

**BUYER'S OCCUPANCY AND RESALE RESTRICTION AGREEMENT  
WITH OPTION TO PURCHASE**

**CITY OF HAYWARD  
AFFORDABLE HOUSING PROGRAM**

La Playa Place (FKA La Playa Commons) by D.R. Horton Bay, Inc.

**ADMINISTRATIVE COVER SHEET**

**(Remove Upon Completion)**

**BLANK LINES: CHECKLIST**

- Address of Home, p. 1, upper right
- Number of Bedrooms, p. 1 upper right
- Owner's Base Price, p. 1, upper right
- Owner's Original Closing Costs, p. 1, upper right
- Median Income at Time of Purchase, p.1, upper right
- Date of Document, p.1, first paragraph
- Owner's Name, p. 1, first paragraph
- Property Address, p.2, Recital C
- First Mortgage Amount, Lender and Recording Information, p. 2, Recital F
- Selection Subordination Language, p. 3, Recital G
- Selection Income Level language, p. 5, Section 2
- Name of First Lender and amount of First Lender Loan, p. 5, Section 2
- Name of approved junior lenders and amount of First Lender Loan, p. 5, Section 2
- Date of original sale of Home, p.20, Section 21
- Choose a Subordination paragraph, Section 23
- Delete highlighted language if Resale Agreement isn't subordinated, Section 24B

- Address of First Lender, p. 26, Section 32
- Initials of Owner, p. 27, Section 36D
- Signatures of City, p. S-1
- Signatures of Owner, p. S-2
- Notary
- Attach Legal Description of the Property, p. A-1

DRAFT

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

City of Hayward  
Development Services Department  
Housing Division  
777 "B" Street  
Hayward, CA 94541-5007  
Attn: Housing Division Manager

**No fee for recording pursuant to  
Government Code §27383**

*Space above for Recorder's use*

**BUYER'S OCCUPANCY AND RESALE RESTRICTION AGREEMENT,  
WITH OPTION TO PURCHASE**

CITY OF HAYWARD  
AFFORDABLE HOUSING PROGRAM  
La Playa Place by D.R. Horton Bay, Inc.

Address of Home: \_\_\_\_\_

Number of Bedrooms: \_\_\_\_\_

Income Category of Purchaser: [**CHOOSE  
ONE: Low OR Moderate**]

Sales Price at Original Purchase (Owner's  
Base Price): \$ \_\_\_\_\_

Owner's Original Closing Costs: \$ \_\_\_\_\_

Median Income at Time of Purchase:  
\$ \_\_\_\_\_

This Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase (the "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF HAYWARD, a California charter city (the "City"); and \_\_\_\_\_ (the "Owner").

## RECITALS

A. The City of Hayward administers a variety of affordable housing programs (the "City Affordable Housing Program").

B. D.R. Horton Bay, Inc., a Delaware corporation, the developer of La Playa Place, formerly known as La Playa Commons (the "Developer"), entered into an Affordable Housing Agreement (Developer Agreement for On-Site Affordable Housing Units – La Playa Commons) with the City of Hayward dated August 1, 2022 (the "Affordable Housing Agreement") and recorded in the Official Records of the County of Alameda (the "Official Records") on October 5, 2022 as Instrument No. 2022167602. Pursuant to the Affordable Housing Agreement, the Developer agreed to sell two (2) homes in a portion of La Playa Place to low-income households and three (3) homes in a portion of La Playa Place to moderate-income households at affordable prices (the "Affordable Units").

C. Owner intends to purchase the property located at \_\_\_\_\_ in the City of Hayward and more particularly described in **Exhibit A** attached hereto and incorporated herein (the "Home"), which is an Affordable Unit. The Home has been designated by the City and the Developer as a [**CHOOSE ONE: low income OR moderate income**] Affordable Unit, and this Agreement restricts future sales of the Home to households whose incomes do not exceed [**CHOOSE ONE: eighty percent (80%) OR one hundred twenty percent (120%)**] of the area median income adjusted for household size in Alameda County ("Income Eligible Households").

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

E. The purpose of this Agreement is to place resale controls on the Home and to require the payment of any excess proceeds of sale or excess rental proceeds to the City. This Agreement also provides the City an option to purchase the Home at a restricted price, given in consideration of the economic benefits to the Owner resulting from purchase of the Home at a below market price under the City's Affordable Housing Program. This Agreement is accompanied by a promissory note from the Owner to the City (the "City Note") pursuant to which the Owner agrees to pay any excess proceeds of sale or excess rental proceeds to the City.

F. The Owner is receiving a first mortgage loan (the "First Lender Loan") from \_\_\_\_\_ (the "First Lender"). The First Lender Loan is secured by a deed of trust executed by the Owner in favor of First Lender and recorded in the official records of Alameda County (the "Official Records") substantially concurrently with this Agreement (the "First Lender Deed of Trust"). **[If Owner is receiving more than one purchase money loan from the same lender revise as follows: The Owner is receiving [insert number] mortgage loans from \_\_\_\_\_ and \_\_\_\_\_ (collectively, the "First Lender") for purchase of the Home (collectively, the "First Lender Loan"). The First Lender Loan is secured by a deed trust dated \_\_\_\_\_, 20\_\_, executed by the Owner and recorded in the County of Alameda on \_\_\_\_\_, 20\_\_, and assigned Instrument**

No. \_\_\_\_\_ and a deed of trust dated \_\_\_\_\_, 20\_\_, executed by the Owner and recorded in the County of Alameda on \_\_\_\_\_, 20\_\_, and assigned Instrument No. \_\_\_\_\_ [revise if more than two deeds of trust] (collectively, the "First Lender Deed of Trust").

G. This Agreement and the accompanying City Note shall be secured by a deed of trust on the Home (the "City Deed of Trust"). **[CHOOSE ONE: This Agreement will be recorded senior and will not be subordinated to the First Lender Deed of Trust, but the City Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust. OR Because the First Lender Loan is financed with a HUD or VA loan, the Agreement and the City Deed of Trust will be subordinate to such HUD or VA financing.]**

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

1. DEFINITIONS AND EXHIBITS

A. The following terms are specifically defined for this Agreement and their definitions can be found in the Sections indicated below:

- (1) "Affordable Cost" – Section 2
- (2) "Affordable Rent" – Section 3B
- (3) "Agreement" - first sentence of the Agreement on page 1
- (4) "City" – first sentence of the Agreement on page 1
- (5) "City Deed of Trust" - Recital G
- (6) "City Designated Purchaser" – Section 10B
- (7) "City Note" – Recital E
- (8) "City Option" - Section 10A
- (9) "City Purchase Option Upon Default" – Section 17A
- (10) "City Resale Restriction" – Section 12A
- (11) "City Response Notice" - Section 8
- (12) "Eligible Capital Improvements" – Section 11A(1)
- (13) "Eligible Purchaser" Section 12B

- (14) "Excess Rental Proceeds" – Section 3B
- (15) "Excess Sales Proceeds" - Section 13
- (16) "Fair Market Value" - Section 11B
- (17) "First Lender" - Recital F
- (18) "First Lender Deed of Trust" - Recital F
- (19) "First Lender Loan" - Recital F
- (20) "Home" - Recital C
- (21) "Maximum Restricted Resale Price" - Section 11
- (22) "Median Income" – Section 11A
- (23) "Owner" - first sentence of the Agreement on page 1.
- (24) "Owner's Base Price" – Section 11A
- (25) "Owner's Original Closing Costs" – Section 11A(3)
- (26) "Owner's Notice of Intent to Transfer" - Section 7
- (27) "Owner's Request to Refinance Notice" – Section 24B
- (28) "Permitted Refinance Amount" – Section 24B(1)
- (29) "Proposed Purchaser" - Section 12A
- (30) "Indexed Price" - Section 11A
- (31) "Term" – Section 21
- (32) "Transfer" - Section 6A
- (33) "Trust" – Section 6

B. The following Exhibits are attached to this Agreement:

- (1) Exhibit A: Legal Description of Property (Home)
- (2) Exhibit B: Form of Owner Occupancy Certification

- (3) Exhibit C: Form of Owner's Notice of Intent to Transfer
- (4) Exhibit D: Form of Owner Acknowledgement of City Response Notice
- (5) Exhibit E: Form of Request for City Approval of Improvements to the Property
- (6) Exhibit F: Form of Owner Request to Refinance Notice

2. OWNER CERTIFICATIONS

The Owner certifies that (i) the financial and other information previously provided in order to qualify to purchase the Home is true and correct as of the date first written above and (ii) the Owner shall occupy the Home as the Owner's principal place of residence.

The Owner further certifies that Owner's financing for the Home has been approved in advance by the City. The City will only approve the following types of First Lender Loans: (i) First Lender Loans from the California Housing Finance Agency, Veterans Administration or other public agency; or (ii) First Lender loans from an institutional lender with a thirty (30) year term with an interest rate that is commercially reasonable and does not include any of the following terms: negative amortization, balloon payments, interest only payments, or other provision which the City determines will cause the Owner's monthly housing costs to exceed one-twelfth (1/12<sup>th</sup>) of [**CHOOSE ONE: thirty percent (30%) of seventy percent (70%) OR thirty-five percent (35%) of one hundred ten percent (110%)**] of Median Income Adjusted for household size appropriate to the Home (the "Affordable Cost") at any time during the term of such loans shall not be permitted. The Owner further certifies that any financing recorded junior to this Agreement and the City Deed of Trust as of the date of this Agreement has also been approved in advance by the City. The Owner understands and acknowledges that the City shall only approve junior loans to be recorded at the sale of the Home to Owner if (i) such loans are offered by a public entity or by a nonprofit tax-exempt entity approved in advance by City and (ii) such loans have thirty (30) year terms with deferred payments and/or below market rate interest rates. Junior loans with negative amortization, balloon payments, interest only payments, or other provision which, as determined by the City, will cause the Owner's monthly housing costs to exceed the Affordable Cost at any time during the term of such loans are prohibited. The City hereby approves of the following First Lender Loan: \_\_\_\_\_ . **[The City hereby approves of the following junior loan \_\_\_\_\_.]**

3. OWNER OCCUPANCY AND LEASING OF HOME

A. The Owner shall occupy the Home as the Owner's principal place of residence within the earlier of: sixty (60) days of the recorded date of this Agreement or the close of escrow on the First Lender Loan. Failure by the Owner to occupy the Home as the Owner's principal place of residence shall constitute a default under this Agreement for which the City may exercise its option to purchase pursuant to Section 17 below. The Owner shall be

considered as occupying the Home if the Owner is living in the unit for no fewer than nine (9) months out of each calendar year. The Owner shall provide an annual written certification in the form shown in the attached **Exhibit B**, to the City that the Owner is occupying the Home as his or her principal place of residence.

B. The Owner shall not rent or lease the Home to another party, unless such rental or lease is first approved in writing by the City, which the City may approve or disapprove in its sole and absolute discretion. If the City approves the renting, and it shall have no obligation to do so, the following conditions must be met: (1) the term of the rental or lease may not exceed twelve (12) months and cannot be extended without City approval; (2) the Owner must provide evidence to the City's reasonable satisfaction that the Owner will incur substantial financial hardship if he or she is not permitted to rent or lease the Home to a third party; (3) the tenant must qualify as a low income household, as certified to the City, (4) the rent for the Home may not exceed rent determined by the City to be affordable to a low income household, in accordance with the City's affordable housing programs (the "Affordable Rent"), and (5) any rental and lease must comply with all applicable state, local and federal laws. Any rental or lease of the Home in violation of this Agreement is prohibited and shall be a default under this Agreement and the City Deed of Trust. The Owner further agrees that, in the event the Owner rents or leases the Home to a third party in violation of this Section 3B, any excess rents ("Excess Rental Proceeds") paid to the Owner by the lessee over the "Affordable Rent" shall be due and payable to the City immediately upon receipt thereof by the Owner. Such Excess Rental Proceeds shall be considered a recourse debt of the Owner to the City, as evidenced by the City Note, which the City may collect by legal action against the Owner, including by foreclosure under the City Deed of Trust.

#### 4. MAINTENANCE

A. The Owner shall maintain the Home, including landscaping, in good repair and in a neat, clean, and orderly condition (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and all their respective departments, bureaus, and officials and other bodies having or claiming jurisdiction. Owner will not commit waste or permit deterioration of the Home and shall make all repairs and replacements necessary to keep the Home in good condition and repair. Failure by the Owner to maintain the Home shall constitute a default under this Agreement for which the City may exercise the City Purchase Option Upon Default to purchase the Home pursuant to Section 17 below.

B. In the event that the Owner breaches any of the covenants contained in this section and such default continues for a period of ten (10) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter the Home and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter the Home and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas, and to attach a lien on the Home, or to assess



the Home, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, which amount shall be promptly paid by the Owner to the City, plus an administrative charge equal to fifteen percent (15%) of the cost of such work upon demand.

5. INSURANCE PROCEEDS

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

6. TRANSFER AND SALE RESTRICTIONS

A. Transfer. Any Transfer of the Home will be subject to the provisions of this Agreement including, without limitation, exercise of the City Option pursuant to Section 10 below. "Transfer" shall mean any sale, assignment, or transfer, voluntary or involuntary, of any interest in the Home, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, an interest evidenced by a land contract by which possession of the Home is transferred and Owner retains title, or a deed of trust. Any Transfer without satisfaction of the provisions of this Agreement is prohibited, and shall constitute a default for which the City may exercise the City Purchase Option on Default pursuant to Section 17 below. A Transfer shall not include a transfer: (i) to an existing spouse or Domestic Partner who is also an obligor under the City Note; (ii) by the Owner to a spouse or Domestic Partner where the spouse or Domestic Partner becomes the co-owner of the Home; (iii) between spouses as part of a marriage dissolution proceeding; (iv) to an existing spouse or Domestic Partner of Owner by devise or inheritance following the death of Owner; (v) by Owner into an inter vivos trust in which Owner is the trustee or beneficiary of the trust (the "Trust") (provided that the Owner must continue to reside in the Property and any other transfer of the Property as a Trust asset will be considered a Transfer); (vi) by deed of trust or imposition of a lien subordinate to the Deed of Trust approved in advance by the City; (vii) refinance of the First Lender Loan meeting the requirements of Section 24 of this Agreement. Owner shall provide written notice of all such transfers to the City pursuant to Section 7 below and Owner shall continue to occupy the Home as his or her principal place of residence (except where the transfer occurs pursuant to subsection (iii) or (iv) above, in which event the transferee shall owner-occupy the Home and affirmatively assume Owner's obligations under this Agreement, the City Note and the City Deed of Trust). Transfer by devise from one Owner to another Owner who is a joint tenant with a right of survivorship shall not be considered a "Transfer" for the purposes of this agreement provided that both Owners are listed as parties to this Agreement as of the date of this Agreement. For the purposes of this Section 6, "domestic partners" shall mean two unmarried people, at least eighteen (18) years of age, (i) who have lived together continuously for at least one (1) year and who are jointly responsible for basic living expenses incurred during their domestic partnership or (ii) who have registered as domestic partners with the State of California. Domestic partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of California. For purposes of this section, an individual shall be considered a

domestic partner of Owner upon presentation of an affidavit, proof of registration or other acceptable evidence by Owner to the City.

B. Inheritance. In the event a Transfer occurs by devise or inheritance due to death of the Owner (through the Trust or otherwise), the administrator of the Owner's estate or the person inheriting the Home shall provide written notice to the City of the Owner's death within thirty (30) days of the date of death and the following procedures shall apply:

(1) The person inheriting the Home (the "Inheriting Owner") shall provide the City with income information, to be verified by the City, so that the City may determine if the Inheriting Owner is an Income Eligible Household. If the Inheriting Owner fails to provide required financial information and/or documentation, he or she shall be deemed not to qualify as an Income Eligible Household. If the Inheriting Owner qualifies as an Income Eligible Household, he or she shall succeed to the Owner's interest and obligations under this Agreement, the City Note, and the City Deed of Trust and new documents shall be executed between the Inheriting Owner and the City and recorded against the Home. If the Inheriting Owner fails to qualify as an Income Eligible Household, he or she shall be required to Transfer the Home to an Eligible Purchaser at a price not exceeding the Maximum Restricted Resale Price, pursuant to the procedures set forth in Sections 7 through 13 below and the City may exercise the City Option pursuant to Section 10 below; provided, however that the Inheriting Owner may own and occupy the Home for up to twelve (12) months prior to providing an Owner's Notice of Intent to Sell to the City pursuant to Section 7 below, and provided further that the Inheriting Owner remains in compliance with the requirements of this Agreement and the City Deed of Trust. The Inheriting Owner shall not be required to occupy the Home during this twelve (12)-month time period but shall not rent the Home except as provided in Section 3B above.

(2) Failure of an Inheriting Owner to follow the procedures and file the notices described in this Section 6 shall constitute a Default under this Agreement and the City may then exercise any of the remedies set forth in Section 14B below, including, without limitation, exercise of the City Purchase Option upon Default.

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

A. In the event the Owner intends to transfer (including without limitation all "Transfers" as defined in Section 6) or vacate the Property, the Owner shall promptly give the City written notice of such intent (the "Owner's Notice of Intent to Transfer") in the form shown in the attached **Exhibit C**. The Owner shall give the City the Owner's Notice of Intent to Transfer prior to notifying real estate brokers or lenders of Owner's intent to Transfer the Property and prior to listing of the Property on the Multiple Listing Service. The Owner's Notice of Intent to Transfer shall be sent to the City by certified mail, return receipt requested at the address provided in Section 32 of this Agreement. The Owner's Notice of Intent to Transfer shall include the information necessary for the City to determine the Maximum Restricted Resale Price of the Property, including the following information:

(1) the address of the Property;

- (2) the date of purchase of the Property by the Owner;
- (3) the purchase price of the Property paid by the Owner at the time of his/her purchase;
- (4) a copy of the "Closing Disclosure," as defined under 12 C.F.R. section 1026.38 or equivalent document from the close of escrow on the Owner's purchase of the Property;
- (5) if Owner has made Eligible Capital Improvements to the Property that he/she wishes to include in the calculation of Indexed Price, a description of the improvements, the date the improvements were made, a copy of the letter granting prior City approval of the improvements, evidence of cost of the improvements, and an appraisal of the value added to the Property by the Eligible Capital Improvements;
- (6) if the Owner believes the Home is in good repair, with no deferred maintenance that would warrant a downward adjustment of the Indexed Price, a request for City inspection to verify good condition;
- (7) the date on which Owner intends to vacate the Property;
- (8) the date the Property will be placed on the market; and
- (9) the name and phone number of the person to contact to schedule inspection of the Property by the City.

**B. The City hereby notifies Owner and Owner hereby acknowledges that if the Owner contracts with a real estate broker to sell the Home, and the City or a City Designated Purchaser purchases the Home that the Owner shall be solely responsible to pay for the services of such broker. The services of a broker may not be required if the City exercises the City Option pursuant to Section 10 below. Therefore, the Owner understands and agrees that the Owner should wait to hire a broker until such time as the Owner has received the City Response Notice pursuant to Section 10 and then Owner should only hire a broker if the City or a City designee has not executed the Option.**

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

- (1) within thirty (30) days of delivery of the Owner's Notice of Intent to Transfer, the Owner shall obtain and deliver to the City a current written report of inspection of the Home by a licensed structural pest control operator;
- (2) within the sooner of (a) sixty (60) days from the date of delivery of the Owner's Notice of Intent to Transfer, or (b) prior to close of escrow on the Transfer, the Owner shall repair all damage noted in the pest report including damage caused by infestation or infection by wood-destroying pests;

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

(4) if the Home is vacant, the Owner shall maintain utility connections until the close of escrow on the Transfer;

(5) in the event of purchase of the Property by the City or City Designated Purchaser, the Owner shall permit a final walk-through of the Property by the City or City Designated Purchaser, in the final three (3) days prior to close of escrow on the Transfer.

#### 8. CITY RESPONSE TO OWNER'S NOTICE OF INTENDED TRANSFER

The City shall respond in writing (the "City Response Notice") to the Owner's Notice of Intent to Transfer within thirty (30) days of City receipt of a complete Owner's Notice of Intent to Transfer that includes all information required under Section 7A and 7C(1) and (2) above, which includes the City receipt of the pest control report and home inspection report (if any) required. The City Response Notice shall inform the Owner of the City's election to proceed under one (1) of the following two (2) alternatives:

A. City Exercise of City Purchase Option. The City Response Notice may notify the Owner that the City or a City Designated Purchaser elects to exercise the City Option to purchase the Home. The City Response Notice shall include the City's calculation of the (i) Maximum Restricted Resale Price pursuant to Section 11 below to be paid by the City or a City Designated Purchaser and (ii) the transaction fee to be paid by the Owner pursuant to Section 10A below.

B. Owner Sale at a Restricted Sales Price to Eligible Purchaser. Alternatively, the City Response Notice may notify the Owner that the City or a City Designated Purchaser will not exercise the City Option to purchase the Home. In this event, the City Response Notice shall include the following information: (1) the maximum qualifying income for an Eligible Purchaser; (2) the certifications required of an Eligible Purchaser; and (3) the Maximum Restricted Resale Price the Owner may receive for the Home, calculated by the City pursuant to Section 11 below. Upon receipt of such notice, the Owner may proceed to sell the Home to an Eligible Purchaser at a price not to exceed the Maximum Restricted Resale Price, as set forth in Section 11 pursuant to the procedure set forth in Section 12 below.

#### 9. OWNER ACKNOWLEDGEMENT OF CITY RESPONSE NOTICE

No later than seven (7) days following the date of the City Response Notice, the Owner shall acknowledge in writing to the City, in the form shown in the attached **Exhibit D**, that he/she has received the City Response Notice and still intends to Transfer the Home.

#### 10. CITY PURCHASE OPTION

A. In consideration of the economic benefits received by the Owner resulting from purchase and ownership of the Home at an affordable price, Owner hereby grants and gives to the City a right to purchase all of Owner's right, title, and interest in and to the Home upon the occurrence of the events set forth in this Agreement, subject to the terms and conditions included in this Agreement (the "City Option"). The Owner agrees that if the Owner decides to Transfer the Home, the City shall have the City Option to purchase the Home for the Maximum Restricted Resale Price calculated pursuant to Section 11 of this Agreement. If the City or a City Designated Purchaser exercises the City Option and purchases the Home, the Owner shall pay the City a transaction fee equal to three percent (3%) of the Maximum Restricted Resale Price (or such greater amount as may be set forth in the City's Master Fee Schedule). The City Option may be exercised by the City or by a City Designated Purchaser in the City Response Notice. If the City Response Notice notifies the Owner that the City or a City Designated Purchaser will exercise the City Option, the City or the City Designated Purchaser shall purchase the Home within ninety (90) days of the date of the City Response Notice and title shall be delivered by the Owner to the City by grant deed, free and clear of any mortgage or other liens, unless approved in writing by the City.

B. The City may assign the City Option to another public agency, a nonprofit corporation, or an Eligible Purchaser selected by the City (any of which shall be referred to herein as a "City Designated Purchaser"). If the City assigns the City Option to a City Designated Purchaser, the City Response Notice shall be executed by the City Designated Purchaser and shall notify the Owner that a City Designated Purchaser is exercising the City Option in lieu of the City.

C. The City acknowledges and agrees that the City Option shall only be exercised by the City or a City Designated Purchaser for the purpose of retaining the Home as an affordable housing unit and that the Home may only be resold by the City or a City Designated Purchaser as an affordable housing unit in compliance with the City's Affordable Housing Program and/or other City affordable housing programs.

#### 11. DETERMINATION OF MAXIMUM RESTRICTED RESALE PRICE FOR CITY PURCHASE OR RESTRICTED SALE

If the City (or a City Designated Purchaser) exercises the City Option, or if Owner sells to an Eligible Purchaser, the Maximum Restricted Resale Price (the "Maximum Restricted Resale Price") that the Owner shall receive from the City, City Designated Purchaser or Eligible Purchaser (or from any other sale or transfer by the Owner of the Home) shall be the lesser of (i) the Indexed Price of the Home; or (ii) the Fair Market Value of the Home.

A. Indexed Price. The Indexed Price of the Home means the sales price of the Home at the time of purchase by the Owner, as set forth on page 1 of this Agreement (the "Owner's Base Price"), increased by the percentage of increase in the Median Income from the date of the original purchase of the Home by the Owner to the date of receipt by the City of the Owner's Notice of Intent to Transfer, and, where applicable, adjusted pursuant to subsection 11A(1) to reflect the value of Eligible Capital Improvements and subsection 11A(3) to reflect Owner's Original Closing Costs or subsection 11A(2) below to reflect the cost of deferred maintenance.

"Median Income" shall refer to the median yearly income, adjusted for a household size of four, in Alameda County, as published by the California Department of Housing and Community Development ("HCD"), or, in the event such income determination is no longer published by HCD, 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 in order to determine the median yearly income in Alameda County. The Median Income as of the date of this Agreement is shown on the first page of this Agreement.

(1) Where applicable, the Indexed Price shall include an upward adjustment reflecting the value of any substantial structural or permanent fixed improvements which the Owner has made to the Home after purchase of the Home. No such adjustment shall be made except for improvements: (a) made or installed by the Owner which conform with applicable building codes; (b) approved in advance of installation by the City; (c) whose initial costs were Two Thousand Dollars (\$2,000) or more; and (d) that conform to Federal Housing Quality Standards and (e) for which the Owner has submitted two bids from contractors acceptable to the City stating the estimated cost to perform the Improvements. Capital improvements meeting the above requirements are referred to herein as "Eligible Capital Improvements." Eligible Capital Improvements shall be any addition or improvement made to the Home which consists of more than mere repairs or replacement of existing facilities or improvements and which has a useful life of five (5) years or more. A form for use in requesting City approval of an Eligible Capital Improvement is attached hereto as **Exhibit E**. The adjustment to the Indexed Price for Eligible Capital Improvements shall be limited to the cost minus depreciation value of the Eligible Capital Improvements.

(2) The Indexed Price shall include a downward adjustment, where applicable, in an amount necessary to repair any violations of applicable building, plumbing, electric, fire or housing codes or any other provisions of the City of Hayward Building Code, as well as any other repairs needed to put the Home into a "sellable condition." Items necessary to put the Home into sellable condition shall be determined by the City, and may include cleaning, painting and making needed structural, mechanical, electrical, plumbing and fixed appliance repairs and other deferred maintenance repairs.

(3) The Indexed Price shall include an upward adjustment reflecting the City's administrative fees set forth in Section 10A or Section 12E, as applicable.

(4) In the event the difference between the Indexed Price and the Owner's Base Price is less than the amount of closing costs that the Owner paid at the initial closing of the sale of the Home to Owner and that are set forth on page 1 of this Agreement (the "Owner's Original Closing Costs"), the Indexed Price shall be adjusted upward in an amount equal to the difference between (i) the Indexed Price as calculated pursuant to Section 11A above and (ii) the sum of the Owner's Base Price and Owner's Original Closing Costs. Notwithstanding the preceding sentence, the Index Price shall not be adjusted upward pursuant to this subsection 11A(3) if any downward adjustment is required pursuant to Section 11A(2), if the Owner has otherwise failed to maintain the Home in good repair, or if the Owner is otherwise in default under or in violation of the terms of this Agreement.

B. Fair Market Value. In certain circumstances it may be necessary to determine the fair market value of the Property without taking into account the resale restrictions imposed by this Agreement (the "Fair Market Value") where the parties wish to determine if the Indexed Price exceeds the Fair Market Value in order to determine the Maximum Restricted Resale Price pursuant to Section 11. If it is necessary to determine the Fair Market Value of the Property, it shall be determined by a certified Member of the Appraisal Institute ("MAI") or other qualified real estate appraiser approved in advance by the City. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. The cost of the appraisal shall be paid by the Owner unless the appraisal is obtained from a new purchaser. In the event that the Owner has Eligible Capital Improvements to the Property which have increased the value of the Property or if damage or deferred maintenance has occurred while the Owner owned the Property which has decreased the value of the Property, the appraisal shall specifically ascribe a value to these adjustment factors and state what the fair market value of the Property would be without such adjustments by utilizing the procedures outlined in Section 11A above for calculating the Indexed Price. Nothing in this section shall preclude the Owner and the City from establishing the Fair Market Value of the Property by mutual agreement in lieu of an appraisal pursuant to this section.

12. SALE BY OWNER IF CITY DOES NOT EXERCISE OPTION TO PURCHASE

In the event the City Response Notice notifies the Owner to proceed to sell the Home to an Eligible Purchaser at a price not exceeding the Maximum Restricted Resale Price, the Owner may proceed to sell the Home in compliance with the following requirements:

A. Marketing. The Owner shall use bona fide good faith efforts to sell the Home to an Eligible Purchaser in compliance with this Section 12, including listing the Home on the Multiple Listing Service, keeping the Home in an orderly condition, making the Home available to show to agents and prospective buyers, and providing buyers with Eligible Purchaser requirements, including income qualifications and the City's form of disclosure statement summarizing the terms of the Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase ("City Resale Restriction"). A proposed purchaser ("Proposed Purchaser") who the Owner believes will qualify as an Eligible Purchaser shall be referred to the City or the City's agent for eligibility determination.

B. Eligible Purchaser. A Proposed Purchaser shall qualify as an "Eligible Purchaser" if he or she meets the following requirements, as determined by the City:

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

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

(3) Agreement to Sign Resale Restriction Agreement and Other City Documents, and to Cooperate with the City. The Proposed Purchaser shall agree to sign a resale restriction agreement, promissory note to the City, and deed of trust to the City restricting future resale of the Home and shall agree to cooperate fully with the City in promptly providing all information requested by the City to assist the City in monitoring the Proposed Purchaser's compliance with the City Resale Restriction.

C. Maximum Sales Price. The purchase price for the sale of the Home by the Owner to the Eligible Purchaser shall not exceed the Maximum Restricted Resale Price calculated by the City pursuant to Section 11 above, as set forth in the City Response Notice. The closing costs paid by the Eligible Purchaser shall not exceed reasonable customary buyer's closing costs in the County of Alameda. Additionally, the loans or other financing that the Eligible Purchaser uses to purchase the homes must be reasonably acceptable to the City and in furtherance of the goals of the City's affordable housing programs. Negative amortization loans, purchase money loans with interest only payments, purchase money loans with balloon payments, or other purchase money loans that, as determined by the City, may cause the Eligible Purchaser's monthly housing cost to exceed the Affordable Cost at any time during the term of such loans shall not be permitted.

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

(1) Within ten (10) days of an offer from the Proposed Purchaser, the name, address, and telephone number in writing of the Proposed Purchaser.

(2) Within ten (10) days of an offer from the Proposed Purchaser, a signed financial statement of the Proposed Purchaser in a form acceptable to the City and any other supporting documentation requested by the City. Owner acknowledges that the City may request the following documentation (1) pay stubs for the most recent pay periods; (2) income tax returns for the most recent tax years; (3) an income verification form from the Proposed Purchaser's current employer; (4) an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; (5) if the Proposed Purchaser is unemployed and has no such tax return, another form of independent verification. The financial information shall be used by the City to determine the income eligibility of the Proposed Purchaser.

(3) Within ten (10) days of an offer from the Proposed Purchaser, the proposed sales contract and all other related documents which shall set forth all the terms of the sale of the Home. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Proposed Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances, or other consideration, if any. Additionally at the same time the Owner submits the proposed sales contract, the Eligible Purchaser will provide the first mortgage loan documents that the Eligible Purchaser intends to enter into in connection with Eligible Purchaser's purchase of the Home, which loan documents shall clearly disclose the interest rate to be charged on the principal and all other terms and conditions of the first mortgage loan.



(4) Within ten (10) days of the City's approval of the Eligible Purchaser and first mortgage financing pursuant to Section 12D(5) below, the Owner and the Proposed Purchaser shall provide the Closing Certification attached hereto as **Exhibit G**.

(5) Upon receipt of the items set forth in Section 12D(1) through (3), the City shall review such documents, shall determine if the Proposed Purchaser is an Eligible Purchaser and if the sales contract and first mortgage loan documents comply with the terms of the City's affordable homeownership program requirements and this Agreement. Owner understands and acknowledges that the City will require at least fifteen (15) days to make such determinations which fifteen (15) days shall commence on the date the Owner and Proposed Purchaser provide City with the items set forth in Section 12D(1) through (3) and such other information as is reasonably necessary for the City to make such determinations. The City shall promptly notify the Owner if the Proposed Purchaser is not an Eligible Purchaser or if the sales contract and first mortgage documents do not comply with the terms of the City's affordable homeownership program or this Agreement. Upon receipt of such notice of disapproval, the Owner shall continue to market the Home in accordance with Section 12A and otherwise comply with the terms and conditions of this Agreement.

(6) Within ten (10) days of the City's approval of the Eligible Purchaser and first mortgage financing pursuant to Section 12D(5) above, an executed resale restriction agreement, promissory note to the City, and deed of trust to the City from the Proposed Purchaser in forms provided by the City. The recordation of the new deed of trust and resale restriction agreement shall be a condition of the City's approval of the proposed sale.

(7) Within ten (10) days of the City's approval of the Eligible Purchaser and first mortgage financing pursuant to Section 12D(5) above, the name of the title company escrow holder for the sale of the Home, the escrow number, and name, address, and phone number of the escrow officer and a preliminary title report for the City's review.

(8) Within three (3) days following the close of the proposed sale, certified copies of the recorded City Deed of Trust and City Resale Restriction, the original City Note, a copy of the final sales contract, Closing Disclosure, escrow instructions, and any other documents which the City may reasonably request.

E. Administrative Fee. The City shall charge the Owner an administration fee equal to .5% of the purchase price (which may be adjusted to reflect the fees set forth in the Master Fee Schedule) in connection with the work that the City shall perform to qualify the Eligible Purchaser and oversee the sales process. Such fee shall be paid at the close of escrow on the sale of the Home. The fee may be adjusted periodically according to the City's Master Fee Schedule.

### 13. PAYMENT TO CITY OF EXCESS SALES PROCEEDS

If the Owner makes a Transfer in violation of this Agreement, the Owner shall pay the Excess Sales Proceeds to the City. For purposes of this Agreement, "Excess Sales Proceeds"

shall mean the amount by which the gross sales proceeds received by the Owner from the new purchaser exceed the Maximum Restricted Resale Price for the Home (in the amount that was stated in the City Response Notice). This amount shall be a debt of the Owner to the City, further evidenced by the City Note, and secured by the City Deed of Trust. The Owner acknowledges that the City shall have no obligation to cause reconveyance of this Agreement or of the City Deed of Trust until the Excess Sales Proceeds are paid to the City. The City shall utilize the Excess Sales Proceeds for the City's affordable housing programs. The Owner and the City acknowledge that the formula for calculation of the amount of Excess Sales Proceeds due from the Owner to the City is intended to cause the Owner to receive the same or fewer net sales proceeds from sale of the Home at an unrestricted price to a market purchaser (in violation of this Agreement) as the Owner would receive from sale of the Home to the City, City Designated Purchaser or to an Eligible Purchaser at the Maximum Restricted Resale Price.

#### 14. DEFAULTS

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

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

(2) The Owner fails to owner-occupy the Home, as required pursuant to Section 3A above, and such failure continues following written notice by the City and sixty (60) days opportunity to cure following the date of such notice.

(3) The Owner rents the Home in violation of Section 3B above, and such failure continues following written notice by the City and sixty (60) days' opportunity to cure.

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

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

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

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

(8) A lien is recorded against the Home other than the lien of a bona fide mortgage loan permitted pursuant to Section 24 below.

(9) Owner places a mortgage on the Home in violation of Section 24 below.

- (10) Owner declares bankruptcy or makes an assignment of assets for the benefit of creditors.
- (11) Judicial foreclosure proceedings are commenced regarding the Property.
- (12) The Owner executes any deed in lieu of foreclosure transferring ownership of the Property.
- (13) Owner defaults under the City Deed of Trust or the City Note.

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

- (1) Declare all sums due under the City Note, including without limitation the Excess Sales Proceeds and/or Excess Rental Proceeds immediately due and payable without further demand, accelerate payments due under the City Note, and invoke the power of sale under the City Deed of Trust;
- (2) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;
- (3) Take such enforcement actions as is authorized under the City of Hayward Municipal Code;
- (4) Declare a Default under the City Note and the City Deed of Trust and pursue all City remedies under the City Note and the City Deed of Trust;
- (5) Enter the Home to correct maintenance failures, and place a lien upon the Home to collect City costs to remedy maintenance failures, pursuant to Section 4B above; and
- (6) Exercise the City Option upon Default as described in Section 17 below.

#### 15. NOTICE AND CURE

Upon Default or a violation of any of the provisions of this Agreement, the City may give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, within such further time as the City determines is necessary to correct the violation, or, if applicable, within the cure period defined under any section of this Agreement, the City may declare a default under this Agreement. If the Owner is in default under any other mortgage loan on the Home, the City may declare a default under this Agreement.

The City shall notify First Lender at the address provided by the First Lender to the City in the manner set forth in Section 32 of this Agreement if the City has declared a default under this Agreement or under the City Note or City Deed of Trust.

16. NOTICE TO CITY OF DEFAULT

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Home shall be recorded by the City in the Office of the Recorder of the County of Alameda for the benefit of the City. The City may declare a default under this Agreement upon receipt of any notice given to the City pursuant to Civil Code Section 2924b and may exercise its rights as provided in Sections 14 and 17.

In the event of default and foreclosure under the First Lender Loan or any other mortgage loan on the Home, the City shall have the same right as the Owner to cure defaults and redeem the Home prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

If a request for notice of default for the benefit of the City has not been recorded, the City's right to purchase the Home shall commence from the date a notice of default is given by the City to the Owner.

17. PURCHASE OPTION UPON DEFAULT

A. Purchase Option. Notwithstanding, and in addition to, the remedies provided the City in Section 14B, and the City Option provided in Section 10A, the Owner hereby grants to the City or the Designee the option to purchase the Home effective upon the declaration of a default by the City pursuant to Section 14A above, and subject to notice and cure rights set forth in Section 15. Such option to purchase on default shall be referred to in this Agreement as the "City Purchase Option Upon Default". The City Purchase Option Upon Default is given to the City by the Owner in consideration of the economic benefits received by the Owner resulting from Owner's purchase of the Home at a below market price made possible by the City's Affordable Housing Programs.

B. Exercise of Option. The City Purchase Option Upon Default may be exercised upon a default under this Agreement or upon default under any promissory note, deed of trust or any other lien, including a judgment lien, recorded against the Home. The City shall have thirty (30) days after a default is declared to notify the Owner and the First Lender of its decision to exercise its option to purchase. Not later than ninety (90) days after the notice is given by the City to the Owner of the City's intent to exercise its option, the City shall purchase the Home for the Maximum Restricted Resale Price set forth in Section 11 and title shall be delivered by the Owner to the City by grant deed, free and clear of any mortgage or other liens, unless approved in writing by the City. In the event of exercise of the City Purchase Option upon Default and purchase of the Home by the City or its assignee, the Owner shall permit a final walk-through of the Home by the City or its assignee in the final

three (3) days prior to close of escrow on the Transfer. The City may assign its rights to purchase the Home under this Section 17 to a City Designated Purchaser.

C. Use for Affordable Housing. The City acknowledges and agrees that the City Option shall only be exercised by the City or a City Designated Purchaser for the purpose of retaining the Home as an affordable housing unit and that the Home may only be resold by the City or a City Designated Purchaser as an affordable housing unit in compliance with the City's Affordable Housing Program and/or other City affordable housing programs.

## 18. NONLIABILITY OF THE CITY

A. No Obligation to Exercise Option. The City shall have no obligation to exercise any option granted it under this Agreement. In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its option to purchase under Sections 10 and 17 nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

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

C. Indemnity. Owner agrees to defend, indemnify, and hold the City harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys' fees that the City may incur as a direct or indirect consequence of: (1) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the City Deed of Trust; (2) the failure at any time of any of Owner's representations to the City to be true and correct; or (3) Owner's purchase or ownership of the Home.

## 19. RESTRICTIONS ON FORECLOSURE PROCEEDS

If a creditor acquires title to the Home through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Owner when added to the proceeds paid or credited to the creditor exceed the Maximum Restricted Resale Price. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to the City in consideration of the benefits received by the Owner through purchase of the Home under this Agreement and the City's Affordable Housing Programs. This Section 19 is subject to the provisions of Section 23 of this Agreement,

including but not limited to, the requirement that no provision of this Agreement shall impair the rights of the First Lender, or the First Lender's successor or assign, or Fannie Mae, to protect its interests under the First Lender Loan.

20. RESTRICTION ON INSURANCE PROCEEDS

If the Home is damaged or destroyed and the Owner elects not to rebuild or repair the Home, the Owner shall pay the City the portion of any insurance proceeds received by the Owner for such destruction or damage which is in excess of the Maximum Restricted Resale Price calculated pursuant to Section 11 above.

21. TERM OF AGREEMENT

All the provisions of this Agreement, including the benefits and burdens, run with the land and the Home and this Agreement shall bind, and the benefit hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the City and its successors in perpetuity until the date of Transfer of the Property to the City or another purchaser in compliance with this Agreement (including execution by the purchaser of a new Resale Restriction for the benefit of the City). Upon resale in accordance with the terms of this Agreement, the term of this Agreement shall continue in perpetuity and the new Owner shall execute a new resale restriction agreement, promissory note to the City, and deed of trust to the City.

22. SUPERIORITY OF AGREEMENT

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

23. SUBORDINATION **CHOOSE 1 BELOW**

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

California Civil Code Section 2924), and (ii) the City shall not have cured the default within the sixty (60)-day period. Owner agrees to record any necessary documents to effect such termination, if applicable. **[Use if first lender is a HUD or VA insured loan (City restrictions are junior)]**

Notwithstanding any other provision hereof, the provisions of the City Deed of Trust shall be subordinate to the lien of the First Lender Loan and this Agreement and the City Deed of Trust shall not impair the rights of the First Lender, or the First Lender's successor or assign, or Fannie Mae, to cure a default under the terms of the First Lender Loan, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner, or to otherwise protect its interest in the First Lender Loan. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. This Agreement shall not be subordinated to the First Lender Deed of Trust and shall survive such foreclosure or acceptance of a deed in lieu of foreclosure. Notwithstanding such survival, this Agreement shall in no way impair the First Lender's ability to foreclose or accept a deed in lieu of foreclosure. After such foreclosure or acceptance of a deed or assignment in lieu of foreclosure, the City Deed of Trust shall be forever terminated and shall have no further effect as to the Home or any transferee thereafter. **[Use if first lender is NOT a HUD or VA insured loan (City restrictions are senior)]**

24. 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.

B. Refinance of First Mortgage Loan.

(1) The City shall permit and approve prepayment and refinance of the existing First Lender Loan and shall provide for the subordination of **this Agreement (if previously subordinated to the First Lender Loan) and** the City Deed of Trust to the refinanced First Lender Loan only if the new loan (a) does not exceed the original principal amount of the First Lender Loan and (b) such refinance does not cause the Owner's monthly payment on all debt recorded against the Home (including the refinanced loan) to exceed the Affordable Cost, as determined by the City. A new loan that meets the requirements in this Section 24B(1) shall be a loan that is a "Permitted Refinance Amount".

(2) The City may permit and approve prepayment and refinance of the existing First Lender Loan with a new loan that exceeds the Permitted Refinance Amount if (i) the Owner demonstrates to the City's reasonable satisfaction that repairs are required in order for the Home to meet applicable health and safety and building code requirements (and repairs are not the result of Owner's failure to comply with this Agreement), (ii) Owner provides two bids from licensed Contractors reasonably acceptable to the City evidencing the cost of the needed repairs, (iii) Owner provides the contract for the performance of such repairs to the City and the City determines that the terms of such contract are reasonable, (iv) Owner (a) deposits the amount necessary to pay for such repairs into an escrow account and the City controls the

disbursement of such amount to Owner or (b) City and Owner agree to another manner of disbursement of funds for repairs that is acceptable to City in its sole and absolute discretion and (v) the Owner uses the amount of the new loan that exceeds the Permitted Refinance Amount solely for the needed repairs pursuant to the terms of the construction contract approved by the City. The Owner shall provide such evidence as may be required by the City to demonstrate the Owner has completed the approved repairs in accordance with the approved construction contract.

(3) No refinance shall be permitted if Owner is in default or otherwise in violation of this Agreement. If there is more than one loan, from the same lender, which loans collectively make up the "First Lender Loan" (as set forth in Recital F), the City shall not subordinate to the refinanced loan unless all loans making up the First Lender Loan are refinanced into one loan and such loan meets the requirements of Section 24B. The City will not approve any mortgage loan which includes negative amortization, a mortgage loan with interest only payments or balloon payments, or a mortgage loan that may cause the Owner's housing costs, as determined by the City, to exceed the Affordable Cost at any time during the term of such loan.

(4) In the event the Owner desires to refinance the First Lender Loan, Owner shall submit the Owner Request to Refinance Notice, the form of which is attached as **Exhibit F**. As part of its Owner Request to Refinance Notice, the Owner shall provide to the City the following: (i) a copy of the Closing Disclosure, (ii) copies of the new first mortgage loan documents to be entered into by Owner (which loan documents shall clearly disclose all terms and conditions to such loan including the interest rate) and the name, address, phone number and contact person of the new lender, (iii) the anticipated closing date of the new loan, (iv) copy of the escrow instructions to be used by the new lender in connection with the refinance, (v) a copy of a preliminary title report for the property that is dated within two weeks of the Owner Request to Refinance Notice, (vi) copies of the Owner's existing first mortgage loan documents and any other loan documents that are secured by a deed of trust recorded against the Home, (vii) a certified statement as to the monthly mortgage payments Owner makes on all debt secured against the Home. Owner understands and acknowledges that the City will require at least fifteen (15) days to approve or disapprove of an Owner's Request to Refinance which fifteen (15) days shall commence on the date the Owner and Proposed Purchaser provide City with the items set forth in Section 24B(4) (if applicable) and such other information as is reasonably necessary for the City to determine if the refinanced loan amount meets the requirements of this Section 24B. In the event the City determines that the new loan meets the requirements of this Section 24B, the City shall promptly notify Owner. In the event the new loan does not meet the requirements of this Section 24B, the City shall notify Owner that the new loan is not permitted under the terms of this Agreement.

C. Junior Loans and Equity Lines of Credit. After the initial sale of the Home to Owner, mortgage loans or equity lines of credit junior in lien priority to this Agreement and the City Deed of Trust are not permitted, except as expressly approved by the City in writing. The City shall not approve junior mortgage loans or equity lines of credit if the Owner is in default under or otherwise in violation of this Agreement. The City shall only approve junior mortgage loans or equity lines of credit after the initial sale of the Home to Owner if such



loans will not cause the total of all debt secured by the Home (calculated assuming a maximum permitted draw on any equity line of credit) to exceed the Permitted Refinance Amount. The City will not approve any mortgage loan which includes negative amortization, a mortgage loan with interest only payments or balloon payments, or a mortgage loan that may cause the Owner's monthly housing costs, as determined by the City, to exceed the Affordable Cost at any time during the term of such loan. In the event the Owner desires to borrow a mortgage loan or equity line of credit junior in lien priority to this Agreement, the Owner shall submit to the City the Owner Request to Refinance Notice attached as **Exhibit F**. Along with the Owner Request to Refinance Notice, the Owner shall provide to the City the following: (i) a copy of the Closing Disclosure, (ii) copies of the new loan documents to be entered into by Owner (which loan documents shall clearly disclose all terms and conditions to such loan including the interest rate) and the name and address of the new lender, (iii) the anticipated closing date of the new loan, (iv) copy of the escrow instructions to be used by the new lender in connection with the closing, (v) a copy of a preliminary title report for the property that is dated within two weeks of the Owner Request to Refinance Notice, (vi) copies of any and all loan documents that are secured by a deed of trust recorded against the Home, (v) a certified statement as to the monthly mortgage payments Owner makes on all debt secured against the Home. Owner understands and acknowledges that the City will require at least fifteen (15) days to approve or disapprove of an Owner's Request to Refinance which fifteen (15) days shall commence on the date the Owner and Proposed Purchaser provide City with the items set forth in this Section 24C and such other information as is reasonably necessary for the City to determine if the refinanced loan amount meets the requirements of this Section 24C. In the event the City determines that the new loan meets the requirements of this Section 24C, City shall promptly notify Owner. In the event the new loan does not meet the requirements of this Section 24C, the City shall notify Owner that the new loan is not permitted under the terms of this Agreement. The City will not approve any mortgage loan which includes negative amortization, a mortgage loan with interest only payments or balloon payments, or a mortgage loan that may cause the Owner's monthly housing costs, as determined by the City, to exceed the Affordable Cost at any time during the term of such loan.

D. Request for Notice of Default. Any time an Owner enters into a new mortgage loan, including junior mortgage loans and equity lines of credit, the Owner shall cause to be recorded against the Home a request for notice of default, providing for notice of default under such loan to be delivered to the City.

E. Purpose of Restrictions on Refinance and Junior Loans. The City and the Owner agree that the requirements of this Section 24 are necessary to ensure the continued affordability of the Home to Owner and to minimize the risk of loss of the Home by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section 24 shall constitute a Default under this Agreement for which the City may exercise the City's option upon default pursuant to Section 17 above.

F. Administrative Fee. The City shall charge the Owner an administration fee equal to Five Hundred Dollars (\$500) (which amount may be adjusted periodically by the City as published in the Master Fee Schedule) in connection with the work that the City shall perform

in connection with any Owner's request for refinance or to borrow a junior loan, which fee shall be due from Owner upon close of escrow in connection with the new first mortgage.

25. NONDISCRIMINATION

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

26. MONITORING AND INSPECTION BY CITY

A. The City (or its designee) may enter the Home for inspection following two (2) business days' advance written notice.

B. The Owner shall retain all records related to compliance with obligations under this Agreement for a period of not less than five (5) years, and shall make such records available to the City or its designee for inspection and copying upon five (5) business days advance written notice.

C. The City shall monitor Owner's compliance with the requirements of this Agreement on an annual basis. Owner shall cooperate with City monitoring and provide required certifications and other information required by the City to determine compliance within fifteen (15) days of receipt of a written request by the City.

27. RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUSTS

This Agreement shall not diminish or affect the rights of the City under the City Note and the City Deed of Trust.

Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of the California Housing Finance Agency ("CalHFA"), HUD, the Federal National Mortgage Association ("FNMA"), or the Veterans Administration ("VA") under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Home in compliance with Section 24 above.

28. HUD FORBEARANCE RELIEF

Notwithstanding other provisions of this Agreement, the Option shall not be exercised by the City when a deed of trust insured by HUD is secured by the Home, and (i) the Owner is undergoing consideration by HUD for assignment forbearance relief, or (ii) the Owner is undergoing consideration for relief under HUD's Temporary Mortgage Assistance Payment (TMAP) program.

29. INVALID PROVISIONS

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

30. NO WAIVER

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

31. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of California.

32. NOTICES

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

To the Owner:

At the address of the Home.

To the City:

City of Hayward  
Office of the City Manager  
Housing Division  
777 "B" Street  
Hayward, CA 94541-5007  
Attn: Housing Division Manager

and:

City Attorney  
City of Hayward  
777 "B" Street

Hayward, CA 94541-5007

To the First Lender:

**[to be inserted]**

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

33. INTERPRETATION OF AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid speculation on the Home and to insure to the extent possible that the mortgage payments remain affordable to moderate income households.

34. ATTORNEYS' FEES

If either party is required to initiate legal proceedings to enforce its rights under this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and costs in addition to any other recovery under this Agreement.

35. COVENANTS RUNNING WITH THE LAND

A. Owner hereby subjects the Home to the covenants and restrictions set forth in this Agreement. Owner hereby declares its express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land in perpetuity and shall pass to and be binding upon all parties having any interest in the Home throughout the term of this Agreement set forth in Section 21. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Home or any interest therein, as the case may be, shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties to such contract have actual knowledge of this Agreement.

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

C. All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon Owner for the benefit of the City and Eligible

Purchasers and such covenants and restrictions shall run in favor of such parties for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the City is an owner of any land or interest therein to which such covenants and restrictions relate.

36. OWNER'S ACKNOWLEDGEMENT OF RESALE RESTRICTION

Owner hereby acknowledges and agrees that:

A. Owner hereby subjects the Home to certain restrictions and limits the price for which Owner may sell the Home and the persons to whom Owner may sell the Home. Owner may not enjoy the same economic or other benefits from owning the Home that Owner would enjoy if this Agreement did not exist.

B. Absent the City's Affordable Housing Programs and the provisions of this Agreement, the Home could not be made available to Eligible Purchasers at an affordable price, including Owner.

C. Owner understands all of the provisions of this Agreement. In recognition of the acknowledgments and agreements stated in this Section 35, Owner accepts and agrees to the provisions of this Agreement with the understanding that this Agreement will remain in full force and effect as to the Home following any Transfer of the Home throughout the term of this Agreement.

D. OWNER UNDERSTANDS THAT THE DETERMINATION OF THE MAXIMUM RESTRICTED RESALE PRICE OF THE HOME TO AN ELIGIBLE PURCHASER CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INCREASES IN MEDIAN INCOME AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED AND THAT THE SALES PRICE PERMITTED HEREUNDER MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS AGREEMENT OR SUBJECT TO THE CITY'S AFFORDABLE HOUSING PROGRAM. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALES PRICE OF THE HOME THE PRIMARY OBJECTIVE OF THE CITY AND THIS AGREEMENT IS TO PROVIDE HOUSING TO ELIGIBLE PURCHASERS AT AN AFFORDABLE COST. THE MAXIMUM RESTRICTED RESALE PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES THAT HAVE NO RESTRICTIONS.

\_\_\_\_\_  
(Initials of Owner)

\_\_\_\_\_  
(Initials of Owner)

37. EXHIBITS

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

*[Signature Pages Follow]*

DRAFT

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

CITY:

CITY OF HAYWARD, a California charter city

By: \_\_\_\_\_  
Kelly McAdoo, City Manager

APPROVED AS TO FORM:

Michael S. Lawson, City Attorney

By: \_\_\_\_\_  
Vadim Sidelnikov, Deputy City Attorney

ATTEST:

By: \_\_\_\_\_  
Miriam Lens, City Clerk

***[CITY MANAGER SIGNATURE MUST BE ACKNOWLEDGED]***

BUYER:

By: \_\_\_\_\_  
[Owner Name]

By: \_\_\_\_\_  
[Co-owner Name]

***[ALL SIGNATURES MUST BE ACKNOWLEDGED]***

DRAFT



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 \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

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

Notary Public

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 \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_

Notary Public

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 \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

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

Notary Public

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 \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

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

Notary Public

**EXHIBIT A**

Legal Description of Property

DRAFT

**EXHIBIT B**

Form of Owner Occupancy Certification

To: City of Hayward ("City")

From: \_\_\_\_\_ [name of owner(s)] ("Owner(s)")

Address of Home: \_\_\_\_\_ ("Property")

Date: \_\_\_\_\_

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

This Owner Occupancy Certification is signed on \_\_\_\_\_, 20\_\_, under penalty of perjury.

By: \_\_\_\_\_  
Owner [type name]

By: \_\_\_\_\_  
Owner [type name]

Due Date: February 1 of each calendar year.

Attach copy of utility bill or driver's license showing address of Home.

**EXHIBIT C**

Form of Owner's Notice of Intent to Transfer  
(Affordable Housing Program)

To: City of Hayward ("City")

From: \_\_\_\_\_ [name of owner(s)] ("Owner(s)")

Address of Home: \_\_\_\_\_ ("Property")

Date: \_\_\_\_\_

Please be notified pursuant to Section 7 of the Resale Restriction Agreement and Option to Purchase between Owner and City dated \_\_\_\_\_, that the Owner intends to transfer the Property listed above.

A. The following information is provided to the City pursuant to Section 7 of the Resale Restriction Agreement:

1. Address of Property: \_\_\_\_\_
2. Date Owner purchased Property: \_\_\_\_\_
3. Purchase Price paid by Owner when Property was purchased: \_\_\_\_\_
4. Date Owner intends to vacate Property: \_\_\_\_\_
5. Date Property will be placed on market: \_\_\_\_\_
6. Name and phone number of person for City to contact to schedule inspection:  
\_\_\_\_\_ and \_\_\_\_\_  
(name) (phone number)

B. As required by Section 7 of the Resale Restriction Agreement, the following documents are attached to this Notice:

1. Copy of Closing Disclosure from Owner's purchase of the property
2. If Owner has made Eligible Capital Improvements to the Property that Owner wishes to include in the City's calculation of Indexed Price, check box below

Yes, I have made Eligible Capital Improvements pursuant to Section 11 of the Resale Restriction Agreement. They are \_\_\_\_\_ [describe improvements] and were completed on \_\_\_\_\_ [insert date]. I attach the following documents to this letter:

- a. copy of City letter granting prior approval of these improvements;
- b. evidence of cost of these improvements;
- c. appraisal showing value added to Property by the improvements.

C. I have not yet listed the Property for sale with a multiple listing service, or contacted a real estate broker or financial institution. I/we agree to prepare the Property for sale by:

- 1. obtaining a pest control report within thirty (30) days of the date of this notice,
- 2. repairing all damage noted in the pest report within the sooner of: (i) sixty (60) days from the date of this notice, or (ii) two (2) weeks prior to close of escrow or the transfer of the Property ,
- 3. allowing the City or its designee to inspect the Property within thirty (30) days of this notice,
- 4. maintaining utility connections until the Property is transferred,
- 5. permitting a walk through by the City prior to close of escrow or the transfer.

D. I acknowledge that if the City, or its designee, exercises its option to purchase the Property, the City will charge a transaction fee in the amount of three percent (3%) of the Maximum Restricted Resale Price and if the City does not exercise its option, the City will charge a fee in the amount of five tenths percent (.5%) of the purchase price (which fees may be adjusted to reflect the fees set forth in the Master Fee Schedule).

This Owner's Notice of Intent to Transfer is certified by Owner to be true and correct and is signed on \_\_\_\_\_ [insert date] under penalty of perjury.

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

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



**EXHIBIT D**

**Form of Owner Acknowledgement of City Response Notice  
(Affordable Housing Program)**

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

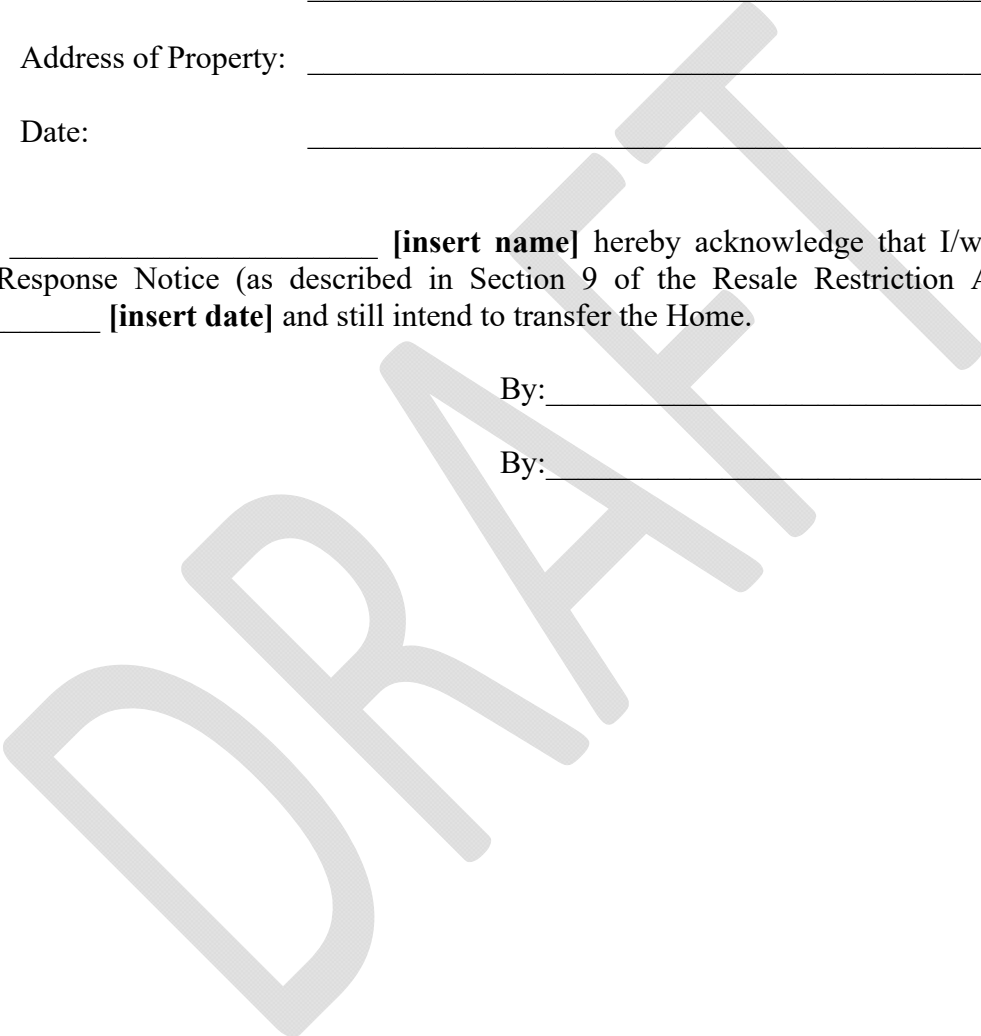
Address of Property: \_\_\_\_\_

Date: \_\_\_\_\_

I/We, \_\_\_\_\_ **[insert name]** hereby acknowledge that I/we received the City Response Notice (as described in Section 9 of the Resale Restriction Agreement) on \_\_\_\_\_ **[insert date]** and still intend to transfer the Home.

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

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



**EXHIBIT E**

Form of Request for City Approval of Improvements to the Property  
(Affordable Housing Program)

To: City of Hayward ("City")  
From: \_\_\_\_\_ ("Owner")  
Property Address: \_\_\_\_\_ ("Property")  
Date: \_\_\_\_\_

I hereby request City approval of the following capital improvements I/we intend to make to my Property:

Description of Improvements: \_\_\_\_\_  
\_\_\_\_\_

Original Purchase Price: \_\_\_\_\_

Two bids evidencing cost of Improvements: \_\_\_\_\_

A copy of the building permit (if required) is attached.

The City will respond in writing to this request.

**NOTE: Owner should retain copies of contracts, invoices, and receipts for all completed capital improvements. These documents will be necessary to establish the resale restricted price of the Property upon subsequent transfer.**

\*Notice: Proposed Improvements must cost at least Two Thousand Dollars (\$2,000) and must be approved by the City in writing prior to construction.

**EXHIBIT F**

Form of Owner Request to Refinance Notice  
(Affordable Housing Program)

To: City of Hayward ("City")  
From: \_\_\_\_\_ ("Owner")  
Home Address: \_\_\_\_\_ ("Home")  
Date: \_\_\_\_\_

**A. FOR PROPOSED REFINANCE OF FIRST LENDER LOAN**

The Owner hereby requests the City to approve the Owner's refinance of the existing First Lender Loan (first mortgage loan) on the Home. The Owner provides the following information and documentation which it certifies to be true and correct:

1. Copy of a Closing Disclosure
2. Copy of new First Lender Loan documents, including escrow instructions
3. Contact information for proposed new First Lender  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Contact Person: \_\_\_\_\_
4. Anticipated closing date of new First Lender Loan: \_\_\_\_\_
5. Copy of recent preliminary title report for the Home
6. Copy of existing First Lender Loan Documents and any other loan documents secured by a deed of trust that has been recorded against the Home.
7. Monthly Housing Payment on First Mortgage Loan: \_\_\_\_\_
8. Monthly Housing Payment on all other loans secured by a deed of trust that has been recorded against the Home: \_\_\_\_\_

9. Contact Information for Title Company

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

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**B. FOR PROPOSED REFINANCE OF FIRST LENDER LOAN THAT EXCEEDS PERMITTED REFINANCE AMOUNT**

The Owner hereby requests the City to approve the Owner's refinance of the existing First Lender Loan (first mortgage loan) on the Home in excess of the Permitted Refinance Amount. The Owner shall complete Section A of this Owner's Request for Refinance Notice. The Owner also provides the following information and documentation which it certifies to be true and correct:

1. Description of required repairs \_\_\_\_\_

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

2. Explanation of why repairs are necessary, including the source of damage necessitating repairs \_\_\_\_\_

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

3. Copy of two bids evidencing cost repair.

4. Contact information for contractors making bids

Contractor 1:

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

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contractor 2:

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

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_

5. Copy of proposed Construction Contract

**C. FOR PROPOSED JUNIOR LOAN**

The Owner hereby requests the City to approve the Owner's proposed junior financing. The Owner also provides the following information and documentation which it certifies to be true and correct:

1. Copy of a Closing Disclosure
2. Copy of new junior loan documents, including escrow instructions
3. Contact information for proposed new junior lender

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

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_

4. Anticipated closing date of new junior loan: \_\_\_\_\_

5. Copy of recent preliminary title report for the Home

6. Copy of existing First Lender Loan Documents and any other loan documents secured by a deed of trust that has been recorded against the Home.

7. Monthly Housing Payment on First Mortgage Loan: \_\_\_\_\_

8. Monthly Housing Payment on all other loans secured by a deed of trust that has been recorded against the Home: \_\_\_\_\_

9. Contact Information for Title Company

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

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**D. CITY ADMINISTRATIVE FEE**

The Owner acknowledges that the City will charge an administrative fee in the amount of \$500 (which amount may be adjusted periodically by the City to the fees published in the Master Fee Schedule) in connection with the work that the City shall perform in connection with any Owner's request for refinance or to borrow a junior loan.

\_\_\_\_\_  
Owner Initials

\_\_\_\_\_  
Owner Initials

The Owner hereby certifies the above information is true and correct and this Owner Request to Refinance Notice is executed under penalty of perjury on \_\_\_\_\_ **[insert date]**.

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

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

**EXHIBIT G**

**Closing Certification**

Within ten (10) days of approval by the City of the Hayward (the "City") of the proposed purchaser and first mortgage financing for the sale of the property at \_\_\_\_\_ in the City of Hayward (the "Property") in accordance with the terms of the Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase executed by and between \_\_\_\_\_ (the "Owner") and the City (the "Resale Restriction Agreement"), the Owner and \_\_\_\_\_ (the "Proposed Purchaser") shall submit this certification.

The Owner and the Proposed Purchaser hereby agree to and acknowledge the following:

1. The sale of the Property shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City.
2. The Proposed Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Proposed Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City.
3. In the event a transfer is made in violation of the terms of the Resale Restriction Agreement, or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to foreclose on the Property or file an action at law or in equity as may be appropriate.
4. Any costs, liabilities or obligations incurred by the Owner and the Proposed Purchaser for the return of any moneys paid or received in violation of the Resale Restriction Agreement or for any of the Owner's and/or the Proposed Purchaser's costs and legal expenses, shall be borne by the Owner and/or the Proposed Purchaser and the Owner and the Proposed Purchaser shall hold the City harmless and reimburse the City's expenses, legal fees and costs for any action the City reasonably takes to enforce the terms of the Resale Restriction Agreement.

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

By: \_\_\_\_\_  
Proposed Purchaser

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

By: \_\_\_\_\_  
Proposed Purchaser