

**Recording requested by and when  
recorded mail to:**

City of Dublin  
100 Civic Plaza  
Dublin, CA 94568  
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

(Space Above This Line For Recorder's Use Only)

City Clerk Department\Agreements\Contracts\0600-25 or 0600-90

Development:

Owner:

APN:



## **RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE**

City of Dublin Affordable Housing Program  
(Inclusionary Units)

**NOTICE: THIS DOCUMENT CONTAINS RESTRICTIONS ON THE USE,  
SALE AND REFINANCING OF THIS PROPERTY.**

This RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE (this "Agreement") is entered into by and between the CITY OF DUBLIN, a California municipal corporation (the "City") and **Owner Name(s) as appears on title** ("Owner") regarding certain improved real property which is more particularly described in Exhibit A attached hereto and incorporated herein and commonly known as **Address, Dublin, CA 94568** (the "Property") effective as of **Date** (the "Effective Date"). City and Owner are hereinafter collectively referred to as the "Parties."

### **RECITALS**

**WHEREAS**, pursuant to its Inclusionary Zoning Regulations (Dublin Municipal Code Section 8.68), the City has established a program to further its goal of creating affordable home ownership opportunities for low- and moderate-income households by providing for the construction and sale of certain homes at a price below their market rate (the "Program");

**WHEREAS**, Owner qualifies as an Eligible Household under the Program and intends to occupy and maintain the Property as Owner's principal residence;

**WHEREAS**, to maintain and preserve the Property as housing affordable to eligible moderate-income purchasers, it is necessary to restrict the use and resale of the Property through imposition of the occupancy and resale restrictions set forth herein. These restrictions are intended to prevent uses of the Property for purposes that are incompatible

with the Program, and to prevent unwarranted gains from sale of the Property at an unrestricted price. The Owner's obligations set forth in this Agreement as secured by the Performance Deed of Trust, and the Option granted to the City hereby, are intended to provide the necessary occupancy and resale restrictions to ensure that the Property is used, maintained, and preserved as housing affordable to eligible low- and moderate-income purchasers;

**WHEREAS**, the Property constitutes a valuable community resource by providing decent, safe, and sanitary housing to persons and families of low- and moderate-income who would otherwise be unable to afford such housing. To protect and preserve this resource, it is necessary, proper, and in the public interest for the City to administer occupancy and resale controls consistent with the Program and applicable law by means of this Agreement;

**WHEREAS**, notwithstanding the foregoing, the City has provided a mechanism to allow for the release of the resale restrictions for Below Market Rate ("BMR") properties in the Program whose owners are unable to sell them under certain limited circumstances, at the sole discretion and approval of the City, pursuant to the City's adopted Guidelines to the Inclusionary Zoning Regulations Ordinance ("Guidelines"), at Section 6.5.2 ("Release of Resale Restrictions").

**NOW THEREFORE**, in consideration of the substantial economic benefits received by the Owner and the public purposes served under the Program, Owner and City agree as follows:

## **AGREEMENT**

### **1. Definitions**

As used in this Agreement, the following terms have the meanings set forth below. Other additional terms are defined as necessary throughout this Agreement.

**"Adjusted Resale Price"** means Base Resale Price as adjusted by the factors listed in Section 6.2, not to exceed Affordable Unit Cost.

**"Affordable Unit Cost"** means a sale price that will result in a homeowner's annual housing expenses not exceeding 35% of the maximum qualifying income level, adjusted for household size appropriate for the unit. For purposes of this definition, "housing expenses" means principal, interest, property taxes, property and mortgage insurance, and homeowners' association dues. "Maximum qualifying income level" means: (i) for Moderate-Income Households – 120% of Area Median Income; and (ii) for Low-Income Households – 80% of Area Median Income. "Household size appropriate for the unit" means one person for a studio, two persons for a one-bedroom unit, three persons for a two-bedroom unit, four persons for a three-bedroom unit, and five persons for a four-bedroom unit.

**"Area Median Income"** or **"AMI"** means the area median income adjusted for household size as published annually by the California Department of Housing and Community Development ("HCD") for the County of Alameda, pursuant to California Health and Safety Code Section 50093 or successor provision.

**"Base Resale Price"** means the unadjusted value of the Property as determined in Section 6.1.

**"Eligible Capital Improvements"** means any health and safety-related improvements to the Property as may be approved by the City in accordance with Section 3.5.

**"Eligible Household"** means a household whose gross annual income does not exceed the Low- or Moderate-Income limits of 80% and 120% AMI, respectively, and which otherwise meets the Program criteria.

**"Event of Default"** is any breach by Owner of the covenants and conditions of this Agreement as set forth in Section 11.1, or other event described herein, which gives rise to the City's right to exercise the Option.

**"Excess Sale Proceeds"** means the Owner's obligation to pay to the City the difference between the amount that Owner would have received from sale of the Property to an Eligible Household at the Adjusted Resale Price, and the amount received from sale of the Property to a Market Purchaser or in other circumstances as described in Section 6.3.

**"Guidelines"** means the City's Guidelines to the Inclusionary Zoning Regulations Ordinance set forth in Chapter 8.68 of the City's Municipal Code, as amended from time to time, which terms and provisions are made a part hereof and incorporated into this Agreement as if they were expressly set forth herein.

**"Market Purchaser"** means a household to whom the Property is sold in the event that Owner is unable to locate an Eligible Household, pursuant to the terms and conditions set forth in Section 5.8.

**"Option"** means the City's right to purchase the Property at the Adjusted Resale Price upon the occurrence of an Option Event, in accordance with Section 4.

**"Option Event"** is any event, as identified in Section 4.3, which gives rise to the City's right to exercise the Option.

**"Permitted Exceptions"** means any exceptions to title, liens or other encumbrances expressly permitted by the City to be recorded against the Property.

**"Permitted Transfer"/"Permitted Transferee"** shall mean an authorized conveyance or transfer of interest in the Property as specifically provided in Section 2.3, or the person(s) to whom the Property interest is conveyed, which shall not trigger exercise of the Option or be otherwise considered an Option Event.

**"Principal Residence"** means the place where a person resides on a substantially full-time basis during not less than ten (10) months per year.

**“Resale Restrictions”** means, collectively, the restrictions on sale price and transfer of the Property as set forth in this Agreement.

**“Term of the Resale Restrictions and Option”** means **55 years**, commencing upon the date the unit was placed into service as an inclusionary unit; i.e., the **original owner’s date of signing**, hereby understood by the Parties to be **[EFFECTIVE DATE OF ORIGINAL RRA FOR PROPERTY]**

**“Transfer”** means any sale, conveyance, assignment, or transfer of any interest in the Property, whether voluntary or involuntary.

## 2. Program Requirements

2.1 General Resale Restrictions. Owner hereby covenants and agrees that during the term of this Agreement, the Property shall be sold or transferred only to: (i) Eligible Households at a price not to exceed the Adjusted Resale Price, as described in Section 6.2; (ii) a Permitted Transferee pursuant to Section 2.3; (iii) the City, pursuant to exercise of the Option as described in Sections 4 and 5; or, (iv) in the event that Owner is unable to locate an Eligible Household, to a Market Purchaser as provided in Section 5.8 and other applicable provisions of this Agreement. Any sale or other transfer of the Property in violation of any Resale Restriction set forth herein is prohibited and shall constitute an Event of Default and/or an Option Event entitling City to exercise its Option to purchase the Property.

2.2 Principal Residence Requirement. Owner covenants and agrees to occupy the Property as Owner’s Principal Residence throughout the period of time that Owner owns the Property, and that Owner shall not rent or lease the Property or portion thereof during the Term of the Resale Restrictions and Option. Owner shall take possession of and occupy the Property within sixty (60) days of close of escrow for the Property. Owner shall be considered to occupy the Property as a Principal Residence if the Owner personally resides in the Property for at least ten (10) months out of each calendar year.

2.2.1 Annual Occupancy Certification. On at least an annual basis or as otherwise determined necessary by the City, Owner shall provide written certification, in form provided by City, that Owner occupies the Property as Owner’s Principal Residence and that Owner is not impermissibly renting or leasing the Property to another party. Owner shall provide such documents and other evidence as City may reasonably request to verify compliance with the requirements of this section.

2.2.2 Successor Owners. During the Term of the Resale Restrictions and Option, successor owners of the Property shall be obligated to use the Property as such successor’s Principal Residence for the duration of the successor’s ownership, except as otherwise provided in Section 5.8 with regard to a Market Purchaser. Abandonment of the Property by Owner or any successor shall constitute an Option Event triggering the City’s right to exercise the Option to purchase the Property.

2.3 Permitted Transfers. As provided under this section, transfers of title to the Property, or of any estate or interest therein, shall not be considered Option Events,

provided that the transferee assumes, within 30 days following a written request by City, all of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement or execution of an agreement substantially similar to this Agreement, in form(s) acceptable to the City. Notwithstanding any Permitted Transfer, the Option shall remain effective with respect to the Property for the duration of the Term of the Resale Restrictions and Option. Permitted Transfers shall include:

- (a) Transfer by devise or inheritance to Owner's spouse or domestic partner following the death of Owner;
- (b) Transfer by Owner to a spouse or domestic partner where the spouse or domestic partner becomes the co-owner of the Property;
- (c) Transfer of title to a spouse as part of a divorce or marriage dissolution proceeding; and
- (d) Transfer by Owner into an inter vivos trust in which the Owner is a beneficiary; provided, however, that in every case: (i) written notice of each such transfer shall be provided to City, and (ii) Owner shall continue to occupy the Property as his or her principal place of residence except where the transfer occurs pursuant to subsection (a) or (c) above, in which event the transferee shall owner-occupy the Property.

**2.3.1 Domestic Partners**. For purposes of this Agreement and requirements of the Program, "domestic partner" shall mean two unmarried people, at least eighteen (18) years of age, who have lived together continuously for at least one 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. The City shall consider an individual to be Owner's domestic partner, exclusively for purposes of the Program and this Agreement, upon Owner's presentation to the City of an affidavit or other acceptable evidence of the domestic partnership. No legal rights, obligations, or incidents of domestic partnership or marriage, as recognized under any local, state, or federal law, are granted, established, or implied by this Agreement or as a result of Owner's and Owner's household's participation in the Program.

**2.3.2 Inheritance**. In the event a 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") is the child or stepchild of the deceased Owner (an "Inheriting Child"), he or she shall provide the City with documentation that he or she is the child or stepchild of the deceased Owner together with income information, to be verified by the City, so that the City may determine if the Inheriting Child is an Eligible Household.

(b) If the Inheriting Child fails to provide required documentation of his or her relationship to the Owner or financial information, he or she shall be deemed not to qualify as an Inheriting Child and/or Eligible Household, as applicable. If the Inheriting Child qualifies as an Eligible Household, 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 Child and the City and recorded against the Property.

(c) If the Inheriting Child fails to qualify as an Eligible Household, he or she shall be required to Transfer the Property to an Eligible Household at a price not exceeding the Adjusted Resale Price, pursuant to the procedures set forth in this Agreement and the City may exercise its Option; provided however, the Inheriting Child may occupy the Property for up to twelve (12) months provided that the Inheriting Child remains in compliance with the requirements of this Agreement and the Deed of Trust.

(d) If the Inheriting Owner is not the child or stepchild of the deceased Owner, he or she shall Transfer the Property to an Eligible Household at a price not exceeding the Adjusted Resale Price, pursuant to the procedures set forth in this Agreement, and the City may exercise its Option. In this event, the Inheriting Owner shall provide the City with a Notice of Intent to Transfer within sixty (60) days of the date of death of the Owner.

(e) Failure of an Inheriting Owner to follow the procedures and provide the notices as required under this Section 2.3.2 shall constitute an Event of Default under this Agreement, and the City may then exercise any of the remedies set forth in this Agreement or available to the City under law or equity, including, without limitation, exercise of the Option.

**2.3.3 Changes to Title.** Notwithstanding any other provision of Section 2.3 and subsections thereto, Owner shall obtain City's written approval prior to making any changes to the title of the Property, including but not limited to, the addition or deletion of the names of any person to or from title to the Property.

### **3. Restrictions on Financing Secured by Property**

**3.1 Encumbrances.** Other than this Agreement and related Performance Deed of Trust, Owner shall permit no mortgage, deed of trust or other security instrument to be recorded against the Property, excepting the following: (i) a fixed rate conventional mortgage with a term of up to 30 years, (ii) any California Housing Finance Agency ("CalHFA") product; (iii) other recordable documents such as the City may require under the Program, (iv) other loan products approved by City, and (v) encumbrances that are approved by the City as Permitted Exceptions. Owner hereby covenants and agrees to ensure that any permissible deed of trust or other agreement encumbering the property shall include provisions for notice of any default thereunder to be delivered to City and for City's right to cure such default at City's election.

3.2 Initial Financing. Owner's aggregate purchase money financing for the Property ("Initial Financing") shall not exceed an amount equal to one hundred percent (100%) of the Base Resale Price calculated as provided in Section 6.1.

3.3 Junior Loans. Mortgage loans or equity lines of credit junior in lien priority to the Performance Deed of Trust are not permitted, except when expressly approved by the City in writing. The City shall only approve junior mortgage loans or equity lines of credit as follows:

(a) The loan or equity line of credit does not cause the Property's loan to value ratio (calculated by comparing the total debt secured by the Property to the Adjusted Resale Price of the Property) to exceed 100%.

(b) The proceeds of such loan or equity line of credit are used only for Eligible Capital Improvements; and

(c) The total outstanding balance of principal and any accrued interest on all loans secured by the Property does not exceed the Adjusted Resale Price.

3.4 Refinancing. Any prepayment and refinance of the Initial Financing shall not be permitted unless expressly approved by the City in writing, and the City may approve such refinancing only if all of the following conditions are met:

(a) the refinance reduces Owner's interest rate and monthly payments of principal and interest on the Initial Financing or shall be used to finance Eligible Capital Improvements;

(b) the refinance does not cause the principal amount of all debt secured by the Property to exceed the then outstanding balance (plus refinancing and closing costs) of the Initial Financing plus the cost of any Eligible Capital Improvements that shall be made by Owner;

(c) the refinance does not result in Owner receiving any cash from the refinance except for Eligible Capital Improvements;

(d) the refinance does not cause the Property's loan to value ratio (calculated by comparing the total debt secured by the Property to the Adjusted Resale Price) to exceed 100% if the Owner does not receive any cash from the refinance, or 97% if the Owner receives cash from the refinance for Eligible Capital Improvements; and,

(e) the total outstanding balance of principal and any accrued interest on all loans secured by the Property does not exceed the Adjusted Resale Price.

3.5 Financing of Eligible Capital Improvements. In the City's exercise of reasonable discretion in accordance with the Guidelines, the City will approve capital improvements to improve adverse health and safety conditions. Only such improvements as are approved by the City shall be deemed Eligible Capital Improvements. In the event that the Owner (i) refinances the Initial Financing in accordance with Section 3.4, or (ii) borrows a junior loan or takes an equity line of credit, in accordance with Section 3.3, for purposes of

making Eligible Capital Improvements, Owner shall provide adequate documentation to City, in a form acceptable to City in its sole and absolute discretion, that any amount of funds received by Owner for such Eligible Capital Improvements shall be and are used exclusively for that purpose.

3.6 Preservation of Affordability; Subordination. The City and the Owner agree that the requirements of Section 3 and subsections hereto are necessary to ensure the continued affordability of the Property to Owner and to minimize the risk of loss of the Property by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section 3 shall constitute a Default under this Agreement. In no case shall this Agreement and the Performance Deed of Trust be in lower than third lien position on the Property. Any subordination agreement to be executed by City shall include notice and cure rights for City regarding any defaults in the mortgage to which the City is subordinating.

3.7 For purposes of this Section 3 and subsections hereto, the Adjusted Resale Price shall be calculated by the City pursuant to Section 6.2 of this Agreement as of the earlier of (i) the date on which the deed of trust or mortgage securing the new mortgage is filed for recordation in the Official Records of the County of Alameda, or (ii) the date the City receives a Notice of Intent to Transfer pursuant to Section 5.1.

#### **4. City's Option to Purchase Property**

4.1 Grant of Option to Purchase. Owner hereby grants to the City an Option to purchase the Property, subject only to Permitted Exceptions, at the Adjusted Resale Price, upon the occurrence of an Option Event in accordance with the terms and conditions contained herein.

4.2 Assignment of the Option. The City may assign the Option to another government entity, a non-profit affordable housing provider, or a person or family that qualifies as an Eligible Household. The City's assignment of the Option shall not extend any time limits contained herein with respect to the exercise period of the Option or the period within which the Property must be purchased.

4.3 Events Giving Rise to Right to Exercise Option. The City shall have the right to exercise its Option upon the occurrence of any of the following events (each, an "Option Event"):

- (a) Receipt of a Notice of Intent to Transfer (see Section 5.1, below);
- (b) Receipt of a Notice of Owner's Inability to Locate an Eligible Household as described in Section 5.8;
- (c) Any actual, attempted or pending sale, conveyance, transfer, lease or other attempted disposition of the Property or of any estate or interest therein, except as otherwise provided in Section 3;

- (d) Any actual, attempted or pending encumbrance of the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien, except as provided in Section 3;
- (e) Recordation of a notice of default and/or notice of sale pursuant to California Civil Code Section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;
- (f) Commencement of a judicial foreclosure proceeding regarding the Property;
- (g) Execution by Owner of any deed in lieu of foreclosure transferring ownership of the Property, except as otherwise provided in Section 4.6.2;
- (h) Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner; or
- (i) The occurrence of an Event of Default as described in Section 11.

4.4 Right of Reinstatement. If the Option Event is the recordation of a notice of default, then the City shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor section) solely for purposes of reinstatement of any mortgage on the Property that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the City shall be entitled to pay all amounts of principal, interest, taxes, assessments, homeowners' association fees, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. If the City exercises the Option, then any and all amounts paid by the City pursuant to this section shall be treated as Adjustments to the Base Resale Price for the Property, as described in Section 6.2 below.

#### 4.5 Priority and Effectiveness of the Option

4.5.1 Recordation. This Agreement shall be recorded in the Office of the Recorder of the County of Alameda on or as soon as practicable after the Effective Date. Except as otherwise expressly provided in Section 5.8 of this Agreement, the Option shall have priority over any subsequent sale, conveyance, transfer, lease or other disposition or encumbrance of the Property, or of any estate or interest therein, and in the event of exercise of the Option by City, the City shall take the Property subject only to Permitted Exceptions. The exercise of the Option by the City at any time and from time to time shall not extinguish the Option or cause a merger of the Option into any estate or other interest in the Property, and the Option shall continue to exist and be effective with respect to the Property against any and all subsequent owners.

4.5.2 Request for Notice of Default. The City shall file a Request for Notice of Default for recordation in the Office of the Recorder of the County of Alameda promptly upon execution of this Agreement (see Exhibit E).

4.5.3 Subordination. The City agrees that in order to assist qualified purchasers to secure purchase money financing for the acquisition of the Property, the City will enter into a subordination agreement with a senior purchase money lender to subordinate this Agreement under such terms as the City and the senior purchase money lender shall negotiate.

#### 4.6 Survival of Option Upon Transfer

4.6.1 In General. The City's right to exercise the Option shall survive any transfer of the Property by Owner, except as otherwise provided in Sections 4.6.2 and 5.8 of this Agreement. Each transferee, assignee or purchaser of the Property during the term hereof shall be required to execute an agreement substantially in the form of this Agreement, provided that the term of any such agreement shall be for the remainder of the term hereof as of the date of any such transfer, assignment or sale. The Option may be exercised against the Property throughout the term hereof, regardless of whether the Property is owned, possessed or occupied by Owner or any successor, transferee, assignee, heir, executor, or administrator of Owner, regardless of household income (if applicable) including a debtor-in-possession, debtor or trustee pursuant to Title 11 of the United States Code. Notwithstanding the foregoing, the Option shall not survive (i) the transfer of the Property to a third party purchaser pursuant to a judicial or non-judicial foreclosure or a deed-in-lieu of foreclosure under a power of sale contained in a mortgage or deed of trust held by an institutional lender, or (ii) the recording of an instrument conveying Owner's interest in the Property to the City, or its assignee, provided the conveyance is in accordance with the terms of this Agreement.

4.6.2 HUD-Insured and CalHFA Deeds of Trust. Notwithstanding any other provisions of this Agreement, if Owner has acquired the Property using financing secured by a deed of trust or mortgage insured by the Federal Housing Administration (FHA) or the U.S. Department of Housing and Urban Development (HUD), or provided through the California Housing Finance Agency (CalHFA), then the Option, together with all occupancy and resale restrictions contained herein and in the Performance Deed of Trust, as applicable, shall automatically terminate if title to the Property is acquired by HUD, CalHFA, or another party, upon foreclosure of a deed of trust insured by HUD, or upon execution of a deed in lieu of foreclosure of said deed of trust.

### 5. **Notice of Intent to Transfer; Exercise of Option; Consent to Transfer; Inability to Locate an Eligible Household**

5.1 Notice of Intent to Transfer. If Owner desires to sell, convey, lease, encumber (other than Permitted Exceptions pursuant to Section 3) or otherwise transfer the Property or any estate or interest therein (other than a Permitted Transfer pursuant to Section 2.3), Owner shall deliver written notice to City of such intent ("Notice of Intent to Transfer") by certified mail not less than 45 days prior to the date of such proposed sale,

conveyance, transfer, lease, encumbrance or disposition. The Notice of Intent to Transfer shall be in substantially the form attached hereto as Exhibit B or such substitute form in use by City at such time. **Owner shall provide a Notice of Intent to Transfer to City prior to notifying real estate brokers or lenders of Owner's intent to transfer the Property and prior to listing of the Property on any multiple listing service.**

5.2 Notice of Exercise. Upon the occurrence of any Option Event, including receipt of a Notice of Intent to Transfer, the City may exercise its Option by delivering, within the time period specified in Section 5.4, notice to Owner of City's intent to exercise such Option pursuant to the terms of this Agreement ("Notice of Exercise"). The Notice of Exercise may be in the form attached hereto as Exhibit C, or in such other form as the City may from time to time adopt. If the Option Event relates to the potential foreclosure of a deed of trust or mortgage, then the City shall also deliver the Notice of Exercise to the beneficiary or mortgagee under such mortgage, at such beneficiary's or mortgagee's address of record in the Office of the Recorder of Alameda County, and the City shall not complete the purchase of the Property if the default is cured within the time periods permitted by law.

5.3 Consent to Transfer. If the Option Event involves a Notice of Intent to Transfer the Property and the City does not exercise the Option, the City may consent to the transfer, provided that all of the following requirements are satisfied: (i) the Owner uses bona fide good faith efforts to sell the Property to an Eligible Household in compliance with this Section as well as the requirements outlined in the Guidelines for below market rate unit marketing requirements. This includes, but is not limited to, listing the Property on the multiple listing service, keeping the Property in an orderly condition, making the Property available to show to agents and prospective buyers, and providing prospective buyers with Eligible Household requirements, including income qualifications and the form of the Disclosure Statement attached hereto as Exhibit F; (ii) the prospective purchaser qualifies as an Eligible Household; (iii) the proposed sale price of the Property does not exceed the Adjusted Resale Price; (iv) the prospective purchaser executes a Disclosure Statement in the form attached hereto as Exhibit F or such other form or forms as may be promulgated by the City; (v) the prospective purchaser executes an agreement substantially similar to this Agreement in a form approved by the City and such substitute agreement is recorded in the Official Records of Alameda County concurrently with the close of escrow for the sale of the Property (provided, however, that the Term of the Resale Restrictions and the Option will be for that portion of such term remaining as of the date of close of escrow for the sale of the Property to the prospective purchaser); and (vi) the prospective purchaser executes a Performance Deed of Trust in form provided by City and such Performance Deed of Trust is recorded concurrently with the close of escrow for the sale of the Property. The Performance Deed of Trust, attached hereto as Exhibit G, will secure the performance of the resale, refinancing, and occupancy restrictions set forth herein, the other obligations of the Property owner, and the obligation for payment of the City's Equity Share in connection with the first sale of the Property following the expiration of the Term of the Resale Restrictions and Option.

5.3.1 In the case of a proposed sale of the Property to an identified prospective purchaser, the Owner shall submit to the City, together with the Notice of Intent to Transfer, a copy of the following documents:

- (a) prospective purchaser's income certification and a list of all assets owned by the prospective purchaser, and other financial information reasonably requested by City, in a form approved by the City;
- (b) the income certification to be provided to any lender making a loan to the prospective purchaser; and
- (c) a copy of the proposed sales contract and all documents setting forth the terms of sale, the name of the title company and escrow information.

The City or its authorized designee may require the prospective purchaser to provide documentation evidencing and supporting the income and other financial information contained in the certifications.

**5.3.2 Payment of Commissions.** In any sale or transfer of the Property as provided herein, Owner shall pay real estate agent commissions, if any, which shall not exceed six percent (6%) of the actual sales price.

**5.3.3 Expiration of Consent.** If the prospective purchaser fails to qualify as an Eligible Household or fails to execute and deliver any of the required documents specified above within the time period set forth in the Consent to Transfer, then the Consent to Transfer shall expire and the City may, at its discretion, either: (i) notify Owner of the disqualification, thereby entitling Owner to locate another purchaser who qualifies as Eligible Household; or, (ii) City may exercise the Option, as if no Consent to Transfer had been delivered.

**5.4 Time Periods for Notice of Exercise or Consent to Transfer.** Except as provided in Section 5.8 (Notice of Inability to Locate Eligible Household), to which the time periods set forth in this section shall not apply, or as otherwise specified below, the City shall deliver either a Notice of Exercise or a Consent to Transfer, as applicable, not later than thirty (30) days after the date that it receives a Notice of Intent to Transfer or other notice of an Option Event.

**5.4.1 Computation of Time.** For purposes of computing time under this section, the City shall be deemed to have received notice of an Option Event on the date of delivery of a Notice of Intent to Transfer, or on the date it actually receives a notice of default, trustee's sale, summons and complaint, or other pleading, or other writing specifically stating that an Option Event has occurred. The applicable time period for exercise of the Option shall not commence to run, and the City shall have no obligation to deliver a Notice of Exercise or Consent to Transfer, unless and until the City has received notification of an Option Event in accordance with the notice provisions in Section 5 of this Agreement.

**5.4.2 Notice of Default, Trustee's Sale, Judicial Foreclosure, or Deed in Lieu of Foreclosure.** Upon occurrence of an Option Event as described in Section 4.3 (e), (f), or (g), the City shall deliver the Notice of Exercise on or before sixty (60) days after the date that the City receives notice of the Option Event, and the City or its assignee shall close escrow for the purchase of the Property no later than 90 days after the date the City receives notification of such Option Event, unless extended by

mutual agreement of Owner and the City. If title to the Property has transferred to or been acquired by HUD or CalHFA as provided in Section 4.6.2 of this Agreement, due to foreclosure of a deed of trust or execution of a deed in lieu of foreclosure, the City's Option shall terminate as of the date of such transfer.

**5.4.3 Notice of Exercise After Expiration of Consent to Transfer.** If a Consent to Transfer has expired as provided above in Section 5.3.2, the City's Notice of Exercise, if applicable, must be delivered no later than fifteen (15) days after the expiration of the Consent to Transfer.

**5.4.4 Effect of Court Injunction or Order.** If there is a stay or injunction imposed by court order precluding the City from delivering its Consent to Transfer or Notice of Exercise within the applicable time period, then the running of such period shall cease until such time as the stay is lifted or the injunction is dissolved and the City has been given written notice thereof, at which time the period for delivery of a Consent to Transfer or Notice of Exercise shall again begin to run.

**5.5 No Deemed or Implied Consent; No Waiver.** If the City in its sole discretion determines not to exercise the Option in any particular instance, or fails to deliver a Notice of Exercise or Consent to Transfer within the time periods set forth in Section 5.4 above, such determination or failure shall not affect City's rights to exercise the Option upon the occurrence of any future Option Event. Failure to deliver a Consent to Transfer strictly within the time provided shall not constitute deemed or implied consent by the City.

**5.6 Inspection of Property.** After receiving a Notice of Intent to Transfer or delivering a Notice of Exercise, the City shall be entitled to inspect the Property one or more times prior to the close of escrow to determine the amount of any Adjustments to the Base Resale Price. Before inspecting the Property, the City shall give Owner not less than forty-eight (48) hours written notice of the date, time and expected duration of the inspection. The inspection shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding court holidays, unless the parties mutually agree in writing to another date and time. Owner shall make the Property available for inspection on the date and at the time specified in the City's request for inspection.

## **5.7 Exercise of Option and Escrow**

**5.7.1 Timing of Escrow.** Promptly after delivering a Notice of Exercise, the City shall open an escrow with a title company of City's choosing. Close of escrow shall take place on the later of the following dates: (i) sixty (60) days after a Notice of Exercise has been delivered; or, (ii) ten (10) days after Owner has performed all acts and executed all documents required for close of escrow; provided, however, that if the City exercises the Option upon the occurrence of an Option Event described in Section 4.3 (e), (f) or (g), close of escrow shall take place no later than 90 days after the date the City receives notification of such Option Event. Prior to the close of escrow, the City shall deposit into escrow the Adjusted Resale Price and all escrow fees and closing costs to be paid by City. Commissions (not to exceed 6% of the actual sales price), costs and title insurance premiums shall be paid pursuant to the custom and practice in the County of Alameda at the time of the opening of escrow, or as may otherwise be provided by mutual agreement. Owner

agrees to perform all acts and execute all documents reasonably necessary to effectuate the close of escrow and transfer of the Property to the City.

**5.7.2 Removal of Exceptions to Title, Escrow Proceeds.** Prior to close of escrow, Owner shall cause the removal of all exceptions to title to the Property that were recorded after the Effective Date, with the exception of: (i) non-delinquent taxes for the fiscal year in which the escrow closes, which taxes shall be prorated as between Owner and City as of the date of close of escrow; (ii) quasi-public utility, public alley, public street easements, sidewalks, and rights of way of record; and (iii) such other liens, encumbrances, reservations and restrictions as may be approved in writing by City ("Permitted Exceptions"). The purchase price deposited into escrow by the City shall be applied first to the payoff of the Permitted Exceptions recorded against the Property in order of lien priority, and thereafter to the payment of Owner's share of escrow fees and closing costs. Any amounts remaining after the purchase price has been so applied, if any, shall be paid to Owner upon the close of escrow. If the purchase price is insufficient to satisfy all liens and encumbrances recorded against the Property, the Owner shall deposit into escrow such additional sums as may be required to remove such liens and encumbrances. In the event that the City agrees to proceed with close of escrow prior to the date that Owner has caused all exceptions to title other than Permitted Exceptions to be removed, then Owner shall indemnify, defend and hold City harmless from any and all costs expenses or liabilities (including attorneys' fees) incurred or suffered by City that relate to such exceptions and their removal from title to the Property.

**5.8 Notice of Inability to Locate Eligible Household.** If, despite bona fide good faith documented marketing efforts (as defined in the Guidelines at section 6.4.2), Owner is unable to locate an Eligible Household during the marketing period and any extensions to the marketing period granted by the City, the Owner shall provide written notice to the City of this fact in the form shown in Exhibit H attached to this Agreement (the "Owner's Notice of Inability to Locate Eligible Household") along with other documentation as required by City. Such documentation shall be required to be reviewed and approved by City to demonstrate Owner's eligibility under the policy set forth in the Guidelines allowing the release of resale restrictions for Below Market Rate ownership homes whose owners are unable to sell them under certain circumstances with City approval (the "Resale Restriction Release Policy"). Within fifteen (15) days of receipt of the Owner's Notice of Inability to Locate Eligible Household and other required documentation, and upon a determination that Owner complies with the requirements of the Resale Restriction Release Policy, the City shall provide written notice to Owner stating either (i) that the City will exercise the Option to purchase the Property, or (ii) that the Owner may transfer the Property to a Market Purchaser of the Owner's choosing who is not an Eligible Household, at an unrestricted price which is at or near fair market value (supported by a qualified appraisal), without taking into account the resale price restrictions imposed by this Agreement, and that the Owner shall pay any Excess Sales Proceeds to the City as set forth in Section 6.3 below.

**5.8.1 Extended Time for Close of Escrow.** If the City chooses to exercise its Option in response to the Owner's Notice of Inability to Locate Eligible Household, then the Option shall be exercised pursuant to the provisions of Section 5.7, except that close of escrow shall take place no later than seventy-five (75) days after the date of the City's written notification to Owner indicating City's exercise of its Option.

**5.8.2 Conditions for Release and Reconveyance.** If the Owner transfers the Property to a Market Purchaser, the purchaser shall not be required to execute a resale agreement, and the City shall reconvey the liens of this Agreement and the Performance Deed of Trust, provided that the Owner pays the Excess Sales Proceeds to the City pursuant to Section 6.3 below. The Owner shall provide the City with the following documentation associated with such a transfer:

- (a) The name, address, email, and phone contact information of the purchaser;
- (b) The final sales contract and all other related documents which shall set forth all the terms of the sale of the Property, including the Closing Disclosure. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Market Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.
- (c) A written certification, from the Owner and the Market Purchaser in the form shown in Exhibit I, "Certification Upon Transfer of Property to Market Purchaser," that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the Market Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Market Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to pursue any remedies at law or in equity such as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Market Purchaser for the return of any moneys paid or received in violation of this Agreement or for any costs and legal expenses, shall be borne by the Owner and/or the Market Purchaser and they shall hold the City and its designee harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.
- (d) A copy of the qualified appraisal for the Property.
- (e) Upon the close of the proposed sale, a copy of the final sales contract, the Closing Disclosure, escrow instructions, and any other documents which the City may reasonably request.

## **6. Resale Pricing Requirements and Excess Sale Proceeds**

**6.1 Base Resale Price.** Prior to adjustment pursuant to Section 6.2, the Base Resale Price of the Property shall be the lesser of:

(a) Indexed Value. The Indexed Value of the Property means the original price paid by the Owner for acquisition of the Property, which the Parties agree is the sum of sale amount written 00/100 Dollars (\$000,000.00) (the “Base Price”), increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the Area Median Income between the Effective Date and the date that the City receives notification of an Option Event.

(b) Fair Market Value. The Fair Market Value of the Property means the value of the Property as determined by a qualified appraiser, certified by the State of California, selected and paid for by Owner and approved in writing by the City. Nothing in this section shall preclude the Owner and the City from establishing the Fair Market Value by mutual agreement instead of by appraisal.

To compute the Base Resale Price, the City may use the “Inclusionary Zoning Base Resale Price Worksheet” attached as Exhibit D hereto, or such other form as the City may from time to time adopt.

6.2 Adjustments to Base Resale Price. Subject to the Affordable Unit Cost restriction described in subsection (d) below, the Base Resale Price shall be increased or decreased, as applicable, by the following adjustment factors:

(a) Capital Improvements. An increase for Eligible Capital Improvements made to the Property, but only if the amount of such improvements has been previously approved in writing by the City after Owner has submitted original written documentation of the cost to the City for verification. The amount of the Adjustment shall equal the original cost of any such Eligible Capital Improvements.

(b) Damage. A decrease by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the City upon City’s exercise of its Option hereunder, including, without limitation, amounts attributed to cleaning; painting; replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures. Owner covenants, at Owner’s expense, to maintain the Property in the same condition as in existence on the date of City’s Notice of Exercise, reasonable wear and tear excepted.

(c) Advances by the City. A decrease in an amount equal to the sum of all costs advanced by the City for the payment of mortgages, taxes, assessments, insurance premiums, homeowner’s association fees and/or associated late fees, costs, penalties, interest, attorneys’ fees, pest inspections, resale inspections, fixing violations of applicable building, plumbing, electric, fire, or other codes, and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent.

(d) Adjusted Resale Price Not to Exceed Affordable Unit Cost. The Base Resale Price, as adjusted by the factors set forth in this Section 6.2, is herein referred to as the “Adjusted Resale Price.” Notwithstanding any other provisions of

this Agreement, in no event shall the Adjusted Resale Price exceed the Affordable Unit Cost.

**6.3 Payment of Excess Sale Proceeds.** If the City chooses not to exercise the Option in the event of any transfer other than to an Eligible Transferee as provided herein, the City shall be entitled to receive a portion of the proceeds from sale of the Property as follows:

**6.3.1. Upon Sale in Violation of Agreement.** If Owner sells or otherwise transfers the Property in violation of the price restrictions set forth herein, and if City chooses not to exercise its Option, then City shall be entitled to receive from Owner without any deduction, offset or recoupment, one hundred percent (100%) of the difference between the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and the Adjusted Resale Price (the "Excess Sale Proceeds"). For purposes of this section, the Adjusted Resale Price shall be calculated as of the earlier of: (i) the date of close of escrow for the sale of the Property to the third party, or (ii) the date the City receives Notice of Intent to Transfer pursuant to Section 5.1. This amount of any Excess Sale Proceeds shall be a debt of Owner to City and shall be secured by the Performance Deed of Trust.

**6.3.2. Upon Foreclosure.** If the Property is sold at a foreclosure sale and the proceeds of such sale are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Section 5.7.2 had the City exercised its Option on the date of such sale shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the City.

**6.3.3. Upon Approved Transfer of Property to Market Purchaser.** If the Owner transfers the Property at an unrestricted price pursuant to Section 5.8 above, then City shall be entitled to receive from Owner one hundred percent (100%) of the difference between the gross sales proceeds received by the Owner from the new Market Purchaser and the Adjusted Resale Price for the Property (in the amount that was stated in the City Notice of Consent to Transfer), less the differential between the reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price) versus the commission that would have been paid at the Adjusted Resale Price, and less the differential between the applicable transfer taxes owed based on the actual sales price versus what would have been paid based on the Adjusted Resale Price.

*Example:* The Adjusted Resale Price for the BMR Unit is \$300,000, but the BMR Unit is sold for \$400,000 at an unrestricted price. For the unrestricted price, the reasonable and customary real estate commission is \$24,000 and the transfer tax would be estimated at \$440. For the Adjusted Resale Price, the real estate commission would be \$18,000 and the transfer tax would be \$330. Thus the Owner would owe the City Excess Sale Proceeds based upon \$100,000 (the sales price differential) less \$6,000 (the real estate commission differential) less \$110 (the transfer tax differential), or \$93,890.

*Above calculation expressed as a formula:*

$$(\text{Price}_1 - \text{Price}_2) - (\text{Commission}_1 - \text{Commission}_2) - (\text{Tax}_1 - \text{Tax}_2) = \text{Excess Sale Proceeds}$$

**6.3.4 Owner Acknowledgment of Obligation.** The Excess Sales Proceeds amount, if any, shall be a debt of Owner to City and shall be secured by the Performance Deed of Trust. By entering into this Agreement, Owner acknowledges that City shall have no obligation to reconvey the Performance Deed of Trust or this Agreement unless and until the Excess Sale Proceeds are paid to City. City shall use the Excess Sale Proceeds for affordable housing programs. Owner further acknowledges that the formula used to determine the amount of the Excess Sale Proceeds is intended to cause Owner to receive the same or less net sale proceeds from the unrestricted sale of the Property as Owner would have received if the Property had been sold to an Eligible Household at the Adjusted Resale Price.

**6.4 Appreciation Share Payable After Expiration of Restrictions and Option.**

Unless otherwise released in accordance with the requirements of these restrictions set forth in this Agreement and the Option shall remain in effect for a period of **thirty (30)/fifty-five (55) years** commencing on the Effective Date. Notwithstanding the expiration of such conditions at the end of such term, upon the first transfer of the Property occurring after the expiration of the Term of the Resale Restrictions and Option, Owner (or Owner's successor in interest) shall pay to City an amount (the "City's Appreciation Share") equal to twenty-five percent (25%) of the difference between (a) the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and (b) the Adjusted Resale Price as determined for the date of the expiration of the Term of the Resale Restrictions and Option. The City's Appreciation Share shall be paid to the City concurrently with close of escrow for the sale of the Property, or upon Owner's receipt of the sale proceeds, whichever shall first occur. The requirement to pay the City's Appreciation Share shall survive the expiration of the Term of the Resale Restrictions and Option. Following completion of a sale and payment of the City's Appreciation Share in compliance with this section, this Agreement shall terminate, and City shall release and reconvey the Performance Deed of Trust securing this Agreement.

## **7. Covenants Running with the Land**

**7.1** The Parties hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall be effective as of the date of execution by the original Owner and the City, and that these covenants and restrictions shall be covenants running with the land, which shall pass to and be binding upon all parties having any interest in the Property throughout the Term of the Resale Restrictions and Option. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Property or any interest therein, as the case may be, shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties to such contract have actual knowledge of this Agreement.

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

7.3 All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon Owner for the benefit of the City and such covenants and restrictions shall run in favor of such parties for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the City is an owner of any land or interest therein to which such covenants and restrictions relate.

## **8. Owner's Acknowledgment of Resale Restrictions**

Owner hereby acknowledges and agrees as follows:

(a) Absent the provisions of the Program and the provisions of this Agreement, the Property could not be made available to Eligible Households, including Owner, at an affordable price.

(b) For valuable consideration, Owner hereby subjects the Property to certain restrictions as provided herein; including, in part, limitations on the price for which Owner may sell the Property and persons to whom Owner may sell the Property. The resale price limitations and other provisions of this Agreement may restrict some benefits of owning the Property. Owner may not realize certain economic or other benefits from ownership of the Property that could arise from ownership of real property not otherwise subject to the restrictions of this Agreement.

(c) Owner has read and understands all of the provisions of this Agreement. Owner accepts and agrees to the provisions of this Agreement and understands that this Agreement (including without limitation the effectiveness of the Resale Restrictions and the City's Option) will remain in full force in perpetuity despite any Transfer of the Property, unless and except as otherwise provided in this Agreement.

(d) OWNER UNDERSTANDS THAT THE DETERMINATION OF THE MAXIMUM AFFORDABLE RESALE PRICE OF THE PROPERTY TO AN ELIGIBLE HOUSEHOLD CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INCREASES IN MEDIAN INCOME, MORTGAGE INTEREST RATES, PROPERTY TAXES AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED AND THAT THE SALES PRICE PERMITTED HEREUNDER MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS AGREEMENT. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALES PRICE OF

THE PROPERTY THE PRIMARY OBJECTIVE OF THE CITY AND THIS AGREEMENT IS TO PROVIDE HOUSING TO ELIGIBLE HOUSEHOLDS AT AFFORDABLE HOUSING COST. THE MAXIMUM RESTRICTED RESALE PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES THAT HAVE NO RESTRICTIONS.

Initialed by Owner(s): \_\_\_\_\_

(e) DURING THE TERM OF THIS AGREEMENT OWNER SHALL NOT VOLUNTARILY SELL, ENCUMBER OR OTHERWISE TRANSFER THE PROPERTY WITHOUT EXPRESS WRITTEN APPROVAL BY THE CITY OF SAID ENCUMBRANCE, TRANSFER OR SALE AND THE TERMS AND CONDITIONS THEREOF PERTAINING TO PURPOSE OF ENCUMBRANCE, ELIGIBLE HOUSEHOLD(S), SALE PRICE, EXCESS SALE PROCEEDS, OR OTHER REQUIREMENTS IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT. ANY ACTUAL OR ATTEMPTED SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS COVENANT SHALL BE VOIDABLE BY THE CITY TO THE EXTENT PERMITTED BY LAW AND SHALL ENTITLE THE CITY TO EXERCISE ITS OPTION TO PURCHASE THE PROPERTY.

Initialed by Owner(s): \_\_\_\_\_

## **9. Limits on Liability**

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

## **10. Insurance Proceeds and Condemnation Award.**

In the event the Property is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the Property, or, in the event of condemnation, if the proceeds thereof are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Section 5.7 had the City exercised its Option on the date of the destruction or condemnation valuation date shall be distributed to Owner; the balance of such surplus, if any, shall be distributed to the City.

## **11. Default and Remedies**

11.1 Events of Default. The following shall constitute the occurrence of an Event of Default hereunder, and shall entitle City to exercise the Option or to pursue any other remedy provided herein or at law or in equity:

- (a) Owner's failure to use the Property as Owner's principal residence.
- (b) The sale, conveyance, or other transfer of the Property (including a foreclosure sale) if the remaining ownership interest of the Owner in the Property is less than fifty percent (50%), except for a Permitted Transfer as provided in Section 2.3.
- (c) A default occurs under the terms of a deed of trust secured by the Property and such default is not cured prior to the expiration of any applicable cure period.
- (d) Owner encumbers the Property in violation of this Agreement.
- (e) Owner fails to observe or perform any other covenant, condition, or agreement to be observed or performed by Owner pursuant to this Agreement, and such breach remains uncured beyond the expiration of any applicable cure period.

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

11.3 Other Remedies. City shall have all of the remedies provided for at law or equity, all of which shall be cumulative.

## 12. Notices

Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Paragraph. All such notices shall be sent by:

- (a) personal delivery, in which case notice shall be deemed delivered upon receipt;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

(d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

City:           City of Dublin  
                  Attn: City Clerk  
                  100 Civic Plaza  
                  Dublin, California 94568  
                  Fax (925) 833-6651  
                  HousingInfo@dublin.ca.gov

Owner:          Owner  
                  Address  
                  Dublin, CA 94568

### **13. General Provisions**

**13.1 Attorneys' Fees.** If either party initiates legal proceedings to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and costs in addition to any other recovery to which it is entitled under this Agreement.

**13.2 No Joint Venture; No Third-Party Beneficiary.** No joint venture or other partnership exists or is created between the Parties by virtue of this Agreement. Except as expressly stated herein, this Agreement does not benefit any third party.

**13.3 Successors; Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns. City shall have the right to assign all of its rights and obligations under this Agreement without the consent of Owner.

**13.4 Entire Agreement; Amendment.** This Agreement, together with the Performance Deed of Trust, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements with respect thereto. There are no representations, promises, agreements or other understandings between the Parties relating to the subject matter of this Agreement that are not expressed herein. This Agreement may be modified only by an instrument in writing executed by the Parties or their respective successors in interest.

**13.5 Survival; No Merger.** All of the terms, provisions, representations, warranties and covenants of the Parties under this Agreement shall survive the close of escrow of any sale of the Property and shall not be merged in any deed transferring the Property.

**13.6 Authority And Execution.** Each Party represents and warrants that it has full power and authority to enter into this Agreement and to undertake all of its obligations hereunder, that each person executing this Agreement on its behalf is duly and validly authorized to do so.

13.7 Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the remainder of this Agreement, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

13.8 Waiver; Modification. No waiver or modification of this Agreement or any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties arising out of or affecting this Agreement or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing and duly executed as aforesaid. The provisions of this section may not be waived except as herein set forth. A waiver or breach of any covenant, condition or provision of this Agreement shall not be deemed a waiver of any other covenant, condition or provision hereof.

13.9 Construction. The section headings and captions used in this Agreement are for convenience of reference only and shall not modify, define, limit or amplify any of the terms or provisions hereof. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

13.10 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California.

13.11 Time of the Essence. Time is of the essence in this Agreement as to each provision in which time is an element of performance.

13.12 Further Assurances. Each Party will, upon reasonable request of the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the purposes of this Agreement.

13.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

**OWNER(S):**

---

Owner

---

Owner

**CITY:**

City of Dublin, a California municipal corporation

---

City Manager

**ATTEST:**

---

City Clerk

**SIGNATURES MUST BE NOTARIZED**

**CERTIFICATE OF ACCEPTANCE**  
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by the Resale Restriction Agreement and Option to Purchase dated **DATE** from **Owner(s) as appear on title** to the City of Dublin, a California municipal corporation, is hereby accepted by the undersigned office or agent on behalf of the City of Dublin pursuant to authority conferred by the Resolution No. 24-87 dated April 13, 1987; and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

\_\_\_\_\_  
City Manager

Attest:

\_\_\_\_\_  
City Clerk

**EXHIBIT A**

**LEGAL DESCRIPTION**

SAMPLE

## **EXHIBIT B**

### FORM OF NOTICE OF INTENT TO TRANSFER

To: City of Dublin  
100 Civic Plaza  
Dublin, CA 94568  
Attn: Housing Division

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

**Re:** *Notice of Intent to Transfer*

Pursuant to the terms of the Resale Restriction Agreement and Option to Purchase, dated **Date**, the undersigned Owner(s), **Owner Name(s)**, hereby give(s) notice of his/her/their intent to transfer the property located at **Unit Address, Dublin, California 94568** (the "Property"). Owner may be contacted at the Property or at the following address:

Telephone: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

*If applicable:* The proposed transfer of the Property is to the following person(s):

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

The proposed transfer is (check one):

Sale       Other      Specify: \_\_\_\_\_

Next Anticipated Home Tenure:  Rental       Ownership       Unknown

#### **Reason for Selling Unit (Check all that apply):**

Want to own unrestricted home  
 Home is too small       Home is too large  
 Job relocation       Retirement       Want to move closer to job  
 Change in family situation  
 Home expenses are too great  
 Other: \_\_\_\_\_

**Owner(s) signature(s):**

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

## **EXHIBIT C**

### FORM OF NOTICE OF EXERCISE (Resale Restriction Agreement)

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

To (Owner/Transferee): \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**Re:     *Notice of Exercise***

The City of Dublin ("City") hereby gives notice that it is exercising its option to purchase the real property located at **Unit Address, Dublin, California 94568**. The option has been granted to the City pursuant to the Resale Restriction Agreement with Option to Purchase executed by and between Owner and the City dated as of **Date** and recorded on **Date** as Instrument No. **201XXXXXXX** (the City has assigned its option to purchase the real property to \_\_\_\_\_). \_\_\_\_\_).

An escrow for the purchase will be opened with \_\_\_\_\_ Title Company.

Dated: \_\_\_\_\_

**CITY OF DUBLIN**

\_\_\_\_\_  
By: City Manager

Its:

## **EXHIBIT D**

### **INCLUSIONARY ZONING BASE RESALE PRICE WORKSHEET**

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

Owner(s): \_\_\_\_\_

Address: \_\_\_\_\_ Dublin, CA 94568

Purchase Price: \$ \_\_\_\_\_

Date of Purchase: \_\_\_\_\_

Years Owned: \_\_\_\_\_ years

#### **CALCULATION BASED ON INCREASE IN MEDIAN INCOME\*\*\***

Present Median Income: \$ \_\_\_\_\_  
Family of four, County of Alameda  
(at time of sale of unit)

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

Original Median Income: \$ \_\_\_\_\_  
Family of four, County of Alameda  
(at time of purchase of unit)

Amount of Increase: \_\_\_\_\_  
Family of four, County of Alameda  
(Present median income minus original median  
income)

Increase in Price: \_\_\_\_\_ x \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

Method #1 Resale Price: \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_

Based on the above, the base resale price as of this date is: \_\_\_\_\_

By: \_\_\_\_\_  
Housing Staff

**EXHIBIT E**

**FORM OF REQUEST FOR NOTICE OF DEFAULT**

**Recording requested by and when  
recorded mail to:**

City of Dublin  
100 Civic Plaza  
Dublin, CA 94568  
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

(Space Above This Line For Recorder's Use Only)

***Escrow Number:***

***Loan Number:***

**REQUEST FOR NOTICE UNDER SECTION 2924b CIVIL CODE**

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as Instrument No. **201XXXXXX** recorded concurrent herewith in the Official Records of Alameda County, California, and describing land therein as **Address, Dublin, California 94568**:

(See attached legal description)

Executed by **Owner(s)**, as Trustor, in which **Bank** is named as Lender, with **Trustee** as Trustee, and **Beneficiary** as Beneficiary, be mailed to the *City of Dublin, 100 Civic Plaza, Dublin, California 94568, Attn.: City Manager*

By: \_\_\_\_\_  
City Manager

**NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.**

## **EXHIBIT F**

### **FORM OF DISCLOSURE STATEMENT**

UNDER THE TERMS OF THE RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE ("AGREEMENT") THAT YOU HAVE ENTERED WITH THE CITY OF DUBLIN ("CITY") AND WHICH WILL BE RECORDED AGAINST THE PROPERTY, THERE ARE RESTRICTIONS ON THE OCCUPANCY AND SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE CITY FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN "ELIGIBLE HOUSEHOLD" AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN "AFFORDABLE UNIT COST" AS DEFINED IN THE AGREEMENT.

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE.

THESE RESTRICTIONS WILL BE IN EFFECT FOR **55 YEARS FROM ORIGINAL DATE OF SALE**. ANY SALE OF THE PROPERTY IN VIOLATION OF THE RESTRICTIONS SHALL BE VOIDABLE AT THE ELECTION OF THE CITY, AND SHALL ENTITLE THE CITY TO EXERCISE ITS OPTION TO PURCHASE THE PROPERTY.

TO DETERMINE WHO AN ELIGIBLE HOUSEHOLD IS, AND WHAT THE ADJUSTED RESALE PRICE AND AFFORDABLE HOUSING COST ARE, YOU SHOULD CONTACT THE HOUSING DIVISION OF THE CITY OF DUBLIN.

YOU ARE REQUIRED TO OCCUPY THE PROPERTY AS YOUR PRINCIPAL RESIDENCE THROUGHOUT THE PERIOD OF TIME THAT YOU OWN THE PROPERTY, AS DEFINED IN THE AGREEMENT. THIS MEANS THAT YOU MAY NOT RENT OR LEASE THE PROPERTY, OR PORTION THEREOF, DURING THE TERM OF THE AGREEMENT, AND THAT YOU MUST TAKE POSSESSION OF AND OCCUPY THE PROPERTY AS YOUR PRINCIPAL RESIDENCE WITHIN SIXTY (60) DAYS OF THE CLOSE OF ESCROW FOR THE PROPERTY. THE CITY SHALL CONDUCT A MONITORING OF THE OWNER-OCCUPANCY STATUS OF THE PROPERTY ON AT LEAST AN ANNUAL BASIS, AND YOU ARE REQUIRED TO PROVIDE SUCH DOCUMENTS AND OTHER EVIDENCE AS CITY MAY REQUEST TO VERIFY COMPLIANCE WITH THIS REQUIREMENT.

YOU SHOULD READ AND UNDERSTAND THE TERMS OF THE RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE THAT WILL BE RECORDED AGAINST THE PROPERTY. YOU MAY OBTAIN A COPY FROM THE CITY OF DUBLIN OR FROM THE ESCROW COMPANY.

YOU SHOULD ALSO BE AWARE THAT A PERFORMANCE DEED OF TRUST WILL BE RECORDED AGAINST THE PROPERTY TO ENSURE COMPLIANCE WITH THE AGREEMENT. YOU MAY OBTAIN A COPY FROM THE CITY OF DUBLIN OR FROM THE ESCROW COMPANY.

I HAVE READ THE FOREGOING AND I UNDERSTAND WHAT IT MEANS.

---

Owner

---

Owner

**SIGNATURE REQUIRED**

**EXHIBIT G**

PERFORMANCE DEED OF TRUST

SAMPLE

## **EXHIBIT H**

### **OWNER'S NOTICE OF INABILITY TO LOCATE ELIGIBLE HOUSEHOLD**

To: City of Dublin ("City")

From: \_\_\_\_\_ ("Owner")

BMR Unit Address: \_\_\_\_\_ ("BMR Unit")

**The Owner hereby certifies to the City:**

That he/she has made bona fide good faith marketing efforts as defined in Section 6.4.2 of the City of Dublin Guidelines to the Inclusionary Zoning Regulations Ordinance ("Guidelines") to locate an **Eligible Household** for purchase of the BMR Unit at the **Base Resale Price**, or **Adjusted Resale Price**, as such terms are defined in the "Resale Restriction Agreement and Option to Purchase," or the "Loan, Occupancy, Refinancing and Resale Restriction Agreement with Option to Purchase" entered into between the City and Owner as applicable;

That he/she is unable to locate an Eligible Household to purchase the BMR Unit;

That at least one of the following conditions applies: **Proven Hardship** and/or **Excessive Time on the Market**; **Check all that apply**:

**Proven Hardship:** The BMR Unit Owner has made a good faith effort (BMR Unit Owner has complied with ALL recommended marketing provisions as set forth in Section 6.4.2 of the Guidelines) to sell the BMR Unit for six (6) or more months and has a specific need to sell the home due to financial or personal hardship.

Eligible hardships include:

- A change in annual household income that has resulted in housing costs (mortgage payment, homeowners' association dues, property taxes, and property insurance) exceeding 50% of monthly income;
- Relocation of employment to a work site that is 60 miles or more from the City of Dublin; or
- The maximum restricted resale price, as provided by City Staff in the current Consent to Transfer letter is below or within 10 percent of that of recent (within 3 months) sales prices of comparable nearby market homes as evidenced by documentation of these comparable sales (list prices are not acceptable).

**Excessive Time on Market:** The BMR Unit Owner has made a good faith effort (BMR Unit Owner has complied with ALL recommended marketing provisions as set forth in Section 6.4.2 of the Guidelines) to sell the BMR unit for nine (9) or more months; and

That he/she has provided documentation to the City indicating compliance with the good faith marketing efforts and documentation of either Proven Hardship or Excessive Time on Market with this Notice.

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

Signed by Owner(s): \_\_\_\_\_ Date: \_\_\_\_\_

## **EXHIBIT I**

### **CERTIFICATION UPON TRANSFER OF PROPERTY TO MARKET PURCHASER**

This certification is entered into by and between \_\_\_\_\_ ("Seller") of the Property located at \_\_\_\_\_ in Dublin, California ("Property"), and \_\_\_\_\_ ("Buyer") of the Property (together, the "Parties"). This Certification is required to be entered into by the Parties with respect to that certain Resale Restriction Agreement with Option to Purchase ("RRA") entered into by and between the City of Dublin ("City") and Seller on \_\_\_\_\_ (date) and recorded on \_\_\_\_\_(date) in the Alameda County records as Instrument Number \_\_\_\_\_.

The Parties hereby certify the following:

- 1) That the sale of the Property shall be closed in accordance with the terms of the sales contract and other documents submitted and approved by the City;
- 2) That neither the Buyer nor any other party has paid, and will not pay, to the Seller, and the Seller has not received and will not receive from the Buyer or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City;
- 3) That in the event a Transfer is made in violation of the terms of the RRA or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to pursue any remedies at law or in equity such as may be appropriate;
- 4) That in any event, any costs, liabilities or obligations incurred by the Seller and the Owner for the return of any moneys paid or received in violation of the RRA or for any costs and legal expenses, shall be borne by the Seller and/or the Buyer and both Parties shall hold the City and its designee harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of the RRA.

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

SELLER(S):

---

(Print name)

Date

BUYER(S):

---

(Print name)

Date