

RECORDING REQUESTED PURSUANT TO GOVERNMENT
CODE SECTION 27383

When Recorded Mail To:

City of Campbell
c/o Community Development
70 N. First Street
Campbell, CA 95008-1436

DRAFT – VERY LOW – TOWNE 38
OCCUPANCY, RESALE, REFINANCING RESTRICTION AND EQUITY SHARE
AGREEMENT

CITY OF CAMPBELL DENSITY BONUS
AFFORDABLE HOUSING PRODUCTION PROGRAM

(Development Name)

Owners: **NAME**

Address of Home:

ADDRESS

Campbell, CA 95008

Initial Income Category of Owner: **INSERT Moderate or Low**

Initial (Affordable) Sales Price of the Home to Owner: **\$PRICE**

Initial Market Value of Home: **\$PRICE**

This Occupancy, Resale, and Refinancing Restriction and Equity Share Agreement, (the "Agreement") is entered into as of this **DAY** day of **MONTH YEAR**, by and between the City of Campbell ("City") and **NAME** ("Owners").

RECITALS

Pursuant to the City of Campbell’s Density Bonus Ordinance no household shall be permitted to begin occupancy of a target unit unless the city or its designee has approved the household's eligibility. If the city or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of target units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with rules approved by the community development director or his or her designee.

A. **Developer Name**, (the "Developer") has constructed a **INSERT number-unit INSERT single or multi family INSERT attached or detached residential housing development**, commonly referred to as “**Development Name**”.

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

C. Pursuant to the City’s Density Bonus Ordinance, the City shall ensure that the initial occupant of all for-sale target units are persons and families and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing costs, as that cost is defined in Section 50052.5 of the Health and Safety Code. The City shall enforce an equity share agreement, unless it is in conflict with the requirement of another public funding source or law.

D. The purpose of this Agreement is to place initial occupancy controls on the Home and to require the payment to the City of its proportionate share of appreciation upon sale of the Home.

E. The Initial Purchase Transaction Has the Following Details

Detail	Amount
1) INITIAL MARKET VALUE	\$
2) INITIAL SALES PRICE	\$

F. The Owner is receiving the following loans:

<u>Name of Lender</u>	<u>Amount</u>	<u>Date Deed of Trust Recorded</u>
1) NAME OF LENDER	\$AMOUNT	INSERT DATE

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

G. In accordance with the terms of this Agreement, Owner agrees to pay any excess proceeds of sale or excess rents to the City. This Agreement shall be secured by a deed of trust on the Home (the "City Deed of Trust"). This Agreement and the City Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust.

EXHIBITS

The following exhibits are attached to this Agreement:

- Exhibit A: Legal Description of the Home
- Exhibit B: Form of Owner Occupancy Certification
- Exhibit C: Form of Owner's Notice of Intent to Transfer
- Exhibit D: Form of Owner Acknowledgement of First City Response Notice
- Exhibit E: Form of Request for City Approval of Improvements to the Home
- Exhibit F: Form of Owner Request for City Subordination to Refinance First Lender Loan

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

1. DEFINITIONS

Appreciation Amount – shall mean the difference between the Initial Market Value and Resale Price less the appraised value of the City approved “Eligible Capital Improvements.”

Authorized ECI Appraisal – shall mean an appraisal of Eligible Capital Improvements prepared by a certified MAI or other qualified real estate appraiser approved in advance by the City. The cost of the appraisal shall be paid the Owner, unless the appraisal is obtained from a new purchaser. The appraisal shall include an evaluation of the value of any substantial structural or permanent fixed improvements which the Owner has made to the Home after purchase of the Home, including any depreciation in value of the capital improvements since the time of installation, and excluding the cost of construction of he improvements to the Home. No such adjustment shall be made except for Eligible Capital Improvements.

Eligible Capital Improvements – shall mean improvements: (a) made or installed by the Owner which conformed with applicable building codes at the time of installation; (b) are approved in writing in advance by the City or its designee; and (c) whose initial costs exceed one percent (1%) of the purchase price paid for the Home by the Owner. A form for use in requesting City approval of a capital improvement is attached to this

Agreement as Exhibit E. The value of the Eligible Capital Improvements shall be limited to appraised increases in value to the Home as a result of the improvements pursuant to an Authorized ECI Appraisal.

City's Equity Share Percentage – Amount equal to the ratio of the Initial Subsidy to the Initial Market Value.

Initial Market Value – Amount equal to the Fair Market Value of the Home at the time of the initial sale.

Initial Sale Price – Amount equal to the Below Market Rate Purchase Price of the Home as determined using the Affordable Housing Cost affordable to a very low, low, or moderate-income household.

Initial Subsidy – Amount equal to the Initial Market Value minus the Initial Sale Price to the Eligible Purchaser, plus any down payment assistance or mortgage assistance provided by the City.

2. DESCRIPTION OF PROPERTY

This Agreement concerns the real property commonly known as **ADDRESS**, Campbell, California 95008, which is more fully described in Exhibit A attached hereto and incorporated in this Agreement by reference (the "Home").

3. OWNER CERTIFICATIONS; OWNER OCCUPANCY REQUIREMENT

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

4. LEASING OF HOME

A. The Owner shall not lease the Home to another party, unless such lease is first approved in writing by the City. The City shall approve the leasing of the Home only if ALL of the following conditions are met: (1) the Owner demonstrates to the City's reasonable satisfaction that the Owner will incur substantial hardship if he or she is not permitted to lease the Home to a third party; (2) the term of the lease is not greater than twelve (12) months and

cannot be extended without City approval; (3) the lease requires the tenant to maintain the Home and surrounding property in good condition and prohibits subleasing; and (4) the rent for the Home does not exceed the lesser of: (i) **thirty percent (30%)** of the income of the tenant household that is renting the Home, or (ii) the Owner's monthly cost of principal and interest on the First Lender Loan, and property insurance, property taxes, and homeowners association dues, if any, associated with Home (the lesser rent is the "Affordable Rent").

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

5. MAINTENANCE AND INSURANCE REQUIREMENTS

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

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

6. RESTRICTIONS ON RESALE AND TRANSFER OF THE HOME

A. **Transfer.** Any Transfer of the Home will be subject to the provisions of this Agreement including, without limitation, the Option described in Section 10 below. "Transfer" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest (unless approved pursuant to Section 4 of this Agreement), an interest evidenced by a land contract by which possession of the Home is transferred and Owner retains title, or a deed of trust. Any Transfer without satisfaction of the provisions of this Agreement is prohibited and shall constitute a Default for which the City may exercise its Option.

B. **Permitted Transfers.** Notwithstanding Section 6A, the following shall not be considered a Transfer for the purposes of this Agreement, but all such transferees shall continue to be bound by the requirements of this Agreement: (i) transfers by devise or inheritance to an existing spouse, Domestic Partner, child, surviving joint tenant, or a spouse as part of a dissolution proceeding or in connection with marriage; (ii) a transfer by an Owner into an inter vivos trust in which Owner is the beneficiary, trustor, and trustee; or (iii) refinance of the First

Lender Loan in accordance with Section 26 of this Agreement, provided, however, that Owner shall provide written notice of all such transfers to the City pursuant to Section 7, and all owners of the Home shall continue to occupy the Home as his or her principal place of residence. For purposes of this Section, "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 an affidavit or other acceptable evidence by Owner to the City.

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

A. In the event the Owner intends to Transfer or vacate the Home, the Owner shall promptly give the City written notice of such intent (the "Owner's Notice of Intent to Transfer"), in the form shown in Exhibit C attached to this Agreement. The Owner shall give the City the Owner's Notice of Intent to Transfer prior to notifying real estate brokers or lenders of Owner's intent to Transfer the Home and prior to listing of the Home on the Multiple Listing Service. The Owner's Notice of Intent to Transfer shall be sent to the City by certified mail, return receipt requested at the address provided in Section 33 of this Agreement. The Owner's Notice of Intent to Transfer shall include the information necessary for the City to determine the Indexed Price of the Home, including the following information:

- (1) the address of the Home;
- (2) the date of purchase of the Home by the Owner;
- (3) the Affordable Housing Cost of the Home paid by the Owner at the time of his/her purchase;
- (4) a copy of the HUD-1 Settlement Statement or equivalent document from the close of escrow on the Owner's purchase of the Home;
- (5) if Owner has made Eligible Capital Improvements to the Home that he/she wishes to include in the calculation of Indexed Price, a description of the improvements, the date the improvements were made, a copy of the letter granting prior City approval of the improvements, evidence of cost of the improvements, and an appraisal of the value added to the Home by the Eligible Capital Improvements;
- (6) the date on which Owner intends to vacate Home;
- (7) the date Home will be placed on the market; and
- (8) the name and phone number of the person to contact to schedule inspection of the Home by the City.

B. The Owner shall not contract with a real estate broker to sell the Home until the Owner has received the First City Response Notice pursuant to Section 8 below, as the services of a broker will not be required if the City exercises the Option to purchase the Home.

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

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

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

(3) within thirty (30) days of the date of the Owner's Notice of Intent to Transfer, the Owner shall allow the City, or its designee, to inspect the Home to determine its physical condition, and, if requested by the City, following such inspection, the Owner shall obtain and deliver to the City a home inspection report prepared by a licensed home inspector;

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

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

8. SALE OF HOME

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

(1) the name and address of the purchaser;

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

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

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

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

9. PAYMENT TO CITY OF EXCESS SALES PROCEEDS

Upon Owner's transfers of the Home pursuant to Section ____, above, or if the Owner makes a Transfer in violation of this Agreement, the Owner shall pay the Excess Sales Proceeds to the City. For purposes of this Agreement, "Excess Sales Proceeds" shall mean the amount of the Initial Subsidy plus the City's Equity Share Percentage of the Appreciation Amount. This amount shall be a debt of the Owner to the City, evidenced by this Agreement, secured by a City Deed of Trust. The Owner acknowledges that the City shall have no obligation to cause reconveyance of this Agreement or of the City Deed of Trust until the Excess Sales Proceeds are paid to the City. The City shall utilize the Excess Sales Proceeds for City affordable housing programs.

10. DEFAULTS

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

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

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

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

(4) The Owner actually Transfers, or attempts to Transfer, the Home in violation of this Agreement;

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

(6) Judicial foreclosure proceedings are commenced regarding the Home;

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

(8) The Owner executes any deed in lieu of foreclosure transferring ownership of the Home;

(9) A lien is recorded against the Home other than the lien of the First Lender Loan or a refinance of the First Lender Loan approved by the City pursuant to Section 26; or

(10) The Owner otherwise fails to comply with the requirements of this Agreement, or the City Deed of Trust.

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

(1) Declare all sums due under this Agreement immediately due and payable without further demand;

(2) Declare a default under this Agreement;

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

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

(5) Take such enforcement action as is authorized under the Campbell Municipal Code;

(6) Declare a Default this Agreement and the City Deed of Trust and pursue all City remedies under the City Deed of Trust; and

11. NOTICE OF DEFAULT AND FORECLOSURE

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

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

12. EXERCISE OF OPTION UPON DEFAULT

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

B. **Right of City to Reinstate Mortgages.** In the event of default and foreclosure, the City shall have the same right as the Owner to cure defaults and redeem the Home prior to the foreclosure sale and shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor sections) solely for the purposes of reinstating any mortgage on the Home that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the City shall be entitled, but not required, to pay all amounts of principal, interest, taxes, assessments, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. Nothing herein shall be construed as creating any obligation of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

13. NONLIABILITY OF THE CITY

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

out of or resulting from any condition of the Home and will hold the City harmless from any liability, loss or damage for these things.

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

21. RESTRICTIONS ON FORECLOSURE PROCEEDS

If a creditor acquires title to the Home through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall instruct the holder of such excess proceeds to pay such proceeds to the City (in addition to any other amounts due the City from the Owner pursuant to this Agreement), in consideration of the benefits received by the Owner through purchase of the Home at a price below fair market value.

22. RESTRICTION ON INSURANCE PROCEEDS

If the Home is damaged or destroyed and the Owner elects not to rebuild or repair the Home, the Owner shall pay the City the portion of any insurance proceeds received by the Owner for such destruction or damage which is in excess of amount Owner would otherwise have been entitled to had the Home been sold or transferred under Paragraph 9, above, at its Fair Market Value had Owner elected to rebuild or repair the Home.

23. TERM OF AGREEMENT

All the provisions of this Agreement, including the benefits and burdens, run with the Home and this Agreement shall bind, and the benefit hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the City and its successors, until the date of Transfer of the Home to another purchaser at an unrestricted price and payment of all principal and interest due under this Agreement, including but not limited to payment of all Excess Sales Proceeds (the "Term").

24. SUPERIORITY OF AGREEMENT

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

25. SUBORDINATION

Notwithstanding any other provision hereof, the provisions of this Agreement and the City Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the City Deed of Trust shall be forever terminated and shall have no further effect as to the Home or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquires title to the Home pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the City Deed of Trust shall automatically terminate upon such acquisition of title, only if (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period (which requirement shall be satisfied by recordation of a notice of default under California Civil Code Section 2924) and (ii) the City or its designee shall not have cured the default within such sixty (60)-day period.

26. REFINANCE OF FIRST LENDER LOAN

A. **City Consent Required.** The Owner covenants and agrees not to place any additional mortgage or deed of trust, including any line of credit, on the Property without obtaining prior written consent of the City. A form for use by the Owner in requesting City subordination to a refinanced First Lender loan is attached as Exhibit G to this Agreement.

B. **Permitted Encumbrance Amount.** The "Permitted Encumbrance Amount", is defined as the lesser of: (i) ninety percent (90%) of the Maximum Restricted Resale Price, or (ii) the remaining balance of the original First Lender Loan.

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

- (1) following such refinance, the principal amount of all debt secured by the Property does not exceed the Permitted Encumbrance Amount;
- (2) the refinanced First Lender Loan is a fully amortized fixed rate loan, is fully documented, and requires no balloon payments;
- (3) the refinanced First Lender Loan reduces the Owner's principal and interest payments; and
- (4) the total new housing cost to the Owner after the refinance does not exceed the Owner's ability to pay.

D. **Request for Notice of Default.** As a condition for subordination of the City Deed of Trust, a request for notice of default and notice of sale regarding the refinanced First

Lender Loan shall be recorded in the Office of the Recorder of the County of Santa Clara for the benefit of the City.

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

27. NONDISCRIMINATION

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

28. INVALID PROVISIONS

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

29. CONTROLLING LAW

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

30. NO WAIVER

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

31. NOTICES

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

To the Owner: **NAME**

Address of the Home: **ADDRESS**

To the City:

Campbell Community Development Department
c/o City of Campbell
70 No. First Street
Campbell, CA 95008-1436

To the First Lender:

NAME AND ADDRESS OF LENDER

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

32. INTERPRETATION OF AGREEMENT

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

33. EXHIBITS

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

34. COVENANTS RUNNING WITH THE LAND

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

B. The Owner and the City hereby declare their understanding and intent that: (i) the covenants and restrictions contained in this Agreement shall be construed as covenants

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

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

35. SPECIFIC PERFORMANCE

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

36. ENFORCEMENT

Notwithstanding any other provision of the law, all covenants and restrictions contained herein which implement Health and Safety Code Sections 33334.3 and/or 33413, or successor provisions, shall run with the land and shall be enforceable by the City and the City of Campbell and any of the parties listed in Health and Safety Code Section 33334.3(b)(7), so long as such provision or successor provision remains in effect.

37. DATABASE

Owner hereby acknowledges and agrees that Health and Safety Code Section 33418(c) requires that the Home be listed in a database that shall be made available to the public on the internet and which will include the street address, assessor's parcel number, and other information about the Home.

38. OWNER'S ACKNOWLEDGEMENT OF RESALE RESTRICTION

Owner hereby acknowledges and agrees that:

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

initialed by Owner(s)

B. Owner further acknowledges that at all times in setting the sales price of the property the primary objective of the city and this agreement is to provide housing to eligible purchasers at affordable housing cost. The maximum restricted resale price will almost certainly be less than other similar properties that have no restrictions.

initialed by Owner(s)

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

Name

Date

Name

Date

ALL SIGNATURES MUST BE NOTARIZED

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

By: _____

City of Campbell, a public body, corporate and politic

EXHIBIT A

Legal Description of the Home

Exhibit B

Exhibit C

Exhibit D

Exhibit E

Exhibit F

Exhibit G