of the Premises. Any person, including his or her successors or assigns (other than the Owner or a related entity of the Owner), receiving title to the Premises through a foreclosure of the First Deed of Trust shall receive title to the Premises free and clear from such restrictions. Provided that (i) the City has been given written notice of a default under the First Deed of Trust and (ii) the City shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the 60-day period provided in such notice sent to the City.

8. Attorneys' Fees. Owner hereby agrees to reimburse City the full cost and expense, including staff time and attorneys' fees and costs, incurred by City in an effort to correct any default or enforce any violation of the terms of this Deed of Trust, and Owner further understands and agrees that if such funds are not reimbursed, City may deduct same from the proceeds upon resale of the Premises.

9. Covenant Running with the Land. The terms and conditions set forth herein are intended to run with the land and shall bind Owner and all successors, heirs and grantees. These terms and conditions shall be made part of each deed subsequently recorded and shall bind each successor in interest until the earlier of (a) **thirty (30) years** from the date of recordation; or (b) the recordation of a subsequent and superseding Deed of Trust covenant.

10. Right of First Refusal. Except as provided herein, Owner hereby grants and gives to the City of Sunnyvale or its designee a right to purchase the Premises under conditions set forth below. City, at its sole discretion, may assign this right to an individual buyer who meets the City's eligibility qualifications to participate in the program. City reserves the right to reassign the right to another eligible, qualified buyer in the event the initial designee fails or is unable to complete the transaction. Any assignment or reassignment of this right shall extend the time limits for performance under this Deed of Trust.

11. Resale Procedures.

A. Notice of Offer to Sell. Whenever the Owner no longer desires to own the Premises, Owner shall notify City of their intent to offer the property for sale in accordance with the terms of this Deed of Trust. Such notice shall be in writing, and may be personally delivered or sent by first class mail through the United States Postal Service, addressed to the Director of Community Development, **City of Sunnyvale, P.O. Box 3707, Sunnyvale, California 94088-3707**. Owner's offer to sell may be withdrawn by Owner, provided that notice of withdrawal has been received by City or its Designee, in writing, prior to acceptance by City or its Designee.

B. Acceptance. City, its designee or assignee shall accept offer within one hundred eighty (180) days from the date of receipt of Owner's notice of offer to sell the Premises. This acceptance shall be in writing, and personally delivered or sent by first class mail through the United States Postal Service, addressed to the Owner of record at the official address of the Premises. For purposes of fulfillment of the terms of this procedure, the notice of intent to sell the premises shall be deemed to be an offer to sell, and the exercise of the right to purchase by the City or its designee or assignee shall be deemed to be an acceptance of that offer. Acceptance by City or its Designee shall constitute a legally binding contract for the transfer of title, and once accepted, the offer to sell may not be withdrawn without

the express, written consent of the party who accepted the offer.

C. Escrow. Within ninety (90) days of the date of acceptance, the City or its designee shall open an escrow account. City reserves the right, at any time during this process, to subsequently assign its right to purchase to an individual who is eligible and qualified to participate in the program. Once opened, an escrow must be closed within ninety (90) days, unless both parties mutually agree, in writing, to an extension of time. In no case shall the time between receipt of an offer to sell and the date of close of escrow exceed three hundred and sixty (360) days, unless both parties mutually agree, in writing, to extend that date, or if for any reason the time periods herein are tolled pursuant to the administrative procedures.

D. Acceleration of Time Period for Hardship. Owner may request the City to accelerate the time period specified in subsection B. for a party to accept the offer to sell, or for the City to exercise its right of first refusal, to not exceed ninety (90) days from the receipt of the offer to sell. The Owner would be entitled to accelerate the time period if, in the determination of the Director of Community Development, the Owner can establish that failure to accept the offer to sell, or for the City to otherwise fail to exercise its right of first refusal within ninety (90) days would result in a hardship to the Owner. For purposes of this Deed of Trust, the Owner shall establish that a hardship would result by submission of competent evidence, of a significant loss of funds, loss of an opportunity to qualify or otherwise purchase a new home, or due to an unexpected and sudden loss of employment, job transfer, or death of a spouse or immediate family member. The determination of the existence of a hardship shall be at the sole discretion of the Director of Community Development. Examples of possible grounds for establishing a hardship shall include, but not be limited to, an extraordinary and significant loss of funds, loss of an opportunity to qualify or otherwise purchase a new home, or an unexpected and sudden loss of employment, job transfer, or death of a spouse or immediate family member. Any request for acceleration due to hardship shall be requested by the Owner, in writing, not later than thirty (30) days from the date of receipt of the notification of intent to sell. The Director shall make a determination and notify the owner within ten (10) business days of receipt of the request for a hardship acceleration that the request has been approved, denied, or that additional information is required to make the determination. In the event the request is denied, or if additional information is required, the Owner may submit further evidence and request a reconsideration. In any case, the City shall have a minimum of sixty (60) days from the date of receipt of the new evidence or of the request for reconsideration of a previously issued denial to accept the offer to sell.

12. Termination of Conditions. If the City or its designee does not accept an offer of sale within one hundred eighty (180) days of the date of receipt of Owner's notice, or an escrow account is not opened within ninety (90) days of the date the offer has been accepted, all restrictions, resale controls, and other terms of this Deed of Trust shall cease and become null and void and of no further effect as to the Premises, unless the time period has been tolled, or extended by mutual, written Deed of Trust of the parties.

13. Owner's Obligation to Cooperate. At all times, Owner shall ensure that the Premises are clean and in good repair, and available to be shown to prospective buyers. Owner shall cooperate with the City of Sunnyvale and its respective officers, employees and representatives. Failure to comply with these conditions shall be deemed a material breach of Owner's obligations pursuant to the terms of this Deed of Trust, and upon determination by the City that Owner has failed to comply with any of the above conditions, City shall notify Owner that the time periods stated herein shall be tolled, and the applicable time periods extended accordingly, until Owner has complied with all of the conditions of this Deed of Trust. Acts by Owner which shall be deemed to be a breach of this obligation include, but are not limited to, failure to make the unit available for showing to prospective buyers upon reasonable notice, willful or deliberate actions to dissuade prospective buyers from purchasing the unit, and failure or refusal to return telephone calls, complete forms, provide required reports, or perform other actions ordinarily required by a party to a

real estate transaction in a timely manner. In addition to tolling the applicable time periods, the City may pursue any other remedies for breach based upon this paragraph, or as pursuant to the administrative procedures.

14. Closing Costs. Closing costs, home inspections and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of such escrow. All work recommended in said report to repair damage caused by infestation or infection of wood—destroying pests or organisms found and all work to correct conditions that caused such infestation or infection shall be done at the expense of the Seller. Any work to correct conditions usually deemed likely to lead to infestation or infection of wood—destroying pests or organisms, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of the Seller, and such work shall be done only if requested by the Buyer and then at the expense of the Buyer. The purchase price shall be paid in cash at the close of escrow or as may be otherwise provided by mutual agreement of Buyer and Seller.

15. Purchase Price. The purchase price of the Premises shall be fixed at the lower amount as determined by using the following two methods:

A. Fair Market Value. City or its designee shall have an appraisal made by an appraiser of its choice to establish the fair market value. The Owner, at his or her own expense, may also have an appraisal made by a qualified appraiser of Owner's choice to establish the market value. If Owner elects to obtain their own appraisal, the time period during which the City has the option to perform pursuant to this Deed of Trust shall be tolled for the period of time between the time the City obtains an appraisal and Owner submits a separate appraisal. If an Deed of Trust cannot be reached as to the fair market value, the average of the two appraisals shall be deemed the market price, unless the difference between the two appraisals is greater than ten (10) percent of the amount of the higher appraisal, in which case City has the option of requesting a third appraisal be conducted by a qualified appraiser agreed upon by both City and Owner, who will make an independent appraisal without knowledge of the results of the first two appraisals. The amount of the first two appraisals which is closer to the amount determined by the third appraiser shall be deemed the fair market value for purposes of this Deed of Trust.

B. Adjusted by Consumer Price Index. **Base Price:**
Dollars (_____), plus an amount, if any, to compensate for any increase in the cost of living as measured by the housing component of the Bay Area or closest metropolitan area Consumer Price Index ("Index") for all Urban consumers (CPI-V) as published periodically by the United States Department of Housing and Urban Development. For that purpose, the Index prevailing on the date of the purchase by the selling Owner of said Premises shall be compared with the latest Index available on the date of receipt by City of notice of intent to sell. The percentage increase in the Index, if any, shall be computed and the base price shall be increased by **one-third (1/3)** of that percentage; provided, however, that the price shall in no event be lower than the purchase price paid by the selling Owner when that Owner purchased the Premises. The purchase price shall be adjusted to include the amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, costs for the services of a real estate professional to administer the transaction, minus any costs necessary to bring said unit into conformity with all applicable provisions of the Sunnyvale Municipal Code.

16. Improvements. The adjusted price described in Paragraph 15.B above shall be increased by the value of any substantial structural or permanent fixed improvements which cannot be removed

without substantial damage to the Premises or substantial or total loss of value of said improvements, and by the value of any appliances, fixtures, or equipment which were originally acquired as part of the Premises by Owner; provided that such price adjustment for replacement appliances, fixtures, or equipment shall be allowed only when the expenditure is necessitated by the non— operative or other deteriorated condition of the original appliance, fixture, or equipment.

A. If at the time of replacement the original appliance, fixture, or equipment had in excess of twenty percent (20%) of its original estimated useful life remaining, Owner shall document to the City's satisfaction the condition of the appliance, fixture, or equipment which necessitated its replacement.

B. No such price adjustment shall be made significantly in excess of the reasonable cost to replace the original appliance, fixture, or equipment with a new appliance, fixture, or equipment of comparable quality as hereinafter provided.

(1) No such adjustment shall be made except for improvements, appliances, fixtures, or equipment made or installed by the selling Owner.

(2) No improvements, appliances, fixture, or equipment shall be deemed substantial unless the actual initial cost thereof to the Owner exceeds one percent (1.0%) of the purchase price paid by the Owner for the Premises; provided that this minimum limitation shall not apply in either of the following situations:

(a.) Where the expenditure was made pursuant to a mandatory assessment levied by the Homeowners' association for the development in which the Premises is located, whether levied for improvements or maintenance to the Premises, the common area, or related purposes.

(b.) Where the expenditure was made for the replacement of appliances, fixtures, or equipment which were originally acquired as part of the Premises by Owner.

C. No adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless the Owner shall present to the City valid written documentation of the cost of said improvements. The value of such improvements by which the sale price shall be adjusted shall be determined as follows:

(1) The value of any improvement, appliance, fixture, or equipment, the original cost of which was less than Five Thousand Dollars (\$5,000), shall be the depreciated value of the improvement, appliance, fixture or equipment calculated in accordance with principles of straight-line depreciation applied to the original cost of the improvement, appliance, fixture or equipment based upon the estimated original useful life of the improvement, appliance, fixture or equipment.

(2) The value of any improvement, appliance, fixture, or equipment, the original cost of which was Five Thousand Dollars (\$5,000) or more, shall be the appraised market value of the improvement, appliance, fixture or equipment when considered as an addition or fixture to the premises (i.e., the amount by which said improvement, appliance, fixture or equipment enhances the market value of the premises) at the time of sale. Said value shall be determined in the same manner as the market value of the premises in method 1 above.

(3) On January 1, 1988 and every two years thereafter, regardless of the date of execution or recordation hereof, the amount of Five Thousand Dollars (\$5,000) referred to in paragraphs 1) and (2) immediately above shall be automatically adjusted for the purpose of those paragraphs in the following manner. On each adjustment date, the Consumer Price Index for the San Francisco — Oakland area published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") prevailing on January 1, 1986, shall be compared with the Index prevailing on the date of recordation of this deed. The percentage increase in the Index, if any, shall be computed and the sum of Five Thousand Dollars (\$5,000) shall be increased in the same percentage. In no event shall the sum be reduced below Five Thousand Dollars (\$5,000).

(4) No price adjustment will be made except upon presentation to City of written documentation of all expenditures made by Owner for whom an adjustment is requested.

D. Notwithstanding any other provision herein, no adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless said improvements were completed with required permits and in accordance with applicable provisions of the municipal code. Moreover, no adjustment shall be made for any improvements, appliance, fixtures, or equipment, which were installed or completed in violation of any applicable provision of the homeowners' association by—laws, CC&Rs, or other similar restrictions or regulations.

17. Deferred Maintenance. Any purchase price determined through the use of this method shall be adjusted by decreasing said price by an amount to compensate for deferred maintenance costs, which amount shall be determined in the following manner. Upon receipt of notice of Owner's intent to sell, City or its designee shall be entitled to inspect the Premises. The owner shall provide the City with a copy of a home inspection report conducted by a licensed home inspection service within 10 days of seller's acceptance of the purchase offer. City or its designee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire, or housing codes exist or any other provisions of Title 16 of the Sunnyvale Municipal Code. Additionally, City or its designee shall determine if there are other items of deferred maintenance beyond normal use requiring repair or replacement. In the event deficiencies are noted, the Owner shall obtain estimates to cure the observed deficiencies. The Owner shall cure the deficiencies in a reasonable manner acceptable to City or designee no later than ten (10) days prior to the close of escrow. Should Owner fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of City, or its designee, the escrow holder will be instructed to retain funds necessary to pay for curing such deficiencies (based upon written estimates obtained by City, or its designee), and City shall cause such deficiencies to be cured, and upon certification of completion of work by City, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the selling Owner.

18. Assignment of Right to Purchase. In no event shall City become in any way liable to Owner, nor become obligated in any manner, by reason of the assignment of its right to purchase, nor shall City be in any way obligated or liable to Owner for any failure of City's assignee to consummate a purchase of the premises or to comply with the terms of any purchase and sale Deed of Trust. Nothing in this Deed of Trust shall be construed to obligate City to purchase any unit in the event that a buyer participating in the BMR program fails to complete actions to close escrow.

19. City Consent to Lease. Until such time as the City's right to purchase is exercised,

waived, or expired, the Premises and any interest in title thereto shall not be sold, leased, rented, assigned, or otherwise transferred to any person or entity except with the express written consent of City or its designee, which consent shall be consistent with the City's goal of creating, preserving, maintaining, and protecting housing in Sunnyvale for persons of low and moderate income.

20. Default and Foreclosure. City shall file for record in the Office of the Recorder of the County of Santa Clara a request for a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering said premises pursuant to Section 2924 (b) of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to the **Director of Community Development, City of Sunnyvale, 456 W. Olive Avenue, P.O. Box 3707, Sunnyvale, California 94088-3707**. Any notice of sale given pursuant to Civil Code, Section 2924 (f) shall constitute a notice of intent to sell hereunder and City may exercise its preemptive right prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure. City's right to purchase shall run from the date City obtains actual knowledge of a sale or proposed sale. In the event City elects not to exercise its right to purchase upon default, any surplus to which Owner may be entitled pursuant to Code of Civil Procedure, Section 727, shall be paid as follows:

(A) That portion of surplus (after payment of encumbrances), if any, up to but not exceeding the net amount that Owner would have received after payment of encumbrances under the formula set forth above had City exercised its right to purchase the property on the date of the foreclosure sale, shall be paid to Owner on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the City to fund the cost to the City for increasing the City's low-income and moderate-income housing stock.

(B) City or its designee shall be entitled to recover all costs incurred in curing such default from Owner. Such costs shall be paid through escrow from the proceeds of sale if the sale is consummated. If the sale is not consummated and Owner retains ownership of the Premises, City, or its designee, shall be entitled to recover its costs directly from Owner.

(C) In the event City fails to exercise its preemptive rights to purchase or prevent foreclosure or trustee's sale, a completed action of foreclosure or trustee's sale shall render this Deed of Trust and the restrictions imposed thereby to be null and void and of no further force or effect.

21. Acceleration: Remedies Upon Owner's breach of any covenants or agreement of the Owner in this Deed of Trust, including but not limited to, the covenants to pay, when due, any sums secured by the First Deed of Trust or subsequent Deeds of Trust, all taxes, liens, homeowners association dues, assessments or any other obligation secured on the Property, occupancy of the property by the Owner(s) of record as the principal residence, or any prohibited transfer as specified in Section 5 (A), the City, prior to acceleration, will mail by express delivery, return receipt requested notice to Owner specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than (30) days from the date the notice is received Owner as shown on the return receipt, by which such breach is to be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in the City's exercise of its first right of refusal to purchase the Property. The notice will also inform Owner of Owner's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of the Owner to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the City, at the City's option may: (a) Declare a default under the covenants contained in the Deed of Trust, and exercise its right of first refusal to purchase the Property and may invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part

thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof, and the entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in the Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose the Deed of Trust, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et al., as amended from time to time; or (e) exercise all other rights and remedies provided herein, in the instruments by which the Owner acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations and covenants secured hereby, or provided by law.

The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to reasonable attorney's fees.

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

23. Distribution of Insurance and Condemnation Proceeds. In the event that the Premises is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild, or in the event of condemnation, if proceeds thereof are distributed to Owner, or in the event of termination of the condominium, liquidation of the association and distribution of the assets of the association to the members thereof, including Owner, any surplus of proceeds so distributed remaining after payment of encumbrances of said Premises shall be distributed as follows:

That portion of surplus up to but not to exceed the net amount that Owner would have received under the formula set forth above had City exercised its right to purchase the property on the date of the destruction, condemnation valuation date, or liquidation, shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to City.

24. Nonwaiver. With the exception of the City's right to exercise a right of first refusal to accept an offer to sell the Premises, the failure of the City to take an action to enforce a right or to seek a remedy under the terms and conditions of this Deed of Trust shall not be deemed to be a waiver by the City to take such action or enforce any rights it may otherwise have pursuant to this Deed of Trust.

27. Compliance with the Sunnyvale Municipal Code. It is the purpose and intent of this Deed of Trust to fulfill and be consistent with the requirements set forth in Chapter 19.66 of the Sunnyvale Municipal Code, which is incorporated by reference herein, as presently written and as amended from time to time hereafter. In the event of a discrepancy or conflict between a particular provision of this Deed of Trust and any provision of Chapter 19.66 of the Sunnyvale Municipal Code, the provisions of the Sunnyvale Municipal Code shall be controlling.

28. Reconveyance. Upon expiration of the terms of the Deed of Trust, the City will request Trustee to reconvey the Security and will surrender the Deed of Trust to the Trustee. Trustee will reconvey the Security without warranty to the person or persons legally entitled thereto. Such person or persons will

pay all costs of recordation, if any.

27. Notices. All notices required herein shall be sent to the following address:

CITY:

OWNER:

Housing Officer,
Community Development Department
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

By acceptance of this Deed of Trust, Owner accepts and agrees to be bound by the covenants contained herein.

Date:

Signature of Owner

Print Name

Date:

Signature of Owner

Print Name

Sunnyvale, CA

Print Address of Unit

ACKNOWLEDGEMENT REQUIRED

STATE OF CALIFORNIA

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)ss.

COUNTY OF SANTA CLARA

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On _____, before me, _____, Notary Public, personally appeared _____, personally known to me to be the person(s) (or proved to me on the basis of satisfactory evidence) 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.

WITNESS my hand and official seal.

Signature of Notary Public

per GC Sec. 40814; CC Sec. 1181

(Notary Seal)

**City of Sunnyvale
Agreement for Below Market Rate
Rental Housing Development
Certification Receipt of Administrative Procedures**

This form, when executed by the Developer and the City of Sunnyvale, represents the agreement between both parties that the owner(s)/managing partner(s)/property manager have certified receipt of the Below Market Rate Housing Program Administrative Procedures – Developer.

Further, you are certifying that you will manage the BMR units identified in the signed and recorded Agreement for BMR Rental Housing Development according to Chapter 19.66 of the City of Sunnyvale Municipal Code and these Below Market Rate Housing Program Administrative Procedures – Developer.

Housing Officer/Community Development Director Date

Owner / Developer Date