

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Alameda  
Housing and Human Services Department  
950 West Mall Square, Room 205  
Alameda, California 94501-7558  
Attention: Inclusionary Housing Manager

*(Space above This Line for Recorder’s Use Only)*  
[Exempt from recording fee per Gov. Code § 27383]

**AFFORDABLE HOUSING AGREEMENT**  
**Grand and Clement Condominiums Residential Project**

(For Sale Units Required Pursuant to City Inclusionary Housing Requirements  
Set Forth in Section 30-16 of the City Municipal Code)

THIS AFFORDABLE HOUSING AGREEMENT (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), by and among the CITY OF ALAMEDA, a municipal corporation (“City”) and TH Grand Street LLC, a California Limited Liability Company (“Developer”), with reference to the following facts and circumstances:

**RECITALS**

A. Developer is the owner of that certain real property located in the City of Alameda, County of Alameda, State of California, more particularly described in Exhibit A attached hereto (“Property”), and wishes to construct residential units on the Property.

B. City Municipal Code Section 30-16, added by Ordinance No. 2926 adopted on June 15, 2004, sets forth certain inclusionary housing requirements for residential development in the City (“City Inclusionary Policy”). The Project is located in the City of Alameda and is, therefore, subject to the City Inclusionary Policy.

C. The Property is the site of a 90 unit residential project (“Project”) to be developed by Developer in accordance with (a) City of Alameda Resolution 16028 approving Developer’s Tentative Tract Map Number 8654, allowing for development residential project on the Property of up to ninety (90) housing units (including fifteen (15) affordable units), on file with the Planning and Building Department, as depicted on the approved site plans for the Project attached as Exhibit B, and (b) City of Alameda Planning Board Resolution PB-22-24 Approving Density Bonus, Development Plan and Design Review Application Number PLN22-0127 for the construction of 90 townhome units with 5 accessory dwelling units on approximately 4.14 acres of land at 2015 Grand Street, adopted on December 12, 2022. City of Alameda Resolution 16028 includes certain conditions of approval, including Condition of Approval No. 4, which requires that the Developer reserve at least fifteen (15) units in the Project for sale to moderate-, low- and very low-income

households in accordance with the City Inclusionary Policy (the “Project Inclusionary Requirement”).

D. To satisfy the Inclusionary and Affordable Housing Requirements set forth in Alameda Municipal Code Sections 30-16 and 30-17, Developer offered to provide sixteen (16), three-bedroom affordable housing units and City accepted Developer’s proposal. Exhibit B details the square footage, location, and income groups to be accommodated by the affordable housing units.

E. Developer and City desire to set forth Developer’s obligations to provide affordable housing in a recorded document.

NOW, THEREFORE, Developer and City agree as follows:

**ARTICLE 1  
DEFINITIONS**

The following terms shall have the meanings set forth in this Article 1:

A. “Agreement” means this Affordable Housing Agreement between the Developer and City.

B. “Affordable Sales Price” means the maximum purchase price that will be affordable to the specified target income household. A maximum purchase price shall be considered affordable only if the Owner-Occupied Monthly Housing cost is equal to or less than the “affordable housing cost” for such household as defined in Health and Safety Code Section 50052.5(b), or any successor statute thereto.

C. “Affordable Unit” means each of the sixteen (16) affordable units that are to be sold to and occupied by Eligible Households only pursuant to Article 2.

D. “Applicable Law” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County of Alameda, the City, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Developer or the Property.

E. “Authority” means the Housing Authority of the City of Alameda, a public body corporate and politic, or its affiliate.

F. “City” means the City of Alameda, a municipal corporation.

G. “City Inclusionary Policy” is defined in Recital B.

H. “Developer” means TH Grand Street LLC or its successors and assigns.

I. “Effective Date” means the effective date of this Agreement, as first set forth above.

J. “Eligible Household” means a person or household (i) meeting the definition of “Moderate Income Household,” “Low Income Household,” or “Very Low Income Household,” as applicable, under this Article 1; and (ii) meeting Developer’s standard criteria for determining eligibility for occupancy, which may include an evaluation of the applicant’s ability to pay the mortgage, employment status and credit history. These standard criteria may vary from time to time, but must be uniformly applied at all times.

- K. “Inclusionary Ownership Guidelines” is defined in Section 2.1.E.2
- L. “Low Income Household” means a household whose annual income does not exceed the qualifying limits set for “lower income households” in Section 50079.5 of the California Health and Safety Code, or any successor statute thereto.
- M. “Market Rate Units” means units in the Project, the sale and occupancy of which are not regulated by this Agreement.
- N. “Moderate Income Households” means a household whose annual income does not exceed the qualifying limits set for “persons and families of low or moderate income” in Section 50093 of the California Health and Safety Code, or any successor statute thereto.
- O. “Owner-Occupied Monthly Housing Payment” means the sum equal to the principal, interest, property taxes, property maintenance and repairs, reasonable allowance for utilities not including telephone, homeowner’s insurance and homeowner’s association dues, and any other applicable elements of “housing cost” as defined in Section 6290 of Title 25 of the California Code of Regulations, paid on an annual basis divided by twelve (12).
- P. “Phasing Schedule” is defined in Section 2.1.D.
- Q. “Property” is defined in Recital A.
- R. “Project Inclusionary Requirement” is defined in Recital C.
- S. “Project” is defined in Recital C.
- T. “Project Units” means the Market Rate Units and the Affordable Units.
- U. “Resale Restriction” is defined in Section 2.1.E.4.
- V. “Term” is defined in Section 4.3.
- W. “Very Low Income Household” means a household whose annual income does not exceed the qualifying limits set for “very low income households” in Section 50105 of the California Health and Safety Code, or any successor statute thereto.

**ARTICLE 2**  
**PROJECT INCLUSIONARY REQUIREMENT**

2.1 Affordability Requirements and Restrictions.

A. Developer shall construct, or cause to be constructed, sixteen (16) Affordable Units, which will be sold to and occupied by Eligible Households, as follows: six (6) of the Affordable Units shall be sold to and occupied by Moderate Income Households, six (6) of the Affordable Units shall be sold to and occupied by Low Income Households, and four (4) of the Affordable Units shall be sold to and occupied by Very Low Income Households.

B. The Annual Household Income shall be considered for purposes of calculating the applicable income of the Eligible Household. “Annual Household Income” means the combined “gross income” for a person or family living in a dwelling unit as calculated pursuant to Section 6914 of Title 25 of the California Code of Regulations.

C. The Affordable Units shall be consistent with the architectural character, size, floor plans and location shown for the housing type identified in the Density Bonus Application

Affordable Units shall be comparable in exterior appearance and overall quality of construction to Market Rate Units in the Project.

D. Developer shall construct the Market Rate Units and Affordable Units according to the schedule attached as Exhibit C and incorporated herein (“Project Schedule”).

E. The units designated as the Affordable Units are depicted in Exhibit B. The total number of Affordable Units being offered for sale in accordance with this Article 2 shall be as required by Section 2.1.A. above. During the Term of this Agreement, the Affordable Units shall be subject to all of the requirements of this Agreement, including without limitation the following additional restrictions and requirements:

1. Except for the units that may be purchased by the City per section 2.3, the Affordable Units shall only be sold to and be occupied by Eligible Households, as specified in subsection 2.1.A. Each Affordable Unit shall only be sold to and be occupied by an Eligible Household at a cost that does not exceed the Affordable Sales Price for such a household, subject to prior approval of the City as further described below.

2. For units to be sold, each Affordable Unit shall only be sold to an Eligible Household approved by City in accordance with this Agreement, the City Inclusionary Policy, and the City’s “Below Market Rate Program Manual,” attached hereto as Exhibit D (“Inclusionary Ownership Guidelines”), and each such sale shall comply with the following:

(a) Developer may procure experienced program administrator or staff to conduct the activities described in Exhibit D. If Developer elects to procure a third-party program administrator, then the Developer shall work with the City to obtain City approval of the proposed program administrator. City may: 1) approve proposed program administrator, 2) require that the City enter into an agreement with the proposed program administrator and be reimbursed by the Developer, 3) reject the proposed program administrator. If Developer elects not to procure an experienced program administrator or staff, then the City shall provide services at a cost of \$10,000 per unit or three percent (3%) of the sales price, whichever is less.

(b) At least thirty (30) calendar days prior to entering any agreement with a prospective buyer related to any proposed sale or other transfer of any Affordable Unit during the Term, Developer shall submit to the City: (a) a copy of the proposed written agreement of purchase and sale; (b) an application for City approval of the prospective purchaser/transferee in a form to be provided by the City, along with such supporting documentation as City may require to document the proposed purchaser’s/transferee’s status as an Eligible Household, including the prospective purchaser’s/transferee’s payroll stubs and most recent income tax return, and to otherwise determine compliance with the terms of this Agreement, including the requirement that the sale price for each Affordable Unit not exceed the Affordable Sales Price for the Eligible Household; and (c) the income certification to be provided to any lender making a loan on the Affordable Unit. Developer shall bear all costs and expenses associated with such certification and eligibility determination process.

(c) Within thirty (30) calendar days from receipt of the documentation, City shall render a decision of eligibility or noneligibility. Provided the prospective purchaser/transferee qualifies as an Eligible Household, the purchase price of the Affordable Unit meets the definition of Affordable Sales Price, and the sale or transfer complies with the City Inclusionary Policy and the Inclusionary Ownership Guidelines, the City shall within such thirty

(30) calendar days issue a letter of approval confirming that the proposed transaction complies with the requirements of this Article 2. If the prospective purchaser/transferee does not qualify as an Eligible Household, the purchase price of the Affordable Unit does not meet the definition of Affordable Sales Price, or the sale or transfer does not comply with the City Inclusionary Policy or the Inclusionary Ownership Guidelines, the City shall so notify the Developer in writing, within such thirty (30) calendar days, stating the basis for its determination in reasonable detail and the Developer shall not sell the Affordable Unit to such non-Eligible Household.

(d) THERE SHALL BE NO SALE OR OTHER TRANSFER OF AN AFFORDABLE UNIT WITHOUT ISSUANCE OF A LETTER OF APPROVAL BY CITY THAT THE PURCHASER/TRANSFEREE IS AN ELIGIBLE HOUSEHOLD, THE PURCHASE PRICE OF THE AFFORDABLE UNIT MEETS THE DEFINITION OF AFFORDABLE SALES PRICE FOR SUCH PURCHASER/TRANSFEREE AND THE CATEGORY OF SUCH AFFORDABLE UNIT, AND THE SALE OR TRANSFER COMPLIES WITH CITY'S INCLUSIONARY POLICY AND THE INCLUSIONARY OWNERSHIP GUIDELINES. ANY SALE OR OTHER TRANSFER OF THE AFFORDABLE UNIT IN VIOLATION OF THIS AGREEMENT SHALL BE VOID.

(e) EACH PURCHASER OF AN AFFORDABLE UNIT SHALL ENTER INTO AND RECORD AT THE CLOSE OF ESCROW AN AFFORDABILITY COVENANT, RESALE RESTRICTION AND OPTION TO PURCHASE ("RESALE RESTRICTION"), IN A FORM SUBSTANTIALLY SIMILAR TO EXHIBIT E, ATTACHED HERETO, SUPPLIED BY AND APPROVED BY CITY, AND FOR THE BENEFIT OF CITY, AS ELECTED BY THE CITY. UPON RECORDATION OF THE RESALE RESTRICTION: (A) THIS AGREEMENT SHALL HAVE NO FURTHER FORCE OR EFFECT AS AN ENCUMBRANCE AGAINST THE AFFORDABLE UNIT ENCUMBERED BY THE RESALE RESTRICTION; AND (B) DEVELOPER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE AFFORDABLE UNIT ENCUMBERED BY THE RESALE RESTRICTION, INCLUDING WITHOUT LIMITATION ANY RESPONSIBILITY FOR COMPLIANCE BY THE BUYER OR ITS SUCCESSORS WITH THE TERMS AND CONDITIONS OF THE RESALE RESTRICTION SIGNED BY PURCHASER, PROVIDED THAT DEVELOPER HAS COMPLIED WITH THE TERMS OF THIS AGREEMENT.

(f) Upon the request of the Developer, the City shall provide a letter or written verification certifying that a Market Rate Unit within the Project is not subject to the requirements of this Agreement.

## 2.2 Maintenance and Management.

A. During the Term, the exterior areas and common areas of the Property and the Project shall be maintained by a Homeowners' Association and/or a licensed management company to manage, operate and maintain the Project. The maintenance obligations will include maintenance of the improvements and landscaping. Developer agrees to maintain the Affordable Units in a clean and orderly condition and in good condition and repair, including the maintenance of improvements and landscaping, and to keep the Affordable Units free from accumulation of debris and waste materials, until the close of escrow of the Affordable Units.

B. Upon the sale and close of escrow of each for-sale Affordable Unit, the Eligible Household which purchased the Affordable Unit will be a member of the Homeowners' Association and will be responsible for the payment of Homeowners' Association assessments as

provided in the Covenants, Conditions and Restrictions (“CC&R’s”) for the Project. Developer represents and warrants that such Homeowners’ Association assessments will be determined by the California Department of Real Estate, and subject to increases as provided for in the CC&R’s.

2.3 City Option. The City and the Developer hereby agree that the City shall have the right to purchase any one or more of the ten (10) Low and Very Low-income Affordable Units at a purchase price equal to the Affordable Sales Price, as calculated pursuant to this Agreement, and rent it to an income qualified household. The City has the right to assign the City’s Purchase Option. Effective upon the date that the City or its assignee purchases any such Affordable Unit, the Developer shall be deemed to have completed its obligations as to such Affordable Unit, and such Affordable Unit shall be released from this Agreement in accordance with Section 2.1.E. For each Affordable Unit that the City or its assignee is exercising this option, if for any reason, the City or its assignee does not close escrow on the Affordable Unit within 30 days of notice of the issuance of a Certificate of Occupancy, the Developer shall be released from all obligations under Section 2.3 and may sell the Affordable Unit to any other Eligible Buyer.

### **ARTICLE 3 MARKETING**

#### 3.1 Marketing and Sales Program and Marketing Reports.

A. At least six months prior to issuance of the temporary Certificate of Occupancy for the first home to be developed as part of the Project, Developer shall design and deliver to the City Assistant City Manager a marketing and/or sales plan for the Affordable Units. Developer shall obtain from the City the current marketing plan template that is in use at the time Developer is ready to prepare the marketing and/or sales plan. Such plan shall conform to the terms of this Agreement, the City Inclusionary Policy, and the Inclusionary Ownership Guidelines, and shall be subject to the City Assistant City Manager’s review and approval, not to be unreasonably withheld or delayed.

B. To the extent permitted by law, the marketing program for the Affordable Units referenced above shall give preference in the sale of the Affordable Units according to a point system that allots one preference point to a household where a person in the household lives or works in the City of Alameda and one preference point to a household where a person in the household is a qualified Alameda Unified School District employee who is competing for a moderate income unit. Where a household satisfies both criteria, the preference points shall be aggregated. No more than two (2) of the six (6) moderate income units shall be sold to households based solely on such households’ having two preference points.

3.2 Restrictions on Sales of Affordable Units. Developer shall not sell the Affordable Units to any of the following: (a) any partner, officer, shareholder or employee of Developer or any Family Member (defined below) of any partner, officer, shareholder or employee of Developer; (b) any member of the Authority, or any member of any City board or commission; and (c) any City employee who exercises any function or responsibility in connection with the Property or who has, or whose Family Member (defined below) has, an economic interest in the Property pursuant to the provisions of the Political Reform Act, Government Code section 87100 *et seq.* “Family Member” shall mean the spouse or child of the individual at issue or the individual’s or his or her spouse’s parent, grandparent, brother, sister, aunt, uncle, niece or nephew.



and Developer shall have no further obligations or liabilities with respect to the Affordable Unit, including without limitation, any responsibility for compliance by the buyer or its successors with the terms and conditions of the Resale Restriction, provided that Developer has complied with the terms of this Agreement.

4.4 No Discrimination. Developer covenants, by and for itself and any successors in interest, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Owner, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees in the Property. This covenant shall run with the land in perpetuity.

4.5 Amendment. This Agreement may be amended only in writing by City and Developer.

4.6 No Impairment of Lien. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Developer to the Property shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

4.7 Successors and Assigns;

A. Binding Effect; Covenants Run with Land. The covenants contained in this Agreement shall inure to the benefit of City and its successors and assigns and shall be binding upon Developer and any successor in interest. Upon the transfer by Developer of all or any portion of its interest in the Property, all references in this Agreement to Developer thereafter shall mean and refer to such successor in interest of Developer as may then be the owner of the Property or such portion thereof, or interest therein. In the event that Developer transfers the Property or any portion thereof or interest therein to more than one successor in interest, all successors in interest shall be collectively required to comply with the provisions of this Agreement and shall be jointly and severally liable for any breach or failure to comply, unless each successor and City enter into an agreement outlining the specific obligations of each successor for compliance with this Agreement. The covenants in this Agreement shall run in favor of City and its successors and assigns for the entire period during which such covenants shall be in force and effect. City and its successors and assigns, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach.

B. Transfer by Developer of Property. In the event that Developer intends to sell, transfer, convey, assign or ground lease the Property or any part thereof or interest therein ("Transfer") during the period between the Effective Date and the closing date for the sale of the last Affordable Unit pursuant to Article 2 above, (a) Developer shall provide advance written notice to City describing the Transfer and the proposed transferee, and (b) Developer and the transferee shall execute an assignment and assumption agreement, which provides for the

Transferee to be responsible for all of the obligations of the Developer under the Agreement occurring after the date of the Transfer and provide a copy of the executed agreement to the City.

4.8 Priority of this Agreement. Upon recording, this Agreement shall have priority over the liens of any and all mortgages or deeds of trust encumbering the Affordable Units, or any portion thereof, and Developer shall be required to furnish to City subordination agreements in form and substance approved by the City subordinating the liens of any deeds of trust or mortgages existing as of such recording to this Agreement.

4.9 No Third Party Beneficiaries. Notwithstanding anything in this Agreement to the contrary, there are no third party beneficiaries of this Agreement.

4.10 Effect of Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall have any force or effect on any buyer or buyer's right, title or interest in or to any unit other than the Affordable Units, except that the buyer of an Affordable Unit shall execute and be subject to the Resale Restriction. The foregoing exemption and release shall be self-executing and require no further instruments or assurances to be effective.

4.11 Default and Remedies.

A. Any failure by Developer to perform any term or provision of this Agreement shall constitute an "Event of Default" (1) if Developer does not cure such failure within thirty (30) days following written notice of default from City, or (2) if such failure is not of a nature which cannot reasonably be cured within such thirty (30) day period, Developer does not within such thirty (30) day period commence substantial efforts to cure such failure or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

B. Any notice of default given hereunder shall specify in detail the nature of the failure in performance alleged by City and the manner in which such failure of performance may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure to perform, Developer shall not be considered to be in default of this Agreement for any purposes.

C. Any failure or delay by City in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

D. In the event of an Event of Default under this Agreement, City shall have the right to exercise all of the rights and remedies, and to maintain any actions under this Agreement, the City Inclusionary Policy, at law, in equity, or other remedy proceedings.

4.12 California Law. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

4.13 Counterparts. This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original.

4.14 Severability. Should any provision of this Agreement be found invalid or unenforceable by a court or other body of competent jurisdiction, said invalidity, unenforceability or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force and effect pursuant to the limitations and duration agreed to herein.

4.15 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto. The exhibits attached to this Agreement are incorporated by reference.

4.16 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The words “include” and “including” shall be construed as if followed by the words “without limitation.” The parties acknowledge that each party and its respective counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection herewith. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

4.17 No Recovery of Litigation Fees and Costs. In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney’s fees and costs. No party or litigant shall be entitled to recover any attorneys’ fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

4.18 Authorized Signatories. Each of the undersigned hereby warrants and represents that he/she is duly authorized to execute this Agreement on behalf of the entity for whom he/she signs.

*[Signature page follows]*

IN WITNESS WHEREOF, City and Developer have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized.

RECOMMENDED FOR APPROVAL:

**CITY:**

CITY OF ALAMEDA, a municipal corporation



\_\_\_\_\_  
Amy Wooldridge  
Assistant City Manager

\_\_\_\_\_  
*[Signature must be notarized]*

Jennifer Ott  
City Manager

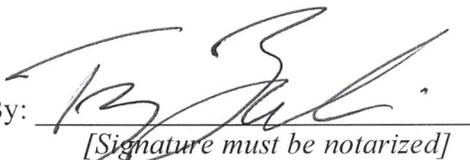
APPROVED AS TO FORM:



\_\_\_\_\_  
Len Aslanian  
Assistant City Attorney

**DEVELOPER:**

TH Grand Street LLC,  
A California Limited Liability Company

By:   
*[Signature must be notarized]*

Tony Bosowski  
Authorized Agent  
3001 Bishop Dr., Ste. 100  
San Ramon, CA 94583

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF Contra Costa

On November 8, 2023, before me, Heide K. Antonescu,  
Notary Public personally appeared Tony Bosowski  
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

Heide K. Antonescu







**EXHIBIT A**

Legal Description of Property

Lots \_\_\_ through \_\_\_ of Tract Map Number 8654, filed in Book \_\_\_\_\_ of Maps, Pages \_\_\_\_\_ through \_\_\_\_\_.

**EXHIBIT B**

Site Plans for Project



## EXHIBIT C

### Schedule

| Task Name  | Duration          | Start              | Finish             |
|--|-------------------|--------------------|--------------------|
| <b>2015 GRAND ST. ALAMEDA, SCHEDULE</b>  | <b>1338 days?</b> | <b>Tue 8/24/21</b> | <b>Fri 10/9/26</b> |
| <b>Milestones</b>  | <b>1013 days</b>  | <b>Wed 2/16/22</b> | <b>Tue 1/6/26</b>  |
| Close of Escrow  | 0 days            | Mon 5/8/23         | Mon 5/8/23         |
| Tentative Map Application Package 1st Submit   | 0 days            | Wed 2/16/22        | Wed 2/16/22        |
| Tentative Map Approval (and 30 appeal period expired)                                | 0 days            | Mon 3/13/23        | Mon 3/13/23        |
| Final Map& Improvement Plan 1st Submit   | 0 days            | Fri 4/14/23        | Fri 4/14/23        |
| Final Map& Improvement Plan City Council   | 0 days            | Tue 12/5/23        | Tue 12/5/23        |
| Architectural Construction Drawings 1st Submit                                       | 0 days            | Thu 9/21/23        | Thu 9/21/23        |
| Architectural Construction Drawings Approval   | 0 days            | Mon 3/11/24        | Mon 3/11/24        |
| Model Complex 1st Submittal  | 0 days            | Mon 6/19/23        | Mon 6/19/23        |
| Model Complex Plan Approval  | 0 days            | Wed 2/28/24        | Wed 2/28/24        |
| Demo, OH Powerline Removal, Surcharge Prep Plan & Surcharge Wall - Permits (at risk) | 0 days            | Thu 8/10/23        | Thu 8/10/23        |
| Surcharge Placement (phase 2) Complete   | 0 days            | Fri 12/22/23       | Fri 12/22/23       |
| Surcharge Removal (phase 2) Complete   | 0 days            | Thu 10/24/24       | Thu 10/24/24       |
| Site work and Improvements Start (phase 1)   | 0 days            | Fri 12/1/23        | Fri 12/1/23        |
| Site work and Improvements Finish (phase 1)  | 0 days            | Wed 6/5/24         | Wed 6/5/24         |
| Site work and Improvements Start (phase 2)   | 0 days            | Fri 10/25/24       | Fri 10/25/24       |
| Site work and Improvements Finish (phase 2)  | 0 days            | Thu 7/17/25        | Thu 7/17/25        |
| Model Home Construction Start  | 0 days            | Mon 3/25/24        | Mon 3/25/24        |
| Model Home Open  | 0 days            | Fri 1/17/25        | Fri 1/17/25        |
| 1st Production Home Construction Start   | 0 days            | Mon 5/27/24        | Mon 5/27/24        |
| 1st Production Home Construction Finish  | 0 days            | Thu 3/6/25         | Thu 3/6/25         |
| 2nd Production Home Construction Start   | 0 days            | Fri 3/28/25        | Fri 3/28/25        |
| 2nd Production Home Construction Finish  | 0 days            | Tue 1/6/26         | Tue 1/6/26         |
| First Close of Escrow  | 0 days            | Mon 3/10/25        | Mon 3/10/25        |
|  |                   |                    |                    |

**EXHIBIT D**  
Inclusionary Ownership Guidelines



# **CITY OF ALAMEDA**

**DRAFT**

**Below Market Rate Program Manual**

**October 2023**

**City of Alameda  
Housing and Human Services  
950 West Mall Square, Room 205  
Alameda, CA 94501  
Tel. (510) 747-6890**

<https://www.alamedaca.gov/Departments/Housing-and-Human-Services>

# Below Market Rate Program Manual

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# **CITY OF ALAMEDA BELOW MARKET RATE (BMR) PROGRAM**

## **SECTION 1 - INTRODUCTION TO THE BMR PROGRAM**

### **1.1 Program Summary**

The City of Alameda (“**City**”) funds and oversees the Inclusionary Housing Program, often referred to as the Below Market Rate (“**BMR**”) Program. In July 2023, the City of Alameda selected Rise Housing Solutions (“**Program Administrator**”) to administer its BMR Program. This manual describes the program guidelines and processing procedures for the BMR program. It also establishes the roles and responsibilities of Program Administrator, the City, the Developers of new residential projects (“**Developer**”), the Applicants and the first mortgage lenders. Finally, it describes the qualifications and requirements of prospective BMR homebuyers. The City shall review and update these guidelines from time to time to reflect changes in the market and better meet the community’s needs. Program users should be aware that under certain circumstances information provided in connection with the BMR Program may be considered to be public records and subject to disclosure in accordance with the California Public Records Act. However, the City and/or Program Administrator does not give, share, sell or transfer any personal identifying information to any third party that is not affiliated with an application for housing.

### **1.2 BMR Sales Process Overview**

The City of Alameda Inclusionary Housing Program provides below market rate (BMR) homes for sale or rent at affordable cost to qualified purchasers. Developers of new residential projects are required to provide BMR homes concurrently with market rate homes in order to fulfill the developer’s inclusionary housing obligation. BMR units will be made available to very low-, low- and moderate-income households. For for-sale BMR units, it is the developer’s responsibility to select buyers who meet the qualification parameters of the Inclusionary Housing Program and to submit an application for each buyer to the City of Alameda, showing both that the buyer’s income falls within the allowable range for the program, that the buyer’s total monthly housing costs meet program requirements and that the applicant may not have owned a home within the past three years from the date of application. The City of Alameda makes the final determination as to whether the submitted applicant is a qualified purchaser. The Inclusionary Housing Program may be subject to administrative review and revision periodically in response to updated information.

#### **A. Pre-Application, Marketing and Lottery Period**

##### **The Developer\* shall:**

1. Prepare and submit a marketing plan to the City of Alameda
2. Create a pre-application process timeline with a minimum 3 week pre-application and marketing period
3. Create and disseminate marketing materials in multiple languages advertising the housing opportunity. Marketing collateral and publications subject to City approval.
4. The pre-application will determine program and preference point eligibility based on stated information from the applicant(s)
5. Upon conclusion of the pre-application period prepare all eligible pre-applications to be entered in a lottery drawing to establish a ranking position

within each preference point category. Prior to conducting the lottery, Developer to provide an unranked list of all applicants to the City.

6. Lottery results will be emailed to all applicant households. Developer to provide spreadsheet of lottery ranking to City.

**The City shall:**

The City shall prepare the sales prices for the very low, low and moderate income units, using the housing cost definitions found in California Health & Safety Code Section 50052.5 and listed below:

For extremely low households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit. (Section 50052.5(b)(1))

For very low income households the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit. (Section 50052.5(b)(2))

For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. (Section 50052.5(b)(3))

For moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit, but shall not exceed 30% of 120 percent of the area median income. (Section 50052.5(b)(4))

Housing costs include, but are not limited to:

- Principal and interest on all loans (see attached Affordable Housing Program Loan Guidelines)
- Property taxes, including special assessments
- Insurance
- Utilities, not including telephone (City will provide utility allowance information)
- Maintenance & repairs
- Home owner association and special fees
- Space rent, if any.

**B. Application Period**

Affordable Monthly Housing Cost Verification: Developers must determine that buyers will pay an “affordable monthly housing cost” for the unit. The definition of affordable monthly housing cost varies by income level and by whether the unit is in a redevelopment area. In general, the affordable monthly housing cost is defined as a percentage of area median income adjusted for family size appropriate for the unit. The “family size appropriate for the unit” is a benchmark standard used only for affordable housing cost calculation purposes. The benchmark is defined as number of bedrooms plus one (e.g., a three person household for a two-bedroom unit).

Selection Process: The City of Alameda encourages developers to use a lottery to select buyers for the BMR units. Developers are responsible for responding to all inquiries regarding BMR units and must adequately train staff to respond to questions that arise. The buyer selection process, including preference points, and all marketing and outreach materials must be approved by the City of Alameda prior to implementation. Adequate time should be allowed for City review and approval. If the Developer determines that an applicant does not meet the qualification criteria to purchase a BMR unit, the Developer should notify the applicant of this determination in writing, explaining why the applicant does not qualify. Developers should have a written appeals process for applicants who are disqualified from the program.

**To summarize, the Developer\* shall:**

1. Market and advertise the available homes, application process and key details of the housing opportunity.
2. Provide application to participants and set deadline.
3. Review applications in lottery order and request additional documents as needed.
4. Complete eligibility review and provide files to City to confirm eligibility determination to City.

City Determination: For each BMR unit, the City of Alameda makes the final determination as to whether the submitted applicant is a qualified purchaser. Developers should not enter into a purchase agreement with an applicant until the following criteria are satisfied:

- The City has approved the applicant as income qualified to purchase the unit.
- The applicant has received full underwriting approval for all financing needed to complete purchase. Financing must conform to the attached City's Affordable Housing Program Loan Guidelines.
- The Developer has determined that the applicant's monthly housing costs fit within the parameters of the program (taking into account the loan obtained and downpayment required).
- The applicant has demonstrated sufficient funds to close.

If the City determines that the applicant is not a qualified purchaser, the applicant may file an appeal to the City in writing with the City Clerk not later than ten days from the date of this decision. The appeal should state completely and in detail the factual and legal grounds for the appeal. The City will consider the appeal at a public hearing within sixty days after the filing of the appeal. The decision of the City is final. The City shall:

1. Review files submitted by the Developer for conditional approval, decline or re-ranking.

**C. Purchase Contracts and Close of Escrow**

**The Developer\* shall:**

1. Coordinate with Developer/Seller to get conditionally approved buyers into contract.

2. Conduct meeting with buyers to ensure understanding of documents and coordinate document signing with buyers and City.
3. Communicate with Escrow Officer to ensure delivery of City documents.
4. Collect necessary documents from lender and escrow officer to ensure eligibility prior to close of escrow.
5. Post-closing, collect conformed copies of all City and lender documents and provide them to the City.

\*The Developer may hire a Program Administrator through the City to perform these activities.

## **SECTION 2 – APPLICANT ELIGIBILITY REQUIREMENTS**

BMR units are to be sold to households of appropriate size for the unit. Households must have at least as many members as number of bedrooms; a preference point will be applied for bedroom count plus one. The household may include:

- All people over the age of 18 who will reside in the home as their primary residence. (Income from these people will be counted in determining gross family income, as stated above.)
- All children for whom an adult household member has full or partial custody, as long as the child in a partial custody situation lives at least part-time in the home.

Any child or adult claimed as a dependent who lives in the home. In order to apply for the City of Alameda BMR Program, Applicant must meet the following requirements:

### **A. Household Size Compatibility**

The minimum household size is one person per bedroom. The following individuals are **not** counted as part of the household:

- foster children
- unborn children
- children who are subject to a shared custody agreement in which the child resides with the household less than 50% of the time
- children being pursued for legal custody or adoption who are not yet living with the household at time of application
- non-related, live-in care takers

Applicant household requests for a reasonable accommodation should be submitted to the Developer or Program Administrator.

### **B. First-Time Homebuyer Requirements**

No member of the applicant household may have owned any interest in a residential unit during the three-year period preceding the date of the BMR Program Pre-Application or Application, whichever comes first. The period shall be counted backwards from the BMR Program Pre-Application or Application submittal date, whichever is earlier. An Applicant shall be deemed to have owned an interest in a residential unit regardless of whether or not that interest resulted in a financial gain, is in another state or country, or if the Applicant has ever used the property as a primary residence. Notwithstanding the foregoing, the following interests shall not, by themselves, disqualify an Applicant from being considered a first-time homebuyer:

- (1) ownership of timeshares
- (2) loan cosigners from previous real estate transactions where the Applicant was not on title
- (3) appearing on title solely in the capacity as a trustee for a trust where the Applicant has no beneficiary interest
- (4) being a named beneficiary of a trust that includes a housing unit amongst the trust assets, but only if the trustor is living at the time and in the residence
- (5) ownership of shares in a limited equity co-op
- (6) an adult who has not worked full-time in the labor force for a number of years but during such years worked primarily to care for the home and family and is currently experiencing difficulty obtaining or upgrading employment
- (7) a single parent who owned a home with their Spouse and is now divorced or legally separated and is pregnant or has at least 50% custody of one or more minor children

The Program Administrator may verify first-time homebuyer status by: (a) reviewing mortgage deductions on the three most recent years of federal tax returns for each Applicant; (b) relying on a signed statement by an applicant stating his/her/their homeownership status; (c) a title search; and/or (d) any other means reasonable to determine First-time Homebuyer status.

### **C. Income Limits**

The BMR program will use the income limits updated annually by the State of California Department of Housing and Community Development (HCD). Income limits for each housing opportunity will be posted in marketing collateral and on online application website.

### **D. Income Calculation**

1. **Determining Baseline Household Income:** Household Income maximums are based on "gross" income derived from all sources as detailed in Internal Revenue Code (26 USC Section 6.1), whether or not exempt from federal income tax. Such income includes, but is not limited to, the following:
  - a. The full amount (before any payroll deductions) of all wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services
  - b. The full, gross amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipt including a lump sum payment for the delayed start of a periodic payment; include amounts received by adults on behalf of minors, or by minors intended for their own support
  - c. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay
  - d. Welfare assistance (excluding food stamps)
  - e. Alimony/maintenance and child support payments
  - f. All regular pay, special pay, and allowances of a member of the Armed Forces

- g. The income, salaries, and other amounts derived from operation of a business or profession
- h. Income from assets
- i. Income from an interest in an estate or trust
- j. Interest; dividends; Capital Gains; Rents, Royalties
- k. Lottery/gambling winnings paid in periodic or lump sum payments
- l. Allowances for housing, auto, food, etc.
- m. Recurring contributions or gifts regularly received from organization or from persons not residing in the dwelling

The following sources of income shall be excluded from the total household income:

- a. Income from the employment of any Household members under the age of 18 unless such Household member is an Applicant on the loan
  - b. Payments received from the care of foster children or adults, or adoption assistance
  - c. Lump sum additions to family assets (e.g., inheritances, capital gains, insurance policy, death benefit payment, stock options payout) (See Asset Inclusions in Section E.1)
  - d. Medical expense reimbursement received specifically for the medical expense of a household member
  - e. Income of a live-in aide
  - f. All forms of student financial assistance paid directly to a student, educational institution, or a veteran
  - g. City of Alameda Guaranteed Income payments
  - h. Income from full-time students who are Dependents.
- 2. Income Calculations:** The Program projects future income based on the Gross Income shown on each Applicant's income documentation and as verified during the underwriting process. Program Administrator must review income documentation for all household members 18 years and older, regardless of dependency status. Earned income from the employment of any household members under the age of 18 is not counted. However, unearned income (e.g., child support, social security, and other benefits paid on behalf of a minor) is included.

Income sources for all household members 18 years or older will be reviewed based on the following methodology:

**Employment Income**

Annual employment income must be determined for each job currently held.

**Overtime, Tips and Bonuses**

When calculating income based on paystubs, overtime, tips and commission will be annualized. Bonuses will be annualized unless the Applicant can provide documentation from the employer that the bonus was a one-time occurrence. In this case, the bonus amount will be removed from the annualization of the income and added in one time to the total annual income that is determined.

Tips that are received in cash will require a year-to-date profit and loss statement.

### **Seasonal Workers**

The program will not annualize current income for seasonal workers who provide a Verification of Employment from their employer(s) verifying that the work does not occur year-round. The income calculation for employment income will be used to determine annual seasonal income, while discounting the amount for off season time. Applicants who are seasonal workers must include documentation of any unemployment he/she/they have received or may receive during the off season. The annual unemployment compensation will be included in Household Income.

### **Child Support**

Income from child support may be excluded with evidence that the child support is scheduled to be terminated within 3 months of the date of application. Alimony/maintenance and child support payments will not be deducted from the household income.

### **Wage Reductions**

For the applicants whose income from employment has declined in the six (6) months prior to submitting an application or during the application process, income will be calculated at the pre-decline rate.

Following are two methods used by the City of Alameda to calculate household income. The City of Alameda will use the greater of:

- Current total annual income from all sources projected 12 months forward; or
- Total Gross Annual Income from all sources earned in the immediate past tax year

### **Income from Government Income**

For applicants receiving government income of any source (e.g. social security, CalWORKs, etc.), the income is derived by multiplying a regular monthly statement by 12 months or by referring to an annual award letter.

### **Self-employed Income**

Self-employed Applicant's employment and income will be verified by obtaining from the Applicant: (a) copies of his/her/their federal income tax returns (both individual returns and in some cases, business returns) that were filed with the IRS for the past three years with all applicable schedules attached, and (b) year to date profit & loss statement.

### **Other Income**

Any source of regular income whether in cash or recurring deposits into a bank account prior to application may be treated as income.

In the case of an Applicant who is paid in cash for employment, the City will consider those Applicants self-employed. Please review the requirements for self-employed income.

### **Unemployed Applicants**

Unemployed Applicants who are receiving no income at all should submit a Zero Income Affidavit as provided by Program Administrator in place of income statements. Applicants receiving unemployment benefits do not need to complete the Zero Income Affidavit as unemployment benefits are considered income. All unemployed Applicants will be required to provide a copy of their most recent EDD Award Letter during the Alameda BMR Program Application processing for Program Administrator to validate applicant's unemployment and income.

### **Verification of Employment**

The City, its designee, or the Program Administrator may request an official Verification of Employment signed by an Applicant's employer as proof of an Applicant's income, if needed.

### **Requirement of a Divorced Applicant**

The income of an Applicant's Spouse or Domestic Partner must be included in the Gross Annual Income for the household, unless an Applicant is legally divorced from his/her/their Spouse or his/her/their Registered Domestic Partnership has been terminated. An Applicant must provide the Program Administrator with a copy of a court-ordered divorce decree or Notice of Termination of Domestic Partnership in order to be considered "legally divorced". For divorces, a petition for dissolution will not suffice. For Registered Domestic Partnerships, at least six months must have passed since the Notice of Termination of Domestic Partnership has been filed in order for the Registered Domestic Partner's income not to be included in the Gross Annual Income for the household.

## **E. Assets Requirements**

- 1. Asset Inclusions:** When calculating an Applicant's assets, the assets to be counted when determining eligibility include, but are not limited, to the following: savings accounts, checking accounts, Certificates of Deposit, the total balance of any joint accounts, money market or mutual fund accounts, in trust for accounts (amount accessible), stocks or bonds, Gift Funds, cash on hand, amount used or borrowed (from a life insurance policy, IRA or retirement accounts), the amount of equity in any real estate owned, and other investments held by any occupant of the Applicant's household age 18 or older.
- 2. Assets Exclusions:** The cash surrender value of life insurance policy, the value of an IRA account, the value of retirement accounts (including but not limited to 401K and 403B accounts), the value of a special needs trust or the value of a 529 college savings may be excluded from an Applicant's assets for the evaluation of Pre- and Post-Purchase Assets.
- 3. Asset Test:** When a household has total household assets in excess of \$5,000, the greater of 10% of the total assets over \$5,000 or actual asset

income will be added to the total household Gross Annual Income. The value of a retirement account such as a 401k, 457 or similar will not be counted for those Applicants under retirement age as outlined by the terms of the retirement account.

4. **Post-Purchase Assets (Reserves):** Prior to Close of Escrow, applicants must document three (3) months of savings equal to the principal, interest, taxes and insurance mortgage payment in any asset that is accessible.
5. **Restrictions:** Evidence that assets have been transferred to another individual or into an unavailable asset account, or have been spent (except on unexpected emergencies, such as funeral expenses, travel costs related to illness, repair of a vehicle, medical needs and housing needs) to avoid use in the purchase will result in disqualification of the Applicant's application.
6. **Deposits:** Deposits or withdrawals that total five hundred dollars (\$500) individually or in aggregate in a thirty (30) day period must be sourced. Any newly opened account must be sourced. The Administrator and City reserve the right to request sourcing documents for any deposit or withdrawal.
7. **Retirement Account Withdrawals:** Withdrawal from retirement accounts towards down payment and closing costs are generally allowed with proof of liquidation. However, the Applicant shall consider all of his/her/their options before using retirement accounts and consult with a tax advisor to fully understand the potential tax consequences of such withdrawal in addition to the applicable early withdrawal penalty. Any funds withdrawn from retirement accounts shall be counted towards the Assets Inclusions.

## **F. Eligible Household Member**

### **1. Household Size Determination and Requirements**

The minimum household size for the BMR Program is one person per bedroom. The size of the household is determined by counting together every person who intends to live in the property, regardless of age or dependency status. All spouses or Registered Domestic Partners must be included in the household, appear on the application, title and loan for the property.

All household members aged 18 and older must appear on the application, title and loan for the property with exceptions pursuant to section F.2.

In order to count household members who are under 18 years of age in the composition of the household, they must be the legal Dependent of an adult household member or an adult household member must have at least partial (50%) custody of the child/children, except in the case of emancipated minors, as claimed on the most recent federal Income tax return, or legal minor children of titleholders. When determining household size for eligibility purposes, pregnant Applicants will be considered as one household member.

Temporarily absent household members who plan to live in the property upon return must appear on the application for the property. Such household members include, but are not limited to, household members serving temporarily in the armed forces, who are temporarily institutionalized, or who are enrolled full-time at a college or university.

Divorced or separated Applicants who have joint custody of their children should include the children in their household count if they have at least 50% custody of the children. Applicants who do not have custody should not include the children in their household count.

The following individuals are **not** counted as part of the household:

- foster children;
- unborn children;
- children who are subject to a shared custody agreement in which the child resides with the household less than 50% of the time;
- children being pursued for legal custody or adoption who are not yet living with the household at time of application; and
- non-related live-in care takers.

**2. Title and Loan Requirements:** All adult household members must appear as an owner or co-owner on the property title and must co-sign for any purchase loan for the property, with the following exceptions:

(1) Legal Dependents of titleholders as claimed on the two most recent federal income tax returns or legal minor children of titleholders. Spouses or Registered Domestic Partners are not considered Dependents; and

(2) Household members younger than age 24 who are the child of a titleholder who will reside in the housing unit as their primary residence, regardless of being named as a Dependent on the federal tax form of a titleholder.

(3) Household members aged 18 and over that do not have a credit score (proof will be required).

### **G. First-Time Homebuyer Education Requirement**

Prior to the close of escrow, Applicants must submit verification of completion of a HUD-certified First-time Home Buyer Education course. Dependents and children of Applicants under the age of 24 are exempt from this requirement, except those that are co-borrowers for the mortgage and a co-owner on the property title.

Workshops and counseling sessions are available in multiple languages through HUD-approved counseling agencies. The City encourages applicants to enroll in a homebuyer education course in their strongest language. Online courses are not allowed.

### **H. Immigration Status**

Proof of citizenship or immigration status is not required for program eligibility. However, all Applicants must qualify for First Mortgage financing from a mortgage lender and many lenders may be unable to approve Applicants without proof of legal immigration status.

### **I. Non-Discrimination and Privacy Requirement**

All Applicant eligibility requirements contained in this manual must be applied without regard to the race, creed, color, gender, sexual orientation, religion or national origin of the Applicant.

Lenders shall be sensitive to the privacy interests of the Applicants and should use the information received only for purposes of verifying the Applicants' eligibility for a mortgage loan.

## **J. Preference Points**

The total number of Preference Points possible per household are two. Applicants can receive one for living or working in Alameda (but not one for each household member), and one for being an employee of the Alameda Unified School District. All preference points claimed will be verified upon full application submission.

### **1. Living/Working in the City of Alameda (1 point)**

To qualify under this Preference Point a member of the household must work a minimum of 32 hours per week as a permanent employee at a business within the corporate city limits OR be a current resident of the City of Alameda.

### **2. Alameda Unified School District Employee (1 point)**

To qualify under this Preference Point a member of the household must be an employee of the Alameda Unified School District.

## **SECTION 3 – APPLICATION AND PROCESS**

Below are the steps for the purchase of a BMR Ownership Unit. The entire process takes about 5-6 months from the day the Project Administrator announces newly constructed BMR Units and about 4-5 months from the day a BMR Owner offers their home for sale. All times listed are approximate; the processing times can vary depending on many reasons including first mortgage loan approval, construction delays and additional information required to determine an applicant's eligibility.

### **A. Pre-Application and Lottery Process**

1. Eligible Pre-Applications will be sorted by the number of Preference Points awarded.
2. Applicants will then be randomly sorted through a lottery selection process and each applicant will be given a lottery ranking number.
3. Applicants will be notified in writing of the results of the selection process within one week of the lottery being conducted.
4. Households that submit multiple eligible pre-applications and receive two lottery numbers will be relegated to the lower lottery number.

### **B. Full Application Review**

1. Applications will be reviewed in lottery ranking order. Failure by the Applicant household to submit a complete Program Application with all required supporting documents by the application deadline may result in disqualification.

2. Additional documents may be requested from the Applicant with a deadline(s) outlined. Failure to return the additional documents by the deadline(s) will result in program disqualification due to an incomplete application.

### **C. Conditional Approval, Preference Point Determination, or Program Disqualification**

1. After a full application review, the Program Administrator will submit a recommendation for Conditional Approval, Program Disqualification or Preference Point Determination to the City along with the complete Program Application and a summary of eligibility findings.
2. The City will issue a Conditional Approval or Disqualification letter to the Applicant.

### **D. Appeal Process**

1. Within seven days from the date on the Disqualification letter, Applicant must submit an appeal to the Program Administrator along with documentation demonstrating the reason for the appeal.
2. The documentation will be provided to the Housing and Human Services Manager for review.
3. Within fifteen (15) business days of receipt of the appeal, a hearing officer will be assigned to review the appeal and additional documentation submitted by the Applicant.
4. Seven days from assignment to a hearing officer, a final decision will be delivered by mail to the Applicant.

During the appeal process, one appropriately sized BMR unit will be held until the process is complete and a final eligibility determination has been made.

## **SECTION 4 – GENERAL FIRST LOAN REQUIREMENTS**

Applicants who apply for the Alameda BMR Program must be able to qualify for a First Mortgage from a mortgage lender. A pre-approval letter will not be required as part of the Pre-Application but must be included as part of the Program Application submittal.

### **A. Impounds**

The primary lender must collect and manage impound accounts for payment of property taxes and hazard insurance for the term of the City loan or Affordability Covenant.

### **B. First Mortgage Loan Term**

The First Mortgage loan must have a fixed interest rate and fixed payment for thirty (30) years such that the loan will be fully paid off at the end of the thirty-year term (be fully amortizing). Mortgages with adjustable rates, interest-only payments, negative amortization or balloon payments are not permitted. The program reserves the right to identify additionally prohibited loan programs and/or characteristics.

### **C. First Mortgage Loan Amount**

The First Mortgage amount must be at least fifty percent (50%) of the Purchase Price.

### **D. Credit Score**

The City does not establish a minimum credit score for Alameda BMR applicants. Lenders determine the minimum credit score according to their own guidelines and loan products.

### **E. Co-Signers**

Co-signers are not permitted. All signers must be on the loan, on title and reside in the property.

### **F. Loan to Value and Combined Loan to Value**

The first mortgage loan-to-value ratio (LTV) cannot be less than 50% of the purchase price. The combined loan-to-value (CLTV) cannot exceed 97%, which includes the first mortgage, and any other borrowed subordinate financing. An exception may be made when closing cost assistance causes the CLTV to rise above 97%. In all cases, the buyer must satisfy the minimum down payment requirement.

### **G. Front-End and Back-End Ratios**

Applicant's monthly housing costs, including mortgage principal, interest, property taxes, property insurance, and if applicable mortgage insurance and homeowner's association dues cannot be less than 28% (Front-end Ratio). For low- and very low-income households, the Front-end Ratio cannot exceed 35% and for moderate income households it cannot exceed 40%.

The ratio of monthly housing costs, plus all other household monthly recurring debts (including credit cards, car payments, etc.) cannot exceed 43% (Back-End Ratio) of the gross Household Income.

### **H. Minimum Down Payment Requirement**

Applicants must contribute a total down payment that is a minimum of three percent (3%) of the Purchase Price and a maximum of 50% of the Purchase Price. Regardless of the amount of the total down payment, a minimum of 3% of the total Purchase Price must come from Applicants' own funds.

Gift Funds can be used for the down payment on top of the 3% required from the buyer's own funds. Maximum Gift Funds amount is 17% of the purchase price.

At the time a Purchase Contract is signed, an Applicant must provide an earnest money deposit. The City recommends that the earnest money deposit be no more than three percent (3%) of the Purchase Price.

### **I. Refinance/Subordination**

The City will allow refinancing of the First Mortgage for the existing loan amount plus actual closing costs up to 3% of the loan amount. BMR homeowners with a Down Payment Assistance (DPA) loan through the City of Alameda may also add the payoff amount to their new mortgage balance in order to pay off the DPA loan and/or any subordinate financing obtained at the time of purchase.

The same individuals that were named as Applicants on the original mortgage used for the initial purchase must also be named as Applicants on any refinance loan unless the City has approved the addition of an Applicant by marriage or domestic partnership or the removal of an Applicant by death, divorce or dissolution of domestic partnership or similar change.

In order for a refinance to be approved, the homeowner must be current on annual compliance Monitoring and in compliance with all BMR program requirements.

A fee of \$300 will be due payable from the Owner to the City of Alameda at closing.

#### **J. Home Equity, Lines of Credit and Reverse Mortgages**

Alameda BMR homeowners must not open home equity line of credit, home equity loans or reverse mortgages. Applicants who use such programs are in violation of the program requirements and requests for approval to refinance their First Mortgage loan will be declined.

### **SECTION 5 – PROGRAM REQUIREMENTS FOR BMR OWNERS**

#### **5.1 General Requirements**

##### **A. City Loan**

The City of Alameda will hold a silent second loan (City Loan) on the property in the amount of the difference between the Fair Market Value (what the property would be worth if the home had no deed restrictions) and the Purchase Price that the buyer pays for the home as an affordable, resale-restricted home. The terms of the loan are contained in a Promissory Note, which is secured by a Deed of Trust. The Deed of Trust is recorded as a lien on title at Close of Escrow. Unlike the first mortgage lender, the City will not disburse any funds to the title company at Close of Escrow.

The loan will have no payments due as long as the owner is in compliance with the program. Instances in which the loan may become due are outlined in the Promissory Note, Deed of Trust and Affordability Covenant that the buyer signs at the time of purchase. If the unit is resold through the City's Affordable Homeownership Program, the City loan will be reconveyed and the buyer will enter into a new Promissory Note, Deed of Trust and Affordability Agreement with the City of Alameda. In the event of an Extraordinary Sale, the owner will repay the City Loan plus the City's shared appreciation.

An ALTA Title Insurance policy is required for the City Loan, which is paid for by the buyer at closing.

##### **B. Owner Occupancy Requirement**

All household members must occupy the purchased property as their Principal Residence within 60 days after the close of escrow. Thereafter, all household members must reside in the property as their Principal Residence a minimum of 10 out of 12 calendar months for the term of the Affordability Covenant or until the property is sold. Annual compliance Monitoring will be performed to confirm continued owner occupancy.

All household members must own and occupy the BMR property for the term of the Affordability Covenant. Exceptions may be approved at the discretion of the City if there are extenuating circumstances that force the household to move (e.g. a job transfer).

### **C. Hazard Insurance**

For the duration of ownership, each Applicant will be required to maintain hazard insurance.

### **D. Title Insurance Policy**

The outstanding principal balance of the silent loan through the City of Alameda must be covered by an ALTA Lender's Policy of Title Insurance naming the City of Alameda c/o Housing and Human Services as follows:

City of Alameda  
ISAOA  
950 West Mall Square  
Alameda, CA 94501

### **E. Capital Improvements**

BMR homeowners will have the opportunity to increase their resale price to reflect pre-approved documented costs associated with eligible City-approved capital improvements. To maintain the affordability for future BMR owners, the City will cap all eligible capital improvements at 10% of the resale price. Capital improvements made within the first year of ownership will not be considered.

Eligible Capital Improvements are any capital improvements or upgrades needed to resolve a health or safety issue and do not include general wear and tear. Capital improvements must be: (1) approved in writing by the City prior to installation; (2) conform with applicable building codes; (3) cost at least Two Thousand Dollars (\$2,000). With the exception of solar, capital improvements that are made during the first five years of the date that the Certificate of Occupancy is issued, shall not be factored into the resale value.

The owner's specific recorded affordable housing covenants will prevail, but this is general guidance.

### **F. Title Transfer Restrictions**

Title transfers will cause the City of Alameda silent second loan to become due, except under the following limited circumstances: (1) a transfer to a Spouse or Registered Domestic Partner who is also an obligor under the City Note; (2) transfer to an Owner's natural or adopted children, provided they qualify as Eligible Buyers; (3) transfer to a Spouse or Registered Domestic Partner who becomes the co-owner of the property; (4)

a transfer between Spouses or Registered Domestic Partners as part of a dissolution proceeding or divorce; (5) transfer to an existing Spouse or Registered Domestic Partner by devise or inheritance following the death of the owner; (6) a transfer to an inter vivos revocable trust in which owner is the beneficiary.

For any of the above permissible transfers, the homeowner must submit a written request to Program Administrator for approval. The homeowner must present supporting documents with their request, including but not limited to, a copy of final trust agreement (any proposed change or revision to a City-approved trust must be first submitted to the City for approval), marriage certificate or state domestic partnership certificate, death certificate, divorce decree or legal separation agreement issued by a court. Upon approval, the City may require the homeowner to execute an addendum to City documents related to the property by which the transferee(s) shall assume the same rights and responsibilities with respect to those documents as the transferor(s).

Tenants in common is not a permitted form of ownership. Unmarried persons or three or more persons must hold title as joint tenants. The City reserves the right to identify additionally prohibited title vesting and transfers.

### **G. No Renting**

Renting or leasing the home in its entirety or rooms within the home is not permitted. In the event the owner rents or leases the property, any excess rents paid to the owner by the lessee over the affordable rent shall be due and payable to the City, as stipulated in the recorded BMR program documents on the property.

### **H. Annual Occupancy Monitoring**

All BMR homeowners must participate in annual occupancy monitoring and certification. At the City's discretion, they will require the owners to provide specific documentation annually to substantiate continued owner occupancy. The City will not subordinate or approve capital improvements or title changes if the homeowner(s) is not in compliance with annual monitoring or any other BMR program rule.

## **5.2 RESELLING A BMR UNIT**

All BMR owners must resell their BMR unit at a price calculated by the City of Alameda (City) and based on the Affordability Covenant under which the BMR unit was purchased. A formula will be used to calculate the maximum price for which the unit can be sold. Selling involves advertising the BMR unit for sale as well as finding a new buyer. The City or its designee will set a due date for prospective buyers to submit an application and these applications will be entered into a lottery. Reselling the BMR unit may typically take about 4 and 6 months but this is subject to change.

Upgrades, storage units, and additional spaces, including second parking spaces:

- Must be financed separately from the financing of the property
- Cannot be added to the resale price when the owner sells
- Must be sold separately from the property when the owner sells
- Are the sole responsibility of the BMR owner

- Are not allowed when purchasing with City provided downpayment assistance funds

#### **A. Notice of Intent to Sell**

To initiate the resale process, the owner must provide the City with a Notice of Intent to Sell. Within 60 days, the City will respond to the owner notifying them whether the City will exercise their purchase option or if the owner is permitted to sell the home to an eligible buyer. The City's response will include the eligible buyer purchase price and any repair costs required of the owner.

#### **B. Eligible Buyer Purchase Price**

The purchase price to be paid by an Eligible Buyer for the resale home will be determined by the Resale Formula outlined in the owner's Affordability Covenant and will include City-required energy efficient upgrades.

#### **C. Permitted Sale to Eligible Purchaser**

The City will use reasonable efforts to identify an Eligible Buyer within 180 days of receipt of the Notice of Intent to Sell, pursuant to Section 3 of this document.

#### **D. Seller Costs and Responsibilities**

Sellers are advised to review their Affordability Covenant to confirm allowable costs. The following information provides information that is generally applicable. The owner's specific recorded affordable housing covenants will prevail, but this is general guidance.

After receiving the Notice of Intent to Sell, the owner shall allow the City to enter the property for an inspection to determine: (a) if any repairs are required to bring the property into a sellable condition; and (b) if any violations of applicable laws or ordinances exist and the requirements for repairing or correcting such violations. Within 30 days of the inspection the City will provide the Owner a written report containing the repair costs. The owner can choose to either make the repairs prior to closing or pay the costs at closing through the escrow holder.

The owner will pay for the city resale costs, a one-year home warranty for the Eligible Buyer and all other customary fees paid by the seller in the City of Alameda (e.g., County transfer tax).

#### **Key Steps to Selling Your BMR Home**

1. The seller notifies the City of intent to sell using an appropriate form supplied by the City.
2. The seller submits capital improvement requests to the City, if any
3. ADD IF APPLIES (MODERATE INC ONLY): The seller finds a real estate agent

- Your real estate agent will list your home on the Multiple Listing Service (MLS), hold open houses, and field questions about the unit and the BMR program. Questions should NOT be directed to the City.
- The real estate agent must provide listing information to the City or its designee prior to posting any advertising. It must specify the application due date.
- Marketing materials must indicate that the property is offered through the City of Alameda Below Market Rate homeowner program.
- All listings must be posted for at least 21 days.
- The program administrator will add up to 5% to the base resale price to pay real estate agent commissions (please refer to your Affordability Covenant to confirm).

4. The seller provides to the City or its designee the following items to calculate the resale price:

- Proof of current HOA dues amount
- Signed listing agreement (Under sales price, please list: "Price to be determined by the City of Alameda or its designee")
- Home Inspection and Disclosure documents
- Proof of approved capital improvements, if any, including information on what type and final cost (provide receipts).
- A description of appliances – is the home entirely electric? If not, which appliances are powered by gas?

5. The real estate agent and City or its designee conduct the required inspections (the seller is responsible for repairs). Prior to listing your home for sale, you or your agent must set up a time for the City or its designee to do a walk-through inspection of your home to ensure it is in good and marketable condition. The following inspection reports are required and must be submitted to the City or its designee to review prior to listing your home for sale:

- Home Inspection Report
- Pest Inspection Report\*
- Agent Visual Inspection Disclosure (CA Association of Realtors Form AVID)

\* Exception may be granted for condos where the HOA is responsible for exterior walls. In the event repairs are noted, the City will deliver written notice to the seller, which specifies the repairs which need to be completed at the seller's expense prior to marketing the home, entering into a sales contract with a new buyer, and in any event prior to close of escrow.

6. The City or its designee shall hold a lottery no less than seven (7) days after the application deadline.

7. The City or its designee will process applications in the order indicated by the lottery.

8. The City will issue a conditional approval. The buyer may sign a sales contract at this time. The buyer's first mortgage lender will schedule the appraisal, if necessary.

9. The buyer's first mortgage lender will submit a package to the City or its designee for final approval. The City will issue the final approval and prepare its loan documents.

10. The first mortgage lender and City will send their loan documents to title. The escrow officer at the title company will coordinate signing times with a notary.

11. The first mortgage lender will fund its loan.

12. The title company confirms that the new loan is recorded and then disburses loan proceeds to the seller and lienholders. Close of escrow typically happens within 24 hours of the loan funding.

## **SECTION 6 - GLOSSARY OF DEFINITIONS**

**Applicant:** Any person eighteen (18) years of age or older who is applying for the BMR Program and who will reside in the property.

**Area Median Income:** The median income for Alameda County as defined by the California Department of Housing and Community Development (HCD) and adjusted for household size. The amounts are adjusted by HCD on an annual basis.

**Back-end ratio:** The ratio of monthly housing costs plus all recurring debt payments, such as installment payments, credit card payments, lease payments and other loan payments divided by the household's gross monthly income.

**Below Market Rate Sales Price:** A sales price that results in a monthly Housing Cost that does not exceed one twelfth of thirty percent (30%) of the maximum annual income for a household of the applicable income. The City reserves the right to reprice a BMR unit if the current rate of the Freddie Mac US 30-year Fixed Rate Mortgage has increased by at least half of a percentage point (0.50 %) from the interest rate that was used to calculate pricing by the City and provided to the Developer.

**City of Alameda:** A municipal corporation in the State of California.

**Combined Loan-to-Value Ratio:** The ratio of the total amount of all debt secured by the property divided by the lesser of the appraised value or BMR sales price of that property.

**Condominium:** As defined in California Civil Code Section 783.

**City Conditional Approval:** An evaluation of an Applicant by Program Administrator and the City that determines whether the Applicant qualifies for a Below Market Rate unit based on his/her/their income, assets, and other eligibility criteria. If an Applicant is conditionally approved, the City will issue a conditional approval letter to Eligible Applicants.

**Close of Escrow:** The point in time when ownership is transferred from the seller to the buyer. When the sale is recorded with the local government and the seller has received the purchase funds, ownership of the home is transferred from the seller to the buyer, and the buyer legally possesses the home.

**Dependents:** The household members who reside in the property and who are listed as dependents on the Applicant's Federal Income Tax returns or who the applicant has at least 50% custody of.

**Educators:** A household applying for a moderate-income unit with at least one member employed as a full-time teacher, administrator, school district employee or staff member working for any Alameda Unified School District K-12 public school, which includes Charter schools and county/continuation schools within the City of Alameda, including extension campuses.

**Eligible Buyer:** Any person or household whose income does not exceed the AMI designation for the BMR home, whose household size is appropriate for the home and who meets the HUD definition of a First-Time Homebuyer.

**Eligible Buyer Purchase Price:** The allowable Purchase Price to be paid by an Eligible Buyer for the property as provided in the owner's Affordability Covenant.

**Fair Market Value:** The value of a property based upon the determination of an authorized appraisal report mutually acceptable by both the City and the Applicant.

**Final Approval:** A written approval from the City prior to close of escrow to the Applicant and lender signifying that the Applicant meets the eligibility criteria of the BMR Program. This letter serves as a clear to close from the City BMR Program.

**First Mortgage:** The mortgage made by a participating lender for the purchase of a Principal Residence, which shall be in first lien position.

**Front-end Ratio:** The ratio of monthly housing costs, including first mortgage principal, interest, taxes, hazard insurance and homeowner's association dues (HOA) divided by the household's gross monthly income.

**Gift Funds:** An applicant may use funds received as a personal gift from an acceptable donor. An acceptable donor includes a relative, defined as any other individual who is related to the Applicant by blood, marriage, adoption, or legal guardianship and who is not part of the household. Gift funds are not allowed for a fiancé or fiancée who is not part of the household. Maximum Gift Funds amount is 17% of the purchase price.

**Gross Annual Income:** The anticipated income of an Applicant for the twelve-month period following the date of determination of Household Income, as determined by Program Administrator pursuant to Section 2.1D of this BMR Program Manual.

**Household Income:** The combined Gross Income for the Applicant(s), and any other person 18 years of age or older who is expected to live in the residence, as determined by Program Administrator pursuant to Section 2.1D of this BMR Program Manual.

**Housing Cost:** Mortgage principal, interest, property taxes, property insurance and, if applicable, mortgage insurance and homeowner's association dues.

**HUD:** The U.S. Department of Housing and Urban Development.

**Inclusionary Housing:** A public benefit program that requires a certain percentage of newly constructed residential units (houses, condos, etc.) to be affordable to low- to moderate-income households.

**Loan-to-Value Ratio:** The ratio of the amount of the first mortgage lien against a property divided by the lesser of the appraised value or BMR sales price of that property.

**Low Income Household:** a household whose annual income does not exceed the qualifying limits set for “lower income households” in Section 50079.5 of the California Health and Safety Code, or any successor statute thereto.

**Moderate Income Household:** a household whose annual income does not exceed the qualifying limits set for “persons and families of low or moderate income” in Section 50093 of the California Health and Safety Code, or any successor statute thereto.

**Monitoring:** Activities of the City, its designee, or Program Administrator, which will ensure compliance with the owner occupancy and other requirements of the program. Applicants are required to live in their BMR property and submit certain documentation on a regular basis to the Program Administrator to substantiate their continuing compliance with the Program requirements.

**Pre-Application:** Initial household eligibility and preference screening based on stated information provided by Applicant on Program Administrator’s website, to determine eligibility of household to be entered into a lottery that will determine a priority order for Program Application submission. Upon request, applicants who prefer to submit a paper copy of the Pre-Application will be provided with instructions to submit a Pre-Application by mail.

**Principal Residence:** (1) “Single-Family House”, (2) “Condominium” or (3) “Townhouse/Town Home”. It does not include timeshares, recreational vehicles, campers, or similar vehicles. The Applicant must occupy the Principal Residence at least 10 months out of every calendar year for the entire term of the loan.

**Program Administrator:** The City of Alameda has contracted with Rise Housing Solutions to administer the day-to-day program operations.

**Program Application:** BMR Program application with required supporting documents submitted by Applicants to the Program Administrator to determine household eligibility and preference verifications to receive a Conditional Approval.

**Preference Points:** Preference points, selected by applicants during the pre-application process, improve chances in a housing lottery. During the lottery ranking drawing, applicants are ranked and sorted by number of preference points, with those with the most points at the top of the list. Complete program applications will be processed in lottery ranking order, and self-reported preference points will be verified during the file review.

**Purchase Contract:** A real estate contract of sale functions as a legally binding agreement between two parties (i.e. Applicant and a seller) concerning the terms of purchase or transfer of real property.

**Purchase Price:** The cost of acquiring a residence, excluding usual and reasonable settlement or financing costs.

**Registered Domestic Partner:** As defined in the State of California Family Code Section 297-297.5.

**Rise Housing Solutions:** An organization that administers BMR and other affordable housing programs in the Bay Area. In July 2023, the City of Alameda selected Rise Housing Solutions to administer its Inclusionary Housing program. Rise Housing Solutions oversees the day-to-day activities of the City of Alameda BMR Program.

**Single-Family Residence:** A single-family one-unit residence.

**Spouse:** A partner in a marriage.

**Townhouse (Town Home):** A single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a yard, patio or public way on at least two sides.

**Very Low Income Household:** a household whose annual income does not exceed the qualifying limits set for “very low income households” in Section 50105 of the California Health and Safety Code, or any successor statute thereto.

**EXHIBIT E**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Alameda  
Community Development Department  
701 Atlantic Avenue  
Alameda, California 94501  
Attention: Executive Director

RECORDED FOR THE BENEFIT OF THE CITY OF ALAMEDA  
PURSUANT TO GOVERNMENT CODE SECTION 6103; NO FEE  
PURSUANT TO GOVERNMENT CODE SECTION 27383

**AFFORDABILITY, RESTRICTIONS ON RESALE,  
AND  
OPTION TO PURCHASE AGREEMENT  
( )**

Owner: \_\_\_\_\_

Address of Property: \_\_\_\_\_

Income Category of Owner: \_\_\_\_\_

Purchase Price of Property (“Affordable Price”):  
\_\_\_\_\_

Median Income on Effective Date: \_\_\_\_\_

THIS AFFORDABILITY, RESTRICTIONS ON RESALE, AND OPTION TO PURCHASE AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 20\_\_, (“Effective Date”) by and between the City of Alameda (“City”), a California municipal corporation and charter city, and \_\_\_\_\_ (“Owner”) with reference to the following facts:

**RECITALS**

A. Owner is acquiring fee title to that certain real property in the City of Alameda, County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto, together with all improvements now or hereafter located thereon and all appurtenances thereto (“Property”), subject to the terms and conditions of that certain Affordable Housing Agreement entered into by and between the City of Alameda (“City”), a California municipal corporation, and \_\_\_\_\_ (“Developer”), dated \_\_\_\_\_, 20\_\_ (“Developer Affordable Housing Agreement”).

B. In furtherance of (a) implementing the goals and objectives of the City's Housing Element, (b) mitigating the impacts on housing affordability caused by new residential development and (c) meeting the need for housing affordable to persons of very low-, low- and moderate-income, the City has adopted an Inclusionary Housing Policy, embodied in Ordinance No. 2926 N.S, Section 30-16.1, et seq., Alameda Municipal Code ("City Inclusionary Policy").

C. The Developer Affordable Housing Agreement requires Developer to sell the Property to Owner at an "Affordable Ownership Cost," as defined below, subject to the covenants, conditions, restrictions, and option to purchase set forth herein.

D. The purpose of this Agreement is to establish the use, occupancy, and resale restrictions in accordance with the City Inclusionary Policy, the Developer Affordable Housing Agreement, and the Grant Deed (as defined below), and grant to the City certain remedies, including the right to purchase the Property, as covenants running with the land and equitable servitudes that benefit the City and permitted successors and assigns and burden the Property, the Owner and all of its successors and assigns. The Property is being purchased by Owner as a Moderate-Income household at the "Affordable Price," in accordance with the goals and purposes of the City Inclusionary Policy, and the Developer Affordable Housing Agreement.

E. In order to ensure the Property remains affordable to a Moderate-Income household for at least fifty-nine (59) years following the date of this Agreement, and as a condition of purchasing the Property at the Affordable Price, the Owner is required to execute this Agreement, the City Note and the City Deed of Trust, as such terms are defined below.

NOW, THEREFORE, in consideration for the ability to purchase the Property at a below fair market price, as described herein, which shall be deemed good and valuable consideration, the Owner and all of its heirs, successors, and assigns hereby agrees that the Property shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, and option to purchase, all of which shall run with the Property and be binding on all parties having any rights, title, or interest in the Property.

## **ARTICLE 1 DEFINITIONS**

As used in this Agreement, the terms set forth below shall have the following meanings (other defined terms in this Agreement not referenced below shall have the meanings where first used herein).

1.1. "Affordable Ownership Cost" shall be as defined as a sales price that results in a monthly housing cost (including mortgage payment, mortgage insurance (if any), homeowner's insurance, property taxes, home owner's association costs (if any), assessments (if any), and utilities) that does not exceed one twelfth of thirty percent (30%) of the maximum annual income for a household of the applicable income.

1.2. "Affordable Price" shall mean the below market rate purchase price paid by the Owner for the Property.

1.3. “Affordable Rent” shall have the meaning provided in Section 2.1(c).

1.4. “Appraisal” shall mean an appraisal setting forth the Market Value of the Property assuming no affordability requirements or other similar restrictions on income, occupancy, or resale of the Property, and prepared by an appraiser approved by the City and who holds an MAI membership designation from the Appraisal Institute or who holds a CREA membership designation from the National Association of Real Estate Appraisers (or, in the case such professional designations are modified or discontinued, the most nearly equivalent successor designations).

1.5. “Appreciation Amount: shall have the meaning provided in Section 6.3(a).

1.6. “Area Median Income” shall mean the median household income (adjusted for household size) of the Metropolitan Statistical Area in which the County of Alameda is located, as established in accordance with California Health and Safety Code section 50093(c).

1.7. “City” shall mean the City of Alameda.

1.8. “City Deed of Trust” shall mean the deed of trust executed by the Owner in favor of the City securing the Owner’s obligations under the City Note and this Agreement, substantially in the form of Exhibit F.

1.9. “City Note” shall mean a promissory note executed by the Owner in favor of the City in the principal amount equal to the difference between the Market Value of the Property calculated at the time Owner acquired the Property and either (a) the Affordable Price, in the case of the first Owner, or (b) the Eligible Buyer Purchase Price, in the case of subsequent Owners, plus a contingent deferred amount equal to the City’s Shared Appreciation, substantially in the form of Exhibit E.

1.10. “City Purchase Option Price” shall mean an amount equal to the Eligible Buyer Purchase Price minus Repair Costs.

1.11. “City Purchase Option” shall have the meaning provided in Section 5.1.

1.12. “City Resale Costs” means any and all costs and fees incurred by the City, whether directly by City or City staff, or indirectly under City or City contract with affordable housing program service providers, in connection with the processing and implementation of a Permitted Sale under Articles 4 or 5, or an Extraordinary Sale under Article 6, including, without limitation, real estate brokerage fees or commissions, and costs and expenses of application screening and processing, employment, credit and income verification, property inspections, and document preparation and processing. The City Resale Costs shall not exceed six percent (6%) and shall not be less than one percent (1%) of the Affordable Price.

1.13. “City Response Notice” shall have the meaning provided in Section 4.1.

1.14. “City’s Shared Appreciation” shall have the meaning provided in Section 6.3.

1.15. “Eligible Capital Improvements” shall mean any capital improvements or upgrades needed to address a health or safety issue affecting the Property, in the discretion of the City, (a) made or installed by the Owner that conform with applicable building codes; (b) approved in writing by City prior to installation; (c) whose initial costs are Two Thousand Dollars (\$2,000) or more; and (d) conform to Federal Housing Quality Standards. City, prior to an Owner commencing work on the Eligible Capital Improvements, shall in its sole and absolute discretion determine (i) whether the improvements qualify as Eligible Capital Improvements; (ii) the value of the Eligible Capital Improvements which value may be less than the actual cost of the Eligible Capital Improvements; and (iii) the depreciation value or rate, if any, to be applied to such value. A form for use in requesting City approval of an Eligible Capital Improvement is attached hereto as Exhibit H.

1.16. “This section intentionally left blank.

1.17. “CC&Rs” shall mean that certain Declaration of Covenants, Conditions, and Restrictions recorded on \_\_\_\_\_, 20\_\_, as Document No. \_\_\_\_\_ in the Official Records of Alameda County, as amended from time to time.

1.18. “Commission” shall mean the former Community Improvement Commission of the City, which was dissolved effective February 1, 2012.

1.19. “Eligible Buyer” shall mean any person or family of moderate income whose combined gross income for all adult persons does not exceed one hundred twenty percent (120%) of Area Median Income, whose family size is appropriate for the Property, and who meet the First-Time Homebuyer requirements provided in Section 1.25. For the purposes herein, “appropriate family size for the Property” shall be: a minimum of one person for a one-bedroom unit; a minimum of two persons for a two-bedroom unit; a minimum of three persons for a three-bedroom unit; and a minimum of four persons for a four-bedroom unit.

1.20. “Eligible Buyer Purchase Price” shall mean the allowable purchase price to be paid by an Eligible Buyer for the Property as provided in Section 4.4.

1.21. “Event of Default” shall have the meaning provided in Section 8.10.

1.22. “Excess Rental Proceeds” shall have the meaning provided in Section 2.1(c).

1.23. “Extraordinary Sale” shall mean a Sale conducted as provided in Article 6.

1.24. “Extraordinary Sale Price” shall have the meaning provided in Section 6.3(c).

1.25. “First Time-Homebuyer” shall mean an individual or individuals, or an individual and his or her spouse, who meets either of the following criteria:

(a) The individual or individuals, or an individual and his or her spouse, has not owned a principle residence during the 3-year period ending on the date of purchase of the Property; or

(b) A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody, joint custody, or is pregnant.

1.26. “Grant Deed” shall mean the grant deed executed by the Developer conveying the Property to the Owner for the initial Owner, or the grant deed executed by the initial Owner or subsequent Owners conveying the Property to subsequent Owners.

1.27. “HUD Increase” shall mean the percentage increase in Area Median Income from the date of sale of the Property to an Owner (or Subsequent Owner, as the case may be) to the date of receipt by the City of the Owner’s Notice of Intent to Transfer or Notice of Intent to Sell. In no event shall the HUD Increase be less than zero.

1.28. “Initial Financing” shall have the meaning provided in Section 7.1(a).

1.29. “Market Value” shall mean the fair market value of the Property, assuming no affordability or resale restrictions, as determined by an Appraisal of the Property obtained from time to time. The cost of the Appraisal shall be paid by the Owner, and the Owner shall promptly provide the Appraisal to the City.

1.30. “Notice of Intent to Transfer” shall have the meaning provided in Section 3.1 and Exhibit B.

1.31. “Notice of Intent to Sell” shall have the meaning provided in Section 4.1 and Exhibit C.

1.32. “Notice of Extraordinary Sale” shall have the meaning provided in Section 6.2 and Exhibit D.

1.33. “Owner” shall mean the purchaser of the Property as identified in the Preamble and Recital A, and includes all of Owner’s heirs, successors, and assigns, as allowed under this Agreement.

1.34. “Owner’s Gross Proceeds” is equal to the Eligible Buyer Purchase Price paid for the Property, as certified by the Owner under the penalty of perjury, and as evidenced by an executed purchase and sale agreement and estimated settlement statement.

1.35. “Permitted Transfer” shall mean a Transfer as provided in Section 2.2.

1.36. “Permitted Sale” shall mean a Sale as provided in Section 2.3.

1.37. “Prohibited Transfer” shall mean any Transfer that is not a Permitted Transfer as provided in Section 2.4.

1.38. “Prohibited Sale” shall mean any Sale that is not a Permitted Sale or Extraordinary Sale as prohibited in Section 2.4.

- 1.39. "Property" shall have the meaning provided in Recital A.
- 1.40. "Purchase Subsidy" shall have the meaning provided in Section 6.3(d).
- 1.41. "Refinancing" shall have the meaning provided in Section 7.1(b).
- 1.42. "Repair Costs" shall have the meaning provided in Section 4.3.
- 1.43. "Sale," "Sell" or "Sold" shall mean a Transfer of the Property for monetary consideration.
- 1.44. "Senior Lien" shall have the meaning provided in Section 7.1.
- 1.45. "Senior Lender" shall have the meaning provided in Section 7.1(a).
- 1.46. "Senior Lender Deed of Trust" shall have the meaning provided in Section 7.3(c).
- 1.47. "Term" shall have the meaning provided in Section 8.15.
- 1.48. "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of any interest in the Property, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate or use, rental, or tenancy therein.
- 1.49. "Transferee" shall mean the person or persons to whom the Property is Transferred or Sold.

## **ARTICLE 2 RESTRICTIONS**

2.1. Owner Acknowledgments and Agreements. Owner hereby acknowledges and agrees that taking title to the Property shall constitute Owner's acknowledgment and agreement of the following:

(a) THE PROPERTY IS BEING ACQUIRED BY OWNER AT A COST THAT IS BELOW MARKET RATE FOR SUCH PROPERTY AND THAT THE PROPERTY IS SUBJECT TO THE RESALE RESTRICTIONS AND THE CITY'S PURCHASE OPTION CONTAINED IN THIS AGREEMENT GRANTING THE CITY AN IRREVOCABLE POWER OF ATTORNEY COUPLED WITH AN INTEREST TO ACT ON THE OWNER'S BEHALF TO EXECUTE, ACKNOWLEDGE, AND DELIVER ANY AND ALL DOCUMENTS RELATING TO THE CITY'S PURCHASE OPTION. THERE SHALL BE NO SALE OR TRANSFER OF THE PROPERTY EXCEPT IN ACCORDANCE WITH THIS AGREEMENT. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS AGREEMENT SHALL CONSTITUTE A DEFAULT AND SHALL BE VOIDABLE BY THE CITY.

(b) OWNER SHALL OCCUPY THE PROPERTY AS ITS PRINCIPAL RESIDENCE WITHIN SIXTY (60) DAYS OF CLOSE OF ESCROW ON THE PURCHASE OF THE PROPERTY BY OWNER. The Owner shall be considered to occupy the Property if the

Owner is living in the Property for at least ten (10) months out of each calendar year. Upon request by the City, each Owner shall submit a declaration to the City certifying under penalty of perjury that the Property is the Owner's principal residence, and provide the City with a copy of valid driver's license of the Owner showing the Property address, recent copy of a utility bill in the name of the Owner, or other evidence of residency as deemed satisfactory to the City. If an Owner vacates the Property, or for any reason does not continue to occupy the Property as its principal residence, City may declare an Event of Default pursuant to Section 8.10 and exercise any or all of its rights and remedies hereunder, including without limitation the City's Purchase Option pursuant to Article 5.

(c) The Owner shall not rent or lease the Property to another party. Any rental or lease of the Property in violation of this Agreement is prohibited, and shall be a default under this Agreement and the City Deed of Trust. The Owner agrees that, in the event the Owner rents or leases the Property to a third party in violation of this Section, any excess rents ("Excess Rental Proceeds") paid to the Owner by the lessee over the Affordable Rent shall be due and payable to the City immediately upon receipt thereof by the Owner. Such Excess Rental Proceeds shall be considered a recourse debt of the Owner to the City, as evidenced by the City Note, which the City may collect by legal action against Owner, including by foreclosure under the City Deed of Trust.

(d) The Owner's right to resell the Property at Market Value is limited and, in certain instances, the City will have the option to purchase the Property from the Owner. In order to ensure the Property shall remain available at an Affordable Ownership Cost over the Term of this Agreement, the Owner's right to resell the Property is limited and is not as favorable as the rights of other property owners whose properties are not affected by this Agreement and are not encumbered by similar agreements.

(e) The Property will not necessarily appreciate in value during the duration of the Owner's ownership, and the Eligible Buyer Purchase Price may be less than the Affordable Price the Owner originally paid for the Property. Thus, when the Owner Sells the Property it may receive less than it originally paid for the Property.

2.2. Permitted Transfers. Subject to compliance with the procedures described in Article 3, including but not limited to providing required notices to the City, the following Transfers of the Property without monetary consideration are "Permitted Transfers":

(a) Transfer to an existing spouse or registered domestic partner who is also an obligor under the City Note;

(b) Transfer to an Owner's natural or adopted children, provided such children qualify as Eligible Buyers;

(c) Transfer by the Owner to a spouse or registered domestic partner where the spouse or registered domestic partner becomes the co-owner of the Property;

(d) Transfer between spouses as part of a marriage dissolution proceeding;

(e) Transfer to an existing spouse or registered domestic partner of Owner by devise or inheritance following the death of Owner; and

(f) Transfer by Owner into an inter vivos trust in which Owner is the beneficiary.

For the purposes of this Section 2.2, “Domestic Partners” shall mean two unmarried people, at least eighteen (18) years of age, who have lived together continuously for at least one (1) year and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic Partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of California. For purposes of this section, an individual shall be considered a domestic partner of Owner upon presentation of a declaration or other acceptable evidence by Owner to the City.

2.3. Permitted Sales. Subject to compliance with the procedures described in Article 4 and Article 5, including but not limited to providing required notices to the City, an Owner may Sell the Property to an Eligible Buyer (“Permitted Sale”). The City shall have the option to purchase the Property pursuant to the City’s Purchase Option described in Article 5. If the City or the Owner are unable to identify an Eligible Buyer or the City has not exercised the City’s Purchase Option, the Owner shall have the right to Sell the Property to a non-Eligible Buyer in accordance with the provisions of Article 6.

2.4. Prohibited Transfers; Prohibited Sales. Any Transfer other than a Permitted Transfer is a Prohibited Transfer. A Prohibited Transfer specifically includes any Transfer of a use, rental, or leasehold interest in the Property. Any Sale of the Property other than a Permitted Sale, the City’s Purchase Option, or an Extraordinary Sale, is a Prohibited Sale. If an Owner attempts or makes a Prohibited Transfer or Prohibited Sale, then in addition to all other rights or remedies the City may have under this Agreement, the City shall have the right to exercise the City’s Purchase Option described in Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer or Prohibited Sale.

### **ARTICLE 3 TRANSFER PROCEDURES**

3.1. Permitted Transfers. If an Owner desires to Transfer by a Permitted Transfer under Sections 2.2(d) or (e), the Owner shall provide the City with a Notice of Intent to Transfer in the form of Exhibit B, together with any other documentation City may reasonably request in order to ensure that the Transfer is a Permitted Transfer. Upon receipt of a Notice of Intent to Transfer, City shall have forty-five (45) days after receipt by the City of such Notice of Intent to Transfer and other documentation to deliver written notice to the Owner of its approval or disapproval of the Transfer as a Permitted Transfer. In the event the City approves the Transfer as a Permitted Transfer, the Transferee shall succeed to the Owner’s interest and obligations under this Agreement, the City Note, and the City Deed of Trust and new documents shall be executed between the Transferee and the City and recorded against the Property.

3.2. Inheritance. In the event a Permitted Transfer occurs by devise or inheritance due to death of the Owner, the administrator of the Owner’s estate or the person inheriting the Property

shall provide written notice to the City of the Owner's death within thirty (30) days of the date of death and the following procedures shall apply:

(a) If the person inheriting the Property (the "Inheriting Owner") desires to occupy the Property, he or she shall succeed to the Owner's interest and obligations under this Agreement, the City Note, and the City Deed of Trust, and new documents shall be executed between the Inheriting Owner and the City and recorded against the Property.

(b) If the Inheriting Owner does not desire to occupy the Property, he or she shall be required to Transfer the Property to an Eligible Buyer at the Eligible Buyer Purchase Price, pursuant to Article 4, or the City may exercise the City's Purchase Option, pursuant to Article 5; provided, however, that the Inheriting Owner may own and occupy the Property for up to twelve (12) months prior to providing a Notice of Intent to Sell to the City pursuant to Section 4.1 below, and provided further that the Inheriting Owner remains in compliance with the City Deed of Trust. The Inheriting Owner shall not be required to occupy the Property during this twelve (12) month time period.

(c) Failure of an Inheriting Owner to follow the procedures and file the notices described in this Section 3.1 shall constitute an Event of Default under this Agreement and the City may then exercise any of the remedies set forth in Section 8.10 below, including, without limitation, exercise of the City's Purchase Option.

3.3. Transfer of the Property without City's Approval. If the City determines that the proposed Transfer is a Prohibited Transfer, the Owner shall not Transfer the Property. Any Transfer of the Property without City's approval shall be voidable and, in such event, in addition to all other rights and remedies the City may have under this Agreement, the City shall have the right to exercise the City's Purchase Option pursuant to Article 5, which may be exercised against the Transferee or the Owner under such Prohibited Transfer.

## **ARTICLE 4 PERMITTED SALE PROCEDURES**

4.1. Notice of Intent to Sell; City Response Notice. If an Owner desires to Sell the Property, the Owner shall provide the City with a Notice of Intent to Sell in the form of Exhibit C and comply with the requirements set forth in the Notice of Intent to Sell. Within sixty (60) days after receipt of the Notice of Intent to Sell, the City shall notify the Owner whether (a) City elects to exercise the City's Purchase Option pursuant to Section 5.1(a) or (b) that City will not exercise the City's Purchase Option and Owner may proceed to Sell the Property to an Eligible Buyer at the Eligible Buyer Purchase Price pursuant to Section 4.4 (the "City Response Notice"). The City Response Notice shall include: (a) any certifications required of an Eligible Purchaser; (b) the Repair Costs pursuant to Section 4.3; and (c) the Eligible Buyer Purchase Price pursuant to Section 4.4.

4.2. Permitted Sale to Eligible Purchaser. In the event the City permits the Owner to sell the Property to an Eligible Buyer, the City shall use its reasonable efforts to identify an Eligible Buyer, taking into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed, and this Agreement. Subject to the City's prior written approval, the

Owner may have the option to identify an Eligible Buyer, which approval may take into consideration the requirements of the Developer Affordable Housing Agreement, the Grant Deed, and this Agreement. Owner shall Sell the Property to the Eligible Buyer at the Eligible Buyer Purchase Price within sixty (60) days after identification of the Eligible Buyer, unless otherwise agreed to in writing by the City.

4.3. Inspection; Repair Costs. Upon receipt of a Notice of Intent to Sell, the City shall have the right to enter the Property at reasonable times with twenty-four (24) hours advance notice to the Owner to inspect the dwelling unit on the Property to determine whether any damage or violations of applicable laws or ordinances exist. In the event any damage or violations are discovered, the City shall determine the cost necessary to repair or correct any violations of applicable building, plumbing, electric, fire, or housing codes, or any other provisions of the City Building Code, as well as any other repairs the City deems necessary to put the Property into a “sellable condition” (“Repair Costs”). Items necessary to put the Property into sellable condition may include cleaning, painting, and making structural, mechanical, electrical, plumbing, fixed appliance repairs, pest control repairs, and other deferred maintenance repairs. Within thirty (30) days after the inspection, the City will prepare a written report describing the Repair Costs. The Owner shall have the option to either (a) repair or replace the items on such report at the Owner’s cost prior to closing (without extending the closing date), or (b) at closing cause the escrow holder to pay the Repair Costs to the City. If an Owner elects to repair or replace the items on such report, the City shall have the right to re-inspect the Property under the terms of this Section 4.3 after the repairs and/or replacements are complete. If the City determines that deficiencies still remain, the Owner shall cause the escrow agent at closing to pay the City the Repair Costs from Owner’s Gross Proceeds or the Extraordinary Sales Price.

4.4. Eligible Buyer Purchase Price. The Purchase Price to be paid by an Eligible Buyer for the Property shall be the total sum of (a) the Affordable Price paid by the Owner for the Property, plus (b) the HUD Increase as defined in Section 1.27, plus (c) the depreciated value of any Eligible Capital Improvements approved by the City as described in Section 1.15. Notwithstanding anything to the contrary herein, in no event shall the Eligible Buyer Purchase Price exceed the Affordable Ownership Cost allowable for a Moderate-Income household at the time of resale.

Example of how the Eligible Buyer Purchase Price is calculated:

Assume the following facts:

- Affordable Price of the Property when Owner purchased the Property was \$450,000.
- Percentage increase in the Area Median Income (“AMI”) from the date of sale of the Property to the Owner to the date of receipt by the City of the Owner’s Notice of Intent to transfer or Notice of Intent to Sell (“the HUD Increase”) is 7%.
- The Owner made Eligible Capital Improvements on the Property and the depreciated value of the Eligible Capital Improvements is \$10,000.

First, determine the Appreciation Amount by multiplying the Affordable Price times the HUD Increase.

Appreciation Amount = Affordable Price x HUD Increase = [\$450,000 x .07 = \$31,500]

Second, determine the Eligible Buyer Purchase Price by adding the Affordable Price plus the Appreciation Amount and any Eligible Capital Improvements.

Eligible Buyer Purchase Price

= Affordable Price + Appreciation Amount + Eligible Capital Improvements

= \$450,000 + 31,500 + 10,000 = \$491,500

4.5. Appraisal; City Resale Costs; City Documents. Upon receipt of a Notice of Intent to Sell, the City shall cause an Appraisal to be completed prior to close of escrow to determine the Market Value of the Property as of the date of such Notice. The cost of such Appraisal shall be paid by the Owner at close of escrow. In addition, the Owner shall pay the City Resale Costs at close of escrow. The Owner may pay the cost of the Appraisal and the City Resale Costs from any sources, including, but not limited to, the Owner's Gross Proceeds, to the extent there are any available, as provided in Section 4.6.

At close of escrow, the Eligible Buyer shall deliver or cause to be delivered into escrow:

(a) the City Note, fully executed by the Eligible Buyer in favor of the City in substantially the form of Exhibit E hereto. The City Note shall be in the principal amount equal to the Purchase Subsidy;

(b) the City Deed of Trust securing the City Note fully executed by the Eligible Buyer in recordable form, in substantially the form of Exhibit F hereto;

(c) a new Affordability, Restrictions on Resale, and Option to Purchase Agreement, in a form provided by the City to the Eligible Buyer and fully executed in recordable form by all appropriate parties; and

(d) the required down payment and all documents required by the Eligible Buyer's Senior Lender.

4.6. Proceeds from Permitted Sale. Owner's Gross Proceeds from a Permitted Sale shall be distributed in the following priority to the extent funds from Owner's Gross Proceeds are available:

(a) first, to pay any amounts owed under the Owner's Senior Lien; and

(b) second, to pay all customary closing costs that a seller would pay in the County of Alameda, a basic one-year home warranty as provided in Section 4.9, and, to the extent not already paid by the Owner to the City, the costs of the Appraisal and the City Resale Costs under Section 4.5; and

(c) third, to pay to the City all Repair Costs (if any, and to the extent not already paid) that are owed to the City under Section 4.3; and

(d) fourth, any remaining amounts shall be paid to the Owner.

4.7. Personal Property. Any sums paid to an Owner by an Eligible Buyer for personal property shall not be part of the Eligible Buyer Purchase Price. No other consideration of any nature whatsoever shall be paid by an Eligible Buyer to the Owner unless first fully disclosed to and approved by the City in writing.

4.8. Real Estate Broker Commission. If the City identifies the Eligible Buyer, no real estate broker's commission shall be paid to any real estate broker unless otherwise approved by the City. If the Eligible Buyer is identified by the Owner, as between the Owner and the Eligible Buyer, the Owner shall have the sole and exclusive obligation to pay any real estate broker's commission regardless of whether the broker was engaged by the Owner or Eligible Buyer.

4.9. Closing. At closing, the Owner shall convey fee title to the Eligible Buyer by standard title company form Grant Deed. The Owner shall cause the title company to issue to the Eligible Buyer a CLTA standard coverage owner's form of title insurance policy in the amount of the Eligible Buyer Purchase Price ensuring title to the Property is vested in the Eligible Buyer, subject to exclusions from coverage, exceptions for current taxes and assessments not yet due, this Agreement, and all documents recorded pursuant to this Agreement and such other matters (other than encumbrances created or suffered by the Owner) that were exceptions to title on the date of this Agreement. The Owner shall pay for a basic one-year home warranty contract issued by a reputable and established company to the Eligible Buyer. The Eligible Buyer shall pay the costs of any longer or more extensive warranty. All other closing costs shall be paid by the Owner or the Eligible Buyer pursuant to the custom in the County of Alameda.

## **ARTICLE 5 CITY'S PURCHASE OPTION**

5.1. Purchase Option. By taking title to the Property, the Owner irrevocably grants, to the City, an option to purchase the Property (the "City Purchase Option") at the City Purchase Option Price upon the occurrence of any of the following:

- (a) in the event the Owner provides a Notice of Intent to Sell to the City pursuant to Section 4.1;
- (b) in the event of any Prohibited Transfer or Prohibited Sale by the Owner;
- (c) in the event the Owner is in default of the occupancy requirement set forth in Section 2.1;
- (d) as reserved to the City under Section 6.1 for the period of time from Owner's Notice of Extraordinary Sale pursuant to Section 6.1 hereof to the date of written acceptance by the Owner of an offer to purchase the Property from an Eligible Buyer;
- (e) in the event that escrow fails to close within the times set forth in Section 6.6; or
- (f) upon occurrence of an Event of Default (as defined in Section 8.10);

provided that, in the case of (b), (c), (d) or (e), above, the City Purchase Option shall be in addition to any other remedy provided in this Agreement for an Event of Default. By taking title to the Property, the Owner agrees that the City's facilitation of the Transfers contemplated hereby, and its acts, commitments, and expenditures in furtherance thereof constitute adequate consideration for the grant of the City Purchase Option.

5.2. Exercise of Option.

(a) Procedure Upon Exercise of Option. The City may exercise the City Purchase Option by delivering written notice to the Owner (and to Transferee, if applicable) of its intent to exercise the City Purchase Option pursuant to Section 5.1, including, but not limited to the delivery of the City Response Notice to the Owner pursuant to Section 4.1.

(b) Assignment of City Purchase Option. After the City has exercised the City Purchase Option, the City may, without the Owner's or Transferee's consent, assign the City Purchase Option to an Eligible Buyer or to a governmental agency or non-profit organization that agrees to be subject to this Agreement; provided, however, that any such assignment shall not extend any time limits contained in this Agreement.

5.3. Close of Escrow.

(a) If the City Purchase Option is available to the City pursuant to Section 5.1(a), the City or its assignee shall purchase the Property within ninety (90) days of the date of the City Response Notice and title shall be delivered by the Owner to the City by grant deed, free and clear of any mortgage or other liens, unless first approved in writing by the City.

(b) If the City Purchase Option is available to the City Pursuant to Sections 5.1 (b), (c), (d), (e), or (f), the City or its assignee shall purchase the Property within thirty (30) days after delivering written notice to the Owner (and to Transferee, if applicable) of its intent to exercise the City Purchase Option and title shall be delivered by the Owner to the City by grant deed, free and clear of any mortgage or other liens, unless first approved in writing by the City.

5.4. Power of Attorney. By taking title to the Property, the Owner grants to the City an irrevocable power of attorney coupled with an interest to act on the Owner's behalf to execute, acknowledge, and deliver any and all documents relating to the City Purchase Option.

**ARTICLE 6  
EXTRAORDINARY SALE; SHARED APPRECIATION**

6.1. When Extraordinary Sale Permitted. The Owner shall have the right to make an Extraordinary Sale in accordance with the procedures set forth in this Article 6 if:

(a) The City or the Owner fail to identify an Eligible Buyer within one hundred and eighty (180) days of the date of the City Response Notice notifying the Owner that the City will not exercise the City Purchase Option pursuant to Section 4.1; or

(b) The City fails to close escrow pursuant to Section 5.3(a) after exercising the City Purchase Option.

Notwithstanding anything to the contrary herein, the City shall retain the City Purchase Option for the period of time from the Owner's Notice of Extraordinary Sale pursuant to Section 6.1 to the date of written acceptance by the Owner of an offer to purchase the Property from a buyer. In no event shall the Owner have the right to make an Extraordinary Sale if there has been any attempted or actual Prohibited Transfer or Prohibited Sale by the Owner or if there is any other Event of Default by the Owner under this Agreement.

6.2. Notice of Extraordinary Sale; Appraisal; City Resale Costs. The Owner shall notify the City of the Owner's intent to make an Extraordinary Sale by delivering a Notice of Extraordinary Sale in the form of Exhibit D. The Notice of Extraordinary Sale shall contain a request that the City calculate the current Market Value of the Property based upon an Appraisal, the cost of which shall be paid by the Owner through escrow. The City shall use reasonable efforts to obtain the Appraisal within thirty (30) days after receipt of the Notice of Extraordinary Sale. The City shall provide the Owner with a copy of the Appraisal within ten (10) days after receipt by the City. All transfer documents relating to the Extraordinary Sale shall be submitted to the City for its review and approval, consistent with the terms of this Agreement. In addition, the Owner shall pay the City Resale Costs at close of escrow.

6.3. City's Shared Appreciation. In the event of an Extraordinary Sale, the Owner shall pay to the City the principal amount outstanding on the City Note and the City's Shared Appreciation, as defined herein. The City Shared Appreciation shall not be credited to the subsequent purchase of the Property.

(a) "Appreciation Amount" shall mean the amount calculated by subtracting the Affordable Price from one of the following amounts, as applicable: (i) in the event of an Extraordinary Sale pursuant to Article 6, the Extraordinary Sales Price, minus the closing costs, including escrow fees, transfer taxes, recording fees, and brokerage commissions, paid by the Owner at acquisition of the Property, minus Eligible Capital Improvements, and minus the City Resale Costs; or (ii) in the event of a Transfer other than Sale of the Property, in the event of prepayment, or in the Event of Default, the Market Value of the Property, minus Eligible Capital Improvements; or (iii) in the event a creditor or third party acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Property at a creditor's sale of the Property, minus Eligible Capital Improvements.

(b) "City Shared Appreciation" shall mean the interest, if any, due on the Purchase Subsidy, equal to the amount resulting from dividing the amount of the Purchase Subsidy by the Affordable Price multiplied by the Appreciation Amount.

(c) "Extraordinary Sale Price" means the amount received by the Owner as the sales price of the Property under an Extraordinary Sale pursuant to Article 6, as certified by the Owner under the penalty of perjury, and as evidenced by an executed purchase and sale agreement and estimated settlement statement. The Extraordinary Sales Price shall not be less than the current Market Value of the Property, unless otherwise approved by the City in writing.

(d) "Purchase Subsidy" shall mean the City's initial equity contribution, equal to the difference between the Market Value of the Property at the time of acquisition by the Owner

and the Affordable Price. The Purchase Subsidy shall be provided to the Owner as a deferred contingent interest loan, as evidenced by the City Note.

Example of calculating the amount of the City’s Shared Appreciation in the Event of an Extraordinary Sale: Assume the following facts:

- Market Value of the Property at the time the Owner purchased the Property was \$1,000,000.
- Affordable Price of the Property at the time the Owner purchased the Property was \$450,000.
- Purchase Subsidy is \$550,000. [\$1,000,000 - \$450,000 = \$550,000]
- Owner paid closing costs of \$5,000 at time of purchase.
- Owner made \$10,000 of Eligible Capital Improvements on the Property.
- Prior to the expiration of this Agreement, Senior Lender sells the Property at the Extraordinary Sale Price of \$625,000. The City Resale Costs are \$20,000.

First, determine the City Shared Appreciation by dividing the Purchase Subsidy by the Market Value of the Property at the time the Owner purchased the Property:

$$\text{City Shared Appreciation} = \frac{\text{Purchase Price Subsidy}}{\text{Market Value of the Property}} = \frac{\$550,000}{\$1,000,000} = 55\%$$

Second, determine the Appreciation Amount by subtracting the sum of the Affordable Price, closing costs, Eligible Capital Improvements, and City Resale Costs from the Extraordinary Sale Price, as shown below:

|                                |            |
|--------------------------------|------------|
| Extraordinary Sale Price       | \$ 625,000 |
| – Affordable Price at purchase | – 450,000  |
| – Closing Costs                | – 5,000    |
| – Capital Improvements         | – 10,000   |
| – City Resale Costs            | – 20,000   |
| = Appreciation Amount          | \$ 140,000 |

In this example, the Appreciation Amount is \$140,000.

Third, calculate the City Shared Appreciation Amount by multiplying the City Shared Appreciation by the Appreciation Amount.

$$\text{City’s Shared Appreciation Amount} = .55 \times \$140,000 = \$77,000$$

The Owner’s share of the Appreciation Amount is \$63,000. [\$140,000 - \$77,000 = \$63,000]

(e) The City’s Shared Appreciation collected by the City shall be used by the City to assist in the provision of housing that is affordable to persons and families of low or moderate income in accordance with Civil Code section 1917.006(a)(1).

6.4. Distribution of Proceeds. At escrow, the Extraordinary Sale Price shall be distributed in the following priority, to the extent funds are available:

- (a) first, to pay any amounts owed under the selling Owner's Senior Lien;
- (b) second, to pay to the City all amounts owing under the City Note and City Deed of Trust, except the City Shared Appreciation;
- (c) third, subject to the provisions of Section 6.7 below, to pay all customary closing costs and escrow fees that are the responsibility of the selling Owner;
- (d) fourth, to the extent not already paid by the Owner to the City, the costs of the Appraisal and the City Resale Costs under Section 6.2;
- (e) fifth, to pay to City all Repair Costs (if any, and to the extent not already paid) which are owed to the City under Section 4.3;
- (f) sixth, to pay the City Shared Appreciation;
- (g) seventh, any remaining amounts to the Owner.

6.5. Time Requirements for Extraordinary Sale. The Owner shall complete an Extraordinary Sale within sixty (60) days after receipt of the Appraisal under Section 6.2. If the Extraordinary Sale is not completed within such time, and the Owner is not bound by written contract with a buyer to Sell the Property, the City may either (i) designate an Eligible Buyer for the Property pursuant to Section 4.1, in which case the provisions of Article 4 shall apply in lieu of the provisions of this Article 6, or (ii) exercise the City Purchase Option under Section 5.1, in which case the provisions of Article 5 shall apply in lieu of the provisions of this Article 6.

6.6. Effect of Extraordinary Sale. Upon the close of escrow for an Extraordinary Sale in compliance with the provisions of this Article 6, the purchaser at the Extraordinary Sale shall acquire title to the Property free and clear of the provisions of this Agreement, including the City Purchase Option. The City agrees to execute, acknowledge, and record a release or other documentation sufficient to release the Property sold at an Extraordinary Sale from the provisions of this Agreement, including the City Purchase Option.

6.7. Owner's Burden to Substantiate Costs; Extraordinary Sale; Foreclosure. Within thirty (30) days of the first scheduled date for the close of escrow of an Extraordinary Sale, the Owner shall submit evidence to the reasonable satisfaction of the City of the closing costs to be paid at resale of the Property as set forth in Section 6.4(c). To the extent such evidence is not submitted by the Owner to the reasonable satisfaction of City at least thirty (30) days prior to the first scheduled date for the close of escrow, such costs shall be deemed waived by the Owner and the Owner shall not be entitled to have such costs, as applicable. The City acknowledges that such evidence may include, by way of example and not limitation, the Owner's original closing statement, bank statements, copies of cancelled checks, and invoices from contractors. In the event of a foreclosure sale, this Section 6.7 shall operate to require the same obligations of the Owner as

in an Extraordinary Sale and all references to the “close of escrow” shall be replaced by “foreclosure sale.”

## **ARTICLE 7 LENDER PROVISIONS**

7.1. Senior Liens. Mortgages, deeds of trust, sales and leases-back, or any other form of conveyance required for any reasonable method of financing (subject to Section 7.2, the “Senior Lien”) are permitted, but only as follows:

(a) for the sole purpose of securing a purchase money loan of funds to be used by an Owner for financing the acquisition of the Property by the Owner (“Initial Financing”), provided such Initial Financing shall be obtained through a bank, savings and loan association, insurance company, pension fund, publicly traded real estate investment trust, governmental agency, or charitable organization engaged in making residential real estate loans (“Senior Lender”); or

(b) for the sole purpose of refinancing an Owner’s Initial Financing (“Refinancing”), provided such Refinancing shall be limited solely to the outstanding principal balance owed under the Owner’s Initial Financing, and shall not include any additional amounts, such as fees or costs associated with such Refinancing or additional funds disbursed to the Owner, and Refinancing shall not include secondary financing such as subordinate deeds of trust or home equity loans; and provided the Owner has paid the City all administrative and document preparation costs and fees incurred by the City in connection with the processing of any documents required to effectuate such Refinancing.

7.2. Subordination. Pursuant to California Health & Safety Code section 33334.14, the City may enter into a subordination agreement with a Senior Lender to subordinate the provisions of this Agreement and its lien under the City Note and City Deed of Trust to the Senior Lien if the City is able to make a finding, based on substantial evidence, that an economically feasible alternative method of financing or refinancing on substantially comparable terms but without subordination is not reasonably available. There shall be no subordination of this Agreement unless the City enters into a subordination agreement with a Senior Lender to subordinate the provisions of this Agreement and its lien under the City Note and City Deed of Trust to the Senior Lien. The subordination agreement shall require the Senior Lender to agree to the Default and Foreclosure provisions set forth in Section 7.3, below, or other alternative provisions acceptable to the City in its sole discretion.

7.3. Default and Foreclosure.

(a) The City shall record a request for notice of default and any notice of sale under any deed of trust or mortgage with a power of sale encumbering the Property pursuant to California Civil Code section 2924. Whether or not a request for a notice of default is recorded, the Owner shall provide a true and correct copy of any notice of default to the City within three (3) business days of the Owner’s receipt thereof.

(b) In the event of default and foreclosure, the City shall have the same right as the Owner to cure any defaults, reinstate the loan (not less than a specified number of times to be set forth in the subordination agreement between the City and the Senior Lender), or redeem the Property prior to foreclosure sale or the acceptance of a deed in lieu of foreclosure by the Senior Lender. Such redemption shall be subject to the same fees, charges, and penalties that would otherwise be assessed against the Owner. Nothing herein shall be construed as creating any obligation on the part of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

(c) If the trustee set forth in Senior Lender's deed of trust (the "Senior Lender Deed of Trust") Sells the Property at a foreclosure sale, the proceeds shall be delivered in the following priority to the extent funds are available:

(i) first, to pay all sums due and owing under the Senior Lien, including without limitation the principal amount, interest, fees and costs of sale;

(ii) second, to pay to the City all amounts owing under the City Note and City Deed of Trust, including, but not limited to the City's Shared Appreciation;

(iii) third, to pay any amounts due to person or persons legally entitled thereto, as required by law; and

(iv) fourth, to pay any remaining amounts, if any, to the Owner.

(d) Upon written request by the City, the Senior Lender is hereby authorized by the Owner to furnish a report of the payment status of the Owner and all other financial information concerning the Owner to the City.

(e) Except as otherwise expressly provided in a City-approved subordination agreement, by making a loan to the Owner, the Senior Lender grants to the City the option to purchase the Senior Lien from the Senior Lender at any time after the filing of a notice of default under the Senior Lien but prior to consummation of the foreclosure or the giving of a deed-in-lieu of foreclosure. Pursuant to this subsection, the City may purchase the Senior Lien from the Senior Lender for an amount equal to the entire indebtedness secured by the Senior Lender's deed of trust. The City may exercise this option by giving the Senior Lender written notice of its intent to do so (i) with respect to a foreclosure, at any time prior to the filing of a notice of sale under the Senior Lien, and (ii) with respect to a deed-in-lieu of foreclosure, within fifteen (15) days after receiving written notice from the Senior Lender of its intent to accept a deed-in-lieu of foreclosure with respect to the Property. Upon receipt of such written notice from the City, the Senior Lender shall promptly give the City a written statement setting forth the amount of the total indebtedness secured by the Senior Lender Deed of Trust, which shall be the purchase price for the Senior Lien, and a copy of the policy of title insurance insuring the priority and validity of the Senior Lender Deed of Trust. Within ten (10) days after the City gives such written notice, the City shall establish an escrow at such title company and concurrently therewith give the Senior Lender written notice thereof, and the City shall deposit the purchase price in such escrow. Within fifteen (15) days after the Senior Lender's receipt of notice of the opening of the escrow, the Senior Lender shall deposit

in the escrow the promissory note evidencing the Senior Lien endorsed in favor of the City, the original Senior Lender Deed of Trust, an assignment of the Senior Lender Deed of Trust duly executed by the Senior Lender and in recordable form, and all other documents, instruments, agreements, certificates, and other items that evidence, secure, or otherwise relate to the Senior Lien. The escrow holder shall be instructed to close the escrow within two (2) business days after receipt of all such items and upon such close of escrow to issue to the City a CLTA Form No. 104.1 endorsement to the title policy, showing the City as the Senior Lender's assignee with respect to the Senior Lender Deed of Trust. The Senior Lender and the City shall execute and deliver escrow instructions and such other documents as may be necessary or appropriate in connection with such escrow and to implement the intent hereof. The City shall pay the escrow fees, recording fees, and the premium for the CLTA Form No. 104.1 endorsement.

## **ARTICLE 8 MISCELLANEOUS**

8.1. No Option Assignment Liability. In no event shall the City in any way become liable to the Owner or become obligated in any manner to any other party by reason of the assignment of the City Purchase Option, nor shall City in any way be obligated or liable to any Owner for any failure of City to purchase the Property or to comply with the terms of the City Purchase Option.

8.2. Distribution of Insurance and Condemnation Proceeds. If the Property is condemned or the improvements damaged or destroyed, all proceeds from insurance or condemnation shall be distributed in accordance with the CC&Rs or, if not covered by the CC&R's, to Owner or its successors or assigns, for purposes of restoring or replacing the Property, unless the Senior Lender Deed of Trust or, if not covered by the Senior Lender Deed of Trust, the City Deed of Trust provides otherwise, in which case the Senior Lender Deed of Trust or, if not covered by the Senior Lender Deed of Trust, the City Deed of Trust shall control.

8.3. Maintenance and Use. Each Owner shall maintain the Property, including all structures and landscaping, in accordance with the CC&Rs. Each Owner shall maintain the interior of the dwelling unit on the Property in a clean condition and all appliances and fixtures in good working order. The Property shall be used and occupied by the Owner solely for residential purposes, and in addition to the residential purpose may also be used for any accessory uses that comply with the provisions of the City's Zoning Ordinance, as it may be amended from time to time, the provisions of the Grant Deed, the Developer Affordable Housing Agreement, and the CC&R's. No Owner shall grant use of, rent, or lease all or any part of the Property.

8.4. No Recovery of Litigation Fees and Costs. In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.



(i) The City determines that the Owner has made a material misrepresentation to obtain the benefits of purchase of the Property or in connection with its obligations under this Agreement.

(ii) The Owner actually Transfers, or attempts to Transfer, the Property in violation of this Agreement.

(iii) The Owner fails to owner-occupy the Property in violation of Section 2.1 of this Agreement.

(iv) The Owner rents or leases the Property in violation of Section 2.1 of this Agreement.

(v) The Owner fails to provide information to the City necessary to determine Owner's compliance with the requirements of this Agreement.

(vi) A notice of default is issued under any other financing secured by the Property, or the City receives any notice of default pursuant to Civil Code Section 2924b, or the Owner is in default on any financing secured by the Property.

(vii) A lien is recorded against the Property other than the lien of the Senior Lender or a loan approved by the City.

(viii) Judicial foreclosure proceedings are commenced regarding the Property.

(ix) The Owner executes any deed in lieu of foreclosure transferring ownership of the Property.

(x) The Owner fails to comply with any other requirements of this Agreement.

(b) Remedies. Upon a declaration of Event of Default by the City under this Agreement, the City may:

(i) Declare Excess Rental Proceeds immediately due and payable without further demand, if applicable;

(ii) Accelerate payments due under the City Note;

(iii) Invoke the power of sale under the City Deed of Trust;

(iv) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;

(v) Take such enforcement actions as are authorized under the City Municipal Code;

(vi) Declare an Event of Default under the City Note and the City Deed of Trust and pursue all City remedies under the City Note and the City Deed of Trust; or

(vii) Exercise the City Purchase Option pursuant to Article 5 of this Agreement.

(c) Notice and Cure. Upon an Event of Default, the City may give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within a reasonable period of time, which period of time shall not be longer than thirty (30) days after the date the notice is mailed, or within such further time as the City determines is necessary to correct the violation or as set forth in this Agreement, the City may declare an Event of Default under this Agreement. However, if the Owner is in default under any financing secured by the Property, the City may declare an Event of Default upon receipt of any notice given to the City pursuant to Civil Code section 2924 or through any other means and may exercise its rights as provided in Section 7.3 and this Section.

#### 8.11. Nonliability and Indemnification of the City.

(a) The City shall have no obligation to exercise any option granted it under this Agreement. In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of the City Purchase Option under Article 5 nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

(b) The Owner acknowledges, understands, and agrees that the relationship between the Owner and the City is solely that of an owner and an administrator of an inclusionary housing program, and that the City does not undertake or assume any responsibility for or duty to the Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy, or suitability of the Property or any other matter. The City owes no duty of care to protect the Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Property, and the Owner agrees that neither the Owner, nor the Owner's heirs, successors, or assigns shall ever claim, have, or assert any right or action against the City for any loss, damage, or other matter arising out of or resulting from any condition of the Property, and will hold the City harmless from any liability, loss, or damage for these things.

(c) The Owner, at its sole cost and expense, agrees to indemnify, defend, and hold harmless the City and its respective commissioners, officers, directors, employees, and agents from and against all liabilities, losses, claims, actions, damages, judgments, costs, and expenses (including, without limitation, reasonable attorney's fees) the City may incur as a direct or indirect consequence of any action by the Owner, including, but not limited to: (i) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the City Deed of Trust; (ii) the failure at any time of any of the Owner's representations to the City to be true and correct; or (iii) the Owner's purchase or ownership of the Property. The Owner agrees that if any claims, demands, suits, or other legal proceedings are made or instituted by any person against the City that arise out of any of the matters relating to this Agreement, the Owner shall cooperate fully with City in the defense or other disposition.

8.12. Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction to create a valid and enforceable City Purchase Option and to prevent any Prohibited Transfer or Prohibited Sale or any use of the Property in violation of this Agreement. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neutral, and vice versa.

8.13. Termination of Agreement. This Agreement shall terminate as to the Property as a result of an Extraordinary Sale pursuant to Section 6.6. In addition, if the City has subordinated this Agreement pursuant to Section 7.2, this Agreement shall terminate as a result of foreclosure through a trustee's sale, a judicial foreclosure sale, or deed in lieu of foreclosure. Upon such termination of this Agreement, on request of the then record Owner of the Property, the City shall execute, acknowledge, and record a termination of this Agreement. To the extent permitted by law, any unfulfilled obligations of any Owner shall survive the termination of this Agreement but this Agreement shall no longer affect title to the Property.

8.14. Entire Agreement and Modifications. This Agreement, together with the exhibits attached hereto, represents the entire agreement between the parties with respect to the subject matter set forth herein and replaces and supersedes any and all prior or contemporaneous oral or written agreements, subject to Section 8.16. This Agreement may be modified only in a writing duly signed by the affected Owner or Owners and an authorized agent of the City. The modifications shall be effective when recorded in the Official Records of Alameda County, California.

8.15. Term. This Agreement shall become effective upon its execution and delivery and unless sooner terminated in accordance with Section 8.13, shall remain in full force and effect for fifty-nine (59) years from the date of recordation of this Agreement.

8.16. Compliance Monitoring.

(a) The City (or its designee) may enter the Property for inspection following two (2) business days advance written notice to the Owner.

(b) The Owner shall retain all records related to compliance with obligations under this Agreement for a period of not less than five (5) years, and shall make such records available to the City or its designee for inspection and copying upon five (5) business days advance written notice.

(c) The City shall monitor the Owner's compliance with the requirements of this Agreement and the City Inclusionary Policy on an annual basis. The Owner shall cooperate with City monitoring and provide required certifications and other information required by the City to determine compliance within ten (10) days of receipt of a written request by the City.

8.17. Nondiscrimination. The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry, or national origin in the sale, transfer, use, occupancy, tenure, or enjoyment of the

Property, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property. The foregoing covenant shall run with the land.

8.18. Payment of City Fee for Administrative Costs of Processing Agreement. Owner acknowledges and agrees to pay City a portion of its administrative costs for preparing and processing this Agreement in the amount of Three Hundred Dollars (\$300), which amount may be part of the closing costs and shall be paid to City at Owner's close of escrow for purchase of the Property.

8.19. Recordation of Agreement. Immediately following the Effective Date, this Agreement and, pursuant to Health and Safety Code section 33334.3(f)(3), the Notice of Affordability Restrictions on Transfer of Property, in the form attached hereto as Exhibit G, shall be recorded against the Property in the Official Records of Alameda County.

8.20. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- Exhibit A: Property Description
- Exhibit B: Notice of Intent to Transfer
- Exhibit C: Notice of Intent to Sell
- Exhibit D: Notice of Extraordinary Sale
- Exhibit E: City Note
- Exhibit F: City Deed of Trust
- Exhibit G: Notice of Affordability Restrictions on Transfer of Property
- Exhibit H: Eligible Capital Improvements

IN WITNESS THEREOF, the parties have executed this Agreement as of the year and date first written above.

**CITY:**  
CITY OF ALAMEDA, a California municipal corporation and charter city

**OWNER(S):**

By: \_\_\_\_\_  
Name  
City Manager  
*[Signature must be notarized]*

\_\_\_\_\_  
Owner  
*[Signature must be notarized]*

APPROVED AS TO FORM:

\_\_\_\_\_  
Owner  
*[Signature must be notarized]*

\_\_\_\_\_  
Name  
Assistant City Attorney

RECOMMENDED FOR APPROVAL:

---

Name  
Assistant City Manager

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

[Attached]

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND  
OPTION TO PURCHASE AGREEMENT

**EXHIBIT B**

**NOTICE OF INTENT TO TRANSFER**

Date \_\_\_\_\_

To: City of Alameda  
Community Development Department  
950 West Mall Square, 2<sup>nd</sup> Floor  
Alameda, CA 94501  
Attention: Executive Director

The undersigned \_\_\_\_\_, owner of that certain real property located in Alameda, California, commonly known as \_\_\_\_\_ [insert address] \_\_\_\_\_, (the “Property”) hereby notifies you of its intent to Transfer in compliance with Section 3.1 of the Affordability, Restrictions on Resale, and Option to Purchase Agreement (the “Agreement”). The reason or circumstances relating to such transfer are as follows: \_\_\_\_\_

\_\_\_\_\_. Any additional information regarding the proposed transferee will be provided to you immediately upon request.

The undersigned acknowledges that all applicable time periods under the Agreement commence only upon the City of Alameda’s receipt of this notice. The undersigned further acknowledges and agrees that any such transfer is subject to the provisions of the Agreement.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

**EXHIBIT C**

**NOTICE OF INTENT TO SELL**

To: City of Alameda  
Community Development Department  
950 West Mall Square, 2<sup>nd</sup> Floor  
Alameda, CA 94501  
Attention: Community Development Director

Date \_\_\_\_\_

The undersigned \_\_\_\_\_, owner of that certain real property located in Alameda, California, commonly known as \_\_\_\_\_ [insert address] \_\_\_\_\_, (the "Property") hereby notifies you of its intent to Sell the Property in compliance with Section 4.1 of the Affordability, Restrictions on Resale, and Option to Purchase Agreement (the "Agreement").

The undersigned acknowledges that all applicable time periods under the Agreement commence only upon the City of Alameda's receipt of this Notice and that terms not defined in this Notice shall have the meaning given in the Agreement.

A. The following information is provided to the City pursuant to Section 4.1 of the Agreement:

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

B. The following documents are attached to this Notice:

1. Copy of HUD-1 Settlement Statement from Owner's purchase of the Property
2. If the Owner believes the Property is in good condition with no deferred maintenance and no deduction for repairs will be necessary, check box below:

Yes, I believe the Property is in good condition and that no deduction for repairs will be necessary pursuant to Section 4.3 of the Agreement. I hereby authorize the City or its designee to enter and inspect the Property to verify its condition.

EXHIBIT C – AFFORDABILITY AGREEMENT

3. If the Owner has made Eligible Capital Improvements and wants such improvements included in the calculation of the Eligible Buyer Purchase Price for the Property pursuant to Section 4.4, check the box below.

Yes, include my Eligible Capital Improvements in the price calculation. I am attaching a copy of the City letter approving these improvements and documentation of costs incurred.

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

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

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

By: \_\_\_\_\_  
Owner

By: \_\_\_\_\_  
Owner

**EXHIBIT D**

**NOTICE OF EXTRAORDINARY SALE**

Date: \_\_\_\_\_

To: City of Alameda  
c/o Housing and Human Services  
950 W. Mall Square, Room 205  
Alameda, CA 94501  
Attention: Housing and Human Services Manager

The undersigned \_\_\_\_\_, (“Owner”) is the owner of that certain real property located in Alameda, California, commonly known as \_\_\_\_\_ [insert address], (the “Property”). On \_\_\_\_\_, 20\_\_\_\_, the Owner provided the City with written notice of its intent to sell the Property. The City and the Owner have failed to identify an Eligible Buyer in accordance with Section 6.1(a) of the Affordability, Restrictions on Resale, and Option to Purchase Agreement (“Agreement”) or the City has failed to exercise the City Purchase Option in accordance with Section 6.1(b) of the Agreement. Accordingly, the Owner hereby notifies the City of its intent to make an Extraordinary Sale of the Property in accordance with Article 6 of the Agreement.

The Owner hereby requests that the City calculate the Market Value of the Property based on an Appraisal in accordance with Article 6 of the Agreement. The Owner hereby acknowledges that the City shall retain the City Purchase Option until the time that the Owner has accepted in writing an offer to purchase the Property from a buyer, and that all applicable time periods for an Extraordinary Sale under the Agreement commence only upon the City’s receipt of this Notice.

Terms not defined in this Notice shall have the meaning given in the Agreement.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

**EXHIBIT E**

**CITY NOTE**

**(Shared Appreciation Loan)**

\$ \_\_\_\_\_ Alameda, California \_\_\_\_\_

FOR VALUE RECEIVED, \_\_\_\_\_, (“Borrower”) promise to pay the CITY OF ALAMEDA (“City”) or order at Housing Authority of the City of Alameda, 701 Atlantic Avenue, Alameda, California 94501, Attention: Executive Director, or such other place as the City may designate in writing, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), plus Shared Appreciation and Excess Rental Proceeds, as applicable (collectively, the “Loan”).

1. **PROPERTY.** The “Property” is that certain real property commonly known as \_\_\_\_\_, Alameda, California, and more particularly described on Exhibit A, attached hereto and incorporated herein, which together with all improvements located thereon is referred to in this promissory note (“Note”) as the “Property.” The Property is part of a residential development known as “ \_\_\_\_\_ ” (“Project”).

2. **AFFORDABILITY COVENANTS, RESALE RESTRICTIONS.** The Property, along with certain other residential lots in the Project, is part of an affordable housing program designed to create, preserve, maintain, and protect housing for persons of low- and moderate-income as described in and pursuant to an Affordable Housing Agreement between the City of Alameda (“City”), and \_\_\_\_\_ (“Developer”) dated \_\_\_\_\_ (“Developer Affordable Housing Agreement”). Under the Developer Affordable Housing Agreement, the Developer was required to sell the Property to the Borrower at an Affordable Housing Price, as defined below, subject to the covenants, conditions, restrictions, and option to purchase set forth herein. Borrower assumes title to the Property subject to that certain Affordability, Restrictions on Resale, and Option to Purchase Agreement (“Resale Restrictions”), between the Borrower and City, recorded on \_\_\_\_\_, 2020, as Document No. \_\_\_\_\_, in the Official Records of Alameda County, California. Capitalized terms used herein and not defined in this Note shall have the meanings set forth in the Resale Restrictions.

3. **BASIS OF PRINCIPAL AMOUNT OF NOTE.** In the event that this Note is due and payable pursuant to Section 5 below, the Borrower shall pay the City the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) (the “Principal” or the “Purchase Subsidy”). The Purchase Subsidy is an amount equal to the difference between the Affordable Price and the fair market value of the Property, as established based on an Appraisal of the Property at the time the Property is acquired by the Borrower. The Borrower acknowledges and agrees that the Purchase Subsidy represents the amount by which the purchase price of the Property has been reduced as a result of the City’s covenants, conditions, and restrictions placed on the Property as set forth in the Developer Affordable Housing Agreement.

4. DEED OF TRUST. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement, and fixture filing (the “Deed of Trust”) from the Borrower in favor of the City, which Deed of Trust is dated concurrently herewith and recorded against the Property.

5. REPAYMENT OF NOTE.

(a) Term. The term of this Note shall be the same as the Term of the Resale Restrictions, as set forth in Section 8.16 of the Resale Restrictions.

(b) Deferral. Repayment of the Loan shall be deferred for the Term, except as provided in subsection (c) below.

(c) Repayment in Full. The total amount of the Principal and any City Shared Appreciation owed under this Note (together with any Excess Rent Proceeds due the City pursuant to the Resale Restriction Agreement) shall immediately become due and payable (i) in the Event of a Default by the Borrower under this Note, the Resale Restrictions, the Deed of Trust, or the Senior Loan; (ii) in the event of an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions; (iii) on the date of a Prohibited Sale or Prohibited Transfer, or (iv) at the end of the Term of this Note. Failure to declare such amounts due shall not constitute a waiver on the part of the City to declare them due in the event of a subsequent Transfer.

(d) Prepayment. Borrower may prepay all or part of the balance due under this Note. If the Borrower prepays all of the balance due under this Note, such prepayment shall include the City’s Shared Appreciation as calculated at the time the prepayment is made. The City’s Shared Appreciation shall be based on the Market Value of the Property at the time of the prepayment. If the Borrower makes a partial prepayment, such partial prepayment shall be applied only to the principal. If the principal and Shared Appreciation of this Note is entirely prepaid, the Deed of Trust shall remain on the Property to secure payment of the Excess Rental Proceeds, if any, and the Resale Restrictions. In addition, prepayment of this Note shall not affect the Resale Restrictions, which shall remain in full force and effect for the Term, regardless of any prepayment.

6. CITY’S SHARED APPRECIATION. In the event of an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions or an event of default by Borrower under this Note, the Deed of Trust, the Resale Restrictions, or Senior Lien, the Borrower shall pay to the City the outstanding Principal owed under this Note and the City’s Shared Appreciation, as defined herein. The City’s Shared Appreciation shall not be credited to the subsequent purchase of the Property.

(a) “Appreciation Amount” shall mean the amount calculated by subtracting the Affordable Price from one of the following amounts, as applicable: (i) in the event of an Extraordinary Sale pursuant to Section 6.2 of the Resale Restrictions, the Extraordinary Sales Price, minus the closing costs, including escrow fees, transfer taxes, recording fees, and brokerage commissions, paid by the Borrower at acquisition of the Property, minus Eligible Capital

Improvements, and minus the City Resale Costs; or (ii) in the event of a Transfer other than Sale of the Property, in the event of prepayment, or in the Event of Default, the Market Value of the Property, minus Eligible Capital Improvements; or (iii) in the event a creditor or third party

acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Property at a creditor's sale of the Property, minus Eligible Capital Improvements.

(b) "Affordable Price" shall mean the below market rate purchase price in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) paid by the Borrower for the acquisition of the Property.

(c) "City Resale Costs" means any and all costs and fees incurred by the City, whether directly by the City or indirectly under City contract with affordable housing program service providers, in connection with the processing and implementation of a Permitted Sale under Articles 4 or 5 or an Extraordinary Sale under Article 6 of the Resale Restrictions, including, without limitation, real estate brokerage fees or commissions, recording fees, escrow charges, and costs and expenses of application screening and processing, employment, credit and income verification, property inspections, and document preparation and processing. The City Resale Costs shall not exceed six percent (6%) of the Affordable Price.

(d) "City's Shared Appreciation" shall mean the interest, if any, due on the Purchase Subsidy, equal to the amount resulting from dividing the amount of the Purchase Subsidy by the Affordable Price multiplied by the Appreciation Amount.

(e) "Eligible Capital Improvements" shall mean any capital improvements or upgrades needed to address a health or safety issue affecting the Property, in the discretion of the City, (a) made or installed by the Owner that conform with applicable building codes; (b) approved in writing by City prior to installation; (c) whose initial costs are Two Thousand Dollars (\$2,000) or more; and (d) conform to Federal Housing Quality Standards. City, prior to an Owner commencing work on the Capital Improvements, shall in its sole and absolute discretion determine (i) whether the improvements qualify as Eligible Capital Improvements; (ii) the value of the Eligible Capital Improvements which value may be less than the actual cost of the Eligible Capital Improvements; and (iii) the depreciation value or rate, if any, to be applied to such value.

(f) "Extraordinary Sale Price" means the amount received by Borrower as the sales price of the Property under an Extraordinary Sale pursuant to Article 6 of the Resale Restrictions, as evidenced by an executed purchase and sale agreement and estimated settlement statement and as certified by the Borrower under the penalty of perjury. The Extraordinary Sales Price shall not be less than the current Market Value of the Property, unless otherwise approved in advance by the City in writing.

(g) "Market Value" shall mean the fair market value of the Property, assuming no affordability or resale restrictions, as determined by an Appraisal of the Property obtained from time to time.

Example of calculating the amount of the City's Shared Appreciation in the Event of an Extraordinary Sale: Assume the following facts:

- Market Value of the Property at the time the Borrower purchased the Property was \$1,000,000.

- Affordable Price of the Property at the time the Borrower purchased the Property was \$450,000.
- Purchase Subsidy is \$550,000. [ $\$1,000,000 - \$450,000 = \$550,000$ ]
- Borrower paid closing costs of \$5,000 at time of purchase.
- Borrower made \$10,000 of Eligible Capital Improvements on the Property.
- Prior to the expiration of this Agreement, Senior Lenders sells the Property at the Extraordinary Sale Price of \$625,000. The City Resale Costs are \$20,000.

First, determine the City Shared Appreciation by dividing the Purchase Subsidy by the Market Value of the Property at the time the Owner purchased the Property:

$$\text{City Shared Appreciation} = \frac{\text{Purchase Price Subsidy}}{\text{Market Value of the Property}} = \frac{\$550,000}{\$1,000,000} = 55\%$$

Second, determine the Appreciation Amount by subtracting the sum of the Affordable Price, closing costs, Eligible Capital Improvements, and City Resale Costs from the Extraordinary Sale Price, as shown below:

|                                |            |
|--------------------------------|------------|
| Extraordinary Sale Price       | \$ 625,000 |
| – Affordable Price at purchase | – 450,000  |
| – Closing Costs                | – 5,000    |
| – Capital Improvements         | – 10,000   |
| – City Resale Costs            | – 20,000   |
| = Appreciation Amount          | \$ 140,000 |

In this example, the Appreciation Amount is \$140,000.

Third, calculate the City Shared Appreciation Amount by multiplying the City Shared Appreciation by the Appreciation Amount.

$$\text{City's Shared Appreciation Amount} = .55 \times \$140,000 = \$77,000.$$

The Borrower's share of the Appreciation Amount is \$63,000. [ $\$140,000 - \$77,000 = \$63,000$ ]

7. **DEFAULT.** The Borrower shall be in default under this Note if the Borrower (i) is in default under the this Note, the Resale Restrictions, the Deed of Trust, or a Senior Lien, (ii) fails

to pay any money when due under this Note; or (iii) breaches any representation or covenant made in this Note or the Resale Restrictions.

8. **NONLIABILITY FOR NEGLIGENCE, LOSS, OR DAMAGE.** Borrower acknowledges, understands, and agrees that the relationship between Borrower and City is solely that of borrower and lender, and that the City and its designated agents neither undertake nor assume any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform the Borrower of the quality, adequacy, or suitability of the Property or any other matter. The City and its designated agents owe no duty of care to protect the Borrower

against negligent, faulty, inadequate, or defective building or construction or any condition of the Property, and the Borrower agrees that neither the Borrower, nor the Borrower's heirs, successors, or assigns shall ever claim, have, or assert any right or action against the City or its agents for any loss, damage, or other matter arising out of or resulting from any condition of the Property, and will hold City and its agents harmless from any liability, loss, or damage for these things.

9. INDEMNITY. Borrower agrees to defend, indemnify, and hold the City and its respective officials, officers, directors, employees, and agents, harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney's fees that the City and its designated agents may incur as a direct or indirect consequence of:

- (a) the making of the loan to the Borrower;
- (b) the Borrower's failure to perform any obligations as and when required by this Note, the Deed of Trust, and the Resale Restrictions; or
- (c) the failure at any time of any of the Borrower's representations or warranties to be true and correct.

10. ACCELERATION. Upon the occurrence of a default as defined in Section 7 of this Note, the City shall have the right to declare the full amount of the principal along with any Shared Appreciation, Excess Rental Proceeds, or other amounts due under this Note immediately due and payable. Any failure by the City to pursue its legal and equitable remedies upon default shall not constitute a waiver of the City's right to declare a default and exercise all of its rights under this Note, the Resale Restrictions, and the Deed of Trust. Nor shall acceptance by the City of any payment provided for herein constitute a waiver of the City's right to require prompt payment of any remaining principal and interest owed.

11. NO OFFSET. Borrower hereby waives any rights of offset it now has or may hereafter have against the City, its successors, and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

12. WAIVER. Borrower and any endorsers or guarantors of this Note, for themselves, their heirs, legal representatives, successors, and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor, and notice of non-payment of this Note, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration, or release of any security given for the payments hereof, and expressly waive the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

13. SEVERABILITY. If any provision of this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

14. NOTICES. All notices required in this Note shall be in writing and shall be deemed received if sent to the addresses set forth below (a) on the date of delivery when personally delivered; (b) one business day after deposit with a reputable overnight courier or delivery service

with all delivery charges paid; or (c) date of receipt by party if deposited in the United States first class mail, postage prepaid, registered or certified, return receipt requested. Any party may change its address by notice delivered in the manner specified above.

If to City: City of Alameda  
Community Development Department  
950 West Mall Square, 2<sup>nd</sup> Floor  
Alameda, CA 94501  
Attention: Community Development Director

If to Owner: \_\_\_\_\_,  
\_\_\_\_\_, Alameda, CA 94501

15. CONTROLLING LAW. This Note shall be construed in accordance with and be governed by the laws of the State of California.

16. ASSIGNMENT BY CITY. The City may assign its right to receive the proceeds under this Note to any person and, upon notice to the Borrower by the City, all payments shall be made to the assignee. The City may not transfer or assign the Note to a profit-making entity without first obtaining approval of the Senior Lender. The City may transfer or assign this Note to a government agency or non-profit entity without obtaining approval of the Senior Lender.

17. ENTIRE AGREEMENT. This Note (along with the Resale Restrictions and Deed of Trust) sets forth the entire understanding and agreement of the City and the Borrower and any amendment, alteration, or interpretation of this Note must be in writing signed by both the City and the Borrower.

18. ATTORNEYS FEES AND COSTS. The Borrower agrees to pay all costs and expenses of collection and reasonable attorney fees paid or incurred by the City or its designated agents in connection with the collection or enforcement of this Note, whether or not suit is filed.

19. JOINT AND SEVERAL OBLIGATIONS. This Note is the joint and several obligation of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

20. NO WAIVER BY CITY. No waiver of any breach, default, or failure of condition under the terms of this Note shall be implied from any failure of the City to take, or any delay by the City in taking, action with respect to such breach, default, or failure or from any previous waiver of any similar or unrelated breach, default, or failure. A waiver of any term of the Note must be made in writing and shall be limited to the express written terms of such waiver.

BORROWER:

\_\_\_\_\_  
Owner

Owner

Address: \_\_\_\_\_, Alameda, CA 94501

**EXHIBIT F**

**CITY DEED OF TRUST**

After Recording Return To:  
City of Alameda  
c/o Housing Authority of  
the City of Alameda  
701 Atlantic Avenue  
Alameda, California 94501  
Attention: Executive Director

THIS DOCUMENT IS RECORDED ON BEHALF  
OF THE HOUSING AUTHORITY OF THE CITY  
OF ALAMEDA AND IS EXEMPT FROM RECORDING  
FEES PURSUANT TO GOVERNMENT SECTION CODE  
6103, NO FEE 27383

\_\_\_\_\_ **[Space Above This Line For Recording Data]** \_\_\_\_\_

**CITY DEED OF TRUST**

This DEED OF TRUST made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, among the trustor \_\_\_\_\_, (“Trustor”), whose address is \_\_\_\_\_, Alameda, California 94501 and \_\_\_\_\_ Title Company (“Trustee”) and the City of Alameda as Beneficiary.

**(A) “Security Instrument”** means this document, which is dated \_\_\_\_\_, 20\_\_ together with all Riders to this document.

**(B) “Note”** means the promissory note signed by Trustor and dated \_\_\_\_\_, 20\_\_. The Note states that the Trustor owes the Beneficiary Purchase Subsidy. The Trustor has promised to pay this debt in the event of Extraordinary Sale. There shall be no payments due under this Note unless payments are otherwise due pursuant to provision of Sections at 5(c) and (d) of Exhibit E FORM OF CITY NOTE.

**(C) “Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”

**(D) “Riders”** mean all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- Adjustable Rate Rider       Condominium Rider       Second Property Rider
- Balloon Rider                       Planned Unit Development Rider
- 1-4 Family Rider                       Biweekly Payment Rider       Rider to City Deed of Trust

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Beneficiary: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Trustor's covenants and agreements under this Security Instrument and the Note. For this purpose, Trustor irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of ALAMEDA:

which currently has the address of \_\_\_\_\_, Alameda, CA 94501 ("Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

TRUSTOR COVENANTS that Trustor is lawfully seised of the estate hereby conveyed and that the Property is unencumbered, except for encumbrances of record. Trustor warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

BY SIGNING BELOW, Trustor accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Trustor and recorded with it

Witnesses:

\_\_\_\_\_  
Owner \_\_\_\_\_ (Seal)

\_\_\_\_\_  
Owner \_\_\_\_\_ (Seal)

\_\_\_\_\_ **[Space Below This Line For Acknowledgment]** \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_

**RIDER TO CITY DEED OF TRUST**

This Rider to Deed of Trust is executed by \_\_\_\_\_, ("Trustor") for the benefit of the CITY OF ALAMEDA ("Beneficiary").

1. This Deed of Trust also secures the obligations of the Trustor under that certain Affordability, Restrictions on Resale and Option to Purchase Agreement dated \_\_\_\_\_, 20\_\_ and recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_ in the Official Records of Alameda County, California ("Agreement"), against the property encumbered by this Deed of Trust. A default under the Agreement shall be considered a default under this Deed of Trust.

2. This Deed of Trust secures a Shared Appreciation Loan and Note.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

**CONDOMINIUM RIDER**

THIS CONDOMINIUM RIDER is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to **CITY OF ALAMEDA** (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

\_\_\_\_\_, **Alameda, CA 94501**  
[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

\_\_\_\_\_  
[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

**CONDOMINIUM COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. Condominium Obligations.** Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Condominium Rider.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

**EXHIBIT G**

**NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Alameda  
c/o Housing Authority of the  
City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attention: Executive Director

*Space Above This Line For Recorder's Use Only*

THIS DOCUMENT IS RECORDED ON BEHALF OF THE CITY  
OF ALAMEDA AND IS EXEMPT FROM RECORDING FEES  
PURSUANT TO GOVERNMENT SECTION CODE 6103, NO FEE  
27383

**NOTICE OF AFFORDABILITY RESTRICTIONS  
ON TRANSFER OF PROPERTY**

*(Note: Above Title and text below must remain in 14-point type or larger)*

***Important notice to owners, purchasers, tenants, lenders, brokers, escrow and title companies, and other persons, regarding affordable housing restrictions on the real property described in this Notice:*** Restrictions have been recorded with respect to the Property described below (referred to in this Notice as the "Property") that restrict the price and terms at which the Property may be sold or rented.

**Title of Document Containing Affordable Housing Restrictions:** Affordability, Restrictions on Resale, and Option to Purchase Agreement, dated \_\_\_\_\_, 20\_\_

(referred to in this Notice as the "Affordable Housing Restrictions").

**Parties to Affordable Housing Restrictions:**

City of Alameda ("City") and \_\_\_\_\_ ("Owner").

**The Affordable Housing Restrictions are recorded:** *(mark one box)*

- on \_\_\_\_\_, as Document No. \_\_\_\_\_, in the Official Records of Alameda County, on \_\_\_\_\_; or
- concurrently with this Notice, as Document No. \_\_\_\_\_, in the Official Records of Alameda County.

**Legal Description of Property:** See Exhibit A (Attached hereto)

**Street Address of Property:**

\_\_\_\_\_

Alameda, CA 94501

**Assessor's Parcel Number of Property:** \_\_\_\_\_

**Summary of Affordable Housing Restrictions** *(mark box as applicable):*

- The Property is restricted for resale to a low- or moderate-income household at a purchase price affordable to a low- or moderate-income household, as applicable.
- The Owner must occupy the Property as the Owner's principal residence, unless approved in writing by the City.
- The Owner must give notice to the City before resale of the Property.
- The Owner has granted the City an option to purchase the Property upon resale or default.
- The Owner's rights to pledge the Property as security for a debt are limited.

Term of Restrictions: 59 years, commencing on \_\_\_\_\_, 20\_\_ and terminating on \_\_\_\_\_, 20\_\_.

This Notice does not contain a full description of the details of all of the terms and conditions of the Affordable Housing Restrictions. You will need to obtain and read the Affordable Housing Restrictions to fully understand the restrictions and requirements that apply to the Property. In the event of any conflict between the terms of this Notice and the terms of the Affordable Housing Restrictions, the terms of the Affordable Housing Restrictions shall control.

This Notice is being recorded and filed by the City in compliance with Health and Safety Code section 33334.3(f)(3) and (4), and shall be indexed against the City and the current Owner of the Property.

IN WITNESS WHEREOF, the parties have executed this Notice of Affordability Restrictions on Transfer of Property on or as of the date first written above.

**THE CITY OF ALAMEDA:**

Dated: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Eric J. Levitt  
City Manager

*[Signature must be notarized]*

Approved as to form:

By: \_\_\_\_\_

Michael Roush  
Chief Assistant City Attorney

**OWNER:**

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
*[Signature must be notarized]*

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
*[Signature must be notarized]*

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a 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 \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To Be Inserted]

**EXHIBIT H**  
**ELIGIBLE CAPITAL IMPROVEMENTS**

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND  
OPTION TO PURCHASE AGREEMENT