

**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City Clerk
City of San Ramon
7000 Bollinger Canyon Rd.
San Ramon, CA 94583

No fee for recording pursuant to
Government Code Section 27383

APN: 213-930-021

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE

This **RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE** (the "Agreement") is entered into as of this _____ day of _____, 20____, by and between the CITY OF SAN RAMON, a municipal corporation of the State of California (the "City"), and _____ (the "Owner").

Recitals

A. The Owner is purchasing Unit #202 (the "Residence") of 4704 Norris Canyon Road, San Ramon, California (the "Project"). The Residence is legally described on Exhibit A attached hereto.

B. The City and the former owner and developer of the Project, KB HOME South Bay Inc. (the "Developer") entered into an Affordable Housing Covenant Agreement, dated August 19, 2013 (the "2013 AHA"), under which the Developer covenanted and agreed that not less than ten percent (10%) of the residential condominium units of the Project shall be made available at affordable housing cost to moderate-income households for a period of twenty (20) years following the date of issuance by the City of a certificate of occupancy for the residential units (the "Affordable Units"). The 2013 AHA requires each purchaser of an Affordable Unit to enter into resale restriction agreement to ensure that (1) the Affordable Unit remains affordable to moderate-income households for the duration of the twenty (20) year affordability term and (2) the Affordable Unit remains owner-occupied.

C. Original Owners of the Residence, -----, ("Original Owners") entered into a Resale Restriction Agreement and Option to Purchase on August 28, 2014 ("2014 RRA"), and on January 22, 2021, Original Owners provided the City with an Owner's Notice of Intent to Transfer pursuant to Section 8 of the 2014 RRA.

D. On March 24, 2021, the City issued the City Response Notice, pursuant to Section 9 of the 2014 RRA, that contained the following required information: (a) Calculation of Adjusted Value, (b) Estimated Owner's Closing Cost, and (c) a statement that the City would exercise its Purchase Option for the Residence.

E. On June 9, 2021, the City closed escrow on the Residence and purchased the Residence at the Affordable Price of \$ -----. City purchased the Residence with the intent to hold the

Residence short term in order to make some improvements to the Residence, and then sell the Residence to a new owner who is an Eligible Household, as that term is defined in Section 1.(j) hereof.

F. As successor in interest to the 2013 AHA and in an effort to retain Affordable Housing Units in the City, City shall require the Owner to enter into this Agreement to ensure that (1) the Affordable Unit remains affordable to a low-income household in perpetuity and (2) the Affordable Unit remains owner-occupied.

G. The Residence has been designated as an Affordable Unit of the Project and as such, the Owner is required by the City to enter into this Agreement to place adequate resale controls on the Owner's Residence, provide eligibility requirements for subsequent purchasers, and reserve to the City an option to purchase the Residence.

H. The Owner is an Eligible Household, as that term is defined in Section 1.(j) hereof.

I. This Agreement shall be subordinate to the lien of that certain deed of trust executed by the Owner in favor of _____ (the "First Lender") and recorded in the official records of the County of Contra Costa on _____, 20__ (the "First Lender Deed of Trust").

NOW, THEREFORE, in consideration of the benefits received by the Owner, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be bound, the Owner and the City have entered into this Agreement.

Section 1. Definitions. The following defined terms have the meanings indicated in this Section 1. Exhibits to this Agreement are hereby incorporated by reference. All recordings required by this Agreement shall be in the official records of the Recorder of the County of Contra Costa.

(a) "Adjusted Value" has the meaning stated in Section 9(a).

(b) "Affordable Price" means (1) a sales price for the Residence that is at an "affordable housing cost" (defined by Section 50052.5 of the Health and Safety Code, and calculated pursuant to 25 Cal. Code Regs. Section 6920) for an Eligible Household, less (2) the amount necessary to repair damages to the Residence, if any, and to place the Residence into saleable condition as reasonably determined by the City, including 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.

(c) "Affordable Rent" means a monthly rent (as determined pursuant to 25 Cal. Code Regs. Section 6918) that does not exceed one-twelfth of thirty percent (30%) of the maximum annual income of an Eligible Household.

(d) "Affordability Period" means the period commencing on the date of recordation of this Agreement and continuing on in perpetuity with no ending date.

(e) "Agreement" means this Resale Restriction Agreement and Option to Purchase.

(f) "Assignee" means the person or entity to whom the City assigns its Purchase Option as provided in this Agreement.

(g) “BMR Ownership Guide” means the City of San Ramon Below Market Rate (BMR) Ownership Program Application Guide attached hereto as Exhibit D and which may be amended from time to time.

(h) “Business Day” means a day other than a Saturday or Sunday on which banks located in the County of Contra Costa are not required or authorized to remain closed.

(i) “Capital Improvement” means an improvement to the Residence (1) that is a substantial structural or permanent fixed improvement that cannot be removed without substantial damage to the Residence or substantial or total loss of value of said improvements; (2) that is not a replacement of existing improvements needed as part of routine upkeep of the Residence; (3) that is approved in writing by the City Manager of the City or his or her designee in advance of its installation, and made following the issuance of all required permits; and (4) that cost at least two thousand dollars (\$2,000.00) or more. The written approval of the City Manager of the City, or his or her designee, of the Capital Improvements shall state the estimated useful life of the Capital Improvements.

(j) “City” means the City of San Ramon, a municipal corporation of the State of California.

(k) “City Response Notice” means the City’s written response to the Owner’s Notice of Intent to Transfer, as described in Section 9.

(l) “Default by the Owner” has the meaning stated in Section 16.

(m) “Eligible Household” means a person or family of low income, as that term is defined by Section 50093 of the Health and Safety Code, and who meets or exceeds the minimum qualifications and minimum household size as stated in the BMR Ownership Guide.

(n) “Excess Rental Proceeds” has the meaning stated in Section 5.

(o) The term “including” or variants thereof shall mean “including without limitation.”

(p) “Inheritance Notice” has the meaning stated in Section 7(d).

(q) “Inheriting Owner” has the meaning stated in Section 7(d).

(r) “Owner” means _____, and all heirs, successors, assigns and all successors in interest.

(s) “Owner’s Notice of Intent to Transfer” means the notice to be delivered to the City pursuant to Section 8 when the Owner decides to Transfer the Residence.

(t) “Original Purchase Price” means \$ _____, or the total amount that the Owner paid as the purchase price for the Residence.

(u) “Prohibited Transfer” has the meaning stated in Section 7(b).

(v) “Proposed Purchaser” means a buyer the Owner believes qualifies as an Eligible Household and that would like to purchase the Residence from the Owner.

(w) “Purchase Option” means the option to purchase granted by the Owner, as optionor, to the City, as optionee, by this Agreement.

(x) “Residence” means the real property described in Exhibit A, including all improvements and appurtenances.

(y) “Transfer” has the meaning stated in Section 7(a).

Section 2. The Residence. The Residence which is the subject of this Agreement has a street address of 4704 Norris Canyon Road, Unit # 202, San Ramon, California, 94583, and its legal description is set forth in Exhibit A attached to this Agreement. The Residence shall be subject to the terms and conditions herein set forth.

Section 3. Owner Representations and Warranties. The Owner represents and warrants to the City that (a) the Owner is an Eligible Household and (b) the financial and other information previously provided to the City by the Owner for the purpose of qualifying to purchase the Residence was true and correct at the time it was given and remains true and correct as of the date of this Agreement.

Section 4. Owner Occupancy and Maintenance Requirements. The Owner shall occupy, use and maintain the Residence as the Owner’s principal place of residence. On or before February 1 of each year, the Owner shall provide an annual written certification to the City, in the form shown in Exhibit B, that the Owner is occupying the Residence as the Owner’s principal place of residence and that the Owner is not renting the Residence to another party.

The Owner shall maintain the Residence in good repair and in a neat, clean and orderly condition and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Owner will not commit waste or permit deterioration of the Residence, and shall make all repairs and replacements necessary to keep the Residence in good condition and repair.

The Owner shall maintain a standard all risk property insurance policy equal to the replacement value of the interior of the Residence (adjusted every five (5) years, if requested by City), naming the City as an additional insured. The Owner shall provide the City with evidence of required insurance coverage upon request of the City. The homeowners' association shall provide insurance coverage for the structural and non-Interior portions of the building.

Section 5. Prohibition of Renting or Leasing. The Owner shall not rent or lease the Residence to another party, unless such rental or lease is in compliance with this Section 5. The Owner may request the City’s approval to rent or lease the Residence, which approval shall not be unreasonably denied, if all of the following conditions are met: (1) the term of the rental or lease is not greater than twelve (12) months and cannot be extended without City approval; (2) the Owner demonstrates to the City’s reasonable satisfaction that the Owner will incur substantial hardship if he or she is not permitted to rent or lease the Residence to a third party; (3) the proposed tenant qualifies as an Eligible Household, as determined by the City; and (4) the rent for the Residence does not exceed the amount of rent that would be affordable to an Eligible Household (the “Affordable Rent”). Any rental or lease of the Residence in violation of this Agreement is prohibited, shall constitute a Prohibited Transfer under Section 7 herein, and shall be a Default by the Owner under Section 16 below. The Owner further agrees that, in the event the Owner rents or leases the Residence to a third party in violation of this Section 5, any excess rents (“Excess Rental Proceeds”) paid to the Owner by the lessee over the Affordable Rent shall be due and payable to the City immediately upon receipt thereof by the Owner.

Section 6. Purchase Option. The Owner hereby grants to the City an option to purchase the Residence on the terms and in the manner set forth in this Agreement. The City shall have the right to exercise its option upon the occurrence of any of the following events:

- (a) Receipt from the Owner of the Owner's Notice of Intent to Transfer pursuant to Section 8 below; or
- (b) The occurrence of any event of Default by Owner listed in Section 16 below.

The City may execute the purchase option under the above conditions unless the proposed sale is to a party or parties who meet all of the following criteria:

- (a) Related by blood or marriage to Owner;
- (b) Meets criteria for Eligible Household; and
- (c) Otherwise conforms to the provisions of this Agreement.

The City may assign the Purchase Option to another governmental entity or to an Eligible Household. The City's right to exercise the Purchase Option shall survive any Transfer of the Residence by the Owner, and, as long as the Purchase Option exists, any actual or attempted Prohibited Transfer shall be voidable at the election of the City.

Section 7. Restrictions on Resale of the Residence. Any Transfer of the Residence will be subject to the provisions of this Agreement. Any Transfer not in compliance with all provisions of this Agreement is prohibited, and shall constitute a Default by the Owner under Section 16 below.

(a) "Transfer" means any voluntary or involuntary sale, assignment or transfer of ownership of or any interest in the Residence, including a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate, leasehold interest or any rental of the Residence, or any interest evidenced by a land contract.

(b) "Prohibited Transfer" means any Transfer made without satisfaction of the conditions of this Agreement and changing title of the Residence into the name of a Trust, Corporation, Partnership or other business entity.

(c) The following Transfers are not considered a Prohibited Transfer: (1) transfer of title by an Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property; (2) transfer of title to a spouse as part of divorce or dissolution proceedings; or (3) transfer of a partial interest in the Residence to a spouse in conjunction with marriage, thereby creating a joint tenancy or tenancy in common; provided, however: (aa) that the transferee must be an Eligible Household and the covenants set forth in this Agreement shall continue to run with the title to the Residence following said Transfers; and (bb) that an instrument be executed, acknowledged and recorded by the transferee containing the following covenant: "This Residence is subject to the Resale Restriction Agreement and Option to Purchase, and transferee, on behalf of transferee, and transferee's successors and assigns, covenants and agrees to be bound by and perform the Agreement, and to include in any further Transfer of the Residence the covenant required by Section 7(c) of the Agreement." A transferee who satisfies the conditions of this Section 7(c) shall then be the Owner. Prior to making any of the Transfers outlined in this Section 7(c)(2) or (3), the Owner shall provide to the City the Owner's Notice of Intent to Transfer pursuant to Section 8 herein.

(d) Transfer by Inheritance. In the event a Transfer occurs by devise or inheritance due to the death of the Owner and it is not a Transfer listed in Section 7(c)(1) above, the administrator of

the Owner's estate or the person inheriting the Residence shall provide written notice to the City of the Owner's death within thirty (30) days of the date of death (the "Inheritance Notice"). The Inheritance Notice shall provide the City with the name and contact information of the person inheriting the Residence (the "Inheriting Owner") and the income information for the Inheriting Owner, so that the City may determine whether the Inheriting Owner is an Eligible Household.

If the Inheriting Owner qualifies as an Eligible Household, as determined by the City, he or she may assume the Owner's interest and obligations under this Agreement and documents shall be executed between the Inheriting Owner and the City and recorded against the Residence, pursuant to which the Inheriting Owner shall agree to assume the obligations of the Owner under this Agreement. If the Inheriting Owner fails to qualify as an Eligible Household or fails to assume the Owner's obligations under this Agreement, the Inheriting Owner shall provide the Owner's Notice of Intent to Transfer to the City pursuant to Section 8 and proceed to Transfer the Residence pursuant to this Agreement.

Failure of an Inheriting Owner to follow the procedures and notices described in this Section 7(d) shall constitute a Default by the Owner under this Agreement, and the City may then exercise any of the remedies set forth in Section 16 below.

Section 8. Notice of Intent to Transfer. In the event that Owner intends to Transfer or vacate the Residence, Owner shall promptly give the City written notice of such intent (the "Owner's Notice of Intent to Transfer"). 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 26 of this Agreement. An incomplete notice of such intent shall not be deemed an Owner's Notice of Intent to Transfer.

The Owner's Notice of Intent to Transfer shall include the information necessary for the City to determine the Adjusted Value of the Residence, and other information required by the form Owner's Notice of Intent to Transfer attached hereto as Exhibit C.

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 Residence 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 and/or a pest inspection report prepared by a licensed structural pest control operator.

Section 9. City Response Notice. Following the receipt of a complete Owner's Notice of Intent to Transfer, the City shall have thirty (30) calendar days to respond in writing (the "City Response Notice") to the Owner. Any response by the City to an incomplete Owner's Notice of Intent to Transfer shall not be considered a City Response Notice.

Prior to issuing the City Response Notice, the City shall calculate both the Adjusted Value and the Affordable Price of the Residence, pursuant to this section. The City Response Notice shall state both the Adjusted Value and the Affordable Price.

(a) Calculation of Adjusted Value. The "Adjusted Value" of the Residence shall mean:

- (1) The Original Purchase Price of the Residence; plus
- (2) The value of any Capital Improvements made to the Residence by the Owner, adjusted by the original cost of the Capital Improvements depreciated in a straight-line basis

based upon the estimated useful life of the Capital Improvements stated in the City's prior written acceptance of said Capital Improvements; less

(3) The amount necessary to repair damages to the Residence, if any, and to place the Residence into saleable condition as reasonably determined by the City, including 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.

(b) Estimation of closing costs. The City Response Notice shall also estimate the reasonable closing costs to the Owner, including real estate commissions or sales administrative fees, real estate transfer taxes and escrow costs that would be incurred by reason of the Transfer of the Residence to an Eligible Household, which amount shall not include the costs of repair or rehabilitation of the unit for matters such as termite damage, appliance replacement and the like ("Estimated Owner's Closing Costs").

(c) The City Response Notice shall state the City's determination regarding whether or not it will exercise its Purchase Option, including whether or not the City will assign the Purchase Option to an Assignee. If the City does not exercise the Purchase Option, the City Response Notice shall include the maximum qualifying income for an Eligible Household and the certifications required of an Eligible Household.

Section 10. Purchase Price on City Exercise of Purchase Option.

(a) If the Affordable Price is less than the sum of the Adjusted Value plus the Estimated Owner's Closing Costs, the City shall state in the City Response Notice that it will either:

(1) Exercise (or assign) the Purchase Option, will purchase the Residence for the Adjusted Value, and will pay that portion of the Owner's closing costs in an amount not to exceed the difference between (a) the Adjusted Value plus the Estimated Owner's Closing Costs and (b) the Affordable Price; or

(2) Notify the Owner to proceed to sell the Residence to an Eligible Household at the Affordable Price pursuant to the terms of Section 12 below.

(b) If the Affordable Price is equal to or greater than the sum of the Adjusted Value plus the Estimated Owner's Closing Costs, the City shall state in the City Response Notice that it will either:

(1) Exercise (or assign) the Purchase Option and purchase the Residence for the Affordable Price; or

(2) Notify the Owner to proceed to sell the Residence to an Eligible Household for the Affordable Price pursuant to the terms of Section 12 below.

Section 11. Procedure on City Exercise of Purchase Option. If the City exercises or assigns the Purchase Option, the City shall designate a real estate agent to process the transaction, and shall open escrow concurrently with the delivery of the City Response Notice to the Owner, or as soon thereafter as possible. The Closing shall occur within forty-five (45) days of the opening of escrow.

Closing shall be through an escrow with a title insurance company issuing to the City an ALTA owner's residential title insurance policy, subject to its exclusions from coverage, special exceptions for current taxes and assessments not yet due and such matters (other than taxes, assessments and encumbrances

created or suffered by the Owner and all those claiming by or through the Owner) which are exceptions to title on the date this Agreement is recorded. The City shall pay the cost of the title insurance. Closing shall utilize the form of escrow agreement customarily used by such title company for residential transactions with the City, modified to the extent necessary to conform to this transaction. At the Closing, the Owner shall convey title to the City by grant deed or its equivalent.

Section 12. Transfer by Owner to Eligible Household at Affordable Price. If the City does not exercise the Purchase Option and the City Response Notice notifies the Owner to proceed to Transfer the Residence to an Eligible Household at a price not exceeding the Affordable Price, the Owner may proceed to sell the Residence in compliance with the following requirements:

(a) Marketing. Immediately following receipt of a City Response Notice informing the Owner that the City will not exercise the Purchase Option, the Owner shall request the City to refer to the Owner Eligible Households from any list maintained by the City of households seeking to purchase an affordable home. The Owner shall make every effort to sell the Residence to Eligible Households referred by the City. At the Owner's option, the Owner may also list the Residence on the multiple listing service. The Owner shall use bona fide good faith efforts to sell the Residence to an Eligible Household in compliance with this Section 12, including keeping the Residence in an orderly condition, making the Residence available to show to agents and prospective buyers, and providing buyers with Eligible Household requirements, including income qualifications and the City's form of disclosure statement summarizing the terms of the buyer's occupancy and resale restriction agreement with option to purchase. A proposed purchaser ("Proposed Purchaser") who the Owner believes will qualify as an Eligible Household shall be referred to the City for an eligibility determination.

(b) Proposed Purchaser. An Eligible Household shall qualify as a "Proposed Purchaser" if he or she meets the following requirements, as determined by the City:

(1) Intent to Owner Occupy. The Proposed Purchaser shall certify that he or she will occupy the Residence as his or her principal place of residence throughout his or her ownership.

(2) Agreement to Sign Buyer's Resale Agreement and to Cooperate with City. The Proposed Purchaser shall agree to sign a buyer's occupancy and resale restriction agreement with option to purchase restricting future resale of the Residence in a form substantially the same as this Agreement and shall agree to cooperate fully with the City in promptly providing all information requested by the City to assist the City in monitoring the Proposed Purchaser's compliance with the buyer's occupancy and resale agreement with option to purchase.

(3) Income Eligibility. The combined maximum income for all household members of the Proposed Purchaser shall not exceed the income level designated by the City in the City Response Notice.

(c) Costs of Eligible Household to Close Escrow. The actual and reasonable costs to the Eligible Household incurred by reason of the purchase of the Residence, including real estate commissions or sales administrative fees, real estate transfer taxes, and escrow costs, which shall not include the costs of repair or rehabilitation of the unit for matters such as termite damage, appliance replacement and the like, shall not exceed reasonable and customary buyers' closing costs in the County of Contra Costa.

(d) Disclosure and Submittals to City. The Owner and the Proposed Purchaser shall provide the following information and documents to the City:

(1) The name, address and telephone number in writing of the Proposed Purchaser.

(2) A signed financial statement of the Proposed Purchaser in a form reasonably acceptable to the City and any other supporting documentation requested by the City. The financial information shall be used by the City to determine the income eligibility of the Proposed Purchaser.

(3) The proposed sales contract and all other related documents which shall set forth all the terms of the sale of the Residence. Said documents shall include at least the following terms: (A) the sales price; and (B) the price to be paid by the Proposed 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.

(4) A written certification, from the Owner and the Proposed 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 reasonably approved by the City. The certification shall also provide that the Proposed 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 Proposed 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 exercise its Purchase Option 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 Proposed Purchaser for the return of any moneys paid or received in violation of this Agreement or for any of the Owner's and/or the Proposed Purchaser's costs and legal expenses, shall be borne by the Owner and/or the Proposed Purchaser and they shall hold the City and its designee harmless and reimburse the City's and its designee's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(5) An executed buyer's resale restriction agreement and option to purchase from the Proposed Purchaser, in a form substantially the same as this Agreement. The recordation of the new buyer's resale restriction agreement and option to purchase shall be a condition of the City's approval of the proposed sale.

(6) The name of the title company escrow holder for the sale of the Residence, the escrow number, and name, address, and phone number of the escrow officer.

(7) Upon the close of the proposed sale, certified copies of the recorded buyer's resale restriction agreement and option to purchase, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

Section 13. Transfer by Owner at Market Value is Prohibited. The Residence may not be sold by Owner at its market value (a "Market Rate Transaction"). Any Market Rate Transaction shall be a Prohibited Transfer under Section 7 herein, and shall be a Default by the Owner under Section 16 below.

Section 14. Default and Foreclosure. A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Residence shall be recorded by the City. Any notice of default given pursuant to Civil Code Section 2924b, as amended, shall constitute Owner's Notice of Intent to Transfer under Section 8 of this Agreement, and the City may exercise any of

its remedies pursuant to the provisions of this Agreement; provided, however, that, notwithstanding any language contained in this Agreement to the contrary with regard to the rights of the lienholder, the City must complete any such actions no later than the end of the period established by California Civil Code Section 2924c for reinstatement of a monetary default under the deed of trust or mortgage.

In the event of default and foreclosure, the City shall have the same right as the Owner to cure defaults and redeem the Residence prior to foreclosure sale. Such redemption shall be subject to the same fees, charges and penalties that would otherwise be assessed against the Owner. Nothing herein shall be construed as creating any obligation on the part of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

In the event a foreclosure sale is consummated, any surplus proceeds to which the Owner may be entitled following foreclosure under California state law shall be paid as follows: After any required payment of encumbrances, that portion of surplus, if any, up to but not exceeding the net amount that the Owner would have received had the City exercised the Purchase Option on the date of the foreclosure sale shall be paid to the Owner on the date of the foreclosure sale; the balance of the surplus, if any, shall be paid to the City.

Section 15. Advances by City. In the event the City advances any amounts for the payment of mortgages, including the curing of defaults on senior liens and redeeming the Residence prior to a lien sale, taxes, assessments, insurance premiums, homeowner's fees and/or associated late fees, costs, interest, attorneys' fees, pest inspections, resale inspections and other expenses related to the Residence, which Owner has failed to pay or has permitted to become delinquent, the City shall be entitled to a lien against the Residence in the amount of all costs and expenses incurred by the City.

Section 16. Defaults and Remedies.

(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 purchasing the Residence, or in connection with its obligations under this Agreement;

(2) The Owner fails to occupy the Residence, as required pursuant to Section 4 above, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;

(3) The Owner rents the Residence in violation of Section 5 above, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;

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

(5) The Owner fails to pay property taxes or maintain the proper insurance coverage for the Residence;

(6) The Owner fails to maintain the Residence pursuant to adopted City codes and standards;

(7) The Owner places a mortgage on the Residence in violation of Section 22;

(8) Any actual, attempted or pending Prohibited Transfer of the Residence or of any estate or interest therein that is not in accordance with this Agreement;

(9) 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 Residence;

(10) Commencement of a judicial foreclosure proceeding regarding the Residence;

(11) Execution by Owner of a deed in lieu of foreclosure transferring ownership of the Residence;

(12) 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

(13) Any other default or breach of any covenant, warranty, promise or representation under this Agreement.

(b) Upon a Default by the Owner under this Agreement, the City shall give written notice pursuant to Section 26 to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within a reasonable period of time, 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.

Upon the declaration of a default, 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 Excess Rental Proceeds immediately due and payable without further demand;

(2) Exercise the Purchase Option granted to the City; and/or

(3) Apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting a proposed Transfer in violation of this Agreement, for a declaration that a Transfer in violation of this Agreement is void, for the acceleration of all amounts due under this Agreement and for subsequent termination of this Agreement, or for any such other relief at law or in equity as may be appropriate.

Section 17. Distribution of Insurance and Condemnation Proceeds. In the event that the Residence is condemned or destroyed (or in the event that the Residence consists of a unit in a condominium project and the condominium project is destroyed and insurance proceeds are distributed to the Owner, instead of being used to rebuild, or in the event of condemnation, if proceeds thereof are distributed to the Owner, or in the event of the termination and liquidation of the condominium

association and distribution of the assets of the association to the members thereof, including the Owner), any surplus proceeds from insurance or condemnation so distributed remaining after payment of encumbrances on the Residence shall be distributed as follows:

That portion of the surplus up to but not to exceed the net amount that Owner would have received had the City exercised the Purchase Option on the date of destruction, condemnation valuation date, or date of liquidation, as applicable, shall be distributed to the Owner, and the balance of such surplus, if any, shall be distributed to the City.

Section 18. Attorneys' Fees and Costs. If any action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

Section 19. Controlling Agreement. The Owner covenants that the Owner has not executed, and will not execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that in any event, the Owner understands and agrees that this Agreement shall control the rights and obligations between and among the parties.

Section 20. Non-Liability of the City; Indemnity. In no event shall the City become liable or obligated to the Owner or to any successor to the Owner by reason of the City's Purchase Option, set forth in Section 6 herein, nor shall the City become obligated or liable to the Owner or to any successor to the Owner for any failure to exercise the City's Purchase Option.

Owner acknowledges, understands and agrees that the relationship between Owner and the City is solely that of an owner and an administrator of a municipal below market rate 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 Residence 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 Residence and Owner agrees that neither Owner, or Owners' 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 Residence and will hold the City harmless from any liability, loss or damage for these things. Nothing contained herein shall be deemed to create or be construed to create a partnership, joint venture or any relationship other than that of an owner and an administrator of a municipal below market rate housing program.

Owner agrees to defend, indemnify, and hold the City harmless from all losses, damages, liabilities, claims, actions, judgments, costs and reasonable attorneys' fees that the 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; (2) the failure at any time of any of Owner's representations to the City to be true and correct; or (3) Owner's purchase or ownership of the Residence.

Section 21. Subordination. This Agreement shall be subordinate only to the lien of a first deed of trust against the Residence, and shall not impair the rights of any institutional lender which is the maker of a loan secured by such first deed of trust, or such lenders' assignee or successor in interest, to exercise its remedies under the deed of trust in the event of default under the first deed of trust by the Owner. Such remedies under the first 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 shall be forever terminated and shall have no further effect as to the Residence or any transferee thereafter; provided, however, if the holder of such deed of trust acquired title to the Residence pursuant to a deed or assignment in lieu of foreclosure, this Agreement shall automatically terminate upon such acquisition of title, provided that (a) the City has been given written

notice of a default under such first deed of trust, and (b) provided such notice, the City shall not have cured the default under such first deed of trust within the forty-five (45) day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the first lender, or (c) the City shall not have exercised the Purchase Option. Any subordination agreement to be executed by the City shall include notice and cure rights for the City regarding any defaults in the mortgage to which this Agreement will be subordinate. Owner requesting a subordination is required to pay the current Subordination Fee as stated in the City's Fee Resolution. The City is under no obligation to execute a subordination unless and until the Subordination Fee is tendered to the City.

Section 22. Restrictions on Financing Secured by Residence; Refinancing. The Owner shall not permit any mortgage, deed of trust or other security instrument to be recorded against the Residence other than the following: (a) a fixed rate conventional mortgage; (b) other loan products approved by the City in writing; and (c) encumbrances permitted pursuant to this Section 22. Owner acknowledges that violation of the provisions of this Section 22 shall constitute a Default by the Owner under Section 16 of this Agreement.

Any refinancing of the first mortgage on the Residence shall not be permitted unless expressly approved by the City in writing, at the City's reasonable discretion, pursuant to the provisions of this Section 22.

The Owner may refinance the existing mortgage debt to (a) reduce the Owner's interest rate and monthly payments of principal and interest or (b) to obtain "cash out" to finance Capital Improvements. The City's consent to the refinancing of existing mortgage debt shall be subject to the following conditions: (a) the refinancing will not result in the Owner's monthly housing cost (as defined by 25 Cal. Code Regs. 6920) exceeding thirty percent (30%) of the Owner's monthly gross income (as defined by 25 Cal. Code Regs. 6914); and (b) the combined loan-to-value ratio of the Residence, calculated by comparing the total of all debt secured by a lien on the Residence and the Affordable Price, shall not exceed 95 percent.

Proceeds of the refinancing for the installation of Capital Improvements shall be deposited into an escrow account and shall only be disbursed to pay the costs of purchasing and installing the Capital Improvements. The Owner may request that the City approve an alternative disbursement mechanism reasonably calculated to provide assurance to the City that the refinancing funds are actually used to finance the Capital Improvements.

Section 23. 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 group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code in the sale, transfer, use, occupancy, tenure or enjoyment of the Residence, nor shall the Owner or any person claiming under or through the Owner establish any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Residence. The foregoing covenant shall run with the land.

Section 24. Severability. 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(s) had never been contained herein.

Section 25. Time of the Essence. Time is of the essence of this entire Agreement. Whenever under the terms of this Agreement the time for performance falls on a day which is not a business day, such time for performance shall be on the next day that is a business day.

Section 26. Notices. All notices required herein shall be in writing and shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as of the date received or the date delivery was refused as indicated on the return receipt as follows:

If to City: City Clerk
 City of San Ramon
 7000 Bollinger Canyon Rd.
 San Ramon, CA 94583

With a Copy to: Community Development Director
 City of San Ramon
 7000 Bollinger Canyon Rd.
 San Ramon, CA 94583

If to Owner: At the address of the Residence.

The address of a party for notices may be changed by that party's written designation to all other parties of the new address in accordance with this Section 26.

Section 27. Covenants as to Use of and Title to the Residence. The Owner covenants and agrees with the City that the Owner will use and maintain the Residence as a single family residence and will perform all obligations of any consensual lien encumbering the Residence, until a permitted Transfer or termination of this Agreement.

Section 28. Captions and Pronouns. The captions and headings of the various Sections of this Agreement are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and masculine, feminine, and neuter shall be freely interchangeable.

Section 29. Running of Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens, run with the land described in Exhibit A and are binding upon the heirs, successors, assigns, and personal representatives of the parties hereto and inure to the benefit of the heirs, personal representatives, and permitted successors and assigns of the parties hereto.

Section 30. 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.

Section 31. Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction so that the intention of the parties, to create a valid and enforceable Purchase Option, to prevent any Prohibited Transfer or any use of the Residence in violation of this Agreement and to ensure to the extent possible that the sales price and mortgage payments for the Residence remain affordable to Eligible Households, is carried out.

Section 32. Termination. This Agreement shall not terminate and remains in effect in perpetuity except termination may be allowed for the following situations: (1) City exercises its option to purchase in compliance with Section 11; or (2) Owner transfers to an Eligible Household at the Affordable Price in compliance with Section 12. Upon termination of this Agreement, on request of the Owner of the fee title to the Residence, the City shall execute, acknowledge, and record a termination and release of this Agreement.

Section 33. Owner's Acknowledgment of Resale Restriction. Owner hereby specifically acknowledges and agrees that:

(a) Owner subjects the Residence to certain restrictions and limits the price for which Owner may sell the Residence and the persons to whom Owner may sell the Residence. The resale price limitation, and other provisions contained in this Agreement, restrict the full benefits of owning the Residence. Owner may not enjoy the same economic or other benefits from owning the Residence that Owner would enjoy if this Agreement did not exist.

(b) Absent the provisions of this Agreement, the Residence could not be made available to Eligible Households, including Owner, at an affordable housing cost.

(c) Owner understands that the determination of the Affordable Price of the Residence 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 under this Agreement may not increase or decrease in the same manner as other similar real property which is not encumbered by this Agreement. Owner further understands that at all times in setting the sales price of the Residence, the primary objective of the City and this Agreement is to provide housing to Eligible Households at an affordable housing cost. The Affordable Price will almost certainly be less than other similar properties that have no restrictions.

(d) Owner understands all of the provisions of this Agreement. In recognition of the acknowledgements and agreements stated in this Section 33, 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 Residence following any Transfer of the Residence throughout the term of this Agreement.

(Owners' Initials)

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

CITY:

CITY OF SAN RAMON, a municipal corporation of the State of California

By: _____
City Manager

OWNER:

ATTACH ACKNOWLEDGMENTS

EXHIBIT A

LEGAL DESCRIPTION OF THE RESIDENCE

The land referred to herein is situated in the City of San Ramon, County of Contra Costa, State of California, and is more particularly described as follows:

[TO BE INSERTED]

EXHIBIT B

FORM OF CERTIFICATE OF OWNER OCCUPANCY

TO: City of San Ramon

FROM: [State names of Owners]

Address of Residence: _____

Date: _____

By signature below, I _____ **[insert name or names of Owner]** hereby certify to the City under penalty of perjury that I/we occupy the home located at _____ **[insert address]** (the "Residence") as my/our principal place of residence and that I/we have occupied the Residence for _____ () **[insert number]** months of the calendar year _____ **[insert previous calendar year]**. Attached to this letter is a copy of _____ **[insert utility bill or driver's license]** showing the Residence as my place of residence.

I also certify that I have not leased part or all of the Residence to a third party.

This Certificate of Owner Occupancy is signed on _____, 20__.

By: _____
Owner **[type name]**

By: _____
Owner **[type name]**

Due Date: February 1 of each calendar year.

Attach copy of utility bill or driver's license showing address of Residence and proof of property insurance (hazard).

EXHIBIT C

FORM OF OWNER'S NOTICE OF INTENT TO TRANSFER

TO: City of San Ramon

FROM: [State names of Owners]

Address of Residence: _____

Date: _____

Please be notified pursuant to Section 8 of the Resale Restriction Agreement and Option to Purchase between Owner and City dated _____ (the "Agreement"), that the Owner intends to transfer the Residence listed above.

The following information is provided to the City pursuant to Section 8 of the Agreement:

1. Address of the Residence: _____
2. Date Owner purchased the Residence:
3. Purchase Price paid by Owner for the Residence: _____
4. Date Owner intends to vacate the Residence:
5. Name and telephone number for City to contact to schedule inspection:

6. Have Capital Improvements been made to the Residence? ___ yes / ___ no

If yes, please attach copies of the City's written approval of the Capital Improvements, and all required permits for the Capital Improvements.

I agree to cooperate with the City to schedule an inspection of the Residence by the City or its designee.

I/we certify that this Owner's Notice of Intent to Transfer is true and correct and is signed on

_____.

By: _____
Owner [type name]

By: _____
Owner [type name]

EXHIBIT D

CITY OF SAN RAMON BELOW MARKET RATE (BMR)
OWNERSHIP PROGRAM APPLICATION GUIDE

[TO BE INSERTED]