

EXHIBIT R

AFFORDABLE HOUSING COVENANT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Alameda
Community Development Department
950 W. Mall Square, Suite 205
Alameda, California 94501
Attention: Community Development Director

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

AFFORDABLE HOUSING AGREEMENT
[ADDRESS]
WEST MIDWAY PROJECT

(For Sale Units Required Pursuant to the Main Street Neighborhood Specific Plan and the
Renewed Hope Settlement Agreement)

THIS AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 20__ ("Effective Date"), by and among the CITY OF ALAMEDA, a municipal corporation ("City") and _____, a _____ ("Developer").

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 Developer wishes to construct residential units on the Property. The Property is a [Phase/Subphase] of the West Midway Project (as defined below).

B. The Main Street Neighborhood Specific Plan ("MSNSP") sets forth certain inclusionary housing requirements for residential development within the Alameda Point Area of the City. The West Midway Project, including the Property, is located in the Alameda Point Area of the City and is, therefore, subject to the inclusionary housing requirements of the MSNSP.

C. The West Midway Project, including the Property, is also subject to the requirements of the Renewed Hope Settlement Agreement dated as of March 20, 2001, related to *Renewed Hope Housing Advocates and Arc Ecology v. City of Alameda, et al.*

D. The West Midway project includes the development of 478 residential units (the "West Midway Project" or "Project") to be developed in accordance with (a) the Disposition and Development Agreement (West Midway) dated _____, 2023 ("DDA") which requires that the Project reserve at least forty-four (44) units in the Project for sale to moderate income households ("Moderate Income Units"), subject to a potential reduction to as few as thirty-nine (39) Moderate Income Units in accordance with the terms of the DDA and forty-three (43) of the units as affordable by design units ("Affordable by Design Units"), (b) the Development Plan approved by the City of Alameda Planning Board Resolution _____.

E. The Project's obligation to construct units available to very low and low income households is being met by the development of the RESHAP project adjacent to the Project.

F. In accordance with the terms of the DDA, Developer and City desire to set forth Developer's obligations to provide Moderate Income Units and Affordable By Design Units with respect to the Property in a recorded document. The number of Moderate Income Units that the Project is required to provide on the Property is _____. The number of Affordable By Design Units that the Project is required to provide on the Property is _____. **[NOTE: Number of Moderate Income Units and Affordable By Design Units in the applicable Phase/Subphase to be added here. If there are no Moderate Income Units or Affordable By Design Units in the applicable Phase/Subphase, then the references to and sections addressing such units in this Agreement should be deleted.]**

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 thirty percent (30%) of the maximum income for a Moderate Income Household as defined in Health and Safety Code Section 50093 adjusted for household size.

C. "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.

D. "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).

E. "City" means the City of Alameda, a municipal corporation.

F. "City Inclusionary Policy" means City Municipal Code Section 30-16, added by Ordinance No. 2965-NA adopted on June 15, 2004.

G. "Developer" means _____ or its successors and assigns.

H. "Effective Date" means the effective date of this Agreement, as first set forth above.

I. "Eligible Moderate Income Household" means a person or household (i) meeting the definition of "Moderate Income Household" in this Agreement, 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.

J. "Eligible Workforce Household" means a person or household meeting the definition of "Workforce Household" in this Agreement.

K. "Inclusionary Ownership Guidelines" is defined in Section 2.1.E.2

L. "Market Rate Units" means units in the Project, the sale and occupancy of which are not regulated by this Agreement.

M. "Moderate Income Household" 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.

N. "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).

O. "Property" is defined in Recital A.

P. "Project Inclusionary Requirement" means the number of Moderate Income Units the Project is required to provide pursuant to the terms of the DDA.

Q. "Project" is defined in Recital C.

R. "Resale Restriction" is defined in Section 2.1.E.4.

S. "Term" is defined in Section 5.3.

T. "Workforce Household" means a household whose annual income is between one hundred twenty percent (120%) and one hundred eighty percent (180%) of Area Median Income. [NTD: This is how the Specific Plan defines "workforce" housing.]

ARTICLE 2 INCLUSIONARY REQUIREMENT

2.1 Affordability Requirements and Restrictions for Moderate Income Units.

A. Developer shall construct, or cause to be constructed, _____ Moderate Income Units on the Property, which shall be sold to and occupied by Moderate Income Households.

B. The Annual Household Income shall be considered for purposes of calculating the applicable income of the Eligible Moderate Income 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 Moderate Income Units shall be consistent with the architectural character, size, floor plans and location shown for the housing type identified in the Development Plan.

Moderate Income Units shall be comparable in exterior design and overall quality of construction to Market Rate Units in the Project, provided, however, the Moderate Income Units may be smaller in size than the Market Rate Units and may have different interior finishes and features than the Market Rate Units so long as the interior finishes are durable, of good quality and consistent with contemporary standards for new housing as reasonably determined by the City Manager or his or her designee.

D. The units designated as the Moderate Income Units are depicted in Exhibit B. The total number of Moderate Income 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 Moderate Income Units shall be subject to all of the requirements of this Agreement, including without limitation the following additional restrictions and requirements:

1. The Moderate Income Units shall only be sold to and be occupied by Eligible Moderate Income Households, as specified in subsection 2.1.A. Each Moderate Income Unit shall only be sold to and be occupied by an Eligible Moderate Income 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 Moderate Income Unit shall only be sold to an Eligible Moderate Income Household approved by City in accordance with this Agreement, the City Inclusionary Policy, and the City's "Inclusionary Housing Program Buyer Selection Guidelines," attached hereto as Exhibit D ("Inclusionary Ownership Guidelines"), and each such sale shall comply with the following:

(a) 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 Moderate Income Unit during the Term, Developer shall submit to the City, to the extent permitted by applicable law (including privacy laws): (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 Moderate Income 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 Moderate Income Unit not exceed the Affordable Sales Price for the Eligible Moderate Income Household; and (c) the income certification to be provided to any lender making a loan on the Moderate Income Unit. Developer shall bear all costs and expenses associated with such certification and eligibility determination process.

(b) Within thirty (30) calendar days from receipt of the documentation, City shall render a decision of eligibility or non-eligibility. Provided the prospective purchaser/transferee qualifies as an Eligible Moderate Income Household, the purchase price of the Moderate Income 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 Moderate Income Household, the purchase price of the Moderate Income 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 Moderate Income Unit to such non-Eligible Moderate Income Household; provided, however, if the Developer disagrees with the City's determination of non-eligibility, the Developer and City shall thereafter meet and confer in good faith to re-evaluate the eligibility of the prospective buyer. If the City fails to render a decision of eligibility or non-eligibility within thirty (30) calendar days from the City's receipt of the documentation described above, then the City shall be deemed to have determined the prospective buyer to be an Eligible Moderate Income Household and the City shall be deemed to have issued a letter of approval that the prospective buyer is an Eligible Moderate Income Household. Developer shall reimburse the City for the City's costs incurred in determining the eligibility of the Eligible Moderate Income Households and administering the terms of this Agreement.

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

(d) EACH PURCHASER OF A MODERATE INCOME 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 MODERATE INCOME UNIT ENCUMBERED BY THE RESALE RESTRICTION; AND (B) DEVELOPER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE MODERATE INCOME 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 IS NOT THEN IN DEFAULT UNDER THIS AGREEMENT.

(e) 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. Furthermore, upon the recording of a final subdivision map that

subdivides the Property into individual lots or condominiums, this Agreement shall automatically terminate and be released by City with respect all of the lots and/or condominiums upon which Market Rate Units will be developed without any further action by City or Developer and this Agreement shall continue in effect only with respect to those lots and/or condominium units upon which the Moderate Income Units and Affordable By Design Units will be constructed; provided, however, within thirty (30) days of written request by Developer, City shall execute and record such documentation as may be required to memorialize such termination and to clear this Agreement from title to the Market Rate Units.

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 Moderate Income Units in a clean and orderly condition and in good condition and repair, including the maintenance of improvements and landscaping, and to keep the Moderate Income Units free from accumulation of debris and waste materials, until the close of escrow of the Moderate Income Units.

B. Upon the sale and close of escrow of each for-sale Moderate Income Unit, the Eligible Moderate Income Household which purchased the Moderate Income 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. Such Homeowners' Association assessments will be reviewed 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 _____ Moderate Income Units at a purchase price equal to the maximum Affordable Sales Price for the maximum household size for the applicable Moderate Income Unit based on bedroom count, as calculated pursuant to this Agreement, and to rent such Moderate Income Unit to an income-qualified household. The City has the right to assign the City's Purchase Option to a nonprofit organization. Effective upon the date that the City purchases any such Moderate Income Unit, the Developer shall be deemed to have completed its obligations as to such Moderate Income Unit, and such Moderate Income Unit shall be released from this Agreement in accordance with Section 2.1.E. The City is a third-party beneficiary of this Section 2.3. For each Moderate Income Unit that the City is exercising this option, if for any reason, the City does not close escrow on the Moderate Income 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 Moderate Income Unit to any other Eligible Buyer.

ARTICLE 3
MARKETING OF MODERATE INCOME UNITS

3.1 Marketing and Sales Program and Marketing Reports.

A. Prior to marketing a Moderate Income Unit, Developer shall design and deliver to the City a marketing and/or sales plan for the Moderate Income Units. Such plan shall conform to the terms of the DDA regarding the marketing plan, and shall be subject to the Community Development Director's review and approval, not to be unreasonably withheld or delayed.

B. To the extent permitted by law, the marketing program for the Moderate Income Units referenced above shall give preference in the sale of the Moderate Income 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. Where a household satisfies both criteria, the preference points shall be aggregated.

3.2 Restrictions on Sales of Moderate Income Units. Developer shall not sell the Moderate Income 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 City Council, 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.

3.3 Effect of Article 3. This Article 3 shall terminate and be of no further force and effect as to Developer upon the first to occur of: (a) with respect to each Moderate Income Unit, the closing of the sale by Developer of, and the transfer of title to, the Moderate Income Unit pursuant to Article 2 above, and (b) the date the Resale Restriction has been recorded against each Moderate Income Unit covered by this Agreement.

ARTICLE 4
AFFORDABLE BY DESIGN UNITS

4.1 Requirements for Affordable By Design Units

A. Developer shall construct, or cause to be constructed, _____ Affordable By Design Units on the Property, which shall be sold to and occupied by Workforce Households.

B. The Annual Household Income shall be considered for purposes of calculating the applicable income of the Eligible Workforce 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 by Design Units will generally be smaller than the Market Rate Units and shall be comparable and not distinguished in infrastructure, construction quality, exterior design, or materials in relation to the Market Rate Units. The Affordable by Design Units may

have different interior finishes and features than Market Rate Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing.

D. The Affordable By Design Units shall only be sold to and be occupied by Eligible Workforce Households, as specified in subsection 2.1.A; provided, however, that for the avoidance of doubt, such income restrictions shall only apply to the first homebuyer of such units from Developer and such homebuyer and their successors and assigns and the Affordable by Design Units shall not thereafter be burdened with any requirement concerning the income of any buyer of an Affordable by Design Unit. The first homebuyer's income verification is the only qualifying factor for the sale of an Affordable by Design Unit.

E. The units designated as the Affordable by Design Units are depicted in Exhibit B. The total number of Affordable by Design Units being offered for sale in accordance with this Article 4 shall be as required by Section 4.1.A. above.

F. Developer shall market the Affordable By Design Units in accordance with a marketing plan approved by the City pursuant to the DDA.

G. UPON SALE OF AN AFFORDABLE BY DESIGN UNIT TO AN ELIGIBLE WORKFORCE HOUSEHOLD THIS AGREEMENT SHALL HAVE NO FURTHER FORCE AND EFFECT AS AN ENCUMBRANCE AGAINST THE AFFORDABLE BY DESIGN UNIT AND DEVELOPER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE AFFORDABLE BY DESIGN UNIT.

H. This Article 4 shall terminate in its entirety with respect to Developer and the Affordable By Design Units upon the date that each Affordable By Design Unit covered by this Agreement has been conveyed to an Eligible Workforce Household.

2.2 Maintenance and Management.

A. Developer agrees to maintain the Affordable By Design 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 By Design Units free from accumulation of debris and waste materials, until the close of escrow of the Affordable By Design Units.

B. Upon the sale and close of escrow of each for-sale Affordable By Design Units, the Eligible Workforce Household which purchased the Affordable By Design Units 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. Such Homeowners' Association assessments will be reviewed by the California Department of Real Estate, and subject to increases as provided for in the CC&R's.

ARTICLE 5
GENERAL PROVISIONS

5.1 Agreement Shall Prevail. This Agreement is intended to give effect to the MSNSP, City Inclusionary Policy, Project Inclusionary Requirement and the requirements of the DDA. In the event of any conflict between this Agreement and the City Inclusionary Policy, this Agreement shall control and prevail.

5.2 Notices. Notices required to be given to the City or Developer shall be given by hand delivery, recognized overnight courier (such as UPS, DHL or FedEx) or certified mail, return receipt requested, to the following addresses, or to such other address(es) as a party may designate from time to time by written notice to the other:

City: City of Alameda
Community Development Department
950 W. Mall Square, Suite 205
Alameda, CA 94501
Attention: Community Development Director

With a copy to:

Alameda City Attorney
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
Attention: City Attorney

Developer: _____

With a copy to:

5.3 Duration. The covenants set forth herein on the Moderate Income Units shall be covenants running with the land and shall inure to the benefit of City and its successors and assigns, and shall be enforceable by City and its successors and assigns during the Term. Upon recordation of the Resale Restriction as to each Moderate Income Unit, this Agreement shall have no further force or effect as an encumbrance against each Moderate Income Unit, and Developer shall have no further obligations or liabilities with respect to the Moderate Income 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 is not then in default under this Agreement. This Agreement shall terminate on the date that is the later to occur of the following: (a) the date the Resale Restriction has been recorded against each Moderate Income Unit covered by this Agreement, and (b) the date each Affordable By Design Unit covered by this Agreement has been

conveyed to an Eligible Workforce Household (such date of termination, the “Termination Date”). The period of time between the Effective Date and the Termination Date is the “Term” of this Agreement.

5.4 No Discrimination. During the Term of this Agreement, 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.

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

5.6 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.

5.7 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 Moderate Income Unit pursuant to Article 2 above or the last Affordable By Design Unit pursuant to Article 4 above, as applicable, Developer shall comply with the requirements of the DDA with respect to such Transfer and any such transferee shall 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.

5.8 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 Property, 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; provided, however, this Agreement shall be released from, and shall not encumber, any individual Moderate Income Unit upon sale of such Moderate Income Unit to an Eligible Moderate Income Household and/or any individual Affordable By Design Unit upon sale of such Affordable By Design Unit to an Eligible Workforce Household.

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

5.10 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 Market Rate Unit or any unit other than the Moderate Income Units and the Affordable By Design Units, as applicable, except that the buyer of an Moderate Income 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.

5.11 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.

5.12 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.

5.14 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.

5.15 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.

5.16 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.

5.17 Attorney Fees. 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 attorneys’ 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 of litigant might prevail.

5.18 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

Andrew Thomas, Interim Base Reuse and
Economic Development Director

[Signature must be notarized]
Jennifer Ott
City Manager

APPROVED AS TO FORM:

Len Aslanian,
Assistant City Attorney

DEVELOPER:

DEVELOPER:

_____,
a _____

By: _____

By: _____
[Signature must be notarized]

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 _____)

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

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

WITNESS my hand and official seal.

Signature_____

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 _____)

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

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

WITNESS my hand and official seal.

Signature_____

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EXHIBIT A

Legal Description of Property

EXHIBIT B

Site Plans for Project

EXHIBIT C

Reserved

EXHIBIT D

Inclusionary Housing Program Buyer/Renter Selection Guidelines

On the following page are the Buyer Selection Guidelines that are currently in effect. City staff anticipates that updated guidelines will be presented to the Council in _____. The Developer shall comply with the Council-approved guidelines that are in effect at the time that the City approves the marketing and/or sales plan for the Moderate Income Units described in Section 3 of the Agreement.

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

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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. Intentionally left blank.

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. Affordable Rent shall mean the thirty (30%) of one hundred ten percent (110%) of Area Median Income adjusted for household size appropriate to the Property.

(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(a) through (d), 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 or the Eligible Buyer. 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 or Eligible Buyer 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) (e) or (f), 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. .

(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 Market Value of the Property at the time the Owner purchase the Property 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 or the Eligible Buyer all Repair Costs (if any, and to the extent not already paid) which are owed to the City or the Eligible Buyer 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, be used in the determination of the Appreciation Amount in accordance with Section 6.3(a) or receive payment of such costs as set forth in Section 6.4(c). 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. The City may, at its sole discretion, enter into a subordination agreement with a Senior Lender to subordinate provisions of this Agreement and its lien under the City Note and the City Deed of Trust to the Senior Lien. Any such 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. Attorneys' 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 attorneys' 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 of litigant might prevail.

8.5. Controlling Agreement. The Owner covenants that it has not executed, and will not execute without the City's prior written approval, any other agreement with provisions contradictory to or in opposition to the provisions of this Agreement.

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

8.7. Time of the Essence. Time is of the essence of this entire Agreement. Whenever the time for performance falls on a day which is not a business day, such time for performance shall be extended to the next business day.

8.8. Notices. All notices, demands, requests for approval and other communications provided for in this Agreement 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, 2nd Floor
 Alameda, CA 94501
 Attention: Community Development Director

If to Owner: _____
 Alameda, CA 94501

8.9. Covenants Running with the Land. Pursuant to the City Inclusionary Policy, all provisions of this Agreement, including the benefits and burdens, are equitable servitudes, run with the land, and are binding upon the heirs, successors, assigns, and personal representatives of the Owner and inure to the benefit of the City and its successors and assigns. The covenants benefit and bind the City, the Property, and all owners and successor owners. Each and every contract,

deed, or other instrument covering, conveying, or otherwise transferring the Property or any interest therein shall conclusively be held to have been executed, delivered, and accepted subject to this Agreement regardless of whether the other party or parties have actual knowledge of this Agreement.

8.10. Defaults.

(a) Event of Default. Any one of the following events shall constitute a “Event of Default” by the Owner under this Agreement:

(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, veteran status, source of income, 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, 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: Intentionally Left Blank
- 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: _____

Jennifer Ott

City Manager

[Signature must be notarized]

Owner

[Signature must be notarized]

APPROVED AS TO FORM:

Owner

[Signature must be notarized]

Michael Roush

Chief Assistant City Attorney

RECOMMENDED FOR APPROVAL:

Lisa Fitts

Management Analyst, Housing

Authority of the City of Alameda

EXHIBIT A

PROPERTY DESCRIPTION

[Attached]

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

HOAL\52476\963160.2
676\05\3534241.2
676\05\3534241.4
7/2/2023

08670533880413v4

EXHIBIT B

NOTICE OF INTENT TO TRANSFER

Date _____

To: City of Alameda
Community Development Department
950 West Mall Square, 2nd 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 TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
OPTION TO PURCHASE AGREEMENT

HOAL\52476\963160.2
676\05\3534241.2
676\05\3534241.4
7/2/2023

086705\3534241.4 v4

EXHIBIT C

NOTICE OF INTENT TO SELL

To: City of Alameda
Community Development Department
950 West Mall Square, 2nd 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:

(name) and _____
(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

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

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

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EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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EXHIBIT D

NOTICE OF EXTRAORDINARY SALE

Date: _____

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

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 TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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EXHIBIT E

CITY NOTE

(Shared Appreciation Loan)

\$_____ Alameda, California _____

FOR VALUE RECEIVED, _____, ("Borrower") promise to pay the CITY OF ALAMEDA ("City"), 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 _____, 20__, 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

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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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.

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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(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%) and shall not be less than one percent (1%) 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 Market Value of the Property at the time the Borrower purchased the Property 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

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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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.

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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Third, calculate the City Shared Appreciation Amount by multiplying the City Shared Appreciation by the Appreciation Amount.

City's Shared Appreciation Amount = .55 x \$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

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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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, 2nd 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

EXHIBIT TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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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. 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 attorneys' 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 of litigant might prevail..

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 TO THE AFFORDABILITY, RESTRICTIONS ON RESALE, AND
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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 |

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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 seized 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)

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_____ **[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

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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

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EXHIBIT H
ELIGIBLE CAPITAL IMPROVEMENTS

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