

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549
Attn: City Manager

[Fee Exempt – Gov't Code § 27383]
(Space above for Recorder's Use)

**OCCUPANCY AND RESALE RESTRICTION AGREEMENT WITH
OPTION TO PURCHASE**

by and between

**THE CITY OF LAFAYETTE,
a municipal corporation**

and

[Dated _____, 20__ for reference purposes only]

Owner: _____

Address of Home: _____

Income Category of Owner: _____

Purchase Price of Home ("Owner's Base Price"): \$ _____

Median Income on Agreement Date: _____

This CITY OF LAFAYETTE OCCUPANCY AND RESALE RESTRICTION AGREEMENT WITH OPTION TO PURCHASE ("Resale Agreement") is made and entered into as of _____, 20__, by and between the CITY OF LAFAYETTE, a municipal corporation ("City") and _____ ("Owner").

RECITALS

A. City and AE Realty Holdings LLC, a California limited liability company ("Developer") have entered into that certain Lafayette Woodbury Highland Inclusionary Housing Agreement, dated as of November 7, 2017, ("Agreement") which provides for, among other things, the creation of a total of fifteen (15) affordable housing condominium units on certain real property located within the City of Lafayette ("Affordable Units") subject to certain conditions, including the terms and conditions of this Resale Agreement.

B. Owner intends to purchase certain property located in the City of Lafayette, and more particularly described in the attached Exhibit A attached hereto and incorporated herein ("Home"). The Home is one of the Affordable Units.

C. The Owner is a Qualifying Household in the Income Category applicable to the Home, as set forth above.

D. The Owner has agreed to execute and comply with this Agreement in consideration of the Developer's agreement with the City to sell the Home to the Owner at an affordable price which is below the current fair market value of the Home.

E. The purpose of this Agreement is to place resale controls on the Home. This Agreement also provides the City an option to purchase the Home at a restricted price, given in consideration of the economic benefits to the Owner resulting from the purchase of the Home at a below market price under the City's Inclusionary Housing Program.

E. The Owner is receiving a first mortgage loan (the "First Mortgage Loan") from _____ (the "First Lender"). The First Mortgage Loan is secured by a deed of trust dated _____, 200__, executed by the Owner in favor of First Lender and recorded in the County of Contra Costa on _____, 200__, and assigned Recorder's Serial No. _____ (the "First Mortgage Deed of Trust").

F. This Agreement shall be secured by a deed of trust on the Home (the "City Deed of Trust"). This Resale Agreement and the City Deed of Trust shall be subordinate to the lien of the First Mortgage Deed of Trust.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND UNDERTAKINGS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, DEVELOPER AND CITY DO HEREBY COVENANT AND AGREE FOR THEMSELVES, THEIR SUCCESSORS AND ASSIGNS AS FOLLOWS:

1. Definitions of Certain Terms. As used in this Resale Agreement, the following words and terms shall have the meaning as provided in the Recitals or in this Section 1, unless the specific context of usage of a particular word or term may otherwise require:

1.1 AMI. The term "AMI" means the area median income for Contra Costa County, California adjusted for family size appropriate for the Unit by the State of California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, and California Health and Safety Code Section 50093.

1.2 Low Income Household. The words "Low Income Household" shall mean persons and families whose income does not exceed eighty percent (80%) of the then-current area median income of the County of Contra Costa adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, and Health and Safety Code Section 50093, as this section may hereafter be amended from time-to-time by the State of California. In no event, however, shall the stated threshold for a Low Income Household be, for purposes of this Agreement, less than eighty percent (80%) of the then-current area median income of the County of Contra Costa.

1.3 Moderate Income Household The words "Moderate Income Household" shall mean persons and families whose income does not exceed one hundred twenty percent (120%) of the then-current area median income of the County of Contra Costa adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, and California Health and Safety Code Section 50093, as it may be amended from time-to-time. In no event, however, shall the stated threshold for a

Moderate Income Household be, for purpose of this Agreement, less than one hundred twenty percent (120%) of the then-current area median income of the County of Contra Costa.

1.4 Qualifying Household. The words “Qualifying Household” shall mean the household of any Unit within the Project who shall, at the commencement of the occupancy of a Unit, have an income that does not exceed the Qualifying Household Income applicable to such Unit, as provided in this Resale Agreement.

1.5 Qualifying Household Income. The words “Qualifying Household Income” shall mean in the case of the Home, household income that, at the commencement of the occupancy of a Unit, does not exceed the income of a Low Income Household or Moderate Income Household, as applicable to the Home.

1.6 Unit. The term “Unit” shall mean one (1) of the Affordable Housing Units.

2. Description of Property. This Agreement concerns the real property in the City of Lafayette, State of California located at _____, which is more fully described in Exhibit A attached hereto and incorporated in this Agreement by reference (the "Home").

3. Owner Covenants and Certifications; Owner Occupancy Requirement.

A. 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.

B. The Owner for itself, its heirs, successors and assigns, hereby covenants and agrees that during the Term of this Agreement the Home shall be occupied by the Owner as its principal residence, and that the Home shall, except as otherwise permitted by this Agreement, be reserved for sale, use and occupancy by the Owner and/or for another Qualifying Household as a successor-in-interest who purchases the Home for not more than the Maximum Allowable Sales Price. The Owner shall be considered as occupying the Home if the Owner is living in the Home for at least ten (10) months out of each calendar year. The Owner, for itself, its heirs, successors and assigns, further covenants and agrees that, during the Term of this Agreement, the completion of any resale or Transfer of the Home to a successor-in-interest shall be subject to City approval. The Owner shall provide an annual written certification to the City that the Owner is occupying the Home as his or her principal place of residence.

4. Leasing of Home. The Owner shall not lease the Home to another party. Any lease in violation of this Agreement is prohibited, and shall be a default under this Agreement and the City Deed of Trust.

5. Maintenance and Insurance Requirements. The Owner, for itself, its successors and assigns, hereby covenants and agrees that:

A. The interior and exterior areas of the Home shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. In the event that at any time during the Term of this Agreement, there is an occurrence of an adverse condition on any area of the Home in contravention of the general maintenance standard described above, (a "Maintenance Deficiency") then the City shall notify the Owner in writing of the Maintenance Deficiency and give the Owner at least thirty (30) days from the date of such notice to cure the Maintenance Deficiency as identified in the notice.

In the event the Owner fails to cure or commence to cure the Maintenance Deficiency within the time allowed, the City may thereafter, without providing further notice of default, conduct a public hearing following transmittal of written notice thereof to the Owner ten (10) days prior to the scheduled date of such public hearing in order to verify whether a Maintenance Deficiency exists and whether the Owner has failed to comply with the provision of this Section 5A. If, upon the conclusion of a public hearing, the City makes a finding that a Maintenance Deficiency exists and that there appears to be non-compliance with the general maintenance standard, as described above, thereafter the City shall have the right to enter the Home (exterior areas only) and perform all acts necessary to cure the Maintenance Deficiency, or to take other action at law or equity the City may then have to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency as authorized by this Section 5A shall become a lien on the Home. If the amount of the lien is not paid within thirty (30) days after written demand for payment by the City to the Owner, the City shall have the right to enforce the lien in the manner as provided in Section 5B.

B. The parties hereto further mutually understand and agree that the rights conferred upon the City under Section 5A expressly include the power to establish and enforce a lien or other encumbrance against the Home in the manner provided under Civil Code Sections 2924, 2924b and 2924c in the amount as reasonably necessary to restore the Home to the maintenance standard required under Section 5A, including attorneys' fees and costs of the City associated with the abatement of the Maintenance Deficiency and the collection of the costs of the City in connection with such action. In any legal proceeding for enforcing such a lien against the Home, the prevailing party shall be entitled to recover its attorneys' fees and costs of suit. The provisions of this Section 5, shall be a covenant running with the land for the Term of this Agreement and shall be enforceable by the City in its discretion, cumulative with any other rights or powers granted by the City under this Agreement or applicable law.

C. 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). Additional insurance requirements are set forth in Section 5 of the City Deed of Trust.

6. Restrictions on Resale/Transfer of the Home. Any Transfer or resale of the Home will be subject to the provisions of this Agreement including, without limitation, the City Option described in Section 12 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, or an interest evidenced by a land contract by which possession of the Home is transferred and Owner retains title. Any

Transfer without satisfaction of the provisions of this Agreement is prohibited. Transfers by devise or inheritance to an existing spouse, domestic partner, or a spouse as part of a dissolution proceeding, or in connection with marriage, shall not be considered a Transfer for the purposes of this Agreement. A transfer to children of the Owner where the income of such children exceeds the income requirements of a Qualifying Household, shall give rise to the option in favor of the City to purchase the Home as described in Section 12.

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"). 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 this Agreement. The Owner's Notice of Intent to Transfer shall include the information necessary for the City to determine the Maximum Allowable Sales Price of the Home, including the following information:

- (1) the address of the Property;
- (2) the date of purchase of the Home by the Owner;
- (3) the purchase price of the Home paid by the Owner at the time of his/her purchase;
- (4) the date on which Owner intends to vacate Home;
- (5) the date Home will be placed on the market; and
- (6) the name and phone number of the person to contact to schedule inspection of the Home by the City.

B. 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) not earlier than ten (10) business days following the date of the Owner's Notice of Intent to Sell, the Owner shall allow the City, or its designee, to inspect the Home to determine its physical condition;
- (2) if the Home is vacant, the Owner shall maintain utility connections until the close of escrow on the Transfer;

8. City Response to Owner's Notice of Intent to Transfer. The City shall respond in writing (the "First City Response Notice") to the Owner's Notice of Intent to Transfer within ten (10) business days following City receipt of a complete Owner's Notice of Intent to Transfer that includes all information required under Section 7 above. The First City Response Notice shall inform the Owner of the following information: (1) the maximum qualifying income for an Eligible Purchaser; (2) the certifications required of an Eligible Purchaser; and (3)

the Maximum Allowable Sales Price the Owner may receive for the Home, calculated by the City pursuant to Section 10 below.

9. Owner Acknowledgement of City Response Notice. No later than ten (10) business days following the date of the First City Response Notice, the Owner shall acknowledge in writing to the City that he/she has received the City Response Notice and still intends to Transfer the Home.

10. Determination of Maximum Allowable Sales Price for Restricted Sales. If the Owner sells to an Eligible Purchaser during the Term of this Resale Agreement, the maximum sales price (the "Maximum Allowable Sales Price") that the Owner shall receive from the Eligible Purchaser for purchase of the Home shall be the Indexed Price, but in no event greater than the Unrestricted Fair Market Value.

A. Indexed Price. The "Indexed Price" of the Home means the Owner's Base Price, increased by an amount equal to the percentage of increase in AMI from the date of the original purchase of the Home by the Owner to the date of receipt by the City of the Owner's Notice of Intent to Transfer, and, where applicable, adjusted pursuant to subsection (2) below to reflect the value of capital improvements or the cost of deferred maintenance. The AMI as of the date of this Agreement is shown on the first page of this Agreement.

(1) Where applicable, the Indexed Price shall include an upward adjustment reflecting the value of any substantial structural or permanent fixed improvements which the Owner has made to the Home after purchase of the Home. No such adjustment shall be made except for improvements: (a) made or installed by the Owner which conform with applicable building codes; and (b) that conform to Federal Housing Quality Standards, as set forth in 24 C.F.R. §982.401, as they may be amended from time to time. Capital improvements meeting the above requirements are referred to herein as "Eligible Capital Improvements." The adjustment to the Indexed Price for Eligible Capital Improvements shall be limited to appraised increases in value to the Home as a result of the improvements (pursuant to an appraisal performed as described in Section 12A below), including any depreciation in value of the capital improvements since the time of installation, and not the cost of construction of the improvements to the Home.

(2) The Indexed Price shall include a downward adjustment, where applicable, in an amount necessary to repair any violations of applicable building, plumbing, electric, fire or housing codes or any other provisions of the City Building Code..

B. Unrestricted Fair Market Value. In certain circumstances it may be necessary to determine the fair market value of the Home (the "Unrestricted Fair Market Value"). These circumstances include: (1) where the parties wish to determine if the Maximum Allowable Sales Price exceeds the Unrestricted Fair Market Value in order to determine the Maximum Allowable Sales Price pursuant to Section 10; (2) where the Owner is selling the Home to a Market Purchaser (defined below) at an unrestricted price pursuant to Section 13; and (3) where the Owner wishes to refinance the First Mortgage Loan as described in Section 24

below. If it is necessary to determine the Unrestricted Fair Market Value of the Home, it shall be determined by a certified MAI or other qualified real estate appraiser approved in advance by the City. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. The cost of the appraisal shall be shared equally by the City and the Owner, unless the appraisal is obtained for sale to a new Market Purchaser, or unless the appraisal is necessary because the Owner wishes to refinance the First Mortgage Loan pursuant to Section 24 below, in which event the Owner shall pay the cost of the appraisal. Nothing in this section shall preclude the Owner and the City from establishing the Unrestricted Fair Market Value of the Home by mutual agreement in lieu of an appraisal pursuant to this section.

C. Holdback for Damage Repair Cost. If the City finds that the Owner, through neglect, abuse, or lack of adequate maintenance, has damaged the Home, the City may require that reasonable repairs be made at the Owner's cost prior to sale or through the escrow for the sale of the Home.

11. Sale of Home to Eligible Purchaser at Restricted Price. Following receipt of the First City Response Notice notifying the Owner of the Maximum Allowable Sales Price, the Owner may proceed to sell the Home in compliance with the following requirements:

A. Marketing Period. The Owner shall have two hundred forty (240) days from the date of the First City Response Notice (the "Marketing Period") to market the Home and find an Eligible Purchaser. During the Marketing Period, the Owner shall use bona fide good faith efforts to sell the Home to an Eligible Purchaser in compliance with this Section 11, including listing the Home on the Multiple Listing Service, keeping the Home in an orderly condition, making the Home available to show to agents and prospective buyers, and providing buyers with Eligible Purchaser requirements, including income qualifications and the City's form of disclosure statement summarizing the terms of the buyer's resale and occupancy agreement with City option to purchase that will have to be executed by a Proposed Purchaser. A proposed purchaser ("Proposed Purchaser"), who the Owner believes will qualify as an Eligible Purchaser, shall be referred to the City for an eligibility determination.

B. Eligible Purchaser. A Proposed Purchaser shall qualify as an "Eligible 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 Home 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 Home for the duration of the Term 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 resale and occupancy agreement with City option to purchase.

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

C. Maximum Allowable Sales Price and Closing Costs. The purchase price for the sale of the Home by the Owner to the Proposed Purchaser shall not exceed the Maximum Allowable Sales Price calculated by the City pursuant to Section 10 above, as set forth in the First City Response Notice. The Maximum Allowable Sales Price shall not include closing costs paid by the Proposed Purchaser. The closing costs paid by the Proposed Purchaser shall not exceed reasonable and customary buyers' closing costs in the County of Contra Costa.

D. Disclosure and Submittals. 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 acceptable to the City and any other supporting documentation requested by the City, which may include but shall not be limited to State and Federal income tax returns from the Proposed Purchaser for the previous three (3) years. 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 resale of the Home. 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, (c) escrow costs and charges, (d) Realtor broker fees and any other resale costs, charges 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 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 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 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 and occupancy agreement and City option to purchase and an executed deed of trust from the Proposed Purchaser in forms provided by the City. The recordation of the new deed of trust and buyer's resale and occupancy agreement and City 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 Home, the escrow number, and name, address, and phone number of the escrow officer.

(7) Such other relevant information as the City may reasonably request.

If, following City's review of the documents and materials above, City reasonably determines that the Proposed Purchaser is income-qualified as an Eligible Purchaser and that the resale of the Home will fulfill the terms and conditions of this Agreement, the City shall deliver a written acknowledgment to the Owner and Proposed Purchaser indicating its approval of the resale of the Home to the Proposed Purchaser and thereafter, the Proposed Purchaser may acquire the Home subject to the satisfaction of all terms and conditions of this Agreement.

Upon the close of the proposed sale, Owner and Proposed Purchaser shall provide to City certified copies of the recorded City deed of trust and buyer's resale agreement, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

E. Failure To Locate Eligible Purchaser: Notice to City. If, despite bona fide good faith marketing efforts, the Owner is unable to locate an Eligible Purchaser satisfactory to City during the Marketing Period and any extensions to the Marketing Period granted by the City, the Owner shall provide written notice to the City of this fact (the "Owner's Notice of Failure to Locate Eligible Purchaser"). Within thirty (30) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser, the City shall provide a second response notice to the Owner (the "Second City Response Notice") stating either (1) that the City will exercise the City Option to purchase the Home pursuant to Section 12 below, or (2) that the Owner may Transfer the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, at Unrestricted Fair Market Value (supported by an MAI or other qualified appraisal), but shall pay all Excess Sales Proceeds to the City as set forth in Section 13 below.

12. City Purchase Option.

A. Exercise of Option. If the Owner desires to Transfer or vacate the Home during the Term of this Resale Agreement but fails to locate an Eligible Purchaser to purchase a Home at or below the Maximum Allowable Sales Price, the City shall then have the option to purchase the Home (the "City Option") for the City Option Purchase Price, as defined

below. The City Option may be exercised by the City in the Second City Response Notice (as described in Section 11E above, to be sent by the City to the Owner within thirty (30) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser) or within thirty (30) days of City's receipt of Owner's Notice of Intent to Transfer if the forty-five (45) year period from the date of purchase of the Home by the Owner has lapsed. If the City exercises the City Option, the City shall purchase the Home within seventy-five (75) days of the date of the City notice to exercise the City Option. The City may, instead of purchasing the Home itself, assign its right to purchase the Home pursuant to the City Option to another public agency, a nonprofit corporation, or to an Eligible Purchaser. In the event of exercise of the City Option and purchase of the Home by the City or its designee, the Owner shall permit a final walk-through of the Home by the City in the final three (3) days prior to close of escrow on the Transfer.

B. City Option Price. If the City exercises the City Option, the purchase price to be paid by the City (the "City Option Purchase Price") shall be the Maximum Allowable Sales Price, calculated in accordance with Section 10 of this Resale Agreement.

13. Unrestricted Sales. If the Second City Response Notice or other City notice states that the City will not exercise the City Option or the City or its designee fails to purchase the Home within seventy-five (75) days following the date of the City notice to exercise the City Option, the Owner may proceed to Transfer the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, for Unrestricted Fair Market Value of the Home (supported by an MAI or other qualified appraisal). In the event that the Owner Transfers the Home to a Market Purchaser, the Owner shall pay all Excess Sales Proceeds to the City as set forth in Section 14 below.

If the Owner Transfers the Home pursuant to this Section 13, the Market Purchaser shall not be required to execute a buyer's resale and occupancy agreement with City option to purchase, and the City shall reconvey and release the liens of this Agreement and the City Deed of Trust from the Home, provided that the Owner pays the Excess Sales Proceeds to the City pursuant to Section 14 below prior to said reconveyance and release. 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. 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, (c) escrow costs and charges, (d) real estate brokerage fees and any other resale costs, charges 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, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

14. Payment to City of Excess Sales Proceeds. If the Owner Transfers the Home at Unrestricted Fair Market Value pursuant to Section 13 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 ninety percent (90%) of the amount by which the Unrestricted Fair Market Value for the Home exceeds the Maximum Allowable Sales Price for the Home (in the amount that was stated in the First City Response Notice). This amount shall be a debt of the Owner to the City, secured by the 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. The Owner and the City acknowledge that the formula for calculation of the amount of Excess Sales Proceeds due from the Owner to the City is intended to cause the Owner to receive the same net sales proceeds (following payment by Owner of a standard broker's commission) from sale of the Home at an unrestricted price to an Market Purchaser as the Owner would receive from sale of the Home to the City or to an Eligible Purchaser at the Maximum Allowable Sales Price.

15. 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, and such failure continues for a period of sixty (60) days following written notice by the City;

(3) The Owner makes a Transfer in violation of this Agreement;

(4) The Owner otherwise fails to comply with the requirements of this Agreement and such violation is not corrected to the satisfaction of the City within ten (10) days after the date of written notice by the City to the Owner of such violation; or

(5) A notice of default is issued under First Mortgage Loan or other financing secured by the Home.

(6) A lien or mortgage is recorded against the Home, without prior approval of the City.

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:

(1) Declare all Excess Sales Proceeds immediately due and payable without further demand and invoke the power of sale under the City Deed of Trust;

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

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

(4) Exercise the City Purchase Option Upon Default as described in Section 17 below.

16. Notice of Default and Foreclosure. In the event that Owner breaches any of the terms and conditions of this Agreement, City shall send written notice to Owner demanding that Owner cure said breach within thirty (30) days of the date of City's notice. If Owner fails to cure such breach within thirty (30) days after the delivery of the City a notice (or where the breach is of the nature which cannot be cured within such 30-day period, Owner fails to commence to cure such breach within the same 30-day period, City shall be entitled to declare Owner to be in default of this Agreement ("Default") and shall send written notice of such declaration of Default to Owner.

A request 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 Contra Costa 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, and may exercise its rights as provided in Sections 15 and 17.

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. 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.

If the City failed to file the request for notice of default, the City's right to purchase the Home shall commence from the date a notice of default is given by the City to the Owner.

17. Purchase Option Upon Default. Notwithstanding, and in addition to, the remedies provided the City in Section 16, and the City Option provided to the City in Section 12, the Owner hereby grants to the City the option to purchase the Home following written notice by the City to the Owner of the declaration of a Default by the City under this Agreement. This option to purchase is given in consideration of the economic benefits received by the Owner resulting from ownership of the Home made possible by the City.

The City shall have thirty (30) days after a Default is declared to notify the Owner and the First Lender of its decision to exercise its option to purchase under this Section 17. Not later than ninety (90) days after the notice is given by the City to the Owner of the City's intent to exercise its option under this Section 17, the City shall purchase the Home for the City Option Price, payable in cash or by assuming existing debt and paying the balance in cash, calculated in the manner set forth in Section 12B.

During the term of this Agreement, the City shall have the right (but not the obligation) to bid on the purchase of any mortgage loan lien secured by the Home at the time of any trustee foreclosure sale or any judicial foreclosure sale. This City right is separate and distinct from the Default Purchase Option described above and no other provisions of this Section 17 shall limit or invalidate City's rights contained in this paragraph.

18. Nonliability of the City

A. No Obligation to Exercise Option. The City shall have no obligation to exercise any option granted it under this Agreement. In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its option to purchase under Sections 12 and 17 nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

B. 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.

C. Indemnity. 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 or the Deed of Trust; or (2) the failure at any time of any of Owner's representations to the City to be true and correct.

19. 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 not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Owner when added to the proceeds paid or credited to the creditor exceed the Maximum Allowable Sales Price. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to the City in consideration of the benefits received by the Owner through purchase of the Home made possible by the City.

Notwithstanding any other provision of this Agreement to the contrary, the obligation to pay City excess foreclosure proceeds pursuant to this Section 19 shall survive the termination of this Agreement until City has received payment in full of any excess foreclosure proceeds to which City is entitled under this Section 19.

20. 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 the Maximum Allowable Sales Price calculated pursuant to Section 10 above.

21. 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 earlier of (i) forty-five (45) years from the date of purchase of the Home by Owner, or (ii) the date of Transfer of the Home to the City or another purchaser for Unrestricted Fair Market Value in compliance with this Agreement (the "Term").

22. 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.

23. Subordination. Notwithstanding any provision herein, this Agreement shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Home in compliance with Section 24 of this Agreement.

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 and (ii) the City shall not have cured the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender, (iii) the City shall not have exercised its option to purchase the Home pursuant to Section 17 above within such sixty (60)-day period and then proceeded diligently to cure the default within sixty (60) days of acquiring title to the Home.

24. Negative Amortization Loan; Refinance of First Mortgage Loan; and Further Encumbrance of Home.

A. The Owner covenants and agrees not to enter into any negative amortizing loan or any loan that has a significant built in payment increase, ie. interest only loan, or hybrid adjustment rate mortgage.

B. The City agrees to promptly upon request execute and deliver any documents reasonably requested to subordinate this Agreement and the City Deed of Trust to a deed of trust securing a refinanced First Mortgage Loan provided that, following such refinance, the principal amount of all debt secured by the Home will not exceed the greater of the outstanding principal balance of the refinanced First Mortgage Loan or ninety-five percent (95%) of the Indexed Price of the Home, determined in accordance with Section 10A above.

C. The Owner covenants and agrees: (i) not to place any mortgage or deeds of trust on the Home without obtaining prior written consent of the City; and (ii) that the total principal amount of all debt secured by the Home shall not exceed ninety-five percent (95%) of the Indexed Price of the Home, determined in accordance with Section 10A above, unless specifically approved in writing by the City. The City and the Owner agree that the requirements of Section 24 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 24 shall constitute a Default under this Agreement.

25. 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.

26. Rights of Beneficiaries Under Deeds of Trust. This Agreement shall not diminish or affect the rights of the City under the City Deed of Trust.

This Agreement shall not diminish or affect the rights of the California Housing Finance City ("CHFA"), United States Department of Housing and Urban Development ("HUD"), the Federal National Mortgage Association ("FNMA"), or the Veterans Administration ("VA") under the First Mortgage Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Home in compliance with Section 24 above.

Notwithstanding any other provisions in this Agreement to the contrary, all of the provisions of this Agreement shall terminate and have no further force and effect upon the occurrence of one of the following events:

A. Title is acquired by CHFA, HUD, FNMA, VA, the First Lender or another party upon foreclosure of a deed of trust to the First Lender or CHFA, or a deed of trust insured by HUD or guaranteed by VA.

B. Title is acquired by another party by a deed in lieu of foreclosure of the First Lender, CHFA, or FNMA deed of trust.

27. Remedies. Upon the occurrence of an Event of Default, City shall, in addition to the remedial provisions of Section 6 as related to a Maintenance Deficiency at the Property, be entitled to seek any appropriate remedy or damages by initiating legal proceedings as follows: (i) by mandamus or other suit, action or proceeding at law or in equity, to require Developer to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of City; or (ii) by other action at law or in equity as necessary or convenient to enforce the obligations, covenants and agreements of Developer to City.

27.1. Rights and Remedies are Cumulative. The rights and remedies of City as set forth in this Section 27 are cumulative and the exercise by City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Developer.

27.2 Enforcement by Third Parties. Except for the City, which shall have the power to enforce this Resale Agreement as the successor of City, no third party shall have any right or power to enforce any provision of this Resale Agreement on behalf of City or to compel City to enforce any provision of this Resale Agreement against Developer or the Project.

28. Governing Law. This Resale Agreement shall be governed by the laws of the State of California, without regard to its conflicts of laws principles.

29. Amendment. This Resale Agreement may be amended after its recordation only by a written instrument executed by Developer and by City.

30. Attorney's Fees. In the event that a party brings an action to enforce any condition or covenant, representation or warranty in this Resale Agreement or otherwise arising out of this Resale Agreement, the prevailing party in such action shall be entitled to recover from the other party reasonable attorneys' fees to be fixed by the court in which a judgment is entered, as well as the costs of such suit. For the purposes of this Section 30, the words "reasonable attorneys' fees" in the case of City, include the salaries, costs and overhead of the lawyers employed as city attorneys of the City who provide legal counsel to City in such an action as well as any City attorney, as allocated on an hourly basis.

31. Severability. If any provision of this Resale Agreement shall be declared invalid, inoperative or unenforceable by a final judgment or decree of a court of competent jurisdiction such invalidity or unenforceability of such provision shall not affect the remaining parts of this Resale Agreement which are hereby declared by the parties to be severable from any other part which is found by a court to be invalid or unenforceable.

32. Time is of the Essence. For each provision of this Resale Agreement which states a specific amount of time within which the requirements thereof are to be satisfied, time shall be deemed to be of the essence.

33. Notice. Any notice required to be given under this Resale Agreement shall be given by City or by Developer, as applicable, by personal delivery or by First Class United States mail at the addresses specified below or at such other address as may be specified in writing by the parties hereto:

to Owner:

with copy to:

to City:

with copy to:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, California 94549
Attn: City Manager
Facsimile: (925) 284-3169

Best Best & Krieger LLP
2001 N. Main Street, Suite 390
Walnut Creek, California 94596
Attn: Malathy Subramanian
Facsimile: (925) 977-1870

Notice shall be deemed given five (5) calendar days after the date of mailing to the party, or, if personally delivered, when received by the Executive Director of City or Developer, as applicable.

IN WITNESS WHEREOF, Owner and City have caused this Resale Agreement to be signed, acknowledged and attested on their behalf by duly authorized representatives in counterpart original copies which shall upon execution by all of the parties be deemed to be one original document.

[Signatures on following pages]

SIGNATURE PAGE TO
OCCUPANCY AND RESALE RESTRICTION AGREEMENT
WITH OPTION TO PURCHASE

CITY:

CITY OF LAFAYETTE, a California
municipal corporation

By: _____

Niroop K. Srivatsa
City Manager

ATTEST:

Joanne Robbins
City Clerk

SIGNATURE PAGE TO
OCCUPANCY AND RESALE RESTRICTION AGREEMENT
WITH OPTION TO PURCHASE

OWNER:

By: _____

Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF CONTRA COSTA)

On, _____, 20__ before me, _____, Notary Public,
personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF CONTRA COSTA)

On, _____, 20__ before me, _____, Notary Public,
personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
TO
OCCUPANCY AND RESALE RESTRICTION AGREEMENT
WITH OPTION TO PURCHASE

Legal Description of the Property

[Attached behind this page]