



Toll Free: 1-877-460-KEYS (5397)

Office (By Appointment)

358 Digital Drive

Gilroy, CA 95037

## AFFORDABLE LENDING PARTICIPATION AGREEMENT

The City of Gilroy, a California municipal corporation (“City”), HouseKeys. Inc. (“Administrator”) and \_\_\_\_\_ (“Lender”) enter into this Affordable Lending Participation Agreement (the “Agreement”) effective as of \_\_\_\_\_, 20\_\_ (the “Effective Date”). City, Administrator, and Lender are referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

A The City established its Residential Development Ordinance (“RDO”) Section 30.50.60 of the City’s Municipal Code in part to encourage a sustainable rate of growth which will not exceed the City’s ability to provide adequate and efficient public services, create a process that fosters and promotes a balanced community with adequate housing to meet the needs of local employment and residents, encourage and promote the construction of an appropriate share of the regional need for housing, encourage and promote housing programs and activities to enable the City to meet the needs of all economic segments of the community, and promote the development and implementation of specific plans and master plans within the City. The provisions of the RDO apply to all residential development projects proposed to be constructed within the City, except for those residential development projects specifically listed as exempt under the RDO.

B. In 2014, the City Council amended the City’s Density Bonus Law (Municipal Ordinance 30.46.40) to provide incentives to developers to build additional affordable housing units for very low-income, low-income, moderate-income, and senior households in exchange for allowing developers to build more market-rate units. Additionally, through the Density Bonus Law, the City further intended to implement the goals, objectives, and policies of the City’s General Plan Housing Element, which includes a goal to encourage the provision of housing affordable to a variety of household income levels and identifies a density bonus policy as one method to encourage the development of affordable housing.

C. Pursuant to the City’s affordable housing program (the “BMR Program”), the City provides for the provision of housing units to meet the City’s need for low, moderate income and senior housing. The BMR Program assists the City in achieving the goals set forth in the housing element of the general plan, including the distribution of housing types to provide neighborhoods of ethnic and economic diversity.

D. The Program includes mortgage lenders as approved program participants and vendors due to the integral role that mortgage loan officers and lenders play in purchase and refinance transactions, first mortgage and subordinate loan officers and lenders must be approved by the



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administrator and a lender agreement will be put in place concerning BMR program compliance during loan origination, underwriting and servicing.

E. On \_\_\_\_\_ the Gilroy City Council adopted formal Below Market Rate Program Policies and Procedures (the “Policies”).

F. The City has contracted responsibility for administration of the BMR Program and monitoring compliance with the Policies to the Administrator pursuant to a Consultant Agreement.

G. The Administrator has prepared a Program Manual which further describes the BMR Program. The Council approved Policies, any applicable Resolutions, and the Program Manual, each as may be amended from time to time, are collectively referred to as the “Program Documents.”

H. The Lender desires to participate in the BMR Program by providing loans (“First Mortgage Loans”) to eligible borrowers (“Eligible Borrowers”) and by administering and servicing first mortgage applications and loans in compliance with the BMR Policies.

I. Each loan officer whether originating on a retail, correspondent or wholesale basis, must be individually registered and approved to participate in the BMR Program.

NOW THEREFORE, in consideration of the foregoing and other valuable consideration, the Parties agree as follows:

1. Program Documents. The Administrator will provide the Lender with a copy of the Program Documents. The Administrator agrees to provide the Lender with any amendments to such documents, and the Lender agrees to comply with all such documents, as they may be amended from time to time, in performing its obligations under this Agreement.

2. Agent. The Administrator hereby designates the Lender as one of the Administrator’s agents for receipt and processing of Applications for the BMR Program in accordance with this Agreement and the Program Documents. The Lender acknowledges that the City and Administrator may enter into Lender Participation Agreements with other financial institutions in connection with the BMR Program.

3. Lender Orientation/Training. As a condition to the Lender’s continuing participation in the Program, the Lender will attend any orientation and/or training programs provided by the Administrator in connection with the BMR Program.

4. Education of Potential Eligible Borrowers. The Lender will provide access to and ensure compliance with the requirements in the Program Manual for the education of BMR Program



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Applicants (“Applicants”). Additionally, the Lender must submit evidence to the Administrator that an Applicant has completed education concerning the policies and guidelines for participation in the BMR Program.

5. Eligibility Criteria. The Lender will screen prospective Eligible Borrowers for compliance with the BMR Program eligibility criteria as described in the Program Documents.

6. Applications for the BMR Program.

(a) The Administrator will provide the Lender with a BMR Program application (the “Application”) in a form approved by the City. The Lender will require that all prospective Eligible Borrowers complete the Application and provide additional information necessary to verify the Application.

(b) The Lender will review and verify the information in each Application and supporting documentation to determine whether an Applicant qualifies as an Eligible Borrower.

7. Investigation/Underwriting for First Mortgage Loan.

(a) The Lender agrees that, with respect to a First Mortgage Loan, it shall perform only such investigations and verifications of potential Eligible Borrowers that it would normally perform for a loan where a borrower was not applying for the BMR Program.

(b) The Lender’s fees for the First Mortgage Loan may not exceed fees customarily charged for mortgage loans which are not made in connection with the BMR Program.

8. Submissions to the Administrator for Program Applicants.

(a) Following the Lender’s determination that an Applicant may qualify as an Eligible Borrower, the Lender shall deliver to the City Applicant’s completed BMR Application and supporting documents, together with a copy of the proposed loan documents for the First Mortgage Loan. This includes a Loan Application Form (1003), Transmittal Summary (1008), Tri-Merge Credit Report, and an Automated Underwriting System Acceptance from Fannie Mae, Freddie Mac or another acceptable Automated Underwriting System as approved by the Administrator. The Lender must include information about any down payment assistance or closing cost assistance programs that the Applicant is seeking.

(b) Upon the Administrator’s review and approval of the BMR Application documents and the First Mortgage Loan Documents, the Administrator may, in its sole discretion, issue a Certification of Eligibility to the Applicant.

(c) Limitation of Liability. Notwithstanding any other provision of this Agreement, in no event shall the City or its Administrator be liable, regardless of whether any claim is based on



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contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

9. Lender's BMR Program Document and Down Payment Assistance Library. The Lender shall track the versions of the Resale Restriction Agreement, Program Performance Note and Program Performance Deed of Trust and identify each Lender approved version with an identification number. The Lender shall maintain a library of available down payment assistance and closing cost assistance programs from Federal, State, and Local (County and City) sources. This includes both government and nongovernment entities. Lender must identify each program using a program number referenced during correspondence with the Administrator. The Lender shall educate potential Applicants about suitable options to ensure maximum affordability.

10. Loan Officer BMR Application Pipeline. The Loan Officer must maintain a pipeline of Applicants and submit a report ("the Pipeline Report") no less than once per week to an email address designated by the Administrator. The Pipeline Report shall include a BMR Application ID Number, Last Name, Loan Number, Loan Amount, Interest Rate, Loan Program, all details regarding lock expiration date, date of underwriter approval and date of initial disclosures and the date of the appraisal order. The Loan Officer also shall submit all loan approval documentation and conditions to the Administrator to enable the Administrator to monitor the progress of each loan transaction submitted by Loan Officer.

11. Escrow Company. Lender must open escrow with an approved escrow officer and escrow company. During sale transactions, the Preliminary Change of Ownership Report must properly identify each Below Market Rate Unit as a transfer subject to governmentally imposed restrictions. Escrow instructions on loan transactions must comply with Program Documents.

12. Loan Servicing and Administration. Lender agrees to authorize the City and the City's Administrator to communicate with the Master Servicer and/or Sub Servicer on any loans that reach a default status. If a Notice of Default is filed on a subject property with a recorded Resale Restriction, notice will be immediately provided to the City and communication with the City will be authorized.

13. Lender's Performance.

(a) The Administrator shall periodically review Lender's performance under this Agreement, including but not limited to the number of loans originated, loan performance, types of loans made to Eligible Borrowers, including the servicing of first mortgages made on homes with Below Market Rate Resale Restrictions. In the event the Administrator determines that the



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Lender has not satisfactorily performed its obligations under this Agreement, the City shall provide written notice of Administrator's determination to the Lender. If, in the City's reasonable judgment, the Lender has not remedied this situation within sixty (60) days of the City's notice, the City may automatically terminate this Agreement by written notice to the Lender.

(b) This Agreement is applicable to all City first-time homebuyer programs. The participating Lender will adhere to the City Below Market Rate Program loan processing time lines and perform business in a professional manner at all times, and comply with any applicable standards of NMLS, California Bureau of Real Estate (BRE), California Department of Business Oversight (DBO) and any other applicable state and/or federal laws.

14. Term.

(a) This Agreement shall continue until terminated for any reason by either the City, Administrator, or the Lender upon sixty (60) days prior written Notice to the other Parties. The City or Administrator may terminate this Agreement effective as of the date of the written Notice to the Loan Officer. in the event of Lender's failure to comply with any provision of this Agreement. In the event of any termination, the Lender may no longer participate in or make First Mortgage Loans in connection with the City's first-time homebuyer programs.

(b) Any termination of this Agreement shall not affect (i) the City's Completed Eligibility Approval, or (ii) any outstanding Resale Restriction Agreement.

15. Amendments. This Agreement may be amended only by a written amendment executed by the City, Administrator and the Lender.

16. Notices. Any notice or other communication shall be effective only if in writing and given by delivering the Notice in person, by sending it first class mail or certified mail with a return receipt requested or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

To Administrator:

HouseKeys, Inc.  
City of Gilroy BMR Program Administrator  
409 Tennant Station #495  
Morgan Hill, CA 95037

To City:

City of Gilroy



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Attn.: Housing and Community Development Division  
7351 Rosanna Street  
Gilroy, CA 95020

To Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Nondiscrimination. In the performance of this Agreement, the Lender covenants and agrees not to discriminate against any employee of, any City employee working with, or applicant for employment with, Lender or against any person seeking services from Lender in accordance with this Agreement, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status)..

18. Americans with Disabilities Act. The Lender acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Lender shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Lender agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Lender, its employees, agents or assigns will constitute a material breach of this Agreement.

19. Loan Officer Participation Fee. The Lender agrees that each Loan Officer participating in the BMR Program must pay an initial participation fee of Three Hundred Fifty Dollars (\$350). For each subsequent year, the Lender agrees that each loan officer will pay a Three Hundred Fifty Dollars (\$350) annual renewal fee. All fees paid by the Lender on behalf of the loan officer and/or by the loan officer shall be non-refundable.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the Parties have executed this Affordable Lending Participation Agreement as of the Effective Date.



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**LENDER:**

LENDER NAME

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

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

Title: \_\_\_\_\_

**ADMINISTRATOR:**

HOUSE KEYS, Inc.

By: \_\_\_\_\_  
Julius Nyanda, Chief Executive Officer