

PROPERTY RESTRICTION AGREEMENT AND OPTION TO PURCHASE
LOW-INCOME OWNER

CITY OF GILROY

ADMINISTRATIVE COVER SHEET

(Remove Upon Completion)

BLANK LINES; CHECKLIST

- _____ Date of Document, p. 1, first paragraph
- _____ Name of Owner p. 1, first paragraph
- _____ Address and APN number for Home p. 7, Section 2
- _____ Original Purchase Price of Home p. 7, Section 2
- _____ Amount of Down Payment p. 7, Section 2
- _____ Initials by Owners, p. 20, Section 20
- _____ Signatures p. 23

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

TO BE RECORDED WITHOUT FEE PER GOVERNMENT CODE SECTIONS 6103 AND 2783
AND HEALTH AND SAFETY CODE SECTION 33334.3 (f) 2

PROPERTY RESTRICTION AGREEMENT AND OPTION TO PURCHASE

PREAMBLE

This Property Restriction Agreement and Option to Purchase (the “Agreement”) is entered into as of the day of June, 2018, by and between the City of Gilroy, a municipal corporation (the “City”) and _____ and _____ (the “Owner”).

Recitals below refer to and utilize certain capitalized terms which are defined in Section 1 of this Agreement. The Parties intend to refer to those definitions in conjunction with the use of capitalized terms in these Recitals and throughout this Agreement.

RECITALS

1. The Home that is the subject of this Agreement is part of the Alexander Place Project (the “Development”). The Market Value of the Home, per the appraisal accepted by the City, is _____ Thousand Dollars (\$_____,000.00). The Original Purchase Price of the Home is _____ Thousand _____ Dollars (\$_____.00).

2. The City provided down payment assistance (“Below Market Financing”) to Owner in the amount of _____ Thousand Dollars (\$_____,000.00), to make it possible for the Owner to purchase the Home. The City also sold the Home to the Owner for _____ Dollars (\$_____.00) below the Original Market Value (the “Price Discount”), which assisted in making the purchase of the Home affordable.

3. The parties agree that, upon the next resale of the Home or any Repayment Transfer, the City shall have the option to recover Below Market Financing and Price Discount funds to the Owner, through an Equity Share (as defined herein and in the Promissory Note), pursuant to a formula further set forth herein and in the Promissory Note executed by Owner in favor of the City. The purpose of the Equity Share is to compensate the City for providing the financing necessary for the Owner to purchase the Home.

4. The Below Market Financing represents _____ Percent (___%) of the Original Market Value. The City’s Price Discount represents _____ Percent

(____%) of the Original Market Value. The total percentage of Below Market Financing and Price Discount is Thirty Point One Five Percent (____%) (the “BMR Percentage”).

5. The City will share in a portion of the Gross Sale Proceeds (“Equity Share”), upon Repayment Transfer of the Home in the first twenty (20) years after Close of Escrow, which portion shall be equal to One Hundred Percent (100%) of the BMR Percentage multiplied by the sum of the Price Discount and the Appreciation Amount calculated at the time of repayment. Beginning on the day after the twentieth (20th) anniversary after the close through the thirtieth (30th) anniversary of close, the Equity Share percentage paid to City shall be Fifty Percent (50%) of the BMR Percentage multiplied by the sum of the Price Discount and the Appreciation Amount calculated at the time of repayment. After the thirtieth (30th) anniversary of the Closing, the City shall not be entitled to any Equity Share upon the occurrence of a Repayment Transfer.

6. The City desires to protect the amount of Below Market Financing provided to Owner in order to provide affordable homes to other low or moderate-income households in the future. Therefore, the City’s subsidized loan amounting to _____ Thousand Dollars (\$____,000.00) is further set forth in a promissory note (the “First-Time Homebuyer Promissory Note”), and a deed of trust (the “First-Time Homebuyer Deed of Trust”), evidencing the Owner’s obligation to repay the subsidized loan. Both of the aforementioned documents are separate from the Promissory Note and the Deed of Trust executed in connection with this Agreement. The City’s Below Market Financing loan is subordinate to a Senior Lender Loan made by _____ Mortgage (Application No. _____) in the amount of _____ Thousand Dollars (\$____,000.00).

7. The City desires to ensure that the long term physical condition and structural integrity of the Home is maintained, through the covenants and restrictions contained in this Agreement that address the long-term maintenance of the Home.

8. The Owner has qualified for purchase of the Home with the Owner’s combined household income at or below one hundred twenty percent (120%) of Area Median Income and both the purchase price and the monthly housing cost have been determined by the City to be at a level that is affordable to moderate-income home buyers.

9. The Home is being purchased by the Owner with full knowledge of the requirements of this Agreement.

10. This Agreement and the accompanying note (“Promissory Note”) is secured by a deed of trust recorded against the Home (“Deed of Trust”). This Agreement and the Deed of Trust shall be subordinate to the lien of the Senior Lender Deed of Trust and the City of Gilroy First-Time Homebuyer Deed of Trust.

11. Owner acknowledges the public and charitable purpose of this Agreement. Owner further acknowledges that Owner could not purchase this home without assistance from the City in the form of Below Market Financing and a Price Discount. Owner therefore agrees to purchase the Home pursuant to the requirements of this Agreement and agrees to execute and comply with this Agreement in consideration for being given the opportunity to purchase the Home with the benefit of the Below Market Financing and Price Discount.

12. If the Owner wishes to sell this Home in the future, the Owner shall first provide the City or the City's Assignee the Option to Purchase the Home in accordance with the terms of this Agreement. Furthermore, upon resale of the Home or any Repayment Transfer, the Owner shall pay the City the amount of Equity Share to which the City is entitled, in accordance with the terms of this Agreement and the accompanying Promissory Note.

SECTION 1. DEFINITIONS

The following terms are specially defined for this Agreement:

Administrator shall mean the entity designated by City to administer the Below Market Rate Program.

Administrative Services Agreement shall mean the Agreement for Services, dated April 1, 2017, and executed by and between City and Administrator, as such agreement may be amended or replaced from time to time. Owner is not a Party to such agreement and shall have no liability or responsibility thereunder.

Agreement shall mean this Property Restriction Agreement and Option to Purchase.

Appreciation Amount shall mean the amount calculated by subtracting _____ Dollars (\$ _____ .00), which is the Original Purchase Price of the Home paid by the Owner, from one of the following amounts, as applicable:

- i) in the event of a sale of the Home, the amount received by the Owner as the gross sale price of the Home, as evidenced by escrow instructions or a settlement statement related to the sale, and as certified by the Owner under penalty of perjury;
- ii) upon the occurrence of :
 - (1) a Repayment Transfer (other than sale of the Home or Other Transfer); or
 - (2) default triggering repayment pursuant to Section 14 of the Property Restriction;
or
 - (3) the end of the Term;

the Market Value of the Home as determined at the time of the above triggering event; or

- iii) in the event a creditor acquires title to the Home through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Home at a creditor's sale of the Home.

Area Median Income shall mean the yearly median income adjusted for a household size in Santa Clara County, as established by HUD and as updated annually and periodically published by the State of California Department of Housing And Community Development (HCD).

Assignee shall mean the person or persons, governmental agency or nonprofit organization that is assigned the right to purchase the Home by the City.

Below Market Financing shall mean financing with below market interest rates and/or terms provided or secured by City for the benefit of Owner and other low-income Owners.

Below Market Rate Program shall mean the City of Gilroy Below Market Rate (BMR) Ownership Program, including the guidelines, policies, fee schedules, and agreements, as modified from time to time, that provide affordable purchase, rental, and financing opportunities to low and moderate-income households.

BMR Percentage shall mean the percentage resulting from dividing the amount of the Below Market Financing and Price Discount by the Original Market Value of the Home, which amount is _____ Percent (____%).

City shall mean the City of Gilroy, a municipal corporation.

Close of Escrow (also “Closing”) shall mean the close of escrow on the transaction through which the Owner purchases the Home from the City.

Deed of Trust shall mean the deed of trust which secures the obligations under this Agreement and evidenced by the Promissory Note, which is to be executed by Owner in favor of City and recorded at the time of purchase against the title of the Residence in the Recorder’s Office of the County of Santa Clara, California.

Down payment shall have the meaning set forth in Section 2 of this Agreement.

Effective Date shall mean the date of recordation of this Agreement.

Equity Share shall mean the share in a portion of the Gross Sale Proceeds (“Equity Share”), upon Repayment Transfer of the Home in the first twenty (20) years after Close of Escrow, which portion shall be equal to One Hundred Percent (100%) of the BMR Percentage multiplied by the sum of the Price Discount and the Appreciation Amount calculated at the time of repayment. Beginning on the day after the twentieth (20th) anniversary after the close through the thirtieth (30th) anniversary of close, the Equity Share percentage paid to City shall be Fifty Percent (50%) of the BMR Percentage multiplied by the sum of the Price Discount and the Appreciation Amount calculated at the time of repayment. After the thirtieth (30th) anniversary of the Closing, the City shall not be entitled to any Equity Share upon the occurrence of a Repayment Transfer

Escrow shall mean an escrow established with a title company for the purpose of providing title insurance and transferring the title of the property from the Owner to the City or the Assignee.

First-Time Homebuyer Deed of Trust shall mean the deed of trust which secures the obligations evidenced by the First-Time Homebuyer Promissory Note and which is to be executed by Owner in favor of City and recorded at the time of purchase against the title of the Home in the Recorder’s Office of the County of Santa Clara, California.

First-Time Homebuyer Promissory Note shall mean the promissory note executed by the Owner in favor of the City evidencing the Owner's obligation to repay the City’s Below Market Financing subsidized loan of _____ Thousand Dollars (\$___,000.00) upon certain circumstances, further defined in the document itself.

Gross Sale Proceeds shall mean the proceeds that the Owner receives from a Repayment Transfer, prior to payment of closing costs and distribution of the City's Equity Share.

Home shall mean the real property, more particularly described in Section 2 and **Attachment 1** of this Agreement, consisting of one unit in the Alexander Place Project, which serves as security for the Deed of Trust executed in connection with this Agreement.

Inheriting Owner shall mean the child, sibling or parent of the Owner who shall succeed to the Owner's interest and obligations under this Agreement, the Promissory Note and Deed of Trust.

Low-Income Household shall mean a household whose annual income is no more than eighty percent (80%) of Area Median Income.

Market Value shall mean the unrestricted value of the Home at a specified time. The Market Value shall be determined in accordance with Section 8 of this Agreement.

Moderate-Income Household shall mean a household whose annual income is no more than one hundred twenty percent (120%) of Area Median Income

Notice of Intent to Exercise Option shall mean the written notice from the City to Owner in the form as attached to this Agreement as **Attachment 6** of the City's intent to exercise the Option to Purchase the Home. The Notice of Intent to Exercise Option shall be delivered in accordance with Section 22.

Notice of Intended Transfer shall mean the written notice from the Owner to the City in the form as attached to this Agreement as **Attachment 3**, and delivered in accordance with Section 22 of this Agreement, evidencing the Owner's desire to Transfer the Home.

Option to Purchase (also "Option") shall mean the City or its Assignee's Option to Purchase the Home pursuant to Sections 7 and 15 of this Agreement.

Original Market Value shall mean the unrestricted value of the Home at the time it was purchased by the Owner.

Original Purchase Price shall mean the price being paid for the Home by the Owner, more particularly described in Section 2 of this Agreement.

Other Deed of Trust shall mean any deed of trust recorded against title to the Home that is recorded after the Deed of Trust and that is junior in lien priority to the Deed of Trust.

Other Transfer shall mean a transfer in whole or in part: (i) to an existing spouse or domestic partner who is also an obligor under the Promissory Note; (ii) by an Owner to a spouse or domestic partner where the spouse or domestic partner either inherits the Home from the Owner or becomes the co-owner of the Home; (iii) between spouses as part of a marriage dissolution proceeding; (iv) by the Owner into an inter vivos trust in which the Owner is the beneficiary; (v) by recordation of an Other Deed of Trust. Other Transfers are subject to the terms and conditions of Section 6 of this Agreement. For purposes of this section, "domestic partner" shall mean two unmarried people, at least eighteen (18) years of age, 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. 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.

Owner shall mean the person or persons so named in the preamble of this Agreement.

Parties shall mean the parties to this Agreement and their successors.

Price Discount shall mean the additional amount above the Original Purchase Price that the City would have received, had it sold the Home at its Original Market Value, but chose to forego in order to make the Home affordable for the Owner. That amount is calculated by subtracting the Original Purchase Price from the Original Market Value.

Promissory Note shall mean the promissory note executed by Owner in favor of the City of Gilroy evidencing the Owner's obligations to pay to the City an Equity Share from the Gross Sale Proceeds of the Home, under certain circumstances, in accordance with Section 10 of this Agreement.

Qualified Purchaser shall mean a household (i) who has been selected or approved by the City to purchase the Home; (ii) who has been verified by the City to meet the definition of "Low-Income Household" or "Moderate-Income Household" as defined elsewhere in the Agreement; (iii) where the total monthly housing cost to be paid by the purchaser does not exceed forty percent (40%) of the gross income level of the purchaser's household; (iv) no member of which has had an ownership interest in residential real estate at any time during the three (3) years prior to the date of this Agreement; (v) who will occupy the Home as their principal residence; and (vi) who will agree to execute a new promissory note (or notes), deed (or deeds) of trust and resale, refinance and option to purchase in forms provided by the City.

Refinance shall mean the act of obtaining any new loan and discharging any Senior Lender Loan, in whole or in part, with the proceeds from such new loan.

Repairs shall mean those items the City wants replaced, repaired or otherwise corrected or deferred maintenance on the Home that the City wants repaired, and the City's estimate of the costs of the items, for the purpose of selling the Home. Repairs may include, but are not limited to, cleaning, painting, replacing worn carpeting, making necessary structural, mechanical, electrical and plumbing repairs, and repairing or replacing built-in appliances.

Repayment 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 of more than two (2) months in any twelve (12) month period, an interest evidenced by a land contract by which possession of the Home is transferred and Owner retains title, or a deed of trust. A Repayment Transfer shall not include an Other Transfer.

Request for Refinance shall mean the written notice from the Owner to the City in the form attached to this Agreement as **Attachment 8**, requesting approval of a Refinance. The Owner shall deliver the Request for Refinance in accordance with Section 22 of this Agreement.

Response Notice shall mean the notice sent to Owner upon the City's receipt of the Notice of Intent to Transfer in the form attached to this Agreement as **Attachment 3**. The City shall deliver the

Response Notice in accordance with Section 22 of this Agreement. The form of Response Notice is attached to this Agreement as **Attachment 4**.

Restricted Price shall mean the price calculated in the manner set forth in Section 8 of this Agreement.

Senior Lender shall mean any lender of a Senior Lender Loan and shall include all successors and assigns of any Senior Lender. There may be more than one Senior Lender.

Senior Lender Deed of Trust shall mean a deed of trust that shall secure a Senior Lender Loan and that shall be recorded against the Home senior to and prior to the Deed of Trust. There may be more than one Senior Lender Deed of Trust.

Senior Lender Loan shall mean the first mortgage or any other purchase money loan that is secured by a Senior Deed of Trust.

Term shall mean the term of this Agreement as defined in Section 2 of this Agreement.

SECTION 2. DESCRIPTION OF PROPERTY; TERM OF AGREEMENT

This Agreement concerns the real property commonly known as _____, **Gilroy, California, 95020** APN: _____, which is more fully described in **Attachment 1** of this Agreement.

The Term of this Agreement shall start as of the Effective Date and shall expire on the earliest of: (i) thirty (30) years after the Effective Date or (ii) the date the Owner makes a Repayment Transfer of the Home in compliance with the terms of this Agreement.

The Original Purchase Price for the Home is _____ **Dollars** (**\$** _____ **.00**), which amount includes the down payment amount, exclusive of closing costs, paid by the Owner upon purchase. Said down payment shall be _____ **Thousand Dollars (\$ _____,000.00)** ("Down Payment").

SECTION 3. OWNER CERTIFICATIONS

The Owner certifies that:

The financial and other information previously provided by Owner to the City in order to qualify as a Qualified Purchaser is true and correct as of the Effective Date.

Owner does not own any other residential property as of the Effective Date.

Owner will occupy the Home as the Owner's principal place of residence.

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

The Owner agrees to fully cooperate with the City in promptly providing information requested by the City to assist in monitoring the Owner's compliance with this Agreement and the Below Market Rate Program. Owner agrees to cooperate with the annual certification of Owner's occupancy of the Home and will provide a copy of the Owner's hazard insurance policy, mortgage statements and other requested certification documents to the City annually.

Throughout the Term of this Agreement, Owner shall be in default in the event that any of the above certifications made by Owner are not or are no longer true or correct.

SECTION 4. DESIGNATED AGENTS

City can act alone or through its designated agents, which can include the Administrator.

SECTION 5. OWNER OCCUPANCY; LEASING

Owner shall occupy and use the Home only for residential purposes in accordance with all applicable laws and regulations. Owner shall occupy the Home as Owner's principal place of residence. Owner shall be considered as occupying the Home if Owner is living in the Home for at least ten (10) months out of each calendar year. On or before July 1 of each calendar year, the Owner shall provide an annual written certification to the City in the form shown as **Attachment 2**, that the Owner is occupying the Home as his or her principal place of residence.

Any rental or lease of the Home in violation of this Agreement is prohibited, and shall be a default under this Agreement and the Deed of Trust.

SECTION 6. OTHER TRANSFERS AND INHERITANCES

A. Transfers of the Home must comply with the terms and provisions of this Agreement. Owner shall provide the City with written notice of an Other Transfer no later than thirty (30) days before the Other Transfer occurs except where the Other Transfer is by inheritance after death of the Owner in which event notice shall be provided as required pursuant to subsection (B) below.

In the event of an Other Transfer, Owner shall continue to occupy the Home as his or her principal place of residence except if the Other Transfer is between spouses as part of a marriage dissolution proceeding or by inheritance from Owner to owner's spouse or domestic partner. For purposes of this section, an individual shall be considered a domestic partner of Owner upon presentation of an affidavit or other acceptable evidence by Owner to the City. If the Other Transfer is between spouses as part of a marriage dissolution proceeding or the spouse or domestic partner of the Owner inherits the Home from the Owner, the transferee shall owner-occupy the Home and assume Owner's obligations under the Promissory Note and Deed of Trust and this Agreement. In order to evidence the assumption of the Owner's obligations under the Promissory Note, Deed of Trust and the Agreement, the City may, at its sole and absolute discretion require the transferee to execute a new note and a new deed of trust, and a new Property Restriction Agreement and Option to Purchase, and/or an assumption agreement.

B. Inheritance. In the event a transfer occurs by devise or inheritance due to death of the Owner, the administrator of the Owner's estate, the trustee of Owner's trust 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) If the person inheriting the Home is an Inheriting Owner, the Inheriting Owner shall succeed to the Owner's interest and obligations under this Agreement, the Promissory Note and the Deed of Trust. In order to evidence the assumption of the Inheriting Owner's obligations under the Promissory Note, Deed of Trust and the Agreement, the City may require the transferee to execute a new note and a new deed of trust, and a new Property Restriction Agreement and Option to Purchase, and/or an assumption agreement. The new resale restrictions agreement and option to purchase between Inheriting Owner and City shall have a thirty (30) year term that shall commence upon the recordation of such new agreement. Notwithstanding the foregoing, nothing herein shall be deemed to obligate City or any other lender to continue to offer a Below Market Financing or Price Discount to such Inheriting Owner, if such Inheriting Owner would not otherwise qualify for such loan.

(2) If the person inheriting the Home is not an Inheriting Owner ("Non-Relative Inheriting Owner"), the City shall have the right to exercise its Option pursuant to Section 7. The Non-Relative Inheriting Owner shall cooperate with the City exercising its Option to Purchase and completing the process as outlined in the Sales Process described in the following Sections 8 and 9.

(3) Failure of an Inheriting Owner to follow the procedures and file the notices described in this Section shall constitute a Default under this Agreement and the City may then exercise any of the remedies set forth in Section 14 below, including, without limitation, exercise of the Option upon Default set forth in Section 15.

SECTION 7. CITY HAS OPTION TO PURCHASE

Owner grants to the City or its Assignee an Option to Purchase the Home at the Restricted Price (as calculated in the manner set forth in Section 8 of this Agreement) under the terms of this Agreement. This Option to Purchase is given in consideration of the economic benefits received by the Owner resulting from purchase and ownership of the Home. Owner further agrees that the City or its Assignee shall have the right to exercise the Option to Purchase and purchase the Home upon the occurrence of the following events:

A. Receipt by the City of "Notice of Intent to Transfer" which is a request from Owner that the City or Assignee purchase the Home (in accordance with Section 8).

B. The City's declaration of an uncured default of this Agreement in accordance with Section 14 of this Agreement.

C. The City's receipt of a notice of default on a Senior Lender Loan or Other Loan.

D. If upon the death of the Owner, the Home is inherited by a Non-Relative Inheriting Owner.

E. When the City learns of a pending or actual sale or conveyance of the Home by Owner and Owner has not previously provided the City with a Notice of Intent to Transfer as required pursuant to Section 8.

The City agrees that it shall only exercise the Option to Purchase for the purposes of retaining the Home as affordable housing in furtherance of the City's charitable purpose and affordable housing requirements. In addition, the Home may only be resold by the City as an affordable housing unit to a Qualified Purchaser for the purposes set forth in the preceding sentence.

SECTION 8. INITIATING THE SALE PROCESS

A. Owner Obtains Appraisal of Home. If the Owner intends to make a Repayment Transfer of the Home, the Owner shall first obtain an appraisal of the Market Value of the Home from an appraiser on a list of appraisers to be maintained by the City ("Owners Appraisal"). The City shall provide the Owner with the list of appraisers upon request by the Owner. 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. Nothing in this subparagraph shall preclude the Owner and the City from establishing the Market Value of the Home by mutual agreement in lieu of an appraisal. The purpose of establishing the Market Value is solely as a basis to determine the Restricted Price, which is calculated as set forth below in this Section 8 of the Agreement.

B. Owner Notice of Intended Transfer. If the Owner intends to make a Repayment Transfer, the Owner shall, as soon as possible, notify the City in writing by sending to the City the Notice of Intended Transfer attached to this Agreement as **Attachment 3** which Notice shall include a copy of the Owners Appraisal, which appraisal shall be dated not earlier than thirty (30) days prior to the date of the Notice of Intended Transfer. The Owner shall provide all of the information identified in **Attachment 3** and include a fee set by the City, which fee shall be listed on the fee schedule contained in the Administrative Services Agreement or the Below Market Rate Program fee schedule. The City shall provide the Owner with either or both fee schedules upon request by the Owner. The Owner shall send the Notice of Intended Transfer to the City in accordance with Section 22 of this Agreement. The Owner acknowledges and understands that the sales process pursuant to this Agreement may take six (6) months.

C. City Response Notice. Within fifteen (15) days after the date that the City receives the Notice of Intended Transfer, the City shall notify the Owner that the City is reviewing the Owner's Appraisal determining Market Value and determining the City's Equity Share as defined in the Promissory Note and requesting an appointment to inspect the Home by sending a Response Notice to the Owner. The form of Response Notice is attached to this Agreement as **Attachment 4**. The City shall send the Response Notice in accordance with Section 22 of this Agreement.

D. Broker Services. The Owner may not contract with a real estate broker to list and sell the Home on the open marketplace as the services of a listing broker to procure a market purchaser or buyer will not be required in the event the City exercises the Option to Purchase the Home.

E. City Inspects Home. The Owner shall cooperate in providing access to the Home, and in providing information and other assistance as needed for City to complete its due diligence, as reasonably requested by the City. If, after inspection of the Home by the City, the City determines that the Home has damage or deferred maintenance, then the City shall provide Owner with a list of necessary Repairs. Owner shall complete the Repairs in a manner consistent with area trade standards, and acceptable to the City, unless the City and Owner mutually agree to an alternative arrangement to pay for cost of Repairs, including deducting the costs of Repairs from the Market Value as provided for

in Section 9.

F. Response to Notice of Intended Transfer and Determination of Market Value. Within thirty (30) days after the date the City has received Notice of Intended Transfer, the City shall provide the Owner with a Response to Owner's Notice of Intended Transfer in the form of **Attachment 5** which response will (i) accept the determination of the Market Value based on the Owner's Appraisal and either include a Notice of Intent to Exercise Option in the form attached as **Attachment 6** or Notice to Sell in the form of **Attachment 7**; or (ii) notify the Owner that the City is disputing the determination of Market Value and obtaining its own appraisal of the Home ("City's Appraisal").

If the City determines to obtain its own appraisal of the Home, it shall do so at its own cost within sixty days of receipt of the Notice of Intended Transfer and shall provide the Owner with a copy of the City's Appraisal. If the City's Appraisal of the Home is within ten percent of the Owner's appraisal of the Home, the Market Value of the Home shall be the average of the two appraisals. If the City's Appraisal differs from the Owner's Appraisal by more than 10%, the City and the Owner shall mutually agree upon an appraiser from the list of appraisers maintained by the City, to be paid for by the Owner. The third appraiser shall appraise the Home and that appraisal shall determine the Market Value of the Home. In the event the City obtains its own appraisal, within thirty (30) days of determination of the appraised value of the Home, the City shall provide the Owner with a Notice of Intent to Exercise Option in the form of **Attachment 6** or a Notice to Sell in the form of **Attachment 7**. The City shall deliver the City's Response Notice to Owner in accordance with Section 22 of this Agreement.

The forty-five (45) day period within which the City has to respond to the Notice of Intent to Transfer shall be extended if the Owner fails to cooperate in a timely manner, to provide access to the Home, to make Repairs required by the City, or to provide needed information to calculate the Market Value of the Home.

G. City Exercises Option and Determination of Restricted Price. Not more than ninety (90) days shall elapse between the date the City delivers a Notice of Intent to Exercise Option and the completion of the purchase of the Home for its Restricted Price by the City or its Assignee. The ninety (90) day time period within which the City, or Assignee must complete the purchase (the "Option Purchase Period") shall be extended if the Owner fails to cooperate in providing access to the Home, to provide information or perform tasks necessary to sell the Home, which failure delays the close of escrow by more than ninety (90) days beyond the initial termination date of the Option Purchase Period. The City will notify the Owner, in accordance with Section 22 of this Agreement in the event of such delays, and shall provide the Owner with the extended date anticipated for completion of the sale.

The Restricted Price shall be calculated by subtracting the principal amount of the Below Market Rate Financing of _____ Thousand Dollars (\$____,000.00) provided by the City to the Owner and the City's Equity Share from the Market Value of the Home in accordance with the terms above in this Section 8 of the Agreement. Upon the City's payment of the Restricted Price and completing closing on the City's acquisition of the Home, the City shall reconvey both the existing First-Time Homebuyer Deed of Trust and the existing Deed of Trust executed in connection with this Agreement, to the Owner, and terminate this Agreement.

H. City Does Not Exercise Option. In the event the City does not exercise or assign its Option, the City, within forty-five (45) calendar days, shall notify the Owner that Owner may sell the Home, by sending to Owner a Notice to Sell attached to this Agreement as **Attachment 7**. In addition to

such notice, the City will provide a list of Qualified Purchasers to be maintained by the City (the "City's Qualified Purchaser's List). Upon receipt of both the City's Notice to Sell and the City's Qualified Purchaser's List, the Owner shall proceed to sell the Home pursuant to the procedure set forth below.

(1) Owner Sells the Home to a Qualified Purchaser. The Owner shall use best efforts in cooperation with the City to sell the Home at the Restricted Price to a Qualified Purchaser from the City's Qualified Purchasers List. The City will provide down payment assistance to the new Qualified Purchaser, which would include the value of the Equity Share to be paid to the City by the Owner pursuant to the Promissory Note upon transfer of the home. Prior to close of escrow, the City will execute a new Property Restriction Agreement and Option to Purchase, promissory note and deed of trust with the new Qualified Purchaser of the Home.

(2) Owner Does Not Complete Sale to a Qualified Purchaser. If after ninety (90) days, through no fault of the Owner, escrow has not been opened for the sale of the Home to a Qualified Purchaser on the City's Qualified Purchasers List, then the Owner may sell the home with no sales price restrictions, subject to recapture by the City of the Equity Share due at the time of the resale, as required pursuant to the Promissory Note and this Agreement. The Owner and the proposed purchaser shall provide the following information and documents to the City:

(a) The name, address and telephone number in writing of the proposed purchaser.

(b) 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.

(c) A written certification, from the Owner and the proposed purchaser in a form acceptable to the City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the proposed purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the proposed purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Repayment Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to foreclose on the Home or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the proposed purchaser for the return of any moneys paid or received in violation of this Agreement or for any of the Owner's and/or the proposed purchaser's costs and legal expenses, shall be borne by the Owner and/or the proposed purchaser and they shall hold the City harmless and reimburse the City's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(d) 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.

(e) Upon the close of the proposed sale, a copy of the final sales contract, official final closing statement (e.g. HUD-1) for owner and buyer, escrow instructions, and any other documents which the City may reasonably request.

SECTION 9. COMPLETING THE SALE UPON EXERCISE OF OPTION

A. Escrow. In the event the City or its Assignee exercise their Option, the City and/or its Assignee shall prepare escrow instructions with conditions or contingencies of the type and nature commonly included within residential purchase escrows. The escrow instructions shall include, but not be limited to, financing contingencies, inspection rights, and preliminary title report approvals.

B. Sale Costs. Owner agrees that, to limit liability and provide timely professional services, a California state licensed real estate broker, or a California state licensed real estate agent working for a California state licensed broker must be utilized and paid for solely by the Owner for sales transactions, except for those in which the City is actually taking title to the Home.

Owner agrees that the following normal and reasonable costs are associated with the sale and purchase of the Home and that the following parties will be responsible for the listed expenses.

Owner shall be responsible for:

- Real estate commissions for representing the Owner only (required) Standard owner's policy of title insurance issued to City or Assignee, Repairs to the home as required by City or the inspection reports.
- One year warranty coverage for such fixtures such as appliances included in the home that have expired warranty and are not covered under SB800 or Title 7 law.
- Pro rata share of Owners Home Owners Association Fees and property taxes.
- Attorney/Advisory Fees (if necessary).
- Fifty percent (50%) each of the title and escrow fee.
- Fifty percent (50%) of the City's administrative fee.
- Obtaining from Purchaser an executed and recordable Property Restriction Agreement and Option to Purchase, promissory note and deed of trust (also in recordable form) provided by City.

Purchaser shall be responsible for:

- Housing Inspection Report if required by Lender or City. Real estate appraisal costs.
- Lender fees and costs incurred for loan approval. Fee for Homeowners Association.
- Legal document preparation and report on condition of the common area. Pro rata share of purchaser Home Owners Association Fees and property taxes.
- Attorney/Advisory Fees including real estate consultation fee if Purchaser chooses to use such services.
- Fifty percent (50%) each of the title and escrow fee.
- Fifty percent (50%) of the City's administrative fee.

- Executing all documents necessary to complete closing on the Purchaser's acquisition of the Property, including a new Property Restriction Agreement and Option to Purchase, promissory note and deed of trust for a Qualified Purchaser.

SECTION 10. PAYMENT TO CITY OF EQUITY SHARE

A. Deferral. Repayment of the Equity Share shall be deferred for the thirty (30) years after the Effective Date of this Agreement, except as provided in subsection (b) below.

B. Repayment in Full. The total amount of the Equity Share shall immediately become due and payable, upon notice from the City, (i) in the event of a default by the Owner under this Agreement, the Promissory Note, the Deed of Trust, the Senior Lender Loan, or the City's First-Time Homebuyer's Promissory Note (assuming default occurs prior to thirty (30) years after the Effective Date of this Agreement); (ii) on the date Repayment Transfer is made, whether voluntarily, involuntarily, or by operation of law and whether by deed, contract of sale, gift, devise, bequest or otherwise; and/or (iii) in the event Borrower ceases to occupy the Home as his or her principal place of residence. Failure to declare such amounts due shall not constitute a waiver on the part of the City to declare them due in the event of a subsequent Repayment Transfer.

C. Transfer of Equity Share to Subsequent Buyers. The City's Equity Share will transfer to the Qualified Purchaser (as part of the Qualified Purchaser's down payment) upon recordation of (i) a new Property Restriction Agreement and Option to Purchase, (identical or substantially similar to this Agreement), executed by the Qualified Purchaser; and (ii) deed of trust, securing a promissory note evidencing Qualified Purchaser's obligation to repay the City's Equity Share. At such time as the aforementioned documents are recorded, the City shall reconvey the existing Deed of Trust to Owner and terminate this Agreement.

In the event no Qualified Purchaser is identified after all efforts are made to locate a Qualified Purchaser, the City, upon the completion of a Repayment Transfer, shall release the Home from this Agreement and reconvey the Deed of Trust upon repayment to the City of the Equity Share (and any amounts due under any other loan and/or deed of trust made by City to Owner related to purchase of the Home) due at time of resale.

SECTION 11. REFINANCING THE HOME

The City must approve of all Refinances. In the event the Owner desires to Refinance, the Owner shall comply with the provisions of this Section 11 and shall provide all of the information identified in **Attachment 8** and pay a fee, which fee shall be listed on the fee schedule contained in the Administrative Services Agreement or the Below Market Rate Program fee schedule. The City shall provide the Owner with either or both fee schedules upon request by the Owner.

A Refinance shall only be approved by the City if (i) the amount of the proposed new loan does not cause the principal and interest payments to be made by the Owner on all outstanding debt secured against the Home to increase, (ii) the proposed new loan is a thirty (30) year fixed-rate loan (or an adjusted loan with a rate that is fixed for the first three (3) years of the new loan term and then converts to a fixed rate loan in the following years), (iii) the proposed new loan is for an amount not more than

ninety-five percent (95%) of the Market Value of the Home minus the amount of the City's Equity Share and all other debt secured against the Home as determined at the time of refinancing, including lender and title fees, if being financed, and (iv) if the proposed new loan is from an institutional lender approved by the City. Mortgages which utilize stated income and/or include negative amortization are prohibited. The current underwriting guidelines for the City's loan approval of the refinance will be sent to the lender for its review and compliance. An underwriter's written approval from the lender must be submitted to the City for review prior to approval.

Cash out. Owner may not take "cash out" from the refinancing proceeds unless approved by the City for education, medical expenses, or hardship circumstances.

Owner Requests Refinance. At least ninety (90) days before the Owner intends to Refinance, the Owner shall notify the City in writing by sending to the City, in accordance with Section 22 of this Agreement, the Request for Refinance attached to this Agreement as **Attachment 8** and made a part of this Agreement. The Owner shall provide the City all of the information identified in Attachment 8, and include all documents required by Attachment 8, including the loan documents that the Owner intends to execute in connection with the Refinance.

City Responds to Request for Refinance. Within forty-five (45) days of the date that City receives the Request for Refinance, the City shall determine if the Owner's proposed terms of Refinance satisfy the Refinance requirements imposed by this Agreement. In the event the City approves the terms of the Refinance, this Agreement and the Deed of Trust shall be subordinated to the new loan resulting from the approved Refinance.

The forty-five (45) day time period within which the City must make a determination regarding the Refinance, shall be extended if the Owner or lender for the refinance fails to cooperate in providing information needed to determine the terms of the Refinance. The City will notify the Owner, in accordance with Section 22 of this Agreement in the event of such delays, and shall provide the Owner with the extended date anticipated for determination regarding the approval or disapproval of the Refinance.

SECTION 12. OTHER LOANS SECURED BY THE HOME

In the event Owner desires to obtain any additional loan that does not comply with Section 11 which is secured by an Other Deed of Trust, Owner shall notify the City in writing of such intent. Owner shall also provide a copy of this Agreement to the proposed lender of the funds. At any time the Owner enters into a new loan secured against the Home, including junior mortgages, consolidation loans or equity lines of credit, the Owner shall cause to be recorded in the Official Records in Santa Clara County against title to the Home, a request for notice of default under such loan to be delivered to the City.

An additional loan shall only be approved by the City if the proposed new loan (i) is for an amount not more than ninety-five percent (95%) of the Market Value of the Home minus the amount of the City's Equity Share and all other debt secured against the Home including lender and title fees, if being financed, and (ii) is from an institutional lender approved by the City.

Cash out. Owner may not take "cash out" from junior mortgages, consolidation loans or equity lines of credit unless approved by the City for education, medical expenses, or hardship circumstances.

SECTION 13. MAINTENANCE AND CARE OBLIGATIONS

The Owner:

Agrees to maintain the Home in good, saleable condition at all times.

Agrees to keep the Owner's garage organized, well maintained and free of any obstacles that could prevent parking of two vehicles in the garage. Owner agrees to regularly park owned vehicles in the Owner's garage.

Agrees to park only vehicles legally owned by the Owner or the Owner's immediate family members living in the Home on the property.

Agrees to keep the exterior of the Home free from trash, inoperable automobiles, stored personal items and any such other items commonly considered to detract from the value of the Home, and to contribute to a general neighborhood nuisance.

Agrees to maintain a standard all risks property insurance policy equal to the replacement value of the Home (adjusted every five (5) years by appraisal) naming the City, and its officers and employees as additional insureds. Additional insurance requirements may be set forth in the Deed of Trust.

Agrees to, annually, on July 1 of each year certify in writing to the City that (i) the Owner occupies the Home as the Owner's principal place of residence as required by Section 3 and (ii) that the Home is in good repair by sending in the form attached to this Agreement as **Attachment 2**.

SECTION 14. DEFAULTS AND REMEDIES UNDER THIS AGREEMENT

The Owner has agreed to comply with all the provisions of this Agreement and with the provisions of the documents regulating the Owner's Senior Lender Loan.

Upon the City's discovery (i) that the Owner has made a misrepresentation to obtain the benefits of purchase of the Home in connection with its obligations under this Agreement; (ii) Owner's failure to comply with this Agreement; (iii) Owner's failure to comply with the provisions of or default under a Senior Lender Loan, or other lien; (iv) recordation of a lien not otherwise permitted by the Agreement or (v) commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy status, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, in which the Owner is the debtor, the City may notify the Owner pursuant to Section 22 of this Agreement, specifying the action needed by the Owner to establish compliance with this Agreement. Owner may provide a remedy acceptable to the City, thereby avoiding a default. However, there shall be no right to cure on the part of the Owner if a failure to comply with this Agreement recurs within a three (3) year period in a substantially similar manner. If the Owner fails to remedy the issue to the satisfaction of the City within thirty (30) days from the date the City's notice was received by Owner or within such additional time as the City determines is necessary to cure the default, then the City may declare a default of this Agreement.

Upon declaration of a default of this Agreement:

- A. The City may exercise its Option to Purchase as specified in Section 7 of this Agreement.
- B. City may apply to a court of competent jurisdiction for relief at law or equity as may be appropriate.
- C. The City may apply to a court for an injunction prohibiting a proposed Repayment Transfer or Other Transfer in violation of this Agreement or for a declaration that the Repayment Transfer or Other Transfer in violation of this Agreement is void.
- D. The City may declare a default under the Promissory Note and pursue all remedies under the Promissory Note.
- E. The City may declare a default under the Deed of Trust and pursue all remedies under the Deed of Trust.
- F. The City may declare the amount owed under the Promissory Note immediately due and payable including any Excess Rents or Equity Share and may invoke the power of sale under the Deed of Trust.

Upon declaration of default of this Agreement, the City shall notify the Senior Lender, at the address provided by the Senior Lender to the City in accordance with Section 22 of this Agreement. The notice to Senior Lender and Owner shall indicate that the City may exercise its Option to Purchase the Home as specified in Section 7 and in accordance with Sections 14 and 15 of this Agreement.

SECTION 15. OPTION UPON DEFAULT

As specified in Section 14 and the Option provided to the City in Section 7, the Owner grants to the City the option to purchase the Home following written notice by the City to the Owner of the declaration of a default by the City under this Agreement. This option to purchase is given in consideration of the economic benefits received by the Owner resulting from purchase and ownership of the Home.

The City shall have thirty (30) days after a Default is declared by the City to notify the Owner and the Senior Lender of its decision to exercise its option to purchase under this Section 15. Not later than ninety (90) days after the notice is given by the City to the Owner of the City's intent to exercise its option under this Section 15, the City or its Assignee shall purchase the Home for the Restricted Price based on an appraisal obtained from an appraiser on the list of appraisers maintained by the City and as calculated in accordance with Section 8 of this Agreement. The cost of the appraisal shall be deducted from the Owner's share of sale proceeds.

SECTION 16. SENIOR LOAN DEFAULT

A request for notice of default or sale under any Senior Lender Deed of Trust shall be recorded by the City in the Office of the Recorder of Santa Clara County 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 the City may exercise its rights as provided in Sections 14 and 15.

Owner shall provide to the City in the manner set forth in Section 22, notice of any default of

Owner under a Senior Lender Deed of Trust or Other Deed of Trust. Notice shall be delivered to the City by the Owner within three (3) days of Owner's receipt of notice of the default from the Senior Lender or holder of the Other Deed of Trust.

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

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

SECTION 17. SENIOR LENDER ASSURANCES

Regardless of any other provision in this Agreement, this Agreement shall not diminish or affect the rights of the Senior Lender under the Senior Lender Deed of Trust or any subsequent Senior Lender deeds of trust hereafter recorded against the Property in compliance with Section 16 of this Agreement.

The provisions of this Agreement and the Deed of Trust shall be subordinate to the lien of the Senior Lender Deed of Trust and shall not impair the rights of the Senior Lender, or such lender's assignee or successor in interest, to exercise its remedies under the Senior Lender Deed of Trust in the event of default under the Senior Lender Deed of Trust by the Owner. Such remedies under the Senior Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the Deed of Trust shall be forever terminated and shall have no further effect as to the Home or any transferee thereafter; provided, however, if the holder of such Senior Lender Deed of Trust acquires title to the Home pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the Deed of Trust shall automatically terminate upon such acquisition of title, only if either a notice of default was recorded under the applicable Senior Lender Deed of Trust, or, if no notice of default was recorded (i) the City has been given written notice of default under such Senior Lender Deed of Trust (which requirement shall be satisfied by notice of default required by California Civil Code Section 2924) and (ii) the City shall not have cured the default within the period provided by law.

This Agreement shall not diminish or affect the rights of the City under the Deed of Trust; and this Agreement shall not diminish or affect the rights of the California Housing Finance Agency, HUD or the Veterans Administration ("VA") under the Senior Lender Deed of Trust or any subsequent Senior Lender deeds of trust hereafter recorded against the Home in compliance with Section 16 above.

SECTION 18. DISTRIBUTION OF CONDEMNATION, INSURANCE AND FORECLOSURE PROCEEDS

The City shall be named as additional insured or loss payee on the fire and casualty insurance policy issued to Owner insuring loss to the City.

In the event the Home is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the improvements on the Home or, in the event of condemnation, or in the event

of a judicial foreclosure, a trustee's deed upon a non-judicial foreclosure, a deed in lieu of foreclosure or any other involuntary Repayment Transfer to the holder of a secured interest in the Home (collectively "Foreclosure"), if proceeds thereof are distributed to Owner, any surplus of proceeds so distributed remaining after payment of encumbrances of the Home shall be distributed as follows:

City shall receive its Equity Share as determined pursuant to the Promissory Note. Owner shall receive the remainder of the proceeds after payment to the City of the above amounts.

SECTION 19. COVENANTS RUN WITH THE LAND

Owner hereby declares its express intent that the provisions of this Agreement shall be deemed covenants running with the land and shall pass to and be binding upon all parties having any interest in the Home. 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 have actual knowledge of this Agreement.

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 any third-party beneficiary specifically named in this Agreement and shall run in favor of such parties for as long as this Agreement shall be in force and effect, without regard to whether the City or such third-party beneficiary has an interest in the land to which this Agreement relates.

SECTION 20. OWNER'S ACKNOWLEDGEMENT OF RESALE RESTRICTION

Owner hereby acknowledges and agrees that

A. Owner hereby subjects the Home to certain restrictions. The restrictions and other provisions contained in this Agreement, restrict the full benefits of owning 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 provisions of this Agreement, the Home could not be made available to Owner at an affordable price.

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

[initialed by Owner(s)]

SECTION 21. NO THIRD-PARTY BENEFICIARY

This Agreement is not intended for the benefit of unnamed third parties.

SECTION 22. GENERAL PROVISIONS

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

To Owner:

[Buyer's Name]

[Property Address]
Gilroy, CA 95020

To the City:

The City of Gilroy
Planning/ HCD Division
7351 Rosanna Street
Gilroy, CA 95020
Attn: HCD Grant Coordinator

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

Information and Entry by City. The Owner shall provide any information reasonably requested by the City in connection with the Home. The Owner hereby grants to the City and its duly authorized representatives the right to enter the Home at reasonable times and in a reasonable manner for purposes of inspecting the Home to determine compliance with this Agreement.

Non Discrimination. 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 Property, 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 Property. The foregoing covenant shall run with the land.

No Liability of the City. In no event shall the City become in any way liable or obligated to Owner or any successor-in-interest to Owner by reason of its Option to Purchase under this Agreement, nor shall the City be in any way obligated or liable to Owner or any successor-in-interest to Owner for any failure to exercise its Option to Purchase.

Indemnification. Nothing in this Agreement shall be construed by the City, or by Owner or by any third party to create the relationship of principal and agent, or of partnership, joint venture or association with the City and Owner. Owner agrees to indemnify, defend, and hold harmless the City, its board members, officers, agents, and employees agents and employees from any and all claims, demands, liability, costs, and expenses of whatever nature, including but not limited to, court costs,

damages and counsel fees accruing or resulting to any and all contractors, subcontractors, material providers, laborers, and any other person, firm, or City furnishing or supplying work in connection with this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or City who may be injured or damaged by Owner in the performance of this Agreement or default under this Agreement. The indemnity provisions set forth in this Section shall survive the termination of this Agreement.

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

Waiver. No waiver by the City of the right to exercise the Option to Purchase the Home or of any breach by Owner of any covenant, restriction or condition herein contained shall be effective unless such waiver is in writing signed by the City and delivered to the Owner. The waiver by the City of any such breach or breaches, or the failure by the City to exercise any right or remedy with respect to any such breach or breaches, shall not constitute a waiver or relinquishment for the future of any such covenant or condition or bar any right or remedy of the City with respect to any such subsequent breach.

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.

Amendment. The parties agree that this instrument, the Promissory Note and the Deed of Trust contain all of the provisions of the Agreement between the parties hereto. No alteration or variation of the terms of this Agreement shall be valid unless made in writing in the form of an amendment and signed by the parties hereto. No oral understanding or Agreement not incorporated herein shall be binding on any of the parties hereto.

Interpretation of Agreement. This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

Exhibits and Attachments. Any exhibits and attachments referred to in this Agreement are incorporated in this Agreement by such reference.

Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.

Assignment by City. The City may assign their rights under this Agreement to any person upon consent from each other and upon notice to the Borrower. The City may assign their rights under this Agreement without the Borrower's consent. The City may not transfer or assign this Agreement to a profit-making entity without first obtaining approval of the Senior Lender Loans lender(s).

Drafting Party. The Owner acknowledges and agrees that, although this Property Restriction Agreement and Option to Purchase has been approved by the City's legal counsel, Owner and/or its legal counsel have reviewed, or had an opportunity to review, the terms hereof. Consequently, the doctrine that ambiguities in an agreement should be resolved against the drafting party shall not be employed in connection with this Agreement and this Agreement shall be interpreted in accordance with its fair

meaning.

[SIGNATURES ON THE NEXT PAGE]

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

CITY:

CITY OF GILROY,
a municipal corporation

By:

(insert Name), City Administrator

Date

OWNER:

(insert Name)

(insert Name)

Date

ATTACHMENT 1

(Property Description)

All that certain Real Property in the County of Santa Clara, State of California, described as follows:

Lot ____, as shown on that certain map entitled "Tract No. 9867, Alexander Place", which was filed in the Office of the Recorder of the County of Santa Clara, State of California on May 2, 2007 in Book 813 of Maps, Page 31 through 34.

APN: _____

ATTACHMENT 2

Owner Occupancy and Maintenance Certification

Date: _____

To: By mail:

City of Gilroy
Planning/HCD Division
7351 Rosanna Street
Gilroy, CA 95020
Attn: HCD Grant Coordinator

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: _____ Development
Property Restriction Agreement and Option to Purchase
Owner Occupancy Certification

Home located at: _____
(Street address)

(City, State, Zip Code)

(Home telephone no.)

(Work telephone no.)

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

I/we also certify the Home is in good repair and saleable condition and that I/we are continuing to meet the conditions of Section 13 of the Property Restriction Agreement and Option to Purchase.

This Owner Occupancy and Repair Certification are signed on _____, 20__, under penalty of perjury.

Owner Signature

Print Name

Owner Signature

Print Name

Due Date: July1 of each calendar year.

Attach copy of utility bill, insurance policy, and mortgage statement, that is within sixty (60) days of the date of this notice or driver's license showing address of Home.

460\01\432279.2_4.23.2007 Attachment 2

ATTACHMENT 3

Notice of Intended Transfer

Date: _____

To:

By mail:

City of Gilroy
Planning/HCD Division
7351 Rosanna Street
Gilroy, CA 95020
Attn: HCD Grant Coordinator

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

RE: _____ Development
Property Restriction Agreement and Option to Purchase
Notice of Intended Transfer

Home located at: _____

(Street address)

(City, State, Zip Code)

(Home telephone no.)

(Work telephone no.)

Date of Purchase _____

Purchase Price paid by me/us ("Original Purchase Price): _____

Original Down payment Amount at time of purchase: _____

NOTE: Down payment does not include closing costs expenses

Date I intend to vacate the Home: _____

Name and Phone Number for to contact to schedule inspection:

(name)

(work phone number)

(home phone number)

To Whom It May Concern:

In accordance with the terms and conditions of the Property Restriction Agreement and Option to Purchase (the "Agreement") recorded against our Home, I/we ("Owner") of the above referenced Home, provide this notice to City of Gilroy (the "City") as notice of our intention to transfer the Home. Attached to this Notice a copy of an appraisal of the Home prepared by _____ (Appraiser must be on the City's list of approved appraisers, which list is available from the City)

ATTACHMENT 3

and dated _____ (Appraisal must be dated within thirty days of the date of notice).

I/We understand that, we must provide the City or its agents reasonable access to the Home to do a full and complete inspection of the Home to determine the condition of the Home. Enclosed is a copy of the HUD-1 Settlement Statement or equivalent documents from the close of escrow of my purchase of the Home and copies of receipts from any improvements I have made to the Home.

Enclosed is a _____ Dollar (\$_____) check or money order made out to the City or its Assignee for administrative costs.

Sincerely,

Owner Signature

Print Name

Owner Signature

Print Name

**ATTACHMENT 4
City Response Notice**

To: _____

Gilroy, CA _____

Attention: _____

From:

City of Gilroy
Planning/HCD Division
7351 Rosanna Street
Gilroy, CA 95020
Attn: HCD Grant Coordinator

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: _____ Development
Property Restriction Agreement and Option to Purchase
Response Notice

Home located at: _____
(Street address)

(City, State, Zip Code)

(Home telephone no.)

(Work telephone no.)

In accordance with the terms and conditions of the Property Restriction Agreement and Option to Purchase (the "Agreement") recorded against your Home (as referenced above) the City is in the process of reviewing the appraisal of the Home. Please call the City at _____ to schedule an inspection to verify capital improvements and the saleable condition of your home .

Sincerely,

Homebuyer Program Manager

ATTACHMENT 5
Response to Notice of Intended Transfer

Date: _____

To: _____

Gilroy, CA _____

Attention: _____

From: City of Gilroy
Planning/HCD Division
7351 Rosanna Street
Gilroy, CA 95020
Attn: HCD Grant Coordinator

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: _____ Development
Property Restriction Agreement and Option to Purchase

Home located at: _____
(Street address)

(City, State, Zip Code)

(Home telephone no.)

(Work telephone no.)

In accordance with the terms and conditions of the Property Restriction Agreement and Option to Purchase (the "Agreement") recorded against your Home, referenced above, and specifically the those in Section 8 of the Agreement, the City has:

_____ accepted the appraised value of the Home based on your appraisal or
_____ has determined to obtain its own appraisal of the Home.

The amount of the City's Equity Share as determined in accordance with the Promissory Note is _____. These amounts are owed to the City from the sale proceeds of the Home.

Please call the City at _____ if you have any questions.

Sincerely,

Owner
4816-7754-4039v5
CCHU\04706084

ATTACHMENT 6
Notice of Intent to Exercise Option

Date: _____
To: Owner
From: City of Gilroy
Planning/HCD Division
7351 Rosanna Street
Gilroy, CA 95020
Attn: HCD Grant Coordinator

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: _____ Development
Property Restriction Agreement and Option to Purchase
Notice of Intent to Exercise Option

RE: Home located at: _____
(Street address)

(City, State, Zip Code)

(Home telephone no.)

(Work telephone no.)

To Whom It May Concern:

In accordance with the terms and conditions of the Property Restriction Agreement and Option to Purchase (the "Agreement"), and specifically those in Sections 8 and 15 of the Agreement, executed upon purchase of the Home, at the above referenced address, City of Gilroy (the "City"), provides this notice of the City's intent to exercise its Option to Purchase the Home or to assign the Option to Purchase the Home to another qualified purchaser.

Sincerely,

ATTACHMENT 7
Notice to Sell

Date: _____

To: Owner

From: City of Gilroy
Planning/HCD Division
7351 Rosanna Street
Gilroy, CA 95020
Attn: HCD Grant Coordinator

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

Re: _____ Development
Property Restriction Agreement and Option to Purchase
Owner Notice to Sell to Qualified Purchaser

RE: Home located at:

(Street address)

(City, State, Zip Code)

(Home telephone no.)

(Work telephone no.)

To Whom It May Concern:

City of Gilroy declines to exercise its option to purchase your home. In accordance with the terms and conditions of the Property Restriction Agreement and Option to Purchase (the "Agreement") executed upon purchase of the Home, at the above referenced address, City of Gilroy (the "City"), acknowledges receipt of a Notice of Intent to Transfer from the Owner of the Home referenced above, and requests that you sell the Home pursuant to Sections 8 and 9 of the Agreement. According to the Agreement and the Promissory Note and based on the gross sale price of the Home, you must pay the City from the Sales proceeds the following amounts:

The City's Equity Share _____. The amount of the City's Equity Share may differ depending upon the actual sale price of the home and the date that the Home is sold. The actual amount of the City's Equity Share will be determined at close of escrow based on the requirements of the Promissory Note and the Agreement.

Please contact the City at _____ if you have any questions.

Sincerely,

**Attachment 8
Request for Refinance**

Date: _____

To:

By mail:

City of Gilroy
Planning/HCD Division
7351 Rosanna Street
Gilroy, CA 95020
Attn: HCD Grant Coordinator

NOTE: This notice must be sent by certified mail, return receipt requested, express delivery service with a delivery receipt or personally delivered with delivery receipt and shall be deemed to be effective as of the date received, the date returned as undeliverable or the date delivery is refused as indicated on the return receipt or the delivery receipt.

RE: _____ Development
Property Restriction Agreement and Option to Purchase
Request for Refinance Amount

Home located at:

(Street address)

(City, State, Zip Code)

(Home telephone no.)

(Work telephone no(s).)

Date of Purchase: _____

Purchase Price paid by me/us ("Original Purchase Price): _____

Amount of outstanding principal balance of senior loan: _____
(Include a copy of your most recent mortgage statement that shows balance due)

Amount of loan that will refinance existing loans: _____

Proposed Interest Rate of loan that will refinance existing loans: _____

Anticipated closing date of Refinance: _____

Name, contact information of lender and loan agent _____

Name, contact information of title company and escrow officer (including e-mail)

List of improvements I have made to the Home:

_____ (attach copy of receipt)
_____ (attach copy of receipt)
_____ (attach copy of receipt)

Name and Phone Number for City to contact to schedule inspection:

_____ (name)
_____ (work phone number)
_____ (home phone number)

To Whom It May Concern:

In accordance with the terms and conditions of the Property Restriction Agreement and Option to Purchase (the "Agreement") recorded against our Home, and specifically Sections 11 and 12 of the Agreement, I/we ("Owner") of the above referenced Home, provide this request to South County Housing to approve our request to refinance the senior mortgages that have been recorded against our Home. Copies of the loan documents that will be used in connection with the refinance and the HUD-1 Settlement Statement from the close of escrow of our purchase of the home are attached here for your reference.

Enclosed is a _____ Dollar (\$ _____) check or money order made out to the City or its Assignee for administrative costs.

I/we (Owner) acknowledge that there may be an additional administrative fee due to the City that will be collected upon close of escrow.

Sincerely,

Owner Signature Print Name

Owner Signature Print Name

Attachments: Loan Documents