

**Recording requested by and when  
recorded mail to:**

Town Clerk  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

(Space Above This Line For Recorder's Use Only)

**NOTICE OF RECORDED DEED RESTRICTION, REFINANCE RESTRICTION,  
AND FIRST RIGHT OF REFUSAL OF THE TOWN OF LOS GATOS  
108 Sierra Linda, Los Gatos, California  
TOWN OF LOS GATOS  
BELOW MARKET PRICE HOUSING PROGRAM  
DEED RESTRICTION, REFINANCE RESTRICTION, AND FIRST RIGHT OF REFUSAL  
AGREEMENT  
OWNER-OCCUPIED UNIT  
(ssssssnnnnn)**

This Deed Restriction, Refinance Restriction, and First Right of Refusal Agreement is made this \_\_\_ day of \_\_\_, 2020, by and between the Town of Los Gatos, a municipal corporation of the State of California (hereinafter "TOWN") and \_\_\_\_\_ (hereinafter "OWNER"), OWNER(s) of the real property located at \_\_\_\_\_, Los Gatos, California, which is more fully described in Exhibit A attached hereto and incorporated by reference. Said real property (hereinafter "PROPERTY") is hereby designated as a Below Market Price (BMP) Housing Unit subject to the terms and conditions set forth herein.

**RECITALS**

WHEREAS, Town Code Sections 29.10.3000 *et seq.* establish the Below Market Price (BMP) Housing Program described herein; and

WHEREAS, the BMP Program is administered by the TOWN to increase the supply of housing affordable to families and individuals with low and median incomes by offering homes for sale at prices which are below those otherwise prevailing in the market; and

WHEREAS, the purpose of this Agreement is to place certain use restrictions on the PROPERTY, establish resale controls with respect to the PROPERTY, and reserve for the TOWN an option to acquire the PROPERTY from OWNER in order to preserve indefinitely the affordability of PROPERTY for persons of low and median income.

NOW, THEREFORE, in consideration of the mutual benefits provided herein, TOWN and OWNER agree as follows:

## **1. OWNER CERTIFICATIONS**

OWNER certifies the following:

- a. All financial and other information submitted by OWNER in order to qualify to purchase the PROPERTY is true and correct as of the date first written above. OWNER understands that any material misstatement or misrepresentation shall be deemed to be a material breach of this Agreement and shall be grounds for declaring a default, terminating this agreement, or seeking other such relief and remedies as are appropriate under the circumstances.
- b. OWNER shall occupy the PROPERTY as the OWNER's principal place of residence. TOWN may grant a temporary waiver of this occupancy requirement for good cause in its sole discretion pursuant to Section 2 below. OWNER agrees that TOWN shall have the right, from time to time, to request reasonable verification from OWNER that he/she remains the owner-occupant of the PROPERTY as required by this Agreement.

## **2. LEASING OF PROPERTY**

OWNER shall not lease, rent, sublet, assign, or otherwise transfer the right of use or possession to all or any portion of the PROPERTY without the prior written consent of the TOWN. TOWN may consent if the action is necessary because of family or medical emergency, temporary job transfer, or other causes that the TOWN, in its sole discretion, considers acceptable. Leasing of PROPERTY shall be considered acceptable only under the following circumstances:

- a. All leases must be authorized by the BMP Program Manager designated by the TOWN to assume overall responsibility for the execution of this Agreement pursuant to Section 15 of this Agreement.
- b. OWNER shall only accept tenants qualified by the TOWN, or its assignee or designee.
- c. PROPERTY shall not be leased in an amount greater than OWNER's monthly costs, including mortgage, homeowner's insurance, property taxes, homeowner's dues and a reasonable allowance for utilities, not including telephone or cable television services.
- d. Tenants are limited to persons whose income is below 120 percent of the County Median Income for Santa Clara County Jurisdictions as defined by the United States Department of Housing and Urban Development.

Any lease in violation of this Agreement is prohibited and shall constitute a default by the OWNER.

## **3. TRANSFER OF PROPERTY**

For purposes of this Agreement, "transfer" means any voluntary or involuntary sale, assignment, conveyance, or transfer of ownership or any interest in the PROPERTY, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the PROPERTY is transferred and OWNER retains title. Any transfer without satisfaction of the provisions of this Agreement is prohibited.

- a. Transfers by devise or inheritance will be permitted if all of the following terms and conditions of transfer are satisfied within sixty (60) days of the transfer:
  - i. The Transferee shall occupy, establish, and maintain the use of the PROPERTY as Transferee's principal residence;
  - ii. Transferee shall demonstrate to TOWN or its designee that Transferee's annual household income does not exceed the income limits stated in the Below Market Price Housing Program Guidelines in effect on the date of transfer; and
  - iii. Transferee will execute a Deed of Trust or other instrument satisfactory to the TOWN securing the covenants and conditions of the TOWN.If any of these terms and conditions of transfer are not satisfied, the transfer by devise or inheritance will not be permitted.

#### **4. NOTICE OF INTENDED TRANSFER**

In the event the OWNER intends to transfer the PROPERTY, the OWNER shall promptly notify the TOWN in writing of such intent. Said notice shall be personally delivered or sent by certified mail, return receipt requested, to: Town Manager, Town of Los Gatos, 110 E. Main Street, Los Gatos, CA 95030. OWNER's intent to transfer may be withdrawn by OWNER, provided that notice of withdrawal is received by TOWN or its designee in writing prior to acceptance of transfer by TOWN or its designee.

#### **5. REFINANCE OF FIRST LENDER; SUBORDINATE LOANS**

- a. TOWN 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 TOWN.
- b. Permitted Encumbrance Amount. At no time shall the total principal amount of all debt secured by the Home exceed the "Permitted Encumbrance Amount," which is defined as the greater of: (i) ninety percent (90%) of the maximum restricted Resale Price calculated pursuant to Section 9 as of the date of the OWNER's request to the TOWN of approval of the OWNER's refinance (the "Refinance Request Notice"); or (ii) the outstanding balance of the existing First Lender Loan as of the date of the Refinance Request Notice. Mortgage loans which include negative amortization are prohibited. If escrow does not close on the refinance within one hundred twenty (120) days of the date of the Refinance Request Notice, the TOWN shall have the right to recalculate the Permitted Encumbrance Amount. OWNER shall not be in Default hereunder at the time of initial purchase of the Home by the OWNER if, at that time, the initial debt secured by the Home exceeds the Permitted Encumbrance Amount and OWNER does not further encumber the Home until the Permitted Encumbrance Amount complies with this paragraph.
- c. Refinance of First Lender Loan. The TOWN shall permit and approve a prepayment and refinance of the existing First Lender Loan and shall provide for the

subordination of this Agreement and the TOWN Deed of Trust to the refinanced First Lender Loan only if such refinance does not cause the total debt secured by the Home, including junior mortgage loans and equity lines of credit, to exceed the Permitted Encumbrance Amount. The TOWN will not approve any mortgage loan which includes negative amortization.

- d. Junior Loans and Equity Lines of Credit. Mortgage loans or equity lines of credit junior in lien priority to this Agreement and the TOWN Deed of Trust are not permitted, except as when expressly approved by the TOWN in writing. The TOWN shall only approve junior mortgage loans or equity lines of credit which 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 Encumbrance Amount. The TOWN will not approve any mortgage loan or equity line of credit which includes negative amortization.
- e. 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 TOWN.
- f. Any rents, profits, or proceeds from any transaction described in Paragraph 2 or 5 which transaction has not received the requisite written consent of the TOWN shall be paid upon demand by OWNER to the TOWN for deposit to its Affordable Housing Fund. The TOWN may institute proceedings to recover such rents, profits or proceeds, and costs of collection, including attorneys' fees. Upon recovery, after payment of costs, the balance shall be paid to the TOWN for deposit to its Affordable Housing Fund. In the event that the TOWN consents for good cause to any such lease, refinancing, encumbrance, or mortgage, it shall be a condition to such consent that all rents, profits, or proceeds from such transaction, which exceed the actual carrying costs of the PROPERTY as determined by the TOWN, shall be paid to the TOWN for deposit to its Affordable Housing Fund.

## **6. TOWN'S PURCHASE OPTION**

Except as provided herein, OWNER hereby grants and gives to the TOWN or its designee the first right to purchase the PROPERTY under conditions set forth herein for an amount determined in accordance with Section 8 below.

- a. If the TOWN, or its assignee or designee, decides to exercise its right to purchase the PROPERTY:
  - i. It shall notify the OWNER by personal delivery or certified mail, return receipt requested, of its intent to exercise the right within ninety (90) days following the date of receipt of OWNER's notice of intent to transfer the PROPERTY;
  - ii. It shall open an escrow account within ninety (90) days of issuing the notice of intent to purchase the PROPERTY. Once opened, the escrow must be closed within ninety (90) days, unless both parties mutually agree, in writing, to an extension of time. Close of escrow shall mean the recordation

- of a grant deed conveying the BMP unit to the TOWN, or its assignee or designee;
- iii. OWNER understands that final transfer of PROPERTY may not occur until two-hundred seventy (270) days after the notice of intent to transfer has been received by the TOWN;
  - iv. The OWNER may request that the TOWN accelerate the time periods specified herein. The determination to accelerate the time period shall be at the sole discretion of the BMP Program Manager. Any request for acceleration due to hardship shall be requested by the OWNER, in writing, not later than thirty (30) days from the date of receipt of the notification of intent to sell. The BMP Program Manager shall make a determination and notify the OWNER within ten (10) business days of receipt of the request for a hardship acceleration that the request has been approved, denied, or that additional information is required to make the determination. In the event the request is denied, the OWNER may submit further evidence and request a reconsideration. In any case, the TOWN shall have a minimum of sixty (60) days from the date of receipt of the new evidence or of the request for reconsideration of a previously issued denial, whichever is later.
- b. Closing costs, commissions, and title insurance shall be paid by OWNER pursuant to the customs and practices in the Town of Los Gatos. OWNER shall bear the expense of providing a current written report of inspection by a licensed Structural Pest Control Operator. All work recommended in said report to repair damage caused by infestation or infection of wood-destroying pests or organisms found, and all work to correct conditions that caused infestation or infection, shall be done at the expense of the OWNER. Any work to correct conditions usually deemed likely to lead to such infestation or infection, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of the OWNER, and such work shall only be done if requested by the buyer and at the expense of the buyer. The buyer shall be responsible for any prepayment fees imposed by any lender by reason of the sale of the PROPERTY.
  - c. The TOWN, at its sole discretion, reserves the right at any time during this process to assign its right to purchase to:
    - i. A government agency or non-profit organization; or
    - ii. An individual buyer who meets TOWN eligibility qualifications pursuant to the procedures and criteria in effect for the BMP Housing Program at the time the notice of intent to purchase the PROPERTY is issued to the OWNER.
    - iii. In the event the initial designee fails or is unable to complete the transaction, the TOWN reserves the right to reassign the right to another eligible, qualified buyer, provided the opening of the escrow is not postponed longer than ninety (90) days after the OWNER is notified of the TOWN's decision to purchase the PROPERTY.

- iv. In the event the TOWN postpones opening of escrow and is unable to select such an assignee, TOWN retains the right to open escrow and complete the purchase, provided such escrow is opened within ninety (90) days and the sales transaction is completed within two hundred seventy (270) days from the date of receipt of OWNER's intent to transfer the PROPERTY.
- d. In no event shall TOWN become in any way liable to OWNER, nor become obligated in any manner, by reason of the assignment of its right to purchase, or for any failure of TOWN or TOWN's assignee to consummate a purchase of the PROPERTY or comply with the terms of any purchase and sale agreement. Nothing in this Agreement shall be construed to obligate the TOWN to purchase any unit in the event a buyer participating in the BMP Housing Program fails to complete actions to close escrow.
- e. Until such time as the TOWN's right to purchase is exercised or waived, OWNER may encumber title to the PROPERTY for the sole purpose of securing financing by OWNER, in an amount up to 90% of the below market rate price as would be determined under the provisions of Section 8 at the time the lien or encumbrance is placed against the BMP unit. The BMP unit may be refinanced only up to 90% of the below market value regardless of the actual full market value of the BMP unit. However, in the event of foreclosure or transfer of deed in lieu of foreclosure, the provisions of Section 12 of this Agreement shall govern.
- f. The provisions defined herein granting the TOWN the first right to purchase the PROPERTY, established for the purpose of providing and preserving low income housing, shall remain in effect indefinitely.

## **7. FAILURE TO EXERCISE PURCHASE OPTION**

If the TOWN or its designee does not exercise its right to purchase the PROPERTY within ninety (90) days of the date of receipt of OWNER's notice, or an escrow account is not opened within ninety (90) days of the date the TOWN notifies OWNER of its intent to purchase, all restrictions, resale controls, and other terms of this Agreement shall cease and become null and void and of no further effect as to the PROPERTY, unless the time period has been extended by mutual, written agreement of the parties, and OWNER may sell the PROPERTY to a person of his/her choosing in a manner free from any and all restrictions contained in this Agreement.

## **8. OWNER'S OBLIGATION TO COOPERATE**

At all times following receipt of TOWN's notice of intent to purchase the PROPERTY, OWNER shall ensure that the PROPERTY is clean, in good repair, and available to be shown to prospective buyers. OWNER shall cooperate with the TOWN and its respective officers, employees, and representatives. Failure to comply with these conditions shall be deemed a material breach of OWNER's obligations pursuant to the terms of this Agreement, and upon determination by the TOWN that OWNER has failed to comply with any of the above conditions, TOWN shall notify OWNER that the time periods stated in Section 5 herein shall be tolled, and

the applicable time periods extended accordingly, until OWNER has complied with all of the conditions of this Agreement. Acts by OWNER which shall be deemed to be a breach of this obligation include, but are not limited to:

- a. Failure to make the unit available for showing to prospective buyers upon reasonable notice;
- b. Willful or deliberate actions to dissuade prospective buyers from purchasing the unit; and
- c. Failure or refusal to return telephone calls, complete forms, provide required reports, or perform other actions ordinarily required by a party to a real estate transaction in a timely manner.

In addition to tolling the applicable time periods, the TOWN may pursue any other remedies for breach specified in this Section.

## **9. PRICE**

The resale price shall be paid in cash at the close of escrow or as otherwise agreed by the parties and fixed at the lowest of the amounts determined by the four methods described below:

- a. Method 1 - Appraisal:  
The TOWN or its assignee or designee may have an appraisal made by an independent appraiser of its choice to establish the fair market value of the PROPERTY; cost is to be borne by the TOWN or its assignee or designee. Whether or not to determine the fair market value of the property is at the discretion of the BMP Program Manager. The OWNER may also have an appraisal made by an appraiser of her/his choice with three (3) or more years of experience appraising real property for purposes of financing, purchasing, or determining value in condemnation proceedings to establish market value; cost is to be borne 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-month period. If the TOWN and OWNER cannot reach agreement on the fair market value of the PROPERTY, the average of the two appraisals shall be termed the market price.
- b. Method 2 - Median Income Index:  
The resale price shall be determined by adjusting the original purchase price paid by the OWNER to compensate for the percentage increase, if any, in the Median Income Index for Santa Clara County Jurisdictions, as published by the United States Department of Housing and Urban Development for the years the OWNER has lived at the PROPERTY. The Index prevailing on the date of the OWNER's purchase of the PROPERTY shall be compared with the latest Index prevailing on the date of receipt by the TOWN of notice of intent to transfer. The percentage increase in the Index, if any, shall be computed and the original purchase price shall be increased by the same percentage, provided that the price is not lower than the original purchase price.
- c. Method 3 - Consumer Price Index:

The resale price shall be determined by adjusting the purchase price paid by the OWNER to compensate for the percentage increase, if any, in the cost of living as measured by the Housing Component of the Consumer Price Index for the San Francisco-Oakland-San Jose area, as published by the United States Department of Labor, Bureau of Labor Statistics. The Index prevailing on the date of the OWNER's purchase of the PROPERTY shall be compared with the latest Index available on the date of receipt by the TOWN of notice of intent to transfer. The percentage increase in the Index, if any, shall be computed and the original purchase price shall be increased by the same percentage, provided that the price is not lower than the original purchase price.

d. Method 4 - Maximum Affordable Price:

The resale price shall not exceed the maximum affordable sales price for the income category and unit type within which the PROPERTY was originally sold, as such prices are required to be determined pursuant to the resolution of the Town Council of the TOWN establishing the TOWN's BMP Housing Program Guidelines in effect on the date that the TOWN is notified of the OWNER's intent to transfer.

## 10. PRICE ADJUSTMENTS

a. Improvements:

The sales price of the PROPERTY shall be increased from the base price by the dollar cost to the OWNER of any improvements, appliances, fixtures, or equipment permanently affixed to the PROPERTY (the "IMPROVEMENTS"), if that cost is in excess of one percent (1%) of the price OWNER paid for the PROPERTY, minus estimated depreciation of such IMPROVEMENTS. Depreciation estimates shall be based upon an assumed fifteen (15) year economic life for any such improvement and calculated on the straight-line basis from the date of completion of installation to the date the TOWN receives notice from the OWNER of intent to sell the PROPERTY. Receipts for payment of the cost of such IMPROVEMENTS must be submitted by the OWNER to the TOWN within fifteen (15) working days of the receipt by the TOWN of notification of intent to sell if the depreciated cost of such IMPROVEMENTS is to be added to the base price in determining the purchase price of the PROPERTY.

b. Deferred Maintenance:

Upon receipt of notice of OWNER's intent to sell, TOWN or its designee shall be entitled to inspect the PROPERTY. TOWN or its designee shall have an opportunity to determine whether:

- i. All plumbing, electrical, and heating systems are in working order;
- ii. Any violations of applicable building, plumbing, electric, fire, or housing codes exist;
- iii. All appliances which were originally furnished to OWNER as part of the PROPERTY, or any replacements thereof, are in working order;
- iv. Walls, ceilings, and floors are clear and free of holes or other defects



- (except for holes typical of picture hangers);
- v. Doors, window screens, and similar appurtenances are cracked, broken, or torn; and,
  - vi. Carpets, drapes, and similar features which were originally furnished to OWNER as part of the PROPERTY, or any replacement thereof, are clean and free of holes, tears, or other defects.

In the event deficiencies are noted, the TOWN or its designee shall obtain estimates to cure the observed deficiencies. The OWNER shall cure the deficiencies in a reasonable manner acceptable to TOWN or designee within thirty (30) days of being notified of the results of the inspection, but in no event later than close of escrow. Should OWNER fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of TOWN, its designee or assignee, escrow may be closed, title passed and monies paid to the selling OWNER subject to the condition that such funds as are necessary to pay for curing such deficiencies (based upon written estimates obtained by TOWN) shall be withheld from the monies due the selling OWNER and held by the escrow holder for the purpose of curing such deficiencies. TOWN, its designee or assignee, shall cause such deficiencies to be cured and upon certification of completion of work by TOWN, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the selling OWNER. No other payment shall be due said OWNER.

#### **11. INSURANCE**

OWNER shall maintain in full force and effect a policy of fire and extended coverage on the PROPERTY until such time as the PROPERTY is sold to the TOWN, its assignee, or designee, as allowed under this Agreement.

#### **12. ENCUMBRANCES AND TAXES**

OWNER shall pay in a timely manner all amounts due under any mortgage or deed of trust encumbering the PROPERTY and all real property taxes and assessments. Recordation of a notice of default under any deed of trust with a power of sale encumbering the PROPERTY shall constitute an event of default.

#### **13. FORECLOSURE**

- a. TOWN shall cause to be filed for record in the office of the Recorder of the County of Santa Clara a request for copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering the PROPERTY, pursuant to Section 2924(b) of the California Civil Code. Such request shall specify that any such notice shall be mailed to Town Manager, Town of Los Gatos, 110 E. Main Street, Los Gatos, CA 95030. Any notice of default or sale given pursuant to Civil Code Section 2924(b) shall constitute a notice of intent to sell hereunder, and the TOWN may exercise its right to purchase PROPERTY prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of

foreclosure.

- b. In the event of default or foreclosure, the TOWN, or its assignee or designee, shall have the same right as the OWNER to cure defaults and redeem the PROPERTY prior to foreclosure sale. Such redemption shall be subject to the same fees, charges, and penalties which would otherwise be assessed against the OWNER. Nothing herein shall be construed as creating any obligation on the part of the TOWN 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. The TOWN, or its assignee or designee, shall be entitled to recover from the OWNER all costs incurred in curing any such default.
- c. If the TOWN elects not to exercise its right upon such default, any excess proceeds to which the OWNER may be entitled pursuant to the Code of Civil Procedure Section 727 shall be paid to the TOWN. Excess proceeds means the amount by which the foreclosure proceeds exceeds the purchase price that would have been payable to the OWNER if the TOWN had purchased the PROPERTY on the date of the foreclosure sale.
- d. In the event the TOWN, or its assignee or designee, having been duly notified of an impending sale and fully able to exercise its rights hereunder, fails to exercise its right to purchase or prevent foreclosure or trustee's sale, a completed action of foreclosure or trustee's sale shall render this Agreement and the restrictions imposed thereby to be null and void and of no further force or effect. The subsequent bona fide purchaser for value shall take title to the PROPERTY free from any and all restrictions contained in this Agreement.

#### **14. DESTRUCTION OR TERMINATION OF PROPERTY**

- a. If the PROPERTY is destroyed, and insurance proceeds are distributed to the OWNER instead of being used to rebuild; or
- b. If the PROPERTY is condemned, and the proceeds are distributed to the OWNER; or
- c. If the PROPERTY consists of a unit in a condominium project, and the project is destroyed, the association liquidated, and the assets distributed to the members of the association, including the OWNER; then

Any excess proceeds remaining after payment of encumbrances on the PROPERTY shall be distributed to the TOWN. Excess proceeds means the amount by which the insurance, condemnation, or liquidation proceeds exceed the purchase price that would have been payable to the OWNER if the TOWN had purchased the PROPERTY on the date of the destruction, condemnation valuation, or liquidation.

#### **15. DEFAULT UNDER THIS AGREEMENT**

Any transfer which is not in substantial compliance with this Agreement shall be deemed a "prohibited transfer." At any time after receiving actual notice of a prohibited transfer or of any violation of this Agreement, the TOWN shall give written notice to the OWNER specifying the nature of the prohibited transfer or other violation of this Agreement. If the violation is not

corrected to the satisfaction of the TOWN within ten (10) days after the date of the notice, or within such further time as the TOWN determines in its sole discretion to be necessary to correct the violation, the TOWN may declare in writing a default under this Agreement. Upon the declaration of a default under this Agreement, the TOWN may apply to a court of competent jurisdiction for specific performance of this Agreement for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the prohibited transfer is void, or for any such other relief as may be appropriate.

#### **16. PROGRAM MANAGEMENT**

As of the date first written above, TOWN has designated the Community Development Director to serve as BMP Program Manager with overall responsibility for the progress and execution of this Agreement.

#### **17. PROHIBITIONS ON BONUS, COMMISSION, AND FEE**

OWNER shall not pay TOWN any bonus, commission, or fee for the purpose of obtaining approval of OWNER's application for the PROPERTY, or any other approval or concurrence required by the TOWN in connection with this Agreement.

#### **18. SUPERIORITY OF AGREEMENT**

The TOWN and OWNER covenant that they have not and will not execute any agreement with provisions contradictory to or in opposition to the provisions of this Agreement, and that in any event this Agreement is controlling as to the rights and obligations between the TOWN and OWNER.

#### **19. SEVERABILITY**

If any provisions contained herein are for any reason held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, then such 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 provisions had never been contained herein, and the remaining provisions shall continue in full force.

#### **20. APPLICABLE LAW**

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

#### **21. LEGAL ACTION**

If any legal action is commenced to interpret or enforce the terms of this Agreement or collect damages as a result of any breach of this Agreement, then the prevailing party shall be entitled to recover against the party not prevailing all reasonable attorney's fees and costs incurred in such action, not to exceed Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) in total. The venue for any action to enforce the terms of this Agreement or collect damages shall be in the Superior Court of the County of Santa Clara, California.

#### **22. WAIVER**

No failure on the part of either party to exercise any right or remedy hereunder shall operate as

a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

### **23. ENTIRE AGREEMENT**

This Agreement, including Exhibit A attached hereto, sets forth the entire agreement between the parties and supersedes all other oral and written provisions. No other terms or conditions shall be deemed to apply, unless by a mutually executed, written amendment, modification, or superseding agreement which references this Agreement.

### **24. NOTICES**

All notices, demands, and communications between the parties hereto shall be sent by certified mail, return receipt requested, to the addresses set forth after the signatures on this Agreement. Any party changing its address shall forthwith give written notice to the other parties herein.

### **25. OWNER ACKNOWLEDGMENT**

OWNER, by accepting title to the PROPERTY, understands that under the BMP Housing Program, the OWNER is able to purchase the PROPERTY for a price less than its full market value. In consideration for receipt of this benefit, OWNER acknowledges that on a subsequent transfer of the PROPERTY, OWNER will not be entitled to receive full market value for the PROPERTY. The purchase price authorized hereunder will not increase or decrease in the same manner as other similar real property which is not encumbered by this Agreement. OWNER further acknowledges that at all times in the setting of the purchase price, the primary objective of this Agreement is to provide housing to low and moderate income persons at affordable cost.

### **26. COVENANT RUNNING WITH THE LAND**

The terms and conditions set forth herein are intended to run with the land and shall bind the OWNER and all successors, heirs and grantees. These terms and conditions shall be made part of each deed subsequently recorded and shall bind each successor in interest until the recordation of a subsequent and superseding agreement or other covenant instrument.

### **27. SUPERSESSION**

This Agreement shall supersede any and all resale agreements, Deed of Trusts, deed restriction, and other similar conditions and/or restrictions previously imposed on the PROPERTY, whether or not such instruments were recorded.

**IN WITNESS WHEREOF**, the TOWN and OWNER have executed this Agreement as of the date first written above.

Approved as to Content:

By: \_\_\_\_\_  
Laurel Prevetti  
Town Manager

\_\_\_\_\_  
Joel Paulson  
Community Development Director

Approved as to Form:

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

\_\_\_\_\_  
Robert Schultz  
Town Attorney

Address:  
[Insert Address]  
Los Gatos, CA

Attest:

Sales Price:  
\$ \_\_\_\_\_

\_\_\_\_\_  
Shelley Neis  
Town Clerk

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

State of California        }  
  }ss.  
County of Santa Clara  }

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 of Notary Public (Seal)

EXHIBIT 'A'  
Legal Description