

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE SECTION 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Toll West Coast, LLC
250 Gibraltar Road
Horsham, PA 19044
And
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
For Units, 1, 9, 13, 24 and 32

**AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND
TOLL WEST COAST, LLC**

PREAMBLE

This Affordable Housing Agreement (the "Agreement") is entered into on this 19 day of MARCH, 2018, (the "Effective Date") between Toll West Coast, LLC, a Delaware Limited Liability Company, with its principal place of business located at 250 Gibraltar Road, Horsham, PA 19044 (the "Developer"), and the City of Santa Clara, California, a chartered municipal organization, with its primary business address located at 1500 Warburton Avenue, Santa Clara, CA 95050 (the "City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The purpose of this Agreement is to increase, improve and preserve the supply of moderate income housing in the City by ensuring the Developer's construction and sale of housing affordably priced for Median Income Household(s), as defined in Section 1.c below.
- B. Developer owns certain real property (the "Project Site") located within the jurisdiction of the City, which is described in Attachment A attached hereto and incorporated herein.
- C. Developer intends to construct forty-five (45) condominium housing units ("Units") on the Project Site pursuant to the November 29, 2016, City Council land use approvals ("Project").
- D. As a condition of Project entitlement by the City, the Developer is required to designate five (5) condominium housing units, as shown on Attachment B attached hereto and incorporated herein, to be marketed and made available for sale exclusively to Moderate Income Household(s), for a below market price (the "BMP Units") that is required by the Project's conditions of approvals

and the City's Below Market Purchase Program Policies and Procedures Guidelines (the BMP Program Policies & Procedures").

- E. The BMP Units will be sold at a price not to exceed an Affordable Sales Price as defined in Section 1.b below.
- F. "Developer," for purposes of this Agreement, includes Developer and any assignee or successor in interest.

The Parties therefore agree as follows:

AGREEMENT PROVISIONS

1. DEVELOPER OBLIGATIONS.

As provided in this Agreement, in compliance with the Project conditions of approval and subject to the approval of the City, the Developer hereby designates five (5) of the units to be completed on the Project Site as BMP Units. Such BMP Units shall be the units designated as such on Attachment B attached. Developer agrees to complete the 5 BMP units (units 1, 9, 13, 24 and 32, and shall meet the following criteria:

- a. The BMP Units shall all have the standard amenities available to market rate units, including equivalent parking facilities, and shall have 3 and 4 bedrooms and 3.5 and 4 bathrooms. The BMP units shall be offered for sale by the City or its designee.
- b. The BMP Units shall be sold at the following "Affordable Sales Price":
 - i. **Unit #1, 3 bedroom/ and 3.5 Bath, Plan A \$414,000**
 - ii. **Unit #16, 4 bedroom/ and 4 Bath, Plan B \$452,000**
 - iii. **Unit #20, 3 bedroom/ and 3.5 Bath, Plan C \$414,000**
 - iv. **Unit #7, 3 bedroom/ and 3.5 Bath, Plan D \$414,000**
 - v. **Unit #28, 4 bedroom/ and 4 Bath, Plan B \$452,000**
- c. The BMP Units shall be sold exclusively to and for occupancy by persons and families whose affordable housing cost is not less than 28 percent of the gross income of the household, nor which exceeds the product of 35 percent times 100 percent of area median income adjusted for family size ("Median Income Household(s)").
- d. The BMP Units shall be marketed and made available for sale by the City or its designee to Moderate Income Households at the applicable Affordable Sales Price. The City reserves the right to use consultants as necessary to qualify eligible buyers and to market the BMP Units. Developer agrees not to engage in direct marketing of the BMP Units without prior approval of the City.
- e. Developer agrees to abide by the BMP Program Policies & Procedures, as they may be amended from time to time. A true and correct copy of the current BMP Program Policies & Procedures is attached hereto and incorporated herein as Attachment C.
- f. Unless otherwise released from this Agreement as provided herein, Developer and City agree that concurrently with the closing of the sale of each BMP Unit: (i) City and the BMP Unit buyer shall execute and record against the BMP Unit covenants substantially

in the form of Exhibit A of the BMP Program Policies & Procedures; (ii) the BMP Unit buyer shall execute a promissory note substantially in the form of Exhibit B of the BMP Program Policies & Procedures; and (iii) the BMP Unit buyer shall execute and record against the BMP Unit a deed of trust substantially in the form of Exhibit C of the BMP Program Policies & Procedures.

2. CITY OBLIGATIONS.

The City agrees to make a good faith effort to initiate marketing of the BMP Units itself or through its designee, within 30-days of the Developer providing notice to the City of completion of construction, and availability for sale, of the BMP Units. The City, at its sole discretion, may consent to a developer request to conduct earlier marketing efforts.

3. TERM OF AGREEMENT.

The term of this Agreement shall begin on the Effective Date, and shall terminate when all BMP Units have received certificates of occupancy and escrow has closed on all BMP Units, thereby transferring title to City-approved buyers. Upon such transfer of title to the BMP Units, Developer shall have no further obligations or liabilities with respect to the BMP Units, including without limitation, any responsibility for compliance by the buyer or its successors with the terms and conditions of the resale restrictions applicable to such BMP Units.

4. ASSIGNMENT OF AGREEMENT; SUCCESSORS IN INTEREST.

No interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the City, which approval shall not be unreasonably withheld.

5. RELATIONSHIP OF CITY AND DEVELOPER.

No written or verbal statement, including but not limited to this Agreement, shall be deemed or construed to create a partnership, tenancy, joint venture or co-ownership between the City and the Developer. The City shall not be responsible or liable for the debts, losses, obligations or duties of the Developer with respect to the Project Site, the Project or otherwise.

6. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties other than the record owner of title to the Project Site, and no other third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

7. FAIR EMPLOYMENT.

Developer shall not discriminate against any employee because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law in the performance of this Agreement.

8. HOLD HARMLESS/INDEMNIFICATION.

Developer agrees to defend, hold harmless and indemnify the City, its Council members, officers, employees, volunteers and agents from any claim, injury, liability, loss, cost, and/or expense or damage arising from or in any way connected with this Agreement and the performance thereof, including any

Developer shall comply with all environmental laws and environmental permits applicable to the operations of the Developer on the Project Site and the ownership or use of the Project Site and the Project, shall immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, shall keep the Project Site and Project free and clear of any environmental claims or liens imposed pursuant to any environmental law, and shall obtain and renew all environmental permits required for ownership or use of the Project Site and the Project.

During the term of this Agreement, and for any required time thereafter as set forth below, Developer shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:

- Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as set forth in Attachment E, attached hereto and incorporated herein.

This Agreement and its terms and conditions, and the Project's conditions of approval, embody the entire agreement between the Parties. No other understanding, agreements, or conversations with any officer, agent, or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. It is mutually understood and agreed that, except for the City's periodic updates of its BMP Program Policies & Procedures and related documents, no amendment to this Agreement shall be valid unless made in writing and signed by the Parties.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

Developer agrees that waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

All notices to the Parties shall, unless otherwise requested in writing, be addressed as follows:

Page 4 of 7

City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 248-3381

Developer: Toll West Coast LLC
250 Gibraltar Road
Horsham, PA 19044

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

15. GOVERNING LAW; VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, in the United States District Court, Northern District of California.

16. COMPLIANCE WITH LAWS.

Developer shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments, applicable to the Project Site and Project.

17. DISPUTE RESOLUTION.

- a. Unless otherwise mutually agreed to by the Parties, any controversies between Developer and the City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party. Submission to mediation shall be a pre-condition to filing of any litigation.
- b. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement. The costs of mediation shall be borne by the Parties equally.

18. CONFLICTS OF INTEREST.

Developer certifies that to the best of its knowledge no City employee or officer has any pecuniary interest in the business of Developer and that no person associated with Developer has any interest that would conflict in any manner or degree with the performance of this Agreement. Developer represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Developer is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not

know of any facts that constitute a violation of said provisions. Developer will advise City if a conflict arises.

19. COVENANTS RUNNING WITH THE LAND.

The Parties agree that this Agreement shall run with the land, and, subject to the terms hereof, shall bind any and all successors in interest. The Parties agree that this Agreement shall be duly recorded with the County of Santa Clara against each legal parcel associated with the BMP Units within twenty (20) days after the date the Final Map creating the separate legal parcels associated with the BMP Units is recorded.

20. COMPLIANCE WITH ETHICAL STANDARDS.

As a condition precedent to entering into this Agreement, Developer shall review Attachment F, "Ethical Standards," attached hereto and incorporated herein, and execute the affidavit attached hereto and incorporated herein as Attachment G, entitled "Affidavit of Compliance with Ethical Standards."

21. MARKET RATE UNITS.

Upon the request of the Developer, the City shall execute one or more agreements in recordable form certifying that a market rate unit within the Project is not subject to the requirements of this Agreement.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

//
//
//
//
//
//
//

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
City Attorney

ATTEST:

JENNIFER YAMAGUMA,
Acting City Clerk

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

TOLL WEST COAST, LLC
a Delaware Limited Liability Company

Dated: _____

By: _____



(Signature of Person executing the Agreement on behalf of Developer)

Name: _____
Bob Moore

Title: _____
Group President, Toll Brothers

Local Address: _____
6800 Koll Center Parkway
Pleasanton, CA 94566

Email Address: _____
RMOORE@TOLLBROTHERS.COM

Telephone: _____
925-249-6015

Fax: _____

“DEVELOPER”

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss:

COUNTY OF Alameda)

On March 19, 2018 before me, Sonia Padilla, Notary Public

Notary Public (insert name and title of the officer),

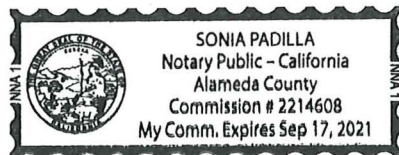
personally appeared Robert D. Moore, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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 Santa Clara)

On _____, 20____, before me, _____,
a 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)

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND
TOLL WEST COAST, LLC

ATTACHMENT A

LEGAL DESCRIPTION OF PROJECT SITE

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

TTM TRACT 10402, BEING A DIVISION OF:

PARCEL ONE:

LOT 8, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "TRACT NO. 2791 KIFER INDUSTRIAL PARK", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON OCTOBER 10, 1960 IN BOOK 126 OF MAPS AT PAGES 20 AND 21.

PARCEL TWO:

BEGINNING AT THE SOUTHEASTERLY CORNER OF LOT 8, AS SAID LOT IS SHOWN UPON THAT CERTAIN MAP ENTITLED, "TRACT NO. 2791 KIFER INDUSTRIAL PARK", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON OCTOBER 10, 1960 IN BOOK 126 OF MAPS, AT PAGES 20 AND 21; THENCE FROM SAID POINT OF BEGINNING SOUTHERLY ALONG THE EASTERLY LINE OF SAID TRACT NO. 2791, ALONG AN ARC OF A CURVE TO THE RIGHT, FROM A TANGENT BEARING SOUTH 5°05'58" WEST, WITH RADIUS OF 2960.00 FEET, THROUGH A CENTRAL ANGLE OF 0°46'39" FOR AN ARC DISTANCE OF 40.17 FEET TO A POINT IN A NORTHERLY LINE OF KIFER ROAD; THENCE SOUTH 89°17'17" WEST ALONG SAID LAST MENTIONED LINE FOR A DISTANCE OF 182.70 FEET; THENCE WESTERLY AND NORTHERLY ALONG AN ARC CURVE TO THE RIGHT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 30.00 FEET, THROUGH A CENTRAL ANGLE OF 90°42'43" FOR AN ARC DISTANCE OF 47.50 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF CORVIN DRIVE, AS SAID DRIVE IS SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE DUE NORTH ALONG SAID PROLONGATION FOR A DISTANCE OF 40.00 FEET; THENCE SOUTHERLY AND EASTERLY ALONG AN ARC OF A CURVE TO THE LEFT, FROM A TANGENT BEARING DUE SOUTH WITH A RADIUS OF 30.00 FEET, THROUGH A CENTRAL ANGLE OF 90°42'43" FOR AN ARC DISTANCE OF 47.50 FEET; THENCE NORTH 89°17'17" EAST ALONG THE SOUTHERLY LINE OF LOT 8 FOR A DISTANCE OF 186.00 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF KIFER ROAD, NOW ABANDONED, AS SAID ROAD IS SHOWN UPON THE MAP ABOVE REFERRED TO.

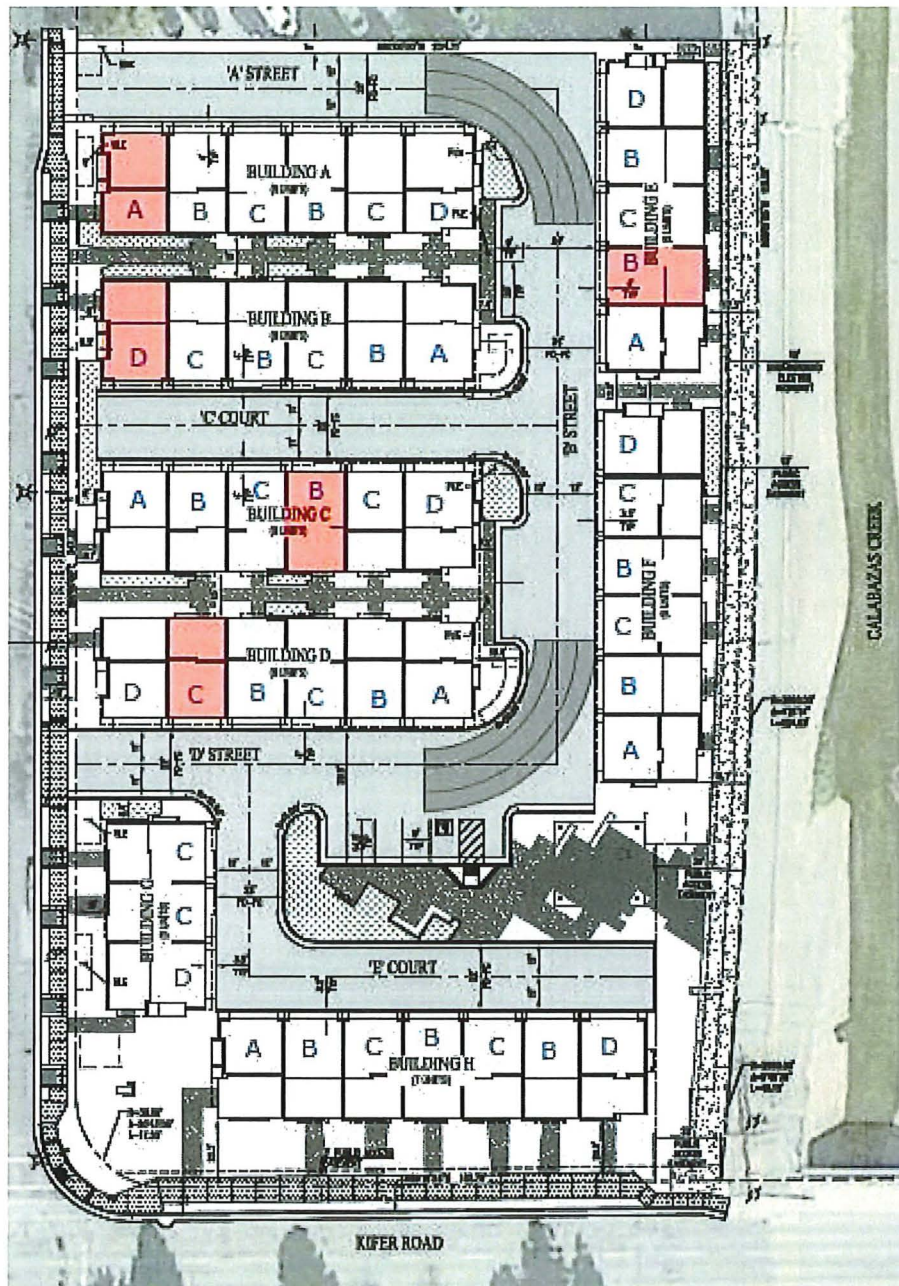
PARCEL THREE:

ALL OF PARCEL "A", AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING A PORTION OF TRACT NO. 2791, LOTS 9 AND 10," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 28, 1972 IN BOOK 305 OF MAPS, AT PAGE 30.

Assessor's Parcel No.: 216-33-001 and 216-33-030

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND
TOLL WEST COAST, LLC
ATTACHMENT B
BMP UNIT LOCATIONS

(Map Attached)



Architecture: There are total of five different plan types for the townhomes with three to four bedrooms ranging from approximately 1,350 to 1,782 square feet of living space, and each plan includes a two-car garage. The two housing styles include three- to four-story tall row townhomes with maximum peak height of approximately 45 feet. All units have a private balcony and deck. The table below details the unit mix and floor area breakdown for each floor plan type.

Unit Plans	Bedrooms	Bathrooms	Living Space	Garage/Storage	Deck
Unit A	3	2.5	1607 sf	410 sf	268 sf
Unit A (ADA)	4	3.5	1693 sf	410 sf	268 sf
Unit B	4	2.5	1551 sf	391 sf	170 sf
Unit C	3+	2.5	1782 sf	360 sf	90 sf
Unit D	3	2.5	1350 sf	365 sf	60 sf

Unit A = 7 Units

Unit B = 15 Units

Unit C = 15 Units

Unit D = 8 Units

TOTAL UNITS = 45

TOLL BROTHERS SITE PLAN 3305 KIFER ROAD

CITY OF SANTA CLARA SANTA CLARA COUNTY CALIFORNIA

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND
TOLL WEST COAST, LLC

ATTACHMENT C

BMP PROGRAM POLICIES AND PROCEDURES

(Attached hereto)



City of Santa Clara

The Center of What's Possible

Below Market Purchase Program Policies and Procedures Manual

February 9, 2016



City of Santa Clara

The Center of What's Possible

Below Market Purchase Program Policies and Procedures Manual

Table of Contents

I.	Introduction.....	2
II.	BMP Requirements for Homeownership Project.....	4
III.	Below Market Purchase Program.....	7
IV.	Guidelines for Program Eligibility.....	8
V.	Homebuyer Selection.....	9
VI.	Financing the Home Purchase.....	11
VII.	Post-Closing Activities.....	14
	Attachments and Exhibits.....	15

I. Introduction

The City of Santa Clara (City) has operated a Below-Market Price Purchase Program (BMP) since 1995 to help low- and moderate-income families achieve the goal of homeownership and to fulfill State mandates for the production of housing for all income levels.

The City updated its Housing Element in December, 2014, and the California Department of Housing and Community Development determined that the Housing Element complies with state law in February, 2015. The Housing Element includes an affordable housing policy that requires "developers of residential developments of 10 or more units to provide at least 10 percent of their units at ... or prices affordable to very low, low and moderate-income households." Specifically, for-sale housing developers are required to designate at least ten percent of the total units in an approved project as BMP units to be sold to qualified buyers.

In 2006, the City Council adopted significant enhancements to the original BMP program. To maintain long-term affordability, a twenty (20) year restrictive resale covenant (Covenant) is enforced and recorded against the property. The resale restrictions within the Covenant include:

1. If home is sold within 5 years of acquisition, the homeowner must sell the BMP unit to another income-eligible homebuyer.
2. After 5 years of ownership, the homeowner can resell the home at market price; however the City and the homeowner will share in the appreciation of the home (Appreciation Amount). The homeowner's share of any appreciation beyond the Initial Market Value (IMV) will increase by five percent per year for twenty years.
3. After the Covenant expires in twenty years, the equity sharing requirements is exhausted and the homeowner will realize full gain beyond the IMV.

In addition to the 20-year Covenant, the homebuyer must also execute a promissory note and Deed of Trust for the difference between the original BMP Affordable Sales Price (ASP) as determined by the City, and the IMV (City Loan) as defined in **Section II.F.3.a.** below. IMV is defined as the unit's unrestricted initial market value as shown in **Section II.B.** The calculation for determining the seller's pay-off obligation to the City is explained in **Section II.F.3.**

The intent of these changes is to further the City's strong commitment to producing and maintaining affordable housing while increasing the level of interest among prospective homebuyers in the BMP Program.

The BMP Program is administered by the City of Santa Clara Housing and Community Services Division, with certain functions delegated under a service contract to Housing Trust Silicon Valley (HTSV). The Division administers the City's approval process for each proposed housing development, the Developer Affordable Housing Agreement (AHA), and the agreement between the buyer and developer to purchase the unit at an affordable price

according to the Covenant. HTSV is the City's exclusive marketing agent for sale of the BMP units. HTSV also manages the homebuyer eligibility, qualification and selection process as well as facilitates the sale of the BMP units. HTSV has ongoing responsibilities for monitoring developer and homebuyer compliance with the BMP Program terms and for managing resale of the BMP units.

The Policies and Procedures describe:

- The BMP Program requirements for developers of single-family, townhome, and condominium residential projects
- The BMP Program requirements for homebuyers of BMP units
- The procedures for administration of the BMP Program and the roles of each participant in the BMP Program
- The BMP Program's documents and other useful reference material

For further information, please contact:
City of Santa Clara Housing & Community Services Division
1500 Warburton Avenue, Santa Clara, CA 95050
Phone: (408) 615-2490

Adopted by Santa Clara City Council on: February 9, 2016

II. BMP Requirements for Homeownership Projects

A. General

The BMP Program applies to any housing project of ten or more units for which an AHA was executed after July 18, 2006. Such projects include proposed new single-family detached, townhouse, or condominium developments as well as any proposed conversion of existing structures to condominiums. Each developer is required to enter into an AHA with the City.

The AHA describes the project and states current applicable zoning and land use requirements. It provides the ASP for each unit as discussed below. The AHA requires that BMP units shall be sold to eligible households whose incomes are at or below 120% of current Area Median Income.

B. Initial Market Value (IMV)

For each BMP unit, the City sets an IMV based upon an independent appraisal prior to the initial sale. The IMV reflects each unit's unrestricted initial market value. The IMV is used to establish the difference between the market value and the ASP for which the BMP unit will be sold. The IMV provides the basis for computing:

1. What the developer would owe the City if the developer chooses to pay an in-lieu fee for a fractional unit, as discussed below, and
2. The amounts that the homebuyer would owe the City if the home is resold at an unrestricted resale price, as discussed in **Section II.F.3**.

C. Affordable Sales Price (ASP)

For each BMP unit in a project, the City establishes an ASP as follows: (See **Attachment #1 Illustrative Calculation of Affordable Sales Price**)

1. Calculates the assumed household size by counting the number of bedrooms in the subject BMP unit and adding one. For example, if the unit is a two-bedroom unit, the assumed household size is three persons.
2. Ascertains the current Area Median Income (AMI) for the assumed household size based on data set annually by the U.S. Department of Housing and Urban Development and the California Department of Housing and Community Development.
3. Multiplies the applicable AMI by 35% and divides the product by 12 to derive a maximum monthly Affordable Housing Cost (AHC).
4. Converts the AHC to an ASP as follows:
 - a) Obtains the estimated amount available for first mortgage principal and interest payment by subtracting from the AHC the estimated cost of property taxes, insurance, homeowner association dues (if any), and allowances for utilities, maintenance and repairs.
 - b) Utilizing the amount available for principal and interest, calculates the maximum principal amount of the first mortgage loan that can be borrowed, assuming the interest rate for a 30-year fixed-rate mortgage

that would be reasonable for the City's housing program client base (typically first-time homebuyers).

- c) Sets the maximum sales price by dividing the first mortgage loan amount by one hundred percent minus the assumed percentage of the first mortgage that will be provided by the homebuyer as down payment. For example, if a three percent down payment is assumed, then the mortgage loan amount is divided by 97%.

In setting the ASP, the City will also consider the following:

1. Housing characteristics: Age of unit (new construction/conversion); type of unit (single-family detached/townhouse/condominium), based upon research of available comparable cost and sales price information.
2. Whether the developer will sustain a documented financial loss for basic production costs, based upon the *pro forma* that the developer has submitted to financial institutions for project financing purposes.
3. Whether the ASP exceeds the maximum sales price published by the California Housing Finance Agency.

D. In-Lieu Fee for a Fractional Unit

If the City determines that the required number of BMP units includes a fraction, the developer may either round up and provide an additional BMP unit within the project or pay an in-lieu fee for the fractional unit. The fee is determined by multiplying the fractional unit percentage (rounded to the nearest 1/10) by the difference between the initial Market Value (IMV) and the Affordable Sales Price (ASP).

For example, a developer of a 16-unit project would be required to provide 1.6 BMP units. The developer may either:

1. Round up and provide two BMP units and pay no in-lieu fee, or
2. Provide one unit and pay an in-lieu fee for the 0.6 units ($0.6 \times (\text{IMV} - \text{ASP})$).

E. Developer and City Actions

The City imposes the BMP program requirements as a condition of approval for projects receiving new land use or subdivision entitlements. Prior to the City issuing building permits for a given project, the developer and the City shall have fully executed the Affordable Housing Agreement (AHA). At the time of project approval, the City will issue a preliminary notice to HTSV. This notice will provide an estimated date for the delivery of the BMP units. It will also provide the location, size, bedroom mix, unit type (single-family, townhouse, condominium), amenities, and targeted income groups.

The Developer shall notify both the City and HTSV no less than one hundred eighty (180) days prior to the estimated occupancy of the BMP units, to enable the start of marketing and homebuyer selection process. The developer shall provide current project and unit descriptive information as a basis for preparation of marketing materials.

At least 30 days prior to start of BMP unit sales, the City shall have set the IMV based upon an independent appraisal.

F. BMP Requirements and Obligations for Homeownership

Each BMP unit is subject to a twenty-year Covenant on the unit as follows: (See form legal documents attached as **Exhibits A-C**).

1. The unit must be owned and occupied by the homeowner as their principal residence and for no other purpose. The unit, or any parts thereof, shall not be leased or rented by the homebuyer to any person or entity.
2. For the first five years after the unit is purchased, if the unit is sold, it must be sold to a household whose income does not exceed 120% of AMI. If the initial BMP homebuyer sells their unit during the first five years after the close of escrow, the homeowner must sell to a BMP- qualified new homebuyer, as required by the City, at a newly established Restricted Resale Price (RSP). The RSP shall be the ASP adjusted by any percent change in the AMI from the date of the original BMP home purchase. The City may increase the RSP to account for any individual capital improvements valued at greater than \$2,000. No amounts are owed by the homeowner to the City if the home is sold at the RSP. **Section II.C.** above indicates the method for deriving the ASP.
3. After the five-year resale restriction period ends, the homeowner may sell the home at market rate, subject to the following conditions through Year Twenty at which time, the restriction expires:
 - a) The homeowner will first pay-off the City Promissory Note held by the City. The City Promissory Note represents the difference between the ASP and the IMV that the City sets when the home is initially sold. The initial homebuyer executes the note and deed of trust in favor of the City. The City sets the IMV based upon an appraisal prior to the initial sale. If the BMP unit is sold at any time after the end of the sixtieth month after the close of escrow on the initial sale (Year Six and thereafter), the seller must pay to the City the full amount of the City Promissory Note.
 - b) The homeowner will also pay the City the lesser of:
 - i. A decreasing portion of the Appreciation Amount gained during the time of ownership. The Appreciation Amount is calculated as the difference between the IMV and the current market price at the time of resale (Unrestricted Resale Price). The homeowner pays the City a proportionate share of the Appreciation Amount that decreases at the rate of 5% per year during the 20-year term of the Note. The homeowner's share of the Appreciation Amount will increase 5% for each year the BMP unit is owned. After twenty years, the homeowner realizes the full, unrestricted appreciation amount of any equity gain in the market value of the unit, or
 - ii. Seven percent (7%) simple interest per year on the City Loan as defined above in SectionII.3.a.

Attachment #3 (Loan Payoff and Equity Share Illustration) illustrates and compares how the amounts received by the City and the homeowner would be calculated under the shared appreciation or simple interest payment alternatives. **Attachment #5** (Calculation of Interest on City Loan) illustrates the procedure for computing interest on the City Loan.

4. The owner may not refinance the first mortgage or encumber the unit without prior approval from the City. Any attempt to refinance or encumber without such approval will be considered as a breach of contract as outlined in the Promissory Note. The City, at its sole discretion, may consent to a refinancing of the first mortgage or encumbrance of the unit in hardship situations or to allow the homeowner to access lower interest rates. Any such new first mortgage must be a fixed rate mortgage with no negative amortization; the new loan amount cannot exceed the current principal payoff amount plus closing costs; the new loan must not contain balloon payments or pre-payment penalties; and the borrower shall not receive any cash out.

III. Below Market Purchase Program

A. Administration

The City has contracted with Housing Trust Silicon Valley (HTSV) to administer the BMP Program. The scope of services includes administering eligibility applications, evaluating applicants during the selection processes, providing a BMP orientation and application workshop, pre-purchase counseling, and facilitating communication between buyer and developer to ensure that sale of the BMP unit is completed. HTSV also provides on-going monitoring of units and unit resale services to the City. Housing Trust Silicon Valley can be reached at:

95 S. Market Street, Suite 610
San Jose, CA 95113
(408) 436-3450
www.housingtrustsv.org

B. Marketing

HTSV shall be responsible for preparing and implementing the BMP unit marketing plan for newly constructed and resale homes.

C. Initial Inquiries

HTSV will respond to inquiries from prospective homebuyers by providing a summary of the BMP Program, which will include the program's requirements and contact information. Housing Trust Silicon Valley will invite prospective homebuyers who express an interest in a BMP unit to complete an intake over the phone and register for the HUD Approved 8 Hour Homebuyer Education classes, the Orientation and Application Workshop, and (if needed) offer pre-purchase counseling.

The purpose of the intake form is to conduct a preliminary assessment of the prospective homebuyer's mortgage readiness and to develop a plan of action designed to move the homebuyer through the homeownership process. HTSV shall insure that interested persons receive information regarding the steps to BMP homeownership and other program materials within a reasonable time after initial contact. Interested applicants will be placed on a general interest list to receive program updates.

HTSV shall serve as exclusive marketing agent for the City. HTSV will select the buyers in accordance with the City's policies and procedures, and will facilitate in the execution of the purchase agreement between the buyer and the developer. HTSV will facilitate the close of escrow. It will perform these functions in coordination with the Developer's project sales team.

D. Verifications/Selection Process

Interested buyers will be provided an eligibility application and a copy of the deed restrictions, written description of the selection process with submittal deadlines, a flyer from the developer describing the unit, sale price, and amenities. Applicants shall be given at least a two-week period to file applications prior to any established submittal deadline. In the event there is not a qualified list of applicants, HTSV has the discretion to implement an open application process as needed by project/development.

Upon receipt of an eligibility application for the BMP Program, HTSV will meet with each prospective homebuyer to check for completeness of application and required documentation. Any missing documentation or information will result in rendering application incomplete and may not be accepted. Homebuyers are required to submit any missing documentation within 7 calendar days.

HTSV will follow the Homebuyer Selection Process outlined in Section V.

IV. Guidelines for Program Eligibility

A. Eligibility

To be eligible for the BMP Program, the household must meet all of the following criteria:

1. Have a gross household income of not more than 120% of the AMI, adjusted for household size. The maximum amount of this income for Santa Clara County is set by the U.S. Department of Housing and Urban Development and published by the California Department of Housing and Community Development in *Title 25 California Code of Regulation Section 69 30*. The AMI limits are updated and published annually. **Attachment # 2** (Income and Asset Definitions) lists the types of income that are included or excluded from gross household income.

Maximum Allowable Household Income Levels for 2015

Household Size	1	2	3	4	5	6
100% AMI	\$74,400	\$ 85,050	\$95,650	\$ 106,300	\$114,800	\$123,300
110% AMI	\$81,840	\$93,555	\$105,215	\$116,930	\$126,280	\$135,630
120% AMI	\$89,300	\$102,050	\$114,800	\$127,550	\$137,750	\$147,950

Source: California Department of Housing and Community Development, Division of Housing Policy Development, April 2015.

2. Be a first-time homebuyer, defined as an individual or individuals who meets any one of the following criteria:
 - a) An individual who has had no ownership in a principal residence during the three-year period ending on the date of purchase of the property.
 - b) An individual who is a displaced homemaker. Displaced homemaker means:
 - i. Is an adult; and
 - ii. Has not worked full-time in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and
 - iii. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.
 - c) An individual who has only owned a principal residence not permanently affixed to a permanent foundation.
 - d) Qualify to purchase a BMP unit with a fixed-rate, thirty-year conventional loan, applying prudent debt-to-income ratios for principal, interest, taxes, insurance and HOA and total debt.
 - e) Borrowers must have a minimum 640 middle FICO score.
 - f) Attend an in-person HUD approved 8-Hour Homebuyer Education Class from a designated HUD certified agency and obtain a Homebuyer Education Certificate that is less than 2 years old from the date of anticipated closing.
 - g) Attend an Orientation and Application Workshop for the BMP program, a one-on-one counseling session with Housing Trust Silicon Valley, and complete the BMP Program test.
 - h) Have less than \$100,000 in financial assets (post closing liquid and non-liquid assets). Assets accumulated under a certified down payment assistance program are excluded from this limit. **Attachment #2** (Income and Asset Definitions) defines those assets that are required to be included and those that may be excluded.
 - i) Agree to contribute a minimum of 3% of liquid or non-liquid assets to the purchase transaction.
3. Requests for approval of exceptions to eligibility criteria will be sent to the Deputy City Manager, Housing and Community Services Division in the form of a memorandum with supporting documents.

V. Homebuyer Selection

A. Qualifications

To be considered for a BMP unit, the prospective homebuyer must complete and submit a BMP eligibility application along with all required documentation. HTSV will verify compliance with all BMP program homebuyer requirements established by the City, to ensure applicant meets all applicable eligibility criteria.

HTSV will also verify the applicant's residency and employment for purposes of ranking the applicant according to the City's Priority Criteria. An applicant is required to submit to HTSV sufficient verification of residency (e.g. lease agreement, cancelled checks, utility bills, verification of rent and/or landlord affidavits). In addition, the applicant must provide HTSV with verification of employment or evidence of self-employment (E.g. copies of current paycheck stubs, complete tax returns including W2s and/or 1099s, and all schedules.) Self-employed individuals must submit year-to-date Profit & Loss Statements and a copy of an active Business license. The documents submitted will be for the time period from the eligibility application and cannot be more than 90 days old at the date of closing.

After determination of Prequalification for the BMP Program, the applicants must apply and receive a loan pre-approval determination for a first mortgage loan from an approved BMP lender. Once the household has been determined as program eligible, the household will be considered for selection of a BMP unit in accordance with the Priority Criteria and Process specified in Section IV.B. The household will receive a letter indicating program eligibility, verified priority level and minimum/maximum bedroom per household size allowed for unit purchased. The minimum/maximum bedroom per household size is determined by the Occupancy Standards. (**Attachment #8**)

B. Priority Criteria

The City Council has established the following Priority Criteria for the allocation of the BMP units as they become available to the community:

1 st Priority Level	At least one household member who both lives within the City Limits of the City of Santa Clara <i>and</i> operates a business or is employed by a business or a public or quasi-public agency in the City of Santa Clara.
2 nd Priority Level	At least one household member lives within the City Limits of the City of Santa Clara.
3 rd Priority Level	At least one household member operates a business or is employed by a business or a public or quasi-public agency in the City of Santa Clara.
4 th Priority Level	Any other qualified applicant household without regard to residency or employment.
<i>Note:</i>	<i>The qualifying household member must be the person or a dependent of a person whose name will appear on title and who will use the unit as their primary residence.</i>

HTSV will verify residency and employment of each applicant. HTSV will apply the above-described Priority Criteria to rank BMP Program applicants. Those selected for the highest priority level will be screened first and selected either through a lottery selection, if necessary, or without a lottery if the number of candidates in the priority level is less than or equal to the number of units available.

Applicant(s) must provide Valid Third-Party Documentation as described in the Eligibility Applications to support their request for the applicable Priority level. The list of program eligible buyers in a higher priority category must be exhausted before a BMP unit will be

offered to someone who in the next priority level. BMP Program Guidelines Handbook provides additional information on the selection process.

C. Lottery Policy

At the time a BMP unit within any given project is near completion, the City, directly and/or through HTSV, will advertise availability. Prospective qualified homebuyers, who indicate an interest in buying a BMP unit, will be pooled according to the priorities set forth below. If the number of interested and qualified prospective homebuyers is greater than the number of units available in any one project, a lottery will be held, administered by HTSV, to determine who will have the first opportunity to purchase.

1. Housing Trust Silicon Valley will select by lottery a "Designated Buyer" and two "Alternate Buyers" for each available unit. All "Designated Buyers" shall be selected first, followed by all First "Alternate Buyers" and then by all Second "Alternate Buyers."
 - a) If a Designated Buyer is unable to obtain financing at an affordable cost or is unable to meet program requirements to purchase the BMP unit, the next highest ranked "Alternate Buyer" will be offered the unit.
 - b) In the event that the "Alternate Buyer" is unable to purchase the BMP unit, the second highest ranked Alternate Buyer" will be offered the unit.
 - c) If no qualified applicants are able to purchase the BMP unit from the initial advertisement or notice, Housing Trust Silicon Valley will re-advertise the unit
2. Having one's name drawn in the lottery is not a guarantee by the City, Housing Trust Silicon Valley, or the BMP unit developer that the selected household will be able to avail itself of the opportunity to purchase a BMP unit. The prospective homebuyer must successfully complete his or her responsibilities under the purchase agreement, and, within the time constraints of the purchase agreement and the BMP Program, must obtain all financing needed to close the transaction.
3. Failure of the homebuyer to perform such requirements shall result in disqualification from the program. Application and qualification for a BMP unit in one housing development are not transferable to another housing development. A new application must be submitted for each development in accordance with the time constraints and application procedures as published for each development by the City and/or Housing Trust Silicon Valley.

Prior to any selection, HTSV may, if requested, review with City staff any application that was disqualified.

VI. Financing the Home Purchase

Each homebuyer is responsible for arranging and qualifying for the mortgage financing that is required to purchase the BMP unit. The first mortgage must be a thirty year fixed-rate mortgage.

The proposed financing package is subject to review by HTSV. Such package may

include first-time homebuyer loan assistance, other subordinate financing offered by other public agencies and/or nonprofit entities. **Attachment #4** (Purchase Application) indicates the documents that must be submitted for review.

A. Approved BMP Lenders

The City has designated lenders as BMP Approved Lenders. This list is provided as a courtesy by the City of Santa Clara's Housing and Community Services Division. The City does not limit participation in its BMP program to the lenders on this list.

1. Homebuyers are free to select any lender they choose. Non- approved lenders must obtain participation approval from the City of Santa Clara and Housing Trust Silicon Valley prior to the acceptance of a non-approved lender pre-approval letter.
2. Pre-approval letters from non-approved lenders will not be accepted until the lender has acknowledged receipt and review of the all BMP documents (Below Market Purchase Program Promissory Note, Below Market Purchase Program Deed of Trust and Security Agreement, Below Market Purchase Program Covenants, Restrictions and Options to Purchase, Lender Instructions to Escrow, and the BMP Policies and Procedures, BMP Program Guidelines Handbook) by the company's legal and underwriting departments.
3. Lender must submit a letter on company letterhead that confirms their review and acceptance of all the BMP documents for full loan approval and requests participation in the Program, to Housing Trust Silicon Valley, 95 S. Market Street, Suite 610, San Jose, CA 95113.

B. Financing Requirements

The following financing requirements apply both at the time of home purchase, and to any subsequent refinance:

1. Total encumbrances (liens, mortgages, loans or debts of any kind secured by the home) may not amount to more than 97% of the home's maximum (restricted) BMP home price, or actual appraised value, if less than the BMP price, at the time the encumbrance is incurred (when the loan is made to home buyer/owner). Therefore, the combined loan-to-value (CLTV) ratio on a BMP home may not exceed 97% of the then-current BMP home price as determined by HTSV. Liens include tax liens, court judgments, and other non-voluntary liens imposed by any party.
 - a) No mortgage or other residential loan secured by a BMP home (including home equity loans or lines of credit, etc.) may include any of the following terms or rates; prepayment penalty, balloon payments, negative amortization (such as interest-only payments, etc.), and/or adjustable and/or non-prime interest rate.
2. Home equity lines of credit (HELOCs) are prohibited
3. Front and back ratios may not exceed the limits set forth above in the Affordability Standards subsection of the BMP Program Guidelines Handbook, using the ratios corresponding to the borrower's actual income level at time of loan application.

4. All first mortgage loans must be provided by a conventional residential lender with standard underwriting and loan servicing capabilities.
5. For purchase transactions, the first mortgage loan cannot be below 70% loan-to-value.

C. Execution of BMP Home Purchase Agreement

Upon completion of the selection process, HTSV will arrange for execution of a Purchase Agreement between the developer and the approved buyer. The Purchase Agreement will be subject to the buyer completing the arrangements for financing the home purchase, and the sale price shall be the ASP set by the City. The Purchase Agreement shall also reference IMV and the amount of the City Promissory Note. The Purchase Agreement shall be accompanied by a Purchase Application (**Attachment #4**) and the Affirmative Buyer Disclosure & Acknowledgment of Below Market Purchase Unit (**Attachment #6**), signed by the buyer, disclosing the Covenant and the amount and terms of the City Promissory Note. Prior to proceeding with close of escrow, HTSV must review the proposed financing package. **Attachment #4** (Purchase Application) indicates the financing documents that must be submitted for review.

D. One-on-One Counseling

Applicants must attend an in-person BMP Homebuyer One-on-One Counseling session at the office of Housing Trust Silicon Valley (HTSV), at which the Below Market Purchase (BMP) Program is explained and the applicants have an opportunity to ask any questions.

The applicants will receive and review sample copies of Promissory Note, Deed of Trust, and the Below Market Purchase Program Covenants, Restrictions and Option to Purchase collectively forming the BMP Program Loan Documents. Applicants will also complete the Verification of Homebuyer Awareness and Comprehension of the City of Santa Clara Below Market Purchase (BMP) Program Resale, Refinancing, and Affordability Restrictions.

Applicant will acknowledge that completion of the BMP Homebuyer One-on-One Counseling session is not a guarantee of final program approval.

E. Close of Escrow

HTSV is responsible for coordinating the close of escrow with the title company, the developer, the City, the lender(s), and the homebuyer. The City shall provide HTSV with Escrow Instructions to transmit to the Title Company. HTSV will ensure that real estate purchase and financing documents are executed correctly and are recorded in the following order of priority:

1. First Deed of Trust for first mortgage lender
2. Second Deed of Trust for a down-payment assistance loan or other subordinate financing offered by other public agencies and/or non-profit entities, if applicable
3. Covenants, Restrictions, and City Option to Purchase
4. Deed of Trust securing the City's Promissory Note

5. Deed(s) of Trust securing other secondary financing, if applicable
6. Requests for Notice on the City loan(s)

VII. Post-Closing Activities

A. Reports to County Assessor

The County Assessor has indicated that the base year value for real property tax purposes shall be the restricted price established by the government agency (the ASP for homes purchased under the City of Santa Clara's BMP Program). No later than May 1 of each year, HTSV shall prepare and provide to the City and

the County Assessor an annual BMP report. This report will indicate for each BMP unit transaction recorded during the previous 12 month period, the APN and property address, the buyer(s) name, the ASP amount, and the terms and restrictions of the transactions. The Escrow Officer shall provide the County Assessor with a change of ownership form with each sale or resale of a BMP unit.

B. Post Purchase Counseling and Compliance Monitoring

HTSV shall provide post purchase counseling services for each homebuyer. HTSV is also responsible for ongoing administration of the BMP Program, including:

1. Facilitating resale of BMP units to eligible households at a RSP during the five-year resale restriction period;
2. Monitoring compliance with BMP requirements;
3. Reviewing requests for refinancing of the BMP units; and
4. Calculating payoff demands for any BMP unit that is to be resold at market value, after expiration of the resale restriction period and until the twenty-year restriction period expires.

Attachments and Exhibits

Attachments:

1. Illustrative Calculation of Affordable Sales Price
2. Income and Asset Definitions
3. Loan Payoff/Equity Share Illustration
4. Purchase Application
5. Calculation of Interest on City Loan
6. Affirmative Buyer Disclosure and Acknowledgment of Below Market Purchase Unit
7. Verification of Homebuyer Awareness and Comprehension of the City of Santa Clara Below Market Purchase (BMP) Program Resale, Refinancing and Affordability Restrictions
8. Occupancy Standards
9. Document Checklist

Exhibits:

- A. Covenants, Restrictions and Option to Purchase
- B. City Promissory Note
- C. Deed of Trust and Security Agreement
- D. Request for Notice
- E. Lien Servicing Agreement
- F. Escrow Instructions

Attachment #1
Illustrative Calculation of Affordable Sales Price
(behind this page)

Attachment #1

Illustrative Calculation of the Affordable Sales Price

(Please note that these are illustrative only, and may not represent the actual costs, fees or mortgage rates actually applied to a particular unit or project.)

The calculation in this Attachment is based on the following definition of household size: The defined household size is equal to one person greater than the number of bedrooms in the unit

Assumptions for calculating the Affordable Sales Price (ASP):

1. Unit Size = _____
2. Family Size = _____
3. Interest Rate* = _____
4. Property taxes and assessments (per month) = _____
(based on actual tax rate with value based on the Affordable Sales Price (ASP) of the unit)
5. Actual insurance premiums (per month) = _____
(if not included in homeowners' association dues)
6. Property maintenance and repair (per month) ** = _____
(if not included in homeowners' association dues)
7. Project's budgeted homeowners' association dues (per month)
= _____
8. Utility allowance (per month)*** = _____
9. Mortgage insurance premium, if any = _____

**The interest rate shall be based upon a 3% down, 30-year, fully amortizing fixed rate mortgage that would be reasonable for the City's housing program client base (typically first-time homebuyers).*

*** Amount is obtained from the City's Department of Planning and Inspection.*

**** Amount is obtained from the Housing Authority of the County of Santa Clara's most recent schedule of allowances for tenant purchased utilities.*

Attachment #1 (cont.)

Illustrative Calculation of the Affordable Sales Price

(This is only an example and may not be reflective of the home you select. This is used for illustrative purposes only.)

I. Calculate monthly Affordable Housing Cost:

\$106,300.00 ((100% of Area Median Income adjusted for family size (4 person household /3 bedroom unit))

X .35

\$37,205 (Affordable Housing Cost cannot exceed 35% times 100% of Area Median Income)

divided by 12 (To calculate the monthly Affordable Housing Cost)

\$3,100 (As this hypothetical illustrates, no family with an income of 110% of Area Median Income with a family size of 4 shall spend more than \$3,410 per month, as of the date hereof, on the sum of the items which make up the Affordable Housing Cost).

II. Calculation of the maximum amount to be spent on principal and interest of all mortgage loans:

A. **\$3,100** (Maximum monthly Affordable Housing Cost) less:

B. (-330) Property taxes and assessments (per month)

C. (-100) Insurance premiums (per month)

D. (-200) Utility allowance (per month)

E. (-300) Mortgage insurance premiums (per month)

F. (-200) Property maintenance and repair (per month)

G. (-450) Homeowners' association dues (per month) equals:

H. **\$1520**_____Maximum Monthly Mortgage Payment

III. Calculation of Affordable Sales Price: The ASP is calculated by adding the Maximum Monthly Mortgage Amount to the down payment. The Maximum Mortgage Amount will be based upon a 3% down, 30-year, fully amortizing fixed rate mortgage at an interest rate that would be reasonable for the City's housing program client base (typically first- time homebuyers). The calculation is as follows:

1. At a 4.5 % interest rate, and a loan term of 30 years, the Maximum Monthly Mortgage Payment (H.) of \$ 1520 will allow a Maximum Mortgage Amount of \$ 300,071____
(Note: The above step requires the use of a financial calculator.)
2. The Maximum Mortgage Amount of \$ 300,071_____divided by .97 (for an assumed 3% down payment) equals the Affordable Sales Price of \$ 370,021_____

Attachment #2
Income and Asset Definitions
(behind this page)

Attachment #2

Income and Asset Definitions

Determine Gross Income:

1. In calculating gross income, the applicant shall present evidence of all household income including that of the applicant, and other individuals who have and will share the same dwelling unit or will share in ownership of the unit. All household income shall be considered as set forth below:
 - a. Gross pay in the case of an employee, as determined by the employer before any payroll tax or other deductions are taken, whether voluntary or involuntary; and including salaries, overtime pay, commissions, fees, tips, and bonuses; and/or
 - b. Net income from the operation of a professional business, the production and/or sale of goods, or the provision of a service as determined by calculating the average net income as reflected in the venture's federal income-tax return for the past three years; and/or
 - c. Interest, dividends, and other net income derived from any kind from real or personal property; and/or
 - d. The full amount of periodic payments actually received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment in lieu of a periodic payment; and/or
 - e. Payments in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance. Although such payments may be excluded by the first mortgage lender for underwriting purposes, they shall be included in determining the applicant's eligibility for the BMP Program; and/or
 - f. Periodic and determinable allowances such as alimony and child support payments, regular contributions or gifts received from persons not residing in the home; to the extent that such payments are reasonably expected to continue; and/or
 - g. All regular pay, special pay and allowances due to an applicant or other household resident as a member of the Armed Forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit; and/or
 - h. Any earned income tax credit to the extent it exceeds income tax liability; and/or
 - i. Any other income that must be reported for federal and State Income tax purposes.
2. The following household income shall not be counted in the determination of gross household income:
 - a. Payments received for the care of foster children;
 - b. Amounts specifically excluded by any federal or state statute from consideration as income;
 - c. Casual, sporadic, or irregular gifts;
 - d. Amounts that are paid specifically for meeting medical expenses or are reimbursements for medical costs incurred;

- e. Lump-sum supplements to family assets such as an inheritance, insurance payment (including payments under health care or accident insurance and Worker's Compensation); and settlement payments for personal injury or property losses.
Note: Although not considered income, these payments will be considered in estimating total household assets, and may result in a determination that total assets exceed qualifying limits.
 - f. Payments for educational scholarships made directly to the student or to the educational institution, including amounts paid by the government to veterans to cover the cost of tuition, fees, books, and equipment.
3. The applicant shall be required to provide federal and State income-tax returns for the prior three years and verification of current income in order to establish eligibility for the program.

Determine Assets:

The applicant shall not possess liquid or non-liquid assets in excess of \$100,000, excluding assets accumulated under a certified down payment assistance program.

- 1. For purposes of the BMP program, the following types of assets shall be considered in determining eligibility:
 - a. Cash savings;
 - b. Marketable securities, stocks, bonds, and other forms of capital investment, including tax-exempt securities *other than individual, tax-deferred retirement accounts*;
 - c. Inheritance or lump-sum insurance payments already received;
 - d. Settlements for personal or property damage already received;
 - e. Equity in real estate, except as stated below; and
 - f. Personal property that is readily convertible to cash.
- 2. The following are *not* considered assets:
 - a. Ordinary household effects, including furniture, fixtures, and personal property;
 - b. Automobiles used for personal use;
 - c. Depreciable property used in a business that generates a significant portion of household income; and
 - d. Individual tax-deferred retirement accounts.

Attachment #3
Loan Payoff/Equity Share Illustration
(behind this page)

Attachment #3

Equity Share and 7% Simple Interest Illustration

The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	\$500,000
Less Affordable Sales Price at time of initial sale equals Principal amount of City Note	\$385,000
	\$115,000

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

	<u>Year Resale Occurs</u>		
	6	10	15
Assumed Unrestricted Resale Price	\$600,000	\$675,000	\$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	500,000	500,000	500,000
Appreciation Amount	\$ 95,000	\$167,500	\$240,000
City's Equity Share			
(20-6)/20 times the Appreciation Amount	(\$66,500)		
(20-10)/20 times the Appreciation Amount		(\$83,750)	
(20-15)/20 times the Appreciation Amount			(\$60,000)
<i>Seller's Equity (Appreciation Amount less City's Share)</i> <i>(Seller gets 5%/yr increase in shared Appreciation Amount)</i>	\$28,500	\$83,750	\$180,000

OR

7% Simple Interest Illustration*:

Appreciation Amount	\$95,000	\$167,500	\$240,000
7% simple interest (\$115,000 principal)	(\$48,300)	(\$80,500)	(\$120,750)
<i>Seller's Equity (Appreciation Amount less City's Interest)</i>	\$46,700	\$87,000	\$119,250
Principal amount of City Note	\$115,000	\$115,000	\$115,000

*Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.

It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.

Attachment #4
Purchase Application
(behind this page)

Attachment #4

**City of Santa Clara
Below Market Purchase Program
Purchase Application**

Please complete and submit this form to Housing Trust Silicon Valley within 10 days of making an offer to purchase a BMP home with all listed documents below.

Applicant Name: _____

Applicant Phone#: _____ Email: _____

Lender

Name: _____ Company: _____

Phone # _____ Fax# _____ E-mail _____

Title Company Name _____ Escrow Officer Name: _____

Escrow#: _____ Phone#: _____

Home Information _____ Purchase Price \$ _____

Developer/Seller: _____ Date Purchase Contract signed: _____

The following documentation must be attached:

- _____ Signed Purchase Application
- _____ Signed Buyer/Seller accepted Purchase and Sale agreement
- _____ 1003 Fannie Mae Form/Freddie Mac Form 65 (Uniform Residential Loan Application) /
- _____ 1008 Fannie Mae Form/Freddie Mac Form 1077 (Uniform Underwriting Transmittal Summary)
- _____ Senior Lender loan commitment letter or equivalent
- _____ Evidence of other proposed Non-City subordinate financing (CalHFA, Teacher or MCC, etc.) **if applicable**
- _____ Copy of Property Appraisal
- _____ Preliminary Title Report (no more than 60 days old)
- _____ Signed Affirmative Buyer Disclosure & Acknowledgment of Below Market Purchase Unit
- _____ Wiring Instructions from Title Company
- _____ \$500 Non-Refundable check or money order made out to Housing Trust Silicon Valley

Primary Applicant Signature

Date

Please submit to Housing Trust Silicon Valley
95 S. Market Street, Suite 610, San Jose CA 95113
408.436.3450 Homeownership Program Department

Attachment #5
Calculation of Interest on City Loan
(behind this page)

Attachment #5

Calculation of Interest on City Loan

The method for calculating interest on the City BMP Program Loan is as follows:

Step 1 -- Multiply the City loan amount by the annual interest amount and by the number of whole calendar years during the period that the loan is outstanding.

Step 2 -- For each fractional year during the loan period, divide the number of partial year days by 360, then multiply the result by the loan amount times the annual interest rate.

Step 3—Add *Step 1* and *Step 2* totals to obtain total interest that the borrower(s) owe the City.

Example -Loan that closes March 31, 2015 and is repaid June 30, 2025

Step 1 - \$40,000 loan amount x 7% x 9 calendar years (2016-2024)	=\$25,200
Step 2 - For Fractional Year 2015 – (270 days/360) x \$40,000 x 7%	=\$2,100
For Fractional Year 2024 - (180 days/360) x \$40,000 x 7%	=\$1,400
Step 3 - Total of Step 2 and Step 3 Amounts	=\$28,700

Attachment #6
Affirmative Buyer Disclosure & Acknowledgement
of Below Market Purchase Unit
(behind this page)

Attachment #6

**AFFIRMATIVE BUYER DISCLOSURE
& ACKNOWLEDGEMENT OF BELOW MARKET PURCHASE UNIT**

**RESALE, REFINANCING & AFFORDABILITY RESTRICTIONS
PRIOR TO PURCHASE**

RECITALS

I/We Mr. Jose S. Public and Mrs. Clara S. Public

Currently residing at 1156 N. Fourth Street, San Jose, CA 95112-4944

the ("DESIGNATED BUYER(S)") who have been allowed an opportunity by the City of Santa Clara, ("CITY") to qualify to purchase the dwelling located at 1500 Civic Center Drive, Santa Clara, CA 95050 which has been designated by the CITY as a Below Market Purchase Unit (the "BMP UNIT").

I/We have been informed by the CITY and their non-profit administrator, Housing Trust Silicon Valley (HTSV) that the City has required the developer of the development project ("the DEVELOPER") to provide this dwelling (the BMP UNIT) at a sales price that is significantly lower than the other market rate units in the development.

I/We fully understand that without the CITY'S assistance, I/we would not otherwise have the ability to purchase this dwelling (the BMP UNIT) with the same favorable terms or at the Affordable Sales Price noted by the CITY.

I/We fully understand and have been informed by the CITY and Housing Trust Silicon Valley of the following facts related to the opportunity provided to purchase the dwelling (the BMP UNIT):

1. The unrestricted Initial Market Value (IMV) of the dwelling based on a recent appraisal is \$425,000
2. I/We are being allowed the opportunity to qualify to purchase the dwelling (the BMP UNIT) at the reduced sales price of \$385,000 (the "Affordable Sales Price recorded as the official transaction price)
3. This represents a reduction of \$ 40,000 from the Initial Market Value;
4. I/We will sign a Promissory Note payable to the City for this amount (\$40,000) and it will become a separate subordinate loan obligation and must be paid to the CITY with interest, if the dwelling (the BMP UNIT) is sold for a price higher than an Affordable Sales Price after the five-year resale restriction period (discussed in Item 8 below) expires.

Attachment #6 (cont.)

5. The Appreciation Amount of the dwelling (the BMP UNIT) after 5 years of ownership is the difference of the Initial Market Value (IMV) appraised at
 - a. \$425,000 and the future unrestricted market value determined at the time of resale.
6. The interest that must be paid to the City based on the City Promissory Note is the lesser of either 7% simple interest or a decreasing share of the Appreciation Amount due to the City calculated at a rate of -5% per year of ownership.

Example A: In addition to the Promissory Note Value of \$ 40,000 after 6 years the City could receive interest equal to 70% of the Appreciation Amount gained above the Unrestricted Initial Market Value [100% of the equity - (6 years X 5%/year) = 70%) or 7% simple interest \$ 16,800 , whichever is less.

Example B: After 20 years, the City would receive only the Promissory Note Value of \$ 40,000, because the equity share would be less than 7% simple interest. [100% of the equity - (20 years X 5%/year) = 0%]

7. I/We fully understand if I/we sell the dwelling (the BMP UNIT) during the first 5 years that I/we will not be able to sell the unit at a full market price because the Resale, Refinance, and Affordability Restrictions I/we will be signing give the City a right to buy the BMP UNIT (or designate another qualified buyer to buy the BMP UNIT) at a reduced purchase price that equals the Affordable Sales Price I/we paid adjusted overtime in accordance with the City's BMP Procedures. If the City or another designated buyer purchases the unit at the Affordable Sales Price, the City will forgive the City Promissory Note and I/we will not have to pay the \$ 40,000 to the City.
8. I/ We fully understand that only improvements that are consistent with the City's BMP Procedures and of at least \$ 2,000 in value will be eligible to increase the Affordable Sales Price of dwelling (the BMP UNIT) during the first 5 years of ownership.
9. I/ We fully understand that the original primary mortgage loan of \$ 300,000 used to purchase this property may not be refinanced without prior written approval from the City and that it may only be replaced with a loan of equal or lesser value.
10. I/We fully understand that I/we must live in the dwelling (the BMP UNIT) until the end of the Resale, Refinancing, and Affordability Restrictions (i.e. 20 years from the date of purchase) or the property is sold, whichever comes first.

Attachment #6 (cont.)

11. I/We fully understand that the Santa Clara County Tax Assessor will use the restricted value of the dwelling (the BMP UNIT) as represented in the Affordable Sales Price of \$385,000 to calculate property taxes for the property and that this amount may be adjusted by the Santa Clara County Tax Assessor as allowed by California Law.

Prior to close of escrow, I/we acknowledge that I/we have read and fully understand and comprehend this disclosure and the buyer documents provided by the CITY and Housing Trust Silicon Valley (Attachments _____ thru _____). I/We have no reservations regarding the terms or conditions that limit our use and ability to resell or refinance the dwelling during the effective 20 year term of the Resale, Refinancing and Affordability Restrictions. I/We accept the terms and conditions noted in these documents.

Accepted: 1500 Civic Center Drive Designated Buyer(s)

Jose S. Public

Buyer #1 Printed Name

Buyer #1 Signature

Date:

Clara S. Public

Buyer #2 Printed Name

Buyer #2 Signature

Date:

Return Original to HTSV to be placed in BMP File with Copies of all Attachments
Provide 1 Copy to Buyer with Copies of all Attachments
Provide 1 Copy to City of Santa Clara with Copies of all Attachments

Attachment #7

Verification of Homebuyer Awareness & Comprehension of the City of Santa
Clara Below Market Purchase (BMP) Program
Resale, Refinancing, & Affordability Restrictions

(behind this page)

Attachment #7

Verification of Homebuyer Awareness & Comprehension of the City of Santa Clara Below Market Price Program Resale, Refinancing, and Affordability Restrictions

This is a test of your understanding of the City of Santa Clara (CITY) Below Market Purchase (BMP) Program and the Resale, Refinancing, & Affordability Restrictions that will apply to the dwelling you may be given the opportunity to purchase. You must understand the concepts noted in each question and be able to answer all the questions correctly or you will not be allowed to purchase the designated BMP Unit.

1. What is the address of the dwelling (the BMP UNIT) that I may be given the opportunity to purchase? _____.
2. Given my/our current financial circumstances, I/we would not otherwise have the ability to purchase the BMP UNIT with the same favorable terms or at the Affordable Sales Price (ASP) noted by the CITY. True or False? _____.
3. The Initial Market Value (IMV) of the dwelling without the CITY's Resale, Refinancing, and Affordability Restrictions based on an appraisal is \$ _____.
4. I/We are being allowed the opportunity to qualify to purchase the BMP UNIT at the reduced sales price of \$ _____ which is also referred to as the ASP and this is the official recorded transaction price.
5. The difference between the Initial Market Value and the Affordable Sales Prices is \$ _____.
6. The eventual buyer of the BMP UNIT will record a second Promissory Note payable to the CITY and it will become a separate loan from the primary mortgage loan used to purchase the unit and must be paid to the CITY with interest, if after the five-year resale restriction expires, the dwelling is sold for a price higher than the allowed Affordable Sales Price. What is the amount that will be on the City Promissory Note and when must it be paid to the CITY with interest? _____.
7. What is the Affordable Sales Price? \$ _____.
8. In addition to the value on the City Promissory Note, what is the interest that must be paid to the CITY if the he BMP UNIT is sold for a price higher than the Affordable Sales Price?
_____.
9. Can improvements made to the BMP UNIT during the first 5 years of ownership be used to adjust the Affordable Sales Price? If so what is the minimum value of the improvements eligible? _____.
10. Can the original mortgage loan used to purchase this property be refinanced and if so for what amount? _____.
11. Can I rent out the dwelling (the BMP UNIT)? _____.

Attachment #7 (cont.)

12. What is the transaction price used by the Santa Clara County Tax Assessor to calculate property taxes for this property? _____.

COMPLETED BY:

Buyer #1 Printed Name Buyer #1 Signature Date: _____

Buyer #2 Printed Name Buyer #2 Signature Date: _____

**HOUSING TRUST SILICON VALLEY VERIFICATION OF HOMEBUYER COMPREHENSION
OF THE SANTA CLARA BMP PROGRAM RESALE, REFINANCING, & AFFORDABILITY
RESTRICTIONS**

HTSV Representative Signature Date: _____

.....
Return Original to HTSV to be placed in BMP File with Copies of all Attachments
Provide 1 Copy to Buyer with Copies of all Attachments
Provide 1 Copy to City of Santa Clara RDA with Copies of all Attachments

Attachment #8
Occupancy Standards
(behind this page)

Attachment #8

Occupancy Standards

To determine the size of BMP home (number of bedrooms) an Applicant may be eligible to purchase, the number of people in his/her household, and their age, gender and familial relationships (siblings, couples/spouses, parent, child, etc.) are considered.

The maximum occupancy allowed in a BMP home is two people per bedroom, plus one additional person. The minimum allowed is no less than one person per bedroom, however couples and/or household members (particularly young siblings) of similar age and same gender may be required to share a bedroom. Reasonable accommodations to these standards may be requested in the case of medical or disability needs, and will be considered on a case-by-case basis.

Number of Bedrooms in BMP Home	Minimum Household Size	Maximum Household Size
One	1	3
Two	2	5
Three	3	7
Four	4	9
Five	5	11

Some households may qualify for a range of bedroom sizes (e.g., a 3-person household may qualify for a 1-, 2- or 3-bedroom home), depending on specific household characteristics, and may choose to buy whichever sized home they prefer, among those for which they qualify, assuming they can afford the home's price. Program staff will review household composition details provided in Eligibility Applications and notify Applicants in their initial Eligibility Determination letter what home sizes they are eligible to buy.

If Applicant's household size and/or composition changes between date of Eligibility Application and date of Application to Purchase (according to information provided in Applications), Applicant may be determined to qualify for a different home size(s) than that stated in initial Eligibility Determination Letter.

Attachment #9
Document Checklist
(behind this page)

Attachment #9

Document Transmittal Checklist

Lender/Mortgage Broker Name_____ Contact_____

Phone #_____ Fax#_____ E-mail_____

Title Company Name_____ Escrow Officer Name_____

Phone #_____ Purchase Price_____

Items Required for BMP Program or First-Time Homebuyer Program Commitment, Funding and Close of Escrow

1. Signed original of Homebuyer Program Application
2. Two current pay stubs
3. Signed purchase and sale agreement
4. Current appraisal*
5. Preliminary title report (no more than 45 days old)
6. Freddie Mac Form 65/Fannie Mae Form 1003 (Uniform Residential Loan Application)
7. Freddie Mac Form 1077/Fannie Mae Form 1008 (Uniform Underwriting Transmittal Summary)
8. Federal income tax returns for past three years
9. Senior lender loan commitment letter or equivalent
10. Evidence of other proposed non-City financial commitments (CalHFA, Teacher MCC, regular MCC, HTSCC \$6,500, HomeVenture Fund, etc.) if applicable
11. Statement indicating vesting, correct corporate name of beneficiary and trustee (page 1 of 1st deed of trust, if available), and estimated close of escrow date
12. Certificate of completion of homebuyer training course
13. Wiring Instructions (First-Time Homebuyer Program Only)

*May be submitted after FTHB loan commitment is issued but at least 7 days before close of escrow.

Exhibits

Exhibits:

- G. Covenants, Restrictions and Option to Purchase
- H. City Promissory Note
- I. Deed of Trust and Security Agreement
- J. Request for Notice
- K. Lien Servicing Agreement
- L. Escrow Instructions

Exhibit A
Covenants, Restrictions and Option to Purchase
(behind this page)

COMPLIMENTARY RECORDING
REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

Recording Requested by and
When Recorded Mail To:
CITY OF SANTA CLARA
1500 Warburt.on Avenue
Santa Clara, California 95050
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

BELOW MARKET PURCHASE PROGRAM
COVENANTS, RESTRICTIONS
AND OPTION TO PURCHASE

This agreement, entitled Covenants, Restrictions and Option to Purchase (the "City Covenants") is entered into as of this DATE, by and between the City of Santa Clara (the "City") and OWNER (the "Owner").

RECITALS

WHEREAS, the City has determined that it is desirable to encourage the purchase of homes by Moderate Income Households; and,

WHEREAS, the City has established a Below Market Purchase Program to assist Moderate Income Households; and

WHEREAS, concurrently with the execution of these City Covenants, Owner is purchasing the Residence for a purchase price that is affordable to Owner in accordance with a certain Affordable Housing Agreement (the "AHA") by and between the City and DEVELOPER dated DATE OF THE AGREEMENT. Without the benefits afforded by the City's BMP Program, the purchase price of the Residence would exceed the amount that is affordable to Owner; and,

WHEREAS, accordingly, in order to preserve the affordability of the Residence for Moderate Income Households, and in return for and in consideration of the opportunity for the Owner to purchase the Residence under the above-referenced circumstances and for other good and valuable consideration, the receipt and legal sufficiency of which the undersigned hereby acknowledges, the Owner, has agreed to execute these City Covenants; and,

WHEREAS, these City Covenants place certain use restrictions on the Residence, establish resale controls with respect to the Residence, and reserve to the City an option to purchase or designate an

Eligible Purchaser to purchase the Residence from the Owner in order to provide for the continued availability of the Residence to Moderate Income Households.

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

1. **Definitions.** The terms set forth in this section shall have the following meanings when used herein:

“Affordable Housing Cost” shall mean a monthly housing cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence.

“Affordable Sales Price” shall mean a sales price for a Residence that is derived from the Affordable Housing Cost, as determined by the City.

“Appreciation Amount” shall mean the difference between the Initial Market Value and the Unrestricted Resale Price less the Owner’s “capital improvements” as this term is defined in these City Covenants, and which is approved by the City.

“City Covenants” shall mean these Covenants, Restrictions and Option to Purchase executed by and between the City and the Owner, of even date herewith, as amended, modified or supplemented from time to time.

“City Lien” shall mean that certain subordinate mortgage lien, made to the Owner by the City and evidenced by the City Note.

“City Lien Documents” shall collectively mean the City Note, these City Covenants and the City Subordinate Deed of Trust.

“City Manager” shall mean the City Manager of the City of Santa Clara or his/her designee.

“City Note” shall mean the promissory note from the Owner to the City, as amended from time to time, evidencing the City Lien, as amended, modified or supplemented from time to time.

“City Subordinate Deed of Trust” shall mean the deed of trust recorded against the Residence from the Owner in favor of the City, as amended, modified or supplemented from time to time, securing the City Note and these City Covenants.

“CalHFA” shall mean the California Housing Finance Agency.

“Eligible Household” shall mean a prospective purchaser of the Residence who meets the then current requirements established by the City, including, but not limited to, having a household income that does not exceed 120% of the Area Median Income.

“Fair Market Value” shall be determined by an appraisal of the Residence as provided hereunder.

“First Mortgage Deed of Trust” shall mean the Deed of Trust on the Home from the Homebuyer in favor of the First Mortgage Lender, securing the First Mortgage Lender Note.

“First Mortgage Lender” shall mean LENDER, its successors and assigns.

“First Mortgage Loan” shall mean the first mortgage loan provided by the First Mortgage Lender to the Owner and secured by the First Mortgage Deed of Trust.

“Initial Market Value” shall mean the unrestricted Fair Market Value of the Residence as determined by the City as of the date of these City Covenants.

“Moderate Income Household” shall be a household with a gross income which does not exceed one hundred and twenty percent (120%) of the Median Income, adjusted for household size.

“Area Median Income” shall mean the median gross yearly income for households in Santa Clara County, California, as published periodically by the California Department of Housing and Community Development (“HCD”). In the event such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen months, the City shall provide the First Mortgage Lender with other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD.

“Notice of Intended Transfer” shall mean the notice required under Section 5 of these City Covenants that shall specify all the terms of the intended Transfer.

“Program” shall mean the City’s Below Market Purchase Program.

“Purchase Option” shall have the meaning ascribed thereto under Section 7 below.

“Resale Restriction Period” shall mean five years from the date of these City Covenants.

“Residence” shall mean the housing unit commonly known as ADDRESS, together with the land thereon, and any subparts thereof, which is more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures the City Note, which is incorporated herein by reference.

“Restricted Resale Price” - see Section 6.

“Senior Lender” or “Senior Lenders” shall mean any of the following entities and their successors and assigns, which are the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

“Senior Loan” or “Senior Loans” shall refer to loans made by Senior Lenders to the Owner.

“Senior Loan Deeds of Trust” shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

“Transfer” shall mean any sale, assignment, transfer, encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, a lien or an interest evidenced by a land contract by which possession of the Residence is transferred and Owner retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Owner is the sole beneficiary.

“Unrestricted Resale Price” shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Agreement.

2. **Owner Representations and Warranties.** The Owner represents and warrants that:

(a) The financial and other information provided by Owner to the City, its contractors and agents, and all lenders in order to qualify to purchase the Residence is true and correct as of the date first written above;

(b) The Owner intends and shall occupy the Residence as the Owner's principal place of residence, except as otherwise provided in Paragraph (c) of Section 3 below.

3. **Owner-Occupancy.**

(a) Owner shall occupy the Residence as his or her or their primary residence, and the Residence shall be used as the primary residence of Owner and Owner's household and for no other purpose. The Residence shall not be leased or rented by Owner to any person or entity.

(b) The City shall have the right to monitor whether the Residence is Owner-occupied by requesting that Owner provide the City, not more frequently than annually, with a written certification under penalty of perjury that the Residence is Owner-occupied, accompanied by supporting documentation reasonably satisfactory to the City.

(c) These Owner-occupancy restrictions may be waived, modified or terminated only upon the prior written approval of the City Manager.

4. **Maintenance of Property.** Owner agrees it shall maintain the interior and exterior of the Residence and any landscaping on the Residence in good condition and repair and in a manner consistent with the community standards which will uphold the value of the Residence, and in accordance with all applicable City codes. Failure to maintain the Residence in accordance with this Section 4, including, but not limited to, any violations of applicable building, plumbing, electric, fire, housing or other applicable City of Santa Clara Building Codes, shall be a default by the Owner under this Agreement.

5. **Notice of Intended Transfer.** In the event Owner vacates the Residence (e.g., to use the Residence as their primary residence) or Transfer any interest therein or any portion thereof, Owner shall give the City a Notice of Intended Transfer at least ninety (90) days prior to the intended date for

vacating the Residence or executing the Transfer. Any Transfer in violation of this Section 5 or any other provision of these City Covenants is prohibited and shall be null and void.

In the case of a Transfer by sale, the Notice of Intended Transfer shall also be accompanied by a written certification by the Owner and the proposed purchaser, in a form that is reasonably acceptable to the City, that the Owner and the proposed purchaser have not paid, have no agreement to pay and will not pay, to the other such party, or to any other person, any money or other consideration in addition to the consideration described in the terms of the sale.

6. **Determination of Restricted Resale Price.** During the Resale Restriction Period, the maximum sales price that the Owner may receive from any source for any type of Transfer of the Residence ("Restricted Resale Price") shall be the lowest of the following: (a) the Increased Base Price (defined below); (b) the Fair Market Value (defined below); or (c) the Affordable Sales Price (as defined in Section 1.).

(a) **Increased Base Price.** The "Increased Base Price" means the purchase price that Owner paid for the Residence, increased by the percentage change in the Area Median Income, as published by the U.S. Department of Housing and Urban Development, from the purchase date to the date of notification stated in Section 5, above. In the event that such income determination is no longer published, or has not been updated for a period of at least eighteen (18) months, the City may use or develop such other reasonable method as it may choose to determine the Area Median Income for Santa Clara County.

The Increased Base Price shall also be adjusted for the "Value of Capital Improvements". The "Value of Capital Improvements" shall mean the value of substantial structural or permanent fixed improvements that cannot be removed without substantial damage to the Residence or substantial or total loss of value of said improvements. No such valuation shall be made except for improvements: (a) made or installed by or under the direction of the Owner; (b) with an initial cost of Two Thousand Dollars (\$2,000) or more; and (c) which can be documented by the Owner to the reasonable satisfaction of the City Manager. The value of such improvements to be taken into account in calculation of the Increased Base Price shall be the appraised market value of the improvements when considered as additions or fixtures to the Residence (i.e., the amount by which said improvements enhance the market value of the Residence at the time of sale or valuation). The adjustment to the Increased Base Price for such improvements shall be limited to the increase in value, and shall be determined by the City Manager and the Owner, or in the event of a failure to agree, by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. The cost of the appraisal shall be borne by the Owner.

(b) **Fair Market Value.** The "Fair Market Value" of the Residence shall be determined by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. To the extent possible, the appraisal shall be based on 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 borne by the Owner. In the event the Owner has made capital improvements to the Residence which have individually cost more than Two Thousand Dollars (\$2,000) and can be documented to the appraiser and which have increased the value of the Residence, or if damage or deferred maintenance have occurred while the Owner owned the Residence which have decreased the value of the Residence, the appraisal shall specifically determine the Value of Capital Improvements as set forth in Section 6.a. or the adjustment for damage and deferred maintenance and shall state what the fair market value of the

Residence would be without such value or adjustments. Nothing in this Section shall preclude the Owner and the City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal pursuant to this Section.

7. Purchase Option.

(a) As a material part of the consideration for these City Covenants, Owner covenants and agrees for itself, its successors and its assigns and every successor in interest to the Residence that for the Resale Restriction Period of these City Covenants, Owner hereby grants to the City an exclusive option to purchase the Residence or designate an Eligible Household to purchase the Residence from Owner in the event of an uncured default under the First Mortgage Loan or the City Lien Documents (subject to the First Mortgage Lender and Senior Lender's rights to cure under Section 12 herein), or upon receipt by the City of a Notice of Intended Transfer (the "Purchase Option"); provided, however, that the City shall be deemed to have waived such Purchase Option unless it gives notice to the Owner, the First Mortgage Lender and the Senior Lenders of its intention to exercise the Purchase Option within thirty (30) days, and to the extent possible, subsequently completes the purchase of the Residence within one hundred twenty (120) days from earliest of: (i) the expiration of the applicable cure period in the event of a default by the Owner under the City Lien Documents; or (ii) receipt by the City of a notice of default under the First Mortgage Loan, a Senior Loan, or a Notice of Intended Transfer.

(b) Within thirty (30) days following the exercise of the Purchase Option, the parties agree that the City shall open, or cause to be opened, an escrow with a title insurance company or such other escrow agent reasonably acceptable to the City (the "Escrow Agent") and the parties agree to execute escrow instructions with Escrow Agent as may be required by Escrow Agent, or to implement or give effect to the terms and conditions of these City Covenants. The parties agree to the following escrow terms and conditions:

(1) The escrow shall be for a period of one hundred (120) days or sooner if mutually agreed by the parties;

(2) The City agrees that it will pay, or cause to be paid by an Eligible Household designated by the City, the Restricted Resale Price upon the close of escrow or as otherwise mutually agreed to by the parties. Notwithstanding the foregoing, prior to the close of escrow, the Owner hereby agrees that the Escrow Agent shall withhold that portion of the Restricted Resale Price necessary to pay off the outstanding principal balance and interest due under the First Mortgage Loan, the Senior Loans and any outstanding liens or encumbrances against the Residence other than as due under the City Lien Documents. Any remaining funds shall be disbursed by the Escrow Agent to Owner;

(3) The Owner agrees that it shall pay the premium for a standard C.L.T.A. policy of Owner's title insurance issued by the Escrow Agent or title insurance company reasonably acceptable to the City in the amount of the Restricted Resale Price, insuring title to the Residence in the City's (or Eligible Household's, as the case may be) name, subject only to those matters approved by the City in writing. In the event the City (or Eligible Household, as the case may be) requests an A.L.T.A. policy of Owner's insurance and/or any title endorsements, the additional costs associated with the issuance of an A.L.T.A. policy or the endorsements shall be paid by the City (or Eligible Household, as the case may be);

(4) In the event the City exercises its Purchase Option, the Owner and City agree that all costs and fees charged in connection with the closing and escrow shall be borne one-half (1/2) by the City (or Eligible Household, as the case may be) and one-half (1/2) by the Owner; provided, however, in the event the City exercises its Purchase Option upon default by the Owner under the City Lien, the First Mortgage Loan or a Senior Loan, the Owner agrees to pay all costs and fees charged in connection with the closing and escrow;

(5) The Owner agrees that it shall deposit in escrow for delivery to the City (or Eligible Household, as the case may be) a grant deed to the City (or Eligible Household, as the case maybe) in such form as may be reasonably acceptable to the City Manager in his or her sole discretion);

(6) Taxes and assessments shall be prorated at the close of escrow with Owner paying all such taxes and assessments due and payable prior to the close of escrow and City (or Eligible Household, as the case may be) paying all such taxes and assessments due and payable following the close of escrow;

(7) Owner agrees that title shall be conveyed by Owner at the close of escrow to the City (or Eligible Household, as the case may be) free and clear of all mortgages, deeds of trust, liens and encumbrances. Owner agrees that any costs to remove or satisfy any mortgages, deeds of trusts, liens or encumbrances shall be the responsibility of Owner, at Owner's sole cost and expense; and

(8) Any other terms or conditions mutually agreed to by the parties.

(c) Priority of Option. The Option granted pursuant to these City Covenants shall be senior in priority to any lien or encumbrance, with the exception of the First Mortgage Loan, the Senior Loans and the documents securing such loans.

(d) 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 the exercise of, or the failure to exercise the Purchase Option.

8. Appraisal; Fair Market Value. Upon a Transfer of the Residence, the First Mortgage Lender shall conduct an appraisal of the Residence, subject to the City's right to have an independent appraisal conducted. The cost of the appraisal shall be borne by the Owner. Nothing in this Section shall preclude Owner and City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal.

9. Transfer by Owner at an Unrestricted Resale Price. If, after the expiration of the Resale Restriction Period, the Owner Transfers the Residence at an Unrestricted Resale Price, and such Transfer occurs prior to the twentieth (20th) anniversary of the date of this Agreement, the City shall be entitled to receive, and Owner shall pay to the City, an amount equal to the principal balance of the City Note. In addition to paying the entire outstanding balance of the City Note, Owner shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Agreement and the City Note until the twentieth (20th) anniversary. These obligations to pay the City shall be evidenced by a promissory note secured by a deed of trust recorded against the Residence.

10. **Restrictions on Transfer Proceeds.** The proceeds from any Transfer that ensues following the waiver or other failure by the City to exercise the Purchase Option under Section 7 above, after paying any and all superior liens and costs and fees relating to the transaction (such as any escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) the outstanding balance on the City Note; and (ii) any excess proceeds shall belong to the Owner.

11. **Default.** The occurrence of any of the following shall be deemed a default hereunder:

(a) Failure or delay by Owner to perform any covenant or agreement of the Owner under these City Covenants; or

(b) Failure or delay by Owner to perform any other covenant or agreement of the City Lien Documents or any other lien recorded against the Residence.

12. **Notice of Default; Cure Periods.**

(a) Regardless of whether any notice is given, in the event of a failure or delay amounting to a default by the Owner in the performance of any term or provision of these City Covenants or any other City Lien Document, the Owner must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence. In the event the Owner is unable or unwilling to implement the required cure, correction or remedy, the First Mortgage Lender and Senior Lenders shall have the right to cure, correct, or remedy any such default of the Owner, provided the First Mortgage Lender and Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not exercise the Purchase Option, commence foreclosure proceedings or accept a deed in lieu of foreclosure until it has given the First Mortgage Lender and Senior Lenders at least thirty (30) days' prior notice of the default in accordance with this Section 12.

(b) In the event of a non-monetary default by the Owner, the City shall give, or cause to be given, notice of default to the Owner, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in the exercise by the City of the Purchase Option pursuant to these City Covenants and such other remedies available to the City under the City Lien Documents or as provided by law; and (5) that Owner has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Owner to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Owner, the First Mortgage Lender or the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Owner, the First Mortgage Lenders or the Senior Lenders (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Owner, the First Mortgage Lenders or the Senior Lenders such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default, the Owner shall receive notice, and shall be accorded the appropriate period of time to effect a cure, in the manner and under the terms and conditions applicable to such default as provided under the City Lien Documents.

(d) Notwithstanding the cure periods established in this Section 12, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

13. **Notices.** Except as otherwise expressly provided in these City Covenants, in every case when, under the provisions of these City Covenants, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner:

To First Mortgage
Lender:

To Senior Lenders:

To City

The City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Fax: (408) 248-3381
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Binding on Successors and Assigns.** Notwithstanding any other provision of law, these City Covenants shall run with the land and shall be enforceable against the Owner and its successors in interest by the City. The requirements of these City Covenants shall remain in effect with respect to the Residence until the first to occur of the following:

- (a) The end of twenty (20) years from the date hereof;
- (b) The exercise by the City of the Purchase Option granted herein;
- (c) A Transfer of the Residence and payment to the City of the full amount due on the City Note (including principal and the equity share or accrued interest);
- (d) The acquisition of title to the Residence, by the First Mortgage Lender, a Senior Lender or other party, upon foreclosure of the First Mortgage Deed of Trust or a Senior Loan Deed of Trust;
- (e) The acquisition of title to the Residence by the First Mortgage Lender or a Senior Lender or other party by a deed in lieu of foreclosure of the First Mortgage Deed of Trust or Senior Loan Deed of Trust, as applicable.

15. **Superiority of City Covenants/Subordination.** Upon close of escrow for the purchase of this Residence and the valid recordation of these Covenants, these Covenants shall supersede and replace the AHA, any other prior document restricting the unit, and all restrictions in such document are void and of no further effect.

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, these City Covenants is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

Notwithstanding anything to the contrary contained herein, these City Covenants shall, at all times, be subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

16. **Refinance of First Lender Loan; Subordinate Loans**

- (a) **City Consent Required.** The Owner covenants and agrees not to place any additional mortgage or deed of trust, including any line of credit, on the Home without obtaining prior written consent of

the City. In the event the Owner desires to refinance the First Lender Loan, the Owner shall submit in writing to the City a Request to Refinance.

(b) **Refinance of First Lender Loan.** The City, at its sole discretion, may consent to a prepayment and refinance of the First Lender Loan and may agree to subordinate this Agreement and the City Deed of Trust to the refinanced First Lender Loan provided that the proposed refinance meets all of the requirements listed in the then-current version of the City's Below Market Purchase Program Policies and Procedures.

17. **Right To Consent To Changes, Enforce.** No changes shall be made to these City Covenants without the prior written consent of the City. Only the City, the First Mortgage Lender, a Senior Lender, the Owner and their respective successors and assigns in and to the Residence shall have the right to consent and agree to changes in, or to eliminate in whole or in part, these City Covenants or to subject the Residence to additional covenants, easements, or other restrictions without the consent of any tenant, lessee, easement holder, licensee, trustee, beneficiary under a deed of trust (other than those securing the First Mortgage Loan, a Senior Loan or the City Lien) or any other person or entity having an interest less than a fee in the Residence. These City Covenants, without regard to technical classification or designation, shall not benefit or be enforceable by any person, or firm, or corporation, public or private, except the City of Santa Clara and the Owner and their respective successors and assigns.

18. **Invalid Provisions.** If any one or more of the provisions contained in these City Covenants 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 these City Covenants, and these City Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

19. **Controlling Law; Venue.** The terms of these City Covenants shall be interpreted under the laws of the State of California. Any lawsuit brought to enforce these covenants shall be brought in the Superior Court for this County of Santa Clara, and/or the federal district courts Northern District of California, San Jose.

20. **Exhibits.** Any exhibits referred to in these City Covenants are incorporated in these City Covenants by such reference. Owner agrees that he or she has had adequate opportunity to discuss these covenants with a representative of their choosing, and fully understand and accept all obligations assumed by execution of this Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the Owner has executed these City Covenants as of the date first written above.

THE CITY OF SANTA CLARA, CA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
Interim City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

By:

Name: «Applicant»

By:

Name: «CoApplicant»

"Owner"

EXHIBIT A

RESIDENCE DESCRIPTION

[To be added]

State of California)
)
County of Santa Clara)

On _____, 20____, before me, _____,
a 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 Santa Clara)

On _____, 20____, before me, _____,
a 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 B
City Promissory Note
(behind this page)

NOTICE TO BORROWER:

This document contains provisions restricting resales and assumptions.

**BELOW MARKET PURCHASE PROGRAM
PROMISSORY NOTE**

Secured by City Subordinate Deed of Trust

Note Amount: \$XX,000.00
Loan Date: DATE

Santa Clara, California

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the CITY OF SANTA CLARA ("City") at such place as the City may designate from time to time in writing, the principal sum of \$XX,000.00 All sums hereunder shall be payable in lawful money of the United States of America.

1. **Definitions.** The terms set forth in this section shall have the following meanings in this Note.

"Affordable Housing Cost" shall mean a Monthly Housing Cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence, but in no event less than one-twelfth (1/12) of twenty-eight percent (28%) of the Borrower's actual gross income.

"Affordable Sales Price" shall mean a below-market sales price for a Residence, as **ADDRESS** determined by the City as of the date of the City Covenant.

"Appreciation Amount" shall mean the difference between the Initial Market Value and the Unrestricted Resale Price (less Borrower's "capital improvements" as this term is defined in the City Covenants and approved by the City).

"City Covenants" shall mean those certain Covenants, Restrictions and Option to Purchase entered into by and between the Borrower and the City, as amended, modified or supplemented from time to time.

"City Lien" shall mean that certain secondary mortgage lien, made to the Borrower by the City and evidenced by this Note.

"City Lien Documents" shall collectively mean this City Note, the City Covenants and the City Deed of Trust.

"City Note" or "Note" shall mean this promissory note from the Borrower to the City evidencing the City Lien to the Borrower, as amended, modified or supplemented from time to time.

“City Subordinate Deed of Trust” shall mean the deed of trust against the Residence executed by the Borrower in favor of the City, securing the City Note, as amended, modified or supplemented from time to time.

“CalHFA” shall mean the California Housing Finance Agency.

“Eligible Household” shall mean a Moderate Income Household which: (i) is defined as a first-time homebuyer in the City Covenants; (ii) intends to owner-occupy the Residence; and, (iii) meets the Program’s household income and liquid assets requirements.

“Initial Market Value” shall mean the fair market value of the Residence, as determined by the City as of the date of the City Covenants.

“Moderate Income Household” shall be a household with a gross income which does not exceed one hundred and twenty percent (120%) of the Median Income, adjusted for household size.

“Notice of Intended Transfer” shall mean the notice required under Section 4 of the City Covenants that shall specify all the terms of the intended Transfer.

“Program” shall mean the City’s Below Market Purchase Program.

“Resale Restriction Period” shall mean five years from the date of the City Covenants.

“Restricted Resale Price” shall mean that price determined by the City in accordance with the provisions in the City Covenants.

“Residence” shall mean the housing unit commonly known as **ADDRESS**, together with the land thereon and any subparts thereof, and more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures this Note.

“Senior Lender” or “Senior Lenders” shall mean any of the following entities and their successors and assigns, which is the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender, (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

“Senior Loan” or “Senior Loans” shall refer to loans made by Senior Lenders to the Borrower.

“Senior Loan Deeds of Trust” shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

“Term” shall mean the twenty (20) year period commencing upon the date of this Note.

“Transfer” shall mean any sale, assignment, transfer, or encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, 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 Residence is transferred and Borrower retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Borrower is the sole beneficiary.

“Unrestricted Resale Price” shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Note.

2. **City Lien.** This Note is made and delivered pursuant to, and in implementation of, the City’s Below Market Purchase Program, under which the City, in order to assist Borrower to purchase the Residence, is making the City Lien to Borrower in the amount set forth above. The amount of the City Lien consists of the difference between the Initial Market Value and the Affordable Sales Price for the Residence, as determined by the City as of the date of the City Covenants. Concurrently with the execution of this City Note, Borrower is executing the following instruments in connection with the purchase of the Residence:
 - (a) The City Subordinate Deed of Trust that secures this Note; and
 - (b) The City Covenants, recorded concurrently with the City Subordinate Deed of Trust.
3. **Loan Security.** This Note is secured by the City Subordinate Deed of Trust of even date herewith. Borrower shall purchase an ALTA lender’s policy of title insurance, insuring such City Subordinate Deed of Trust as a secondary lien on the Residence, with no delinquent taxes or assessment liens that appear as exceptions to title.
4. **Repayment.**
 - (a) Notwithstanding any other provision of this Note, the entire outstanding principal balance of this Note and the amount set forth in subsection (b) below, shall be due and payable upon the first to occur of the following:
 - (i) a default by Borrower under the City Lien Documents;
 - (ii) a Transfer that occurs after the expiration of the Resale Restriction Period and before the expiration date of this Note, except as otherwise provided herein;
 - (iii) payment in full of the First Mortgage Loan;

(iv) Borrower refinances all, or any part of, the First Mortgage Loan without first obtaining the written consent of the City to the proposed refinancing. City may approve or deny the proposed refinancing at its sole discretion, depending on whether the proposed refinancing would meet all the requirements listed in the then-current version of the City's Below Market Purchase Program Policies and Procedures; or

(v) twenty (20) years from the date of this Note.

(b) In addition to paying the entire outstanding principal balance of the Note, Borrower shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien commencing from the date of this Note to the date all amounts due under this Note have been repaid in full, or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Note until the maturity date of this Note. See Equity Share/Interest Payment Example attached hereto as **Attachment A**.

c) After payment of the outstanding balance of the Note and any interest or equity share, the City shall then remove or cause to be removed the City Covenants as a lien on the Residence and the City Covenants shall cease to be covenants running with the land for the Residence.

5. **Repayment Deferral/Forgiveness.** Except as provided under Section 4 above, the Borrower is not obligated to repay this Note during the Resale Restriction Period if the Residence is transferred at a Restricted Resale Price pursuant to and in accordance with the City Covenants.

6. **Exception.** The City may, at its sole and absolute discretion, permit exceptions on a case-to-case basis to the accelerated repayment provisions under paragraph (a) of the preceding Section 4 of this Note.

7. **Prepayments.** Borrower may prepay all or part of the principal balance due under this Note. If prepayment occurs after the expiration of the Resale Restriction Period and prior to transfer of the Residence, Borrower shall also pay either interest or an equity share as specified in Section 4 (b). The City shall use Fair Market Value, as defined in the City Covenants in determining the Appreciation Amount. The City Covenants shall continue to remain in full force and effect until the 20th anniversary of this Note. Borrower shall not prepay the First Mortgage Loan unless this Note is paid in full.

8. **Application of Payments.** Any payments made pursuant to the terms of this Note shall be applied first to sums, other than principal, that are due to the City pursuant to this Note, and the balance, if any, to the payment of principal.

9. **Indemnification.** Without prejudice to the rights of the City hereunder or under any other City Lien Documents, Borrower shall indemnify defend and hold harmless the City

against, and shall pay the City on demand, any expense or loss which City may sustain or incur as a result of the failure by Borrower to pay when due any installment of principal, interest, fees, or other amounts payable to the City under this Note or any other City Lien Documents.

10. **Restrictions on Transfer Proceeds.** Except as otherwise provided by the requirements of any Fannie Mae or CalHFA rules or guidelines applicable to the First Mortgage Loan, or by this Note, proceeds from any Transfer, after paying any and all superior liens against the Residence and costs and fees relating to the transaction, if any (such as escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) accrued interest or shared equity under this Note; (ii) the outstanding balance under this Note; and (iii) any excess proceeds shall belong to the Borrower.
11. **Junior Liens.** Borrower shall not encumber the Residence for the purpose of securing financing and excluding the Senior Loan, whether senior in priority or subordinated to the City Deed of Trust without the prior written approval of the City. Notwithstanding any other provision of this Note, the following shall apply in the case of junior liens:
 - (a) Borrower shall give written notice to the City at least 30 days prior to recording any junior lien against the Residence to secure any loan of funds, including documentation of the proposed use of the proceeds of such loan.
 - (b) Borrower shall give written notice to City of any notice of default under any junior lien.
 - (c) Failure to give any notice required under this Section 11 and any uncured default under the terms of the junior lien shall be a default under this Note.
12. **Default.** The occurrence of any of the following shall be deemed a default hereunder:
 - (a) Failure by Borrower to make timely payments as required under this Note;
or
 - (b) Failure or delay in the performance, or any other violation by Borrower of any other covenant or agreement of Borrower under this Note; or
 - (c) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Deed of Trust, the City Covenants or any other lien recorded against the Residence.
13. **Notice of Default; Cure Periods.**
 - (a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Note or any other City Lien Document, the Borrower must

immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence. In the event the Borrower is unable or unwilling to enter into a forbearance agreement or otherwise implement the required cure, correction or remedy, the Senior Lenders shall have the right to cure, correct, or remedy any such default of the Borrower provided the Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not commence foreclosure proceedings or accept a deed in lieu of foreclosure until it has given the Senior Lenders at least thirty (30) days' prior written notice of the default in accordance with this Section 13.

(b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, written notice of default to the Borrower, the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; and (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums owing under this Note, the sale of the Residence or the exercise of such other remedies available to the City under the City Lien Documents or as provided by law; (5) that Borrower has the right to seek reinstatement after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Borrower to such acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Borrower, the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower, the Senior Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Borrower, the Senior Lender such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default by the Borrower under the terms of this Note or the City Deed of Trust, the procedures and time periods established in Section 13 (a) above shall govern.

(d) Notwithstanding the cure periods established in this Section 13, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or if the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

14. **Borrower's Waivers.** Borrower waives any right to require the City:
- (a) To demand payment of amounts due (known as "presentment");
 - (b) To give notice that amounts due have not been paid (known as "notice of dishonor")
 - (c) To obtain an official certification of nonpayment (known as "protest").
15. **Remedies.** Upon the occurrence of a default, the giving of notice and the expiration of the applicable cure period, the City may, at its option: (a) Declare all of the sums owing hereunder and secured by the City Deed of Trust to be immediately due and payable without further demand, and invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Residence and take possession thereof (or any part thereof), in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Residence, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Residence shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding its continuance in possession of the Residence, the City shall be entitled to exercise every right provided for in this Note and the City Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose the City Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in the City Deed of Trust, the trustee named in the deed of trust securing the Senior Loan, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found in California Civil Code Sections 2924, *et seq.*, as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to Residence, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under this City Note or the City Deed of Trust shall operate as a waiver of such right.
16. **City Assignment.** City may, at its option, assign its right to receive payment under this Note without obtaining the consent of the Borrower. City shall provide written notice of any such assignment to the Senior Lenders.
17. **Attorney Fees and Costs.**
- (a) Borrower agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by City, or adjudged by a court: (i) reasonable costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the

collection or enforcement of this Note, whether or not suite is filed; and (ii) costs of suit and such sum as the court may adjudge as attorneys' fees in any action to enforce payment of this Note or any part of it.

(b) In addition to the foregoing award of attorneys' fees, City shall be entitled to its attorneys' fees incurred in any post judgment proceedings to enforce any judgment in connection with this Note. This provision is separate and several and shall survive the merger of this provision into any judgment.

18. **Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.
19. **Severability.** The covenants of this Note are severable. Invalidation of any covenant or any part thereof by law, judgment, or court order shall not affect any other covenant.
20. **Notices.** Except as otherwise expressly provided in this Note, in every case when, under the provisions of this Note, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Borrower: NAME
 ADDRESS
 Santa Clara, CA 9505X

To Senior Lender: JPMorgan Chase Home Loans
 ADDRESS
 CITY, CA XXXXX

To City: The City of Santa Clara
 1500 Warburton Avenue
 Santa Clara, CA 95050
 Fax: (408) 248-3381
 (Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

21. **Non-Waiver.** Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.
22. **Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.
23. **Joint and Several Obligations.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

[Signature on following page]

By signing this document, Borrower agrees to all the terms and conditions stated in this Note.

By: _____
Name: _____

By: _____
Name: _____

Attachment A

Equity Share and 7% Simple Interest Illustration

The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	\$500,000
Less Affordable Sales Price at time of initial sale	<u>\$385,000</u>
equals Principal amount of City Note	<u>\$115,000</u>

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

	<u>Year Resale Occurs</u>		
	<u>6</u>	<u>10</u>	<u>15</u>
Assumed Unrestricted Resale Price	\$600,000	\$675,000	\$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>
Appreciation Amount	\$ 95,000	\$167,500	\$240,000
City's Equity Share			
(20-6)/20 times the Appreciation Amount	(\$66,500)		
(20-10)/20 times the Appreciation Amount		(\$83,750)	
(20-15)/20 times the Appreciation Amount			(\$60,000)
<i>Seller's Equity (Appreciation Amount less City's Share)</i>	\$28,500	\$83,750	\$180,000
<i>(Seller gets 5%/yr. increase in shared Appreciation Amount)</i>			

OR

7% Simple Interest Illustration:

Appreciation Amount	\$95,000	\$167,500	\$240,000
7% simple interest (\$115,000 principal)	(\$48,300)	(\$80,500)	(\$120,750)
<i>Seller's Equity (Appreciation Amount less City's Interest)</i>	\$46,700	\$87,000	\$119,250
Principal amount of City Note	\$115,000	\$115,000	\$115,000

Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.

It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.

Exhibit C

Deed of Trust and Security Agreement

(behind this page)

COMPLIMENTARY RECORDING REQUESTED PURSUANT TO
GOVERNMENT CODE SECTION 27383

Recording Requested By and When
Recorded Mail To: The City of
Santa Clara
City Hall, 1500 Warburton Avenue Santa
Clara, California 95050 Attention: City
Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS DEED OF TRUST CONTAINS PROVISIONS RESTRICTING ASSUMPTIONS

BELOW MARKET PURCHASE PROGRAM DEED OF TRUST AND SECURITY
AGREEMENT (CITY SUBORDINATE DEED OF TRUST)

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made this DATE, among the trustor, NAME ("Borrower") and in care of Housing Services, a division of Santa Clara ("Trustee"), and the CITY OF SANTA CLARA as Beneficiary (the "City").

The Borrower, in consideration of the promises herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, the property located in the City of Santa Clara, State of California, described in the attached Exhibit "A" and more commonly known as: ADDRESS (the "Property").

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances, and all fixtures now or hereafter attached to the Property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by this Deed of Trust; and

TOGETHER with all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected, or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and all of the foregoing, together with the Property, is herein collectively referred to as the "Security";

TO HAVE AND TO HOLD the Security, together with acquittances, to the Trustee, its successors and assigns forever;

TO SECURE to the City the performance of the covenants and agreements of Borrower contained in that certain Covenants, Restrictions and Option to Purchase executed by and between the Owner and the City and incorporated herein by this reference (the "City Covenants");

TO SECURE to the City the repayment of all sums evidenced by that certain promissory note to the City executed by Borrower, on or about the date hereof, in the principal amount of AMOUNT (\$XXX,000.00) and incorporated herein by this reference ("City Note"), with interest or equity share as provided in the City Note; and

TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

BORROWER AND CITY COVENANT AND AGREE AS FOLLOWS:

1. **Borrower's Estate.** Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security and other than this Deed of Trust, the Security is encumbered only by: (1) that deed of trust executed by Borrower in connection with a loan made to Borrower by MetLife Home Loans, (the "First Mortgage Lender"), securing a promissory note executed by Borrower in favor of the First Mortgage Lender (the "First Mortgage Note") to assist in the purchase of the Property; (2) the Senior Loan Deeds of Trust (hereinafter defined); (3) the City Note; and (4) the City Covenants. Borrower agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City's interest in the Security. (As used in this Deed of Trust, the term "First Mortgage Lender" shall include all successors and assigns of the First Mortgage Lender.) For purposes of this Deed of Trust, "Senior Deeds of Trust" shall refer to the recordable instruments securing acquisition loans for the Security made for the benefit of the following entities, their successors and assigns: (i) First Mortgage Lender, (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program (collectively, the "Senior Lenders").

2. **Repayment of Loan.** Borrower will promptly repay, when due, the accrued interest or shared appreciation, plus principal required by the City Note.

3. **City Covenants.** Borrower will observe and perform all of the covenants and agreements of the City Covenants.

4. **Charges; Liens.** Borrower will pay all taxes, assessments and other charges, fines and impositions attributable to the Security which may attain a priority over this Deed of Trust, by Borrower making any payment, when due, directly to the payee thereof. Upon request by the City, Borrower will promptly furnish to the City all notices of amounts due under this paragraph. In the event Borrower makes payment directly, Borrower will promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower will not

be required to discharge the lien of the Deed of Trust securing the First Mortgage Note (the "First Mortgage

Lender Deed of Trust") or any other lien described in this paragraph so long as Borrower will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the City, or will, in good faith, contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

5. **Hazard Insurance.** Borrower will keep the Security insured by a standard fire and extended coverage insurance policy in at least such amounts and for such periods as the City may require, which amounts shall be the lesser of (1) the sum of the loan amounts under the City Note and the First Mortgage Note, or (2) the replacement cost of the Security, but in no event less than (3) the amount necessary to prevent Borrower from becoming a co-insurer under the terms of the policy.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Borrower subject to approval by the City; provided that such approval will not be withheld if the insurer is also approved by the First Mortgage Lender, the Federal Home Loan Mortgage Company, Fannie Mae, California Housing Finance Agency, or successors thereto.

All insurance policies and renewals thereof will be in a form acceptable to the City and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Mortgage Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Borrower shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Borrower will give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make proof of loss if not made promptly by Borrower. The City shall receive thirty (30) days' advance notice of cancellation of any insurance policies required under this section.

Unless the City and Borrower otherwise agree in writing, insurance proceeds, subject to the rights of the First Mortgage Lender, will be applied to restoration or repair of the Security damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds will be used to repay the City Note secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Security is abandoned by Borrower, or if Borrower fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Borrower that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's option either to restoration or repair of the Security or to repay the City Note.

If the Security is acquired by the City, all right, title and interest of Borrower in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition subject to the rights of the First Mortgage Lender.

6. **Preservation and Maintenance of Security.** Borrower will keep the Security in good repair and will not commit waste or permit impairment or deterioration of the Security.

7. **Protection of the City's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under the deed of trust securing the First Mortgage Note, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving bankruptcy or a decedent, then the City, at the City's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorneys' fees and entry upon the Security to make repairs.

Any amounts provided pursuant to this paragraph, with interest thereon, will become an indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and City agree to other terms of payment, such amount will be payable upon notice from the City to Borrower requesting payment thereof, and will bear interest from the date of disbursement at the highest interest rate permissible under applicable law. Nothing contained in this paragraph will require the City to insure any expense or take any action hereunder.

8. **Inspection.** The City may make, or cause to be made, reasonable entries upon and inspections of the Security; provided that the City will give Borrower reasonable notice of inspection.

9. **Forbearance by the City Not a Waiver.** Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

10. **Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. **Successors and Assigns Bound.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the City and Borrower subject to the provisions of this Deed of Trust.

12. **Joint and Several Liability.** All covenants and agreements of Borrower shall be joint and several.

13. **Notice.** In every case under the provisions of this Deed of Trust when it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner: NAME
 ADDRESS
 Santa Clara, CA 9505X

To First Mortgage
Lender: NAME
 ADDRESS
 CITY, CA XXXXX

To Agency: City of Santa Clara
 1500 Warburton Avenue
 Santa Clara, California 95050
 Fax: (408) 248-3381
 (Or such other address as may be provided by the Agency)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Governing Law.** This Deed of Trust shall be governed by the laws of the State of California.

15. **Severability.** In the event that any provision or clause of this Deed of Trust or the City Note conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the City Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the City Note are declared to be severable.

16. **Captions.** The captions and headings in this Deed of Trust are for convenience

only and are not to be used to interpret or define the provisions hereof.

17. **Default.** The occurrence of any of the following shall be deemed a Default hereunder:

- a) Failure or delay by Borrower to make any payments provided for in the City Note or herein; or
- b) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Covenants; or
- c) Failure or delay by Borrower to perform any other covenant or agreement of Borrower in this Deed of Trust or the City Note.

18. **Notice of Default.**

- a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Deed of Trust, the Borrower must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence.
- b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, notice of default to the Borrower, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust, sale of the Security or the exercise of such other remedies available to the City under this Deed of Trust or as provided by law; and (5) that Borrower has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Borrower to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City, in its sole and absolute discretion, may grant the Borrower, the First Mortgage Lender or the Senior Lender such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower or the First Mortgage Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City, in its sole and absolute discretion, may grant the Borrower or the First Mortgage Lender such additional time as is reasonably necessary to cure the default.
- c) In the event of a monetary default by the Borrower, the notice provisions under Section 13 of the City Note shall govern, subject to any forbearance agreement that the City and Borrower may execute pursuant thereto.

- d) Notwithstanding the cure periods established in this Paragraph 18, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.
- e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

19. **Acceleration; Remedies.** Upon the occurrence of a Default, the giving of notice thereof and the expiration of any applicable cure period, City may, at its option: (a) Declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law;

(a) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in this Deed of Trust and the trustee named in the First Mortgage Deed of Trust, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et seq., as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under the City Note, the City Covenants or this Deed of Trust shall operate as a waiver of such right. The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

20. **Borrower's Right to Reinstate.** Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Borrower will have the right to have any proceedings begun by the City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust

or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays City all sums which would be then due under this Deed of Trust and no acceleration under the City Note has occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable

Attorneys' fees; and (d) Borrower takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Security and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

21. **Due on Transfer of the Property or Repayment of the First Mortgage Loan.** Upon a Transfer (as defined in the City Note) of the Property or any interest in it or repayment in full of the amounts due under the First Mortgage Note, the City may, at its option, require immediate payment in full of all sums due and outstanding under the City Note and secured by this Deed of Trust. However, this option shall not be exercised by the City if applicable law as of the date of this Deed of Trust prohibits such exercise, or if the City has executed a separate written waiver of this option.

22. **Reconveyance.** Upon satisfaction of all obligations secured by this Deed of Trust, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the City Note to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

23. **Substitute Trustee.** The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. **Subordination.** Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Mortgage Lender under the First Mortgage Deed of Trust or any subsequent First Mortgage deeds of trust hereafter recorded against the Security. Further, this Deed of Trust, the City Covenants and the City Note are expressly subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

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

- a) Title is acquired by First Mortgage Lender or another party upon foreclosure of the First Mortgage Deed of Trust;

b) Title is acquired by the First Mortgage Lender or another party by a deed in lieu of foreclosure of the First Mortgage Deed of Trust.

25. **Request for Notice.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower at the address set forth in Section 13 above.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the date first written above.

NAME OF BORROWER

NAME OF BORROWER

EXHIBIT A

Property Description

State of California)
)
County of Santa Clara)

On _____, 20____, before me, _____, a
Notary Public, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (SEAL)

State of California)
)
County of Santa Clara)

On _____, 20 , before me, _____, a
Notary Public, personally appeared _____,
personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (SEAL)

FULL RECONVEYANCE

THE CITY OF SANTA CLARA, the Beneficiary named in that Below Market Purchase Program Deed of Trust and Security Agreement (City Subordinate Deed of Trust) dated_____, 20____, in which_____is named as Trustor and the undersigned_____Title Insurance Company, is named as Trustee [or appropriate language if successor trustee], and recorded on____, as Instrument No.____, in the Official Records, Santa Clara County, California, having declared that all obligations secured thereby have been discharged or performed and having requested the reconveyance thereof, _____Title Insurance Company, as said Trustee does hereby reconvey, without warranty, to the person or persons legally entitled thereto all right, title, interest and estate held by the undersigned as such Trustee, in and to the following real property described in the City Subordinate Deed of Trust:

[describe]

Dated:_____

[TRUSTEE]

By:_____

[ACKNOWLEDGMENT]

REQUEST FOR FULL RECONVEYANCE

A reconveyance will be issued only upon presentation to the _____ Title Insurance Company, of this request properly signed and accompanied by the City Subordinate Deed of Trust, the original City Note secured by said City Subordinate Deed of Trust, and any receipt or document evidencing any other indebtedness secured thereby.

To _____, Trustee

The undersigned is the legal owner and holder of the Below Market Purchase Program Promissory Note ("City Note") for the total sum of \$ _____, and of all other indebtedness secured by City Subordinate Deed of Trust dated _____, 20____, made by _____, Trustor, to _____, Trustee, and recorded on _____, 20____, as Instrument No _____, in the Official Records in the Office of the County Recorder of Santa Clara County, California.

Said City Note, together with all other indebtedness and obligations secured by said City Subordinate Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, upon payment to you of any sums owing to you under the terms of said City Subordinate Deed of Trust, to cancel said City Note, above mentioned, and all other evidences of indebtedness secured by said City Second Deed of Trust delivered to you herewith, together with the said City Subordinate Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said City Subordinate Deed of Trust, all the estate now held by you and under the same.

Dated: _____, 20____

THE CITY OF SANTA CLARA

By: _____

Name:

Title:

Mail Reconveyance to:

Exhibit D
Request for Notice
(behind this page)

OFFICIAL BUSINESS.

Document entitled to free
recording per Government
Code Section 6103.

Recording Requested by and
When Recorded Mail to:
Housing and Community Services Division
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE

REQUEST FOR NOTICE
Under Section 2924b Civil Code

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any NOTICE OF DEFAULT and a copy of any NOTICE OF SALE under the _____ dated as of ____/____/20____ and recorded as Instrument No. _____, in the Official Records of Santa Clara County on _____, 20____ executed by _____ and _____ as Borrowers, for the benefit of the City of Santa Clara and describing the following real property, located in Santa Clara County, California:

[See Exhibit A attached hereto and incorporated herein.]

be mailed to THE CITY OF SANTA CLARA at the following address:

1500 Warburton Avenue
Santa Clara, California 95050

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
Interim City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

RAJEEV BATRA
Interim City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

State of California)
)
County of Santa Clara)

On _____, 20____, before me, _____, a Notary Public, personally appeared _____, personally known to me (or 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

Legal Description

[TO BE ATTACHED]

Exhibit E
Lien Servicing Agreement
(behind this page)



City of Santa Clara

The Center of What's Possible

City of Santa Clara – Below Market Purchase (BMP) Program Lien Servicing Agreement

Account Information:

Name of Borrower: _____

Name of Borrower: _____

Property Address: _____

Lien Servicing Information:

This Lien Servicing Agreement (“Agreement”), dated _____, is between the City of Santa Clara, a California Public Municipality (hereafter referred to as “City”); and _____

_____ (hereafter referred to as “Borrower”).

The City wishes to make available a subordinate mortgage lien (“Lien”) to qualified purchasers of homes in its jurisdiction. The payment structure of the Lien will assist low- and moderate-income populations in purchasing their first home within the City of Santa Clara. The City will originate, process, and close the Lien; and create a promissory note (“Note”) secured by Deed of Trust (“Deed of Trust”) in conformance with the City's Below Market Purchase Program Policies and Procedures. The City will be the owner of the “Note” and “Deed of Trust”.

The City or its designee, is hereby authorized to service the Note and Deed of Trust in accordance with the following:

- 1) **Scope:** The City or its designee, as servicer of the Lien, will employ commercially reasonable and prudent practices to collect all scheduled payments on its Lien and to exercise due care to protect the security of the Lien by holding the original Note and Deed of Trust.
- 2) **Term and Termination:** This Agreement shall begin on the date set forth above and shall continue for the duration of the Lien. This Agreement shall terminate upon occurrence of any of the following events related to the Lien:
 - a) Payment in full and reconveyance of the Deed of Trust;
 - b) Recordation of trustee’s deed following a foreclosure.

- c) Sale of the Residence during the Resale Restriction Period if the Residence is transferred at a Restricted Resale Price pursuant to and in accordance with the City Covenants.

3) **Specific Lien Servicing Functions:** The City or its designee, shall:

- a) Receive from the Title Company and hold a original Note secured by a Deed of Trust;
- b) Establish appropriate accounting policies and procedures for any newly originated Lien to ensure proper monitoring and tracking of Lien payments;
- c) Mail to each Borrower a welcoming letter that describes the terms on his or her Lien and explains the payment procedures;
- d) Mail an annual statement to each Borrower;
- e) Issue annual income tax statements to all Borrowers;
- f) Respond to Borrowers' inquiries and requests;

4) **Lien Documents:** The City or its designee, will retain custody of the original Note and Deed of Trust. The Deed of Trust shall be maintained in accordance with applicable State and Federal standards.

5) **Compensation:** The City shall not charge any fees to service its Lien as long as the Borrower retains the property in conformance with the City Covenants.

This Lien Servicing Agreement contains all of the agreements and understandings of the parties hereto, and fully expresses all of the duties and responsibilities of the City as Servicer. No waiver, amendment, or discharge of this Agreement shall be valid unless it is in writing and signed by the waiving party or the party to be obligated.

All correspondence shall be provided to the following address

Servicer: City of Santa Clara
Below Market Purchase (BMP) Program
1500 Warburton Avenue
Santa Clara, CA 95050
(408) 615-2490

6) **Authorization:**

Printed Name(s) of Authorizing Party

Authorizing Party Signature(s) (Required)

Exhibit F
Escrow Instructions
(behind this page)



**City of
Santa Clara**
The Center of What's Possible

February 24, 2016

Name of Title Company
Address of Title Company
City, State Zip

Attention: **Name of Escrow Officer, Title**

Re: Escrow No. #####-#####

Dear **Name of Escrow Officer**:

These escrow instructions are hereby submitted in connection with the sale of a residence (the "Unit") located at the following address in the City of Santa Clara:

Address of Unit: Full Street Address of Unit

Purchaser(s): Name of Purchaser(s)

A. BACKGROUND

1. THE CITY OF SANTA CLARA, a chartered municipal organization (the "City"), and Name of Developer (the "Developer") have entered into an Affordable Housing Agreement (the "Agreement") approved Date of Agreement Meeting.

2. Pursuant to the Agreement the Developer will construct total number dwelling units on property owned by Developer and located in the City of Santa Clara (the "Site").

3. The Agreement requires the Developer to sell exclusively to Moderate Income Households, at an affordable sales price, number of BMP dwelling units on the Site.

4. The Agreement also provides that the Developer agrees to record the attached affordability covenant.

5. The Developer proposes to sell the Unit to a Purchaser as a qualified moderate income household at an affordable sales price, and has provided separate escrow instructions to you in connection with such sale.

B. DOCUMENTS

Enclosed herewith, previously delivered to you, or to be delivered to you, are the following documents, executed in connection with the above-described escrow. Please inform Housing Trust Silicon Valley's Homeownership Department of the signing date at (408) 436-3450. They are Administrators of the Below Market Purchase (BMP) program and will need to be aware of the signing.

1. An original instrument entitled "**BELOW MARKET PURCHASE PROGRAM PROMISSORY NOTE Secured by City Subordinate Deed of Trust**" to be duly executed by the Purchaser (Borrower) and original to be returned to City.

2. An original instrument entitled "**BELOW MARKET PURCHASE PROGRAM DEED OF TRUST AND SECURITY AGREEMENT (CITY SUBORDINATE DEED OF TRUST)**" to be duly executed by the Purchaser in recordable form.

3. An original instrument entitled "**REQUEST FOR NOTICE Under Section 2924b Civil Code**" executed by the City in recordable form.

4. An original document entitled "**BELOW MARKET PURCHASE PROGRAM COVENANTS, RESTRICTIONS AND OPTION TO PURCHASE**" to be executed by the Purchaser in recordable form.

5. An original document entitled "**City of Santa Clara – Below Market Purchase (BMP) Program Lien Servicing Agreement**" to be executed by the Purchaser.

C. CLOSING PROCEDURES

In closing escrow, you will adhere to the procedures set forth below. All requirements with respect to closing shall be considered as having taken place simultaneously, and no delivery shall be considered as having been made until all deliveries and closing transactions have been accomplished. Do not record or deliver any of the documents described above, or the funds to be wired to you, unless all conditions to closing are satisfied. When and only when all conditions to closing are satisfied, you shall:

1. With respect to any documents which have not been dated (whether or not such documents are to be recorded), fill in the date of recordation.

2. With respect to any other blanks in the documents or **[boldface]** notations to insert information, fill in the appropriate information (for example, recording information, lender name, loan amounts, document name or dates of other documents). If you have any questions regarding how to fill in any blanks, contact the undersigned immediately.

3. Record, in the following order:

- a. An Original of the grant deed conveying title to the Unit to the Purchaser
- b. Senior Lender Loan Documents (As provided by Primary Lender under separate escrow instructions)
- c. An Original of the City BMP Subordinate Deed of Trust
- d. An Original of the City BMP Covenant and Option to Purchase
- e. An Original of the City Request For Notice

4. The purchaser(s) shall be provided copies of all executed documents.

5. After the closing, deliver to **both** the City and Housing Trust Silicon Valley (HTSV) one conformed copy of each of the documents # 2-4 described in paragraph B, above (i.e. two copies are required of each document—one for HTSV and one for the City.) In addition to these documents, you are required to return to the City, the original executed copy of the City Promissory Note (document #1) and original executed copy of the City Lien Servicing Agreement (document #5).

6. Please bill the Purchaser(s) for any title or escrow charges associated with the foregoing documents and any other charges you incur. ALTA Title Insurance Policy for the benefit of the City shall be provided as part of the escrow closing with the cost paid by the Purchaser. Any documents signed by the City are entitled to free recording pursuant to California Government Code sec. 6103 and Government Code sec. 27383. If any of such documents do not contain a legend to that effect, please insert the legend in the upper left corner of such documents.

The City hereby reserves the right to withdraw all of the documents and money described herein prior to the closing of the transaction contemplated hereby.

If you have any questions, please do not hesitate to call the undersigned at (408) 615-2490.

Please immediately return an executed copy of these instructions to the undersigned.

Very truly yours,

THE CITY OF SANTA CLARA, CALIFORNIA

By: _____
Housing and Community Services Manager, or designee

The undersigned acknowledges receipt of the within escrow instructions and agrees to proceed in accordance therewith.

NAME OF TITLE COMPANY

By: _____

Exhibit E
Lien Servicing Agreement
(behind this page)



City of Santa Clara

The Center of What's Possible

City of Santa Clara – Below Market Purchase (BMP) Program Lien Servicing Agreement

Account Information:

Name of Borrower: _____

Name of Borrower: _____

Property Address: _____

Lien Servicing Information:

This Lien Servicing Agreement ("Agreement"), dated _____, is between the City of Santa Clara, a California Public Municipality (hereafter referred to as "City"); and _____

_____ (hereafter referred to as "Borrower").

The City wishes to make available a subordinate mortgage lien ("Lien") to qualified purchasers of homes in its jurisdiction. The payment structure of the Lien will assist low- and moderate-income populations in purchasing their first home within the City of Santa Clara. The City will originate, process, and close the Lien; and create a promissory note ("Note") secured by Deed of Trust ("Deed of Trust") in conformance with the City's Below Market Purchase Program Policies and Procedures. The City will be the owner of the "Note" and "Deed of Trust".

The City or its designee, is hereby authorized to service the Note and Deed of Trust in accordance with the following:

- 1) **Scope:** The City or its designee, as servicer of the Lien, will employ commercially reasonable and prudent practices to collect all scheduled payments on its Lien and to exercise due care to protect the security of the Lien by holding the original Note and Deed of Trust.
- 2) **Term and Termination:** This Agreement shall begin on the date set forth above and shall continue for the duration of the Lien. This Agreement shall terminate upon occurrence of any of the following events related to the Lien:
 - a) Payment in full and reconveyance of the Deed of Trust;
 - b) Recordation of trustee's deed following a foreclosure.

- c) Sale of the Residence during the Resale Restriction Period if the Residence is transferred at a Restricted Resale Price pursuant to and in accordance with the City Covenants.

3) **Specific Lien Servicing Functions:** The City or its designee, shall:

- a) Receive from the Title Company and hold a original Note secured by a Deed of Trust;
- b) Establish appropriate accounting policies and procedures for any newly originated Lien to ensure proper monitoring and tracking of Lien payments;
- c) Mail to each Borrower a welcoming letter that describes the terms on his or her Lien and explains the payment procedures;
- d) Mail an annual statement to each Borrower;
- e) Issue annual income tax statements to all Borrowers;
- f) Respond to Borrowers' inquiries and requests;

4) **Lien Documents:** The City or its designee, will retain custody of the original Note and Deed of Trust. The Deed of Trust shall be maintained in accordance with applicable State and Federal standards.

5) **Compensation:** The City shall not charge any fees to service its Lien as long as the Borrower retains the property in conformance with the City Covenants.

This Lien Servicing Agreement contains all of the agreements and understandings of the parties hereto, and fully expresses all of the duties and responsibilities of the City as Servicer. No waiver, amendment, or discharge of this Agreement shall be valid unless it is in writing and signed by the waiving party or the party to be obligated.

All correspondence shall be provided to the following address

Servicer: City of Santa Clara
Below Market Purchase (BMP) Program
1500 Warburton Avenue
Santa Clara, CA 95050
(408) 615-2490

6) **Authorization:**

Printed Name(s) of Authorizing Party

Authorizing Party Signature(s) (Required)

Exhibit F
Escrow Instructions
(behind this page)



**City of
Santa Clara**
The Center of What's Possible

February 24, 2016

Name of Title Company
Address of Title Company
City, State Zip

Attention: **Name of Escrow Officer, Title**

Re: Escrow No. #####-#####

Dear **Name of Escrow Officer**:

These escrow instructions are hereby submitted in connection with the sale of a residence (the "Unit") located at the following address in the City of Santa Clara:

Address of Unit: **Full Street Address of Unit**

Purchaser(s): **Name of Purchaser(s)**

A. BACKGROUND

1. THE CITY OF SANTA CLARA, a chartered municipal organization (the "City"), and **Name of Developer** (the "Developer") have entered into an Affordable Housing Agreement (the "Agreement") approved **Date of Agreement Meeting**.

2. Pursuant to the Agreement the Developer will construct **total number** dwelling units on property owned by Developer and located in the City of Santa Clara (the "Site").

3. The Agreement requires the Developer to sell exclusively to Moderate Income Households, at an affordable sales price, **number of BMP** dwelling units on the Site.

4. The Agreement also provides that the Developer agrees to record the attached affordability covenant.

5. The Developer proposes to sell the Unit to a Purchaser as a qualified moderate income household at an affordable sales price, and has provided separate escrow instructions to you in connection with such sale.

B. DOCUMENTS

Enclosed herewith, previously delivered to you, or to be delivered to you, are the following documents, executed in connection with the above-described escrow. Please inform Housing Trust Silicon Valley's Homeownership Department of the signing date at (408) 436-3450. They are Administrators of the Below Market Purchase (BMP) program and will need to be aware of the signing.

1. An original instrument entitled "**BELOW MARKET PURCHASE PROGRAM PROMISSORY NOTE Secured by City Subordinate Deed of Trust**" to be duly executed by the Purchaser (Borrower) and original to be returned to City.

2. An original instrument entitled "**BELOW MARKET PURCHASE PROGRAM DEED OF TRUST AND SECURITY AGREEMENT (CITY SUBORDINATE DEED OF TRUST)**" to be duly executed by the Purchaser in recordable form.

3. An original instrument entitled "**REQUEST FOR NOTICE Under Section 2924b Civil Code**" executed by the City in recordable form.

4. An original document entitled "**BELOW MARKET PURCHASE PROGRAM COVENANTS, RESTRICTIONS AND OPTION TO PURCHASE**" to be executed by the Purchaser in recordable form.

5. An original document entitled "**City of Santa Clara – Below Market Purchase (BMP) Program Lien Servicing Agreement**" to be executed by the Purchaser.

C. CLOSING PROCEDURES

In closing escrow, you will adhere to the procedures set forth below. All requirements with respect to closing shall be considered as having taken place simultaneously, and no delivery shall be considered as having been made until all deliveries and closing transactions have been accomplished. Do not record or deliver any of the documents described above, or the funds to be wired to you, unless all conditions to closing are satisfied. When and only when all conditions to closing are satisfied, you shall:

1. With respect to any documents which have not been dated (whether or not such documents are to be recorded), fill in the date of recordation.

2. With respect to any other blanks in the documents or **[boldface]** notations to insert information, fill in the appropriate information (for example, recording information, lender name, loan amounts, document name or dates of other documents). If you have any questions regarding how to fill in any blanks, contact the undersigned immediately.

3. Record, in the following order:

- a. An Original of the grant deed conveying title to the Unit to the Purchaser
- b. Senior Lender Loan Documents (As provided by Primary Lender under separate escrow instructions)
- c. An Original of the City BMP Subordinate Deed of Trust
- d. An Original of the City BMP Covenant and Option to Purchase
- e. An Original of the City Request For Notice

4. The purchaser(s) shall be provided copies of all executed documents.

5. After the closing, deliver to **both** the City and Housing Trust Silicon Valley (HTSV) one conformed copy of each of the documents # 2-4 described in paragraph B, above (i.e. two copies are required of each document—one for HTSV and one for the City.) In addition to these documents, you are required to return to the City, the original executed copy of the City Promissory Note (document #1) and original executed copy of the City Lien Servicing Agreement (document #5).

6. Please bill the Purchaser(s) for any title or escrow charges associated with the foregoing documents and any other charges you incur. ALTA Title Insurance Policy for the benefit of the City shall be provided as part of the escrow closing with the cost paid by the Purchaser. Any documents signed by the City are entitled to free recording pursuant to California Government Code sec. 6103 and Government Code sec. 27383. If any of such documents do not contain a legend to that effect, please insert the legend in the upper left corner of such documents.

The City hereby reserves the right to withdraw all of the documents and money described herein prior to the closing of the transaction contemplated hereby.

If you have any questions, please do not hesitate to call the undersigned at (408) 615-2490.

Please immediately return an executed copy of these instructions to the undersigned.

Very truly yours,

THE CITY OF SANTA CLARA, CALIFORNIA

By: _____
Housing and Community Services Manager, or designee

The undersigned acknowledges receipt of the within escrow instructions and agrees to proceed in accordance therewith.

NAME OF TITLE COMPANY

By: _____

AFFORDABLE HOUSING AGREEMENT

**by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND**

TOLL WEST COAST, LLC

ATTACHMENT D

[INTENTIONALLY LEFT BLANK]

AFFORDABLE HOUSING AGREEMENT

**by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND
TOLL WEST COAST, LLC**

ATTACHMENT E

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Developer's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Developer shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Developer; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Developer to comply with the insurance -requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion, which precludes coverage for claims or suits by one insured against another;
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability;
 - d. Coverage shall contain no Contractor's' limitation endorsement limiting the scope of coverage for liability arising from pollution, personal injury, Owners' and Contractor's' protective Liability; and
 - e. Contractual Liability coverage shall expressly include all liability assumed under this Agreement.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Developer and/or its sub-contractor's involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Developer included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Developer or any sub-contractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. The City of Santa Clara, its officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Developer's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Developer shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from any other insurance, which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Developer's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Attachment E, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Developer and City agree as follows:

1. Developer agrees to ensure that sub-contractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Developer, provide the same minimum insurance coverage required of Developer, except as with respect to limits. Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Developer agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such sub-contractors and others engaged in the project will be submitted to City for review.
2. Developer agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Developer for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Developer in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Developer, and each and every sub-contractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and

as described in this Agreement. Developer shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection

G. EVIDENCE OF COMPLIANCE

Developer or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Developer shall submit to City copies of the actual insurance policies or renewals or replacements.

Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
The City of Santa Clara
Housing & Community Services Division
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Developer shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

AFFORDABLE HOUSING AGREEMENT

**by and between the
CITY OF SANTA CLARA, CALIFORNIA,**

AND

TOLL WEST COAST, LLC

ATTACHMENT F

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO
AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

AFFORDABLE HOUSING AGREEMENT
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
AND
TOLL WEST COAST, LLC

ATTACHMENT G

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit F. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

TOLL WEST COAST, LLC

A Delaware Limited Liability Company

By: 

Signature of Authorized Person or Representative

Name: Bob Moore

Title: Group President, Toll Brothers

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.


State of California
County of Alameda)

On March 19, 2018 before me, Sonia Padilla, Notary Public
(insert name and title of the officer)

personally appeared Robert D. Moore,
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)

