

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: Housing

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §27383

Space above this line for Recorder's use.

Escrow No. _____

Property Address: _____

APN: _____

ATTENTION TITLE COMPANY:

THIS AGREEMENT IMPOSES RESTRICTIONS UPON RESALE AND REFINANCING. VIOLATION OF SUCH RESTRICTIONS ENTITLES THE CITY OF MORGAN HILL TO EXERCISE REMEDIES, INCLUDING THE EXERCISE OF AN OPTION TO PURCHASE THE PROPERTY AT A RESTRICTED PRICE AND FREE OF ALL UNAUTHORIZED LIENS.

IN THE EVENT THAT THE FIRST DEED OF TRUST IS REFINANCED OR A SUBORDINATE DEED OF TRUST IS RECORDED, NOTICE OF THE REFINANCE OR NEW LIEN MUST BE SENT TO THE CITY OF MORGAN HILL AT ADDRESS LISTED ABOVE.

**RESALE RESTRICTION AGREEMENT
AND OPTION TO PURCHASE**

City of Morgan Hill Affordable Housing Program – Below Market-Rate Units

This Resale Restriction Agreement and Option to Purchase (this “**Agreement**”) is entered into as of _____, 20____, by and between the City of Morgan Hill, a municipal corporation (“**City**”) and _____ and _____ (collectively, “**Owner**”). City and Owner are collectively referred to herein as the “**Parties**” and sometimes individually as “**Party**.”

RECITALS

WHEREAS, Owner has purchased, or intends to purchase, the property located at _____ Street, Morgan Hill, California, (as more particularly described in Exhibit A attached hereto and incorporated herein, the “**Property**”);

WHEREAS, in accordance with the City’s Inclusionary Housing Ordinance, Morgan Hill Municipal Code Chapter 14.04 (the “**Inclusionary Housing Ordinance**”) the City and the developer of the Property entered into an agreement pursuant to which the Property is designated

as an inclusionary unit that is restricted for sale to eligible Moderate-Income Households at a below-market rate price;

WHEREAS, in accordance with the Inclusionary Housing Ordinance, the intent of the City is to preserve the affordability of the Property for as long as possible;

WHEREAS, Owner has agreed to execute and comply with this Agreement in consideration for the opportunity to purchase the Property at a reduced purchase price; and

WHEREAS, this Agreement restricts the resale price of the Property, restricts the Property to owner-occupancy, and specifies, among other provisions, that City has an option to purchase the Property upon the occurrence of specified events. As described in Section 14 below, in connection with this Agreement, Owner will execute and deliver to City a secured promissory note pursuant to which Owner will be obligated to pay City excess sale proceeds, and a deed of trust for the benefit of City, which shall be recorded against the Property to secure payment of such note and performance of Owner's obligations under this Agreement.

NOW, THEREFORE, in consideration of the benefits received by Owner, and other good and valuable consideration, the Parties agree as follows:

1. **Principal Residence Requirement; Excess Proceeds Note and Performance Deed of Trust.** Owner has purchased, or intends to purchase the Property, including any improvements thereon. The Property is designated as an inclusionary below-market rate unit, and is subject to the terms and conditions set forth in this Agreement. Owner covenants and agrees that Owner will fully and timely comply with all of the provisions of this Agreement, will occupy the Property as Owner's principal residence, and will not rent or lease the Property or part thereof without the prior written approval of City. Owner shall be considered as occupying the Property as a principal residence if Owner lives in the home located on the Property for at least ten (10) months out of each calendar year. Upon City's request from time to time, Owner shall provide an affidavit to City certifying that the Property is Owner's principal residence and shall provide such documents as City may reasonably require to verify compliance with the requirements of this Section. Owner's failure to occupy the Property as Owner's principal residence shall constitute a default under this Agreement entitling City to exercise its option to purchase the Property pursuant to Section 8. In connection with Owner's acquisition of the Property, Owner shall execute and deliver to City an Excess Proceeds Note substantially in the form attached hereto as Exhibit B ("**Excess Proceeds Note**") and shall execute a Performance Deed of Trust substantially in the form attached hereto as Exhibit C ("**Performance Deed of Trust**") which shall be recorded against the Property concurrently with the recordation of this Agreement.

2. **Covenant Running with the Land.** The terms and conditions set forth in this Agreement are intended to run with the land and shall bind Owner and all successors, heirs, grantees and assigns of Owner, unless and until expressly superseded by a subsequently recorded agreement. These terms and conditions shall be made part of each deed subsequently recorded and shall bind each successor in interest until the earlier of: (a) forty five (45) years from the date of recordation of this Agreement, or (b) the recordation of a subsequent and superseding

agreement. This Agreement and the covenants contained herein shall survive delivery of any deed conveying the Property.

3. **Representation and Warranty.** Owner represents and warrants to City that the financial and other information Owner has provided to City and City's agents for the purpose of qualifying to purchase the Property was accurate and complete at the time it was provided and remains accurate and complete as of the date of this Agreement. Owner further 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 Owner's rights in the Property, or seeking other such relief and remedies as are appropriate under the circumstances.

4. **Refinance.** For purposes of this Agreement, "**Refinance**" means any voluntary or involuntary refinancing, encumbrance, or other hypothecation of the Property, including, without limitation, any encumbrance of the Property by a mortgage or deed of trust that is recorded after this Agreement. Any Refinance of the Property will be subject to the conditions set forth in this Agreement.

a. **Request to Refinance.** Owner shall not cause or permit any Refinance of the Property or any interest therein, to or by any person or entity without first delivering written notice to City (a "**Request to Refinance**") and obtaining City's written consent. The Request to Refinance shall provide the name and address of the lender and the proposed terms of the encumbrance, refinancing, or hypothecation. Under no circumstances may Owner encumber, refinance, or otherwise hypothecate the Property for an amount in excess of ninety-five percent (95%) of the Purchase Price as determined pursuant to Section 8.b below.

b. **City's Rights.** Within sixty (60) days following receipt of notice of a Request to Refinance, City may, in its sole discretion, do one of the following:

- i. Provide written notice of exercise of the City's Option to Purchase pursuant to Section 8 below, or
- ii. Provide written notice of consent to the Refinance, which consent shall be consistent with City's goal of creating, preserving, maintaining, and protecting housing for persons of low and moderate, or
- iii. Provide written notice of denial of the Request to Refinance.

5. **Sale Procedure.** Any sale, conveyance, assignment, or other transfer of any legal, equitable, or possessory interest in the Property ("**Sale**") will be subject to the conditions set forth in this Agreement.

a. **Request to Sell.** Owner shall not cause or permit any Sale of the

Property or any interest therein, to any person or entity without first delivering written notice to City (a “**Request to Sell**”) and allowing sixty (60) days for City to exercise City’s Option to Purchase the Property pursuant to Section 8 below. The Request to Sell shall provide the proposed sale price and terms.

- b. City’s Rights. Within sixty (60) days following receipt of a Request to Sell, City may, in its sole discretion, either provide written notice of exercise of the City’s Option to Purchase or provide a written waiver of City’s Option to Purchase.

6. **Conditions of Sale to a Third Party**. If Owner has complied with all requirements set forth in Section 5 above and if City provides a written waiver of City’s Option to Purchase, Owner may sell the Property to a third party provided that all of the following conditions are satisfied:

- a. Occupancy. The prospective buyer certifies that they intend to occupy the Property as their principal residence;
- b. Income. The prospective buyer qualifies as a Moderate-Income Household which means that they do not have a Gross Annual Household Income (defined below) exceeding one hundred twenty percent (120%) of the then-current Santa Clara County area median income (“**Area Median Income**”), adjusted for actual household size, as determined and published from time to time by the California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to Section 50093(c) of the California Health and Safety Code. “**Gross Annual Household Income**” means the combined adjusted gross (pre-tax) income of all adult persons in a household as calculated pursuant to the Section 8 Program under the United States Housing Act of 1937, as amended, or its successor.
- c. Price. The sale price does not exceed the Purchase Price determined pursuant to Section 8.b below; and
- d. Restriction Agreement, Excess Proceeds Note and Performance Deed of Trust. The buyer must execute a new Resale Restriction Agreement and Option to Purchase restricting the resale and refinancing of the Property, in a form provided by City, which shall be recorded concurrently with recordation of the deed transferring title to the Property to the buyer, and the buyer must execute a new Excess Proceeds Note obligating the buyer to pay to the City any excess sales proceeds derived from a future sale of the Property in excess of the permitted Purchase Price, and a Performance Deed of Trust for the benefit of City securing the buyer’s obligations under the

Excess Proceeds Note and the Resale Restriction Agreement, and such other documents as required by City.

7. **Foreclosure.** The recording by any lienholder of any notice of default or notice of sale pursuant to California Civil Code Section 2924 *et seq.* (as such may hereafter be amended or replaced), shall constitute a Request to Sell (as defined in Section 5), entitling the City, or its designee or assignee, to exercise the Option to Purchase pursuant to Section 8, provided, however, that City, or its designee or assignee, must complete such purchase no later than the end of the period established by California Civil Code Section 2924c for reinstatement of a monetary default under the deed of trust or mortgage.

- a. **Right to Cure.** In the event of Owner's default under a deed of trust or mortgage, City, or its designee or assignee, shall have the same right as Owner to cure defaults and redeem the Property prior to foreclosure sale. Such redemption shall be subject to the same fees, charges, and penalties that would otherwise be assessed against Owner. Nothing herein shall be construed as creating any obligation on the part of 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.
- b. **Surplus Funds.** In the event City, or its designee or assignee, does not exercise the Option to Purchase and a foreclosure sale is consummated, any Excess Sales Proceeds (defined in Section 14 below) resulting from such foreclosure sale that remain after payment of encumbrances as required by law, shall be paid to City, or its successors or assigns.

8. **Option to Purchase.** Owner hereby grants to City an option to purchase the Property ("**Option to Purchase**") under conditions set forth in this Agreement. The Option to Purchase shall be exercisable upon the occurrence of any of the following: (i) Owner delivers a Request for Sale to City, (ii) a notice of default or notice of sale is recorded against the Property by any lienholder, (iii) a Prohibited Transfer occurs and continues in effect beyond the cure period specified in Section 10, (iv) Owner fails to occupy the Property as Owner's principal residence and such failure continues for a period of thirty (30) days following written notice of default from City, or (v) a default arises under any other provision of this Agreement and continues beyond any applicable cure period.

- a. **Assignment.** City may assign the Option to Purchase to a governmental or nonprofit organization. City or its assignee may further assign the Option to Purchase to an individual private buyer that qualifies as a Moderate-Income Household, is approved by City, and enters into a Resale Restriction and Option to Purchase Agreement and other documents as required by City. In no event shall City become in any way liable to Owner, nor become obliged in any manner, by reason of the assignment of its right to purchase, nor shall City be in any way obligated or liable to Owner for any failure of

City's assignee to consummate a purchase of the Property or to comply with the terms of any purchase and sale agreement.

b. Purchase Price. The purchase price for the Property (“**Purchase Price**”) that shall apply for both the exercise of the Option to Purchase by City or its designee or assignee and for any sale of the Property to a third party, shall be fixed at the lower of the Fair Market Value or [the Adjusted Base Price] [the Affordable Sales Price], determined as follows:

i. Fair Market Value. The fair market value of the Property (“**Fair Market Value**”) shall be determined as follows. City or its designee shall have an appraisal of the Property conducted by a neutral professional appraiser of its choice. Owner may also have an appraisal of the Property conducted by a neutral professional appraiser of Owner's choice. If agreement cannot be reached, the average of the two (2) appraisals shall be deemed to be the Fair Market Value of the Property.

ii. Adjusted Base Price. The “Adjusted Base Price” shall equal the purchase price paid by Owner for the Property plus any prepayment fees paid by Owner at the time Owner purchased the Property (the “**Base Price**”) which Base Price is equal to _____ Dollars (\$_____), plus an amount, if any, to compensate for any increases in the housing component of the Consumer Price Index, San Francisco-Oakland-San Jose, California, published periodically by the United States Department of Labor, Bureau of Labor Statistics (“**Index**”). For that purpose, the Index effective as of the date of this Agreement shall be compared with the latest Index available on the date the Property was last occupied in compliance with the Agreement. The percentage increase in the Index, if any, shall be computed, and the Base Price shall be adjusted by that percentage to calculate the Adjusted Base Price.

Alternative – these definitions are from the ordinance and are used to determine the initial sale price from the developer to the first buyer. Do you want to use these to determine future resale price? Note that the definitions in the ordinance only address sale price to moderate-income households.

ii. Affordable Sales Price. Affordable Sales Price means a sales price that will result in an Affordable Ownership Cost for a household whose Gross Annual Household Income does not exceed 110% of Area Median Income (defined in Section 6.b above) based upon Assumed Household Size (defined below). “**Affordable Ownership Cost**” means the projected monthly housing cost during the first calendar year of a household's occupancy, as determined by the City, including mortgage

principal and interest payments, mortgage insurance fees, if any, property taxes, reasonable allowances for utilities and property maintenance and repairs, homeowner's insurance, and homeowners' association dues, if applicable, that in the aggregate does not exceed thirty five percent of 110% of Area Median Income. In calculating Affordable Ownership Cost, mortgage payments will be calculated using a thirty year term, an interest rate equal to the Freddie Mac ten year average interest rate as published in the Freddie Mac Primary Mortgage Market Survey or equivalent source and will assume a three percent down payment. “**Assumed household size**” means, a household with a total number of members equal to the number of bedrooms in the dwelling unit, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and subject to applicable federal rules (if any). The Property has [] bedrooms, therefore the Assumed Household Size is [].

- c. Improvements. The [Adjusted Base Price] [Affordable Sales Price] shall be increased by the actual cost of any reasonable and substantial structural or permanent fixed improvements made to the Property, provided such improvements were performed with prior written approval from City. Examples of such improvements include, but are not limited to, structural, permitted additions of square footage or the addition of a pool. No price adjustment will be made except upon presentation to City of written documentation of all expenditures made by Owner for which an adjustment is requested.
- d. Deferred Maintenance. The [Adjusted Base Price] [Affordable Sales Price] shall be decreased by an amount to compensate for deferred maintenance costs, which amount shall be determined in the following manner. Upon receipt of a Request to Sell, City or its designee shall be given reasonable right of entry to the Property to determine whether any violations of applicable building, plumbing, electric, fire, or housing codes or of any other provisions of the Morgan Hill Municipal Code exist. In the event deficiencies are noted, City shall obtain estimates of the cost to cure the observed deficiencies. Owner shall cure the deficiencies in a reasonable manner acceptable to City or City’s designee within sixty (60) 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 City, its designee or assignee, escrow may be closed, title conveyed, and sale proceeds paid to Owner subject to the condition that such funds as are necessary to pay for the curing of such deficiencies (based upon the written estimates obtained by City) will be withheld from the funds due to Owner and shall be released to City or its designee for the purpose of curing such deficiencies.

- e. Escrow. If City exercises its Option to Purchase the Property, City shall open escrow within seven (7) days after delivery of written notice of the exercise of the option. Escrow shall close within ninety (90) days after the opening of escrow.
- f. Disclosures. Owner shall provide City with all disclosures regarding the Property as required by law within seven (7) days after City provides notice of the exercise of its Option to Purchase. City's review and approval of the condition of the Property is a contingency of City's purchase. If the condition of the Property is unacceptable, City shall have thirty (30) days following receipt of all disclosures to cancel the purchase by providing written notice to Owner. If City does not provide written notice of cancellation, then this contingency shall be deemed waived.
- g. Title. Title to the Property shall be conveyed to City or its assignee by grant deed, free of all monetary liens and encumbrances. All property taxes, assessments and homeowner dues shall be paid current by Owner through the close of escrow.
- h. Closing Costs. Closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of escrow.
- i. Occupancy. Owner shall vacate the Property and deliver possession to City or its assignee upon close of escrow.

9. **Subordination.** Subject to the exception for the Purchase Money Deed of Trust identified in the following sentence, absent the written consent of the City, this Agreement shall be and remain senior in priority to all deeds of trust recorded against the Property, and shall remain in effect following any foreclosure or assignment or acceptance of a deed in lieu of foreclosure by any holder of a mortgage that is senior in priority to the Performance Deed of Trust. Notwithstanding the foregoing, this Agreement and the Performance Deed of Trust shall be subordinate to that certain deed of trust ("**Purchase Money Deed of Trust**") recorded in the Official Records of Santa Clara County approximately concurrently with the recordation of this Agreement for the benefit of [REDACTED] ("**Purchase Money Lender**") securing repayment of a loan provided by Purchase Money Lender to Owner in the amount of \$ [REDACTED] ("**Purchase Money Loan**") to enable Owner to purchase the Property, if all of the following conditions are satisfied: (i) the Purchase Money Loan must be a fixed-rate, fully-amortizing loan with a term of not less than 30 years, (ii) the Purchase Money Lender must be a federally- or state-chartered bank or savings and loan association qualified to do business in the State of California, or an approved seller and servicer for Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), Government National Mortgage Association (GNMA), United States Department of Agriculture (USDA), or a Federal Home Loan Bank, and (iii) the proceeds of the Purchase Money Loan must be used solely for Owner's purchase

of the Property. If the foregoing conditions are satisfied, this Agreement shall be subordinate to the Purchase Money Deed of Trust and all advances made by the Purchase Money Lender pursuant to the Purchase Money Deed of Trust for the purpose of protecting or further securing the lien of the Purchase Money Deed of Trust.

If the holder of the Purchase Money Deed of Trust acquires title to the Property pursuant to a foreclosure, this Agreement and the Performance Deed of Trust shall be terminated. If the holder of the Purchase Money Deed of Trust acquires title to the Property pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the Performance Deed of Trust shall automatically terminate upon such acquisition of title only if (A) a notice of default was recorded under the Purchase Money Deed of Trust, or (B) if no notice of default was recorded, City has been given written notice of default under the Purchase Money Deed of Trust with the right to cure such default within a cure period of at least sixty (60) days, and City or its designee shall not have cured the default within such cure period.

Nothing contained in this section requires City to subordinate this Agreement or the Performance Deed of Trust to any lien or encumbrance other than the Purchase Money Deed of Trust described above.

10. **Prohibited Transfer.** Any voluntary or involuntary transfer, assignment, conveyance, lease, rental, Sale or Refinance of the Property (“**Transfer**”) in violation of the terms of this Agreement shall be deemed a “**Prohibited Transfer**”. Upon receiving notification of a Prohibited Transfer, City may give written notice to Owner specifying the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of City within ten (10) days after the date of the notice or within such further time as City determines is necessary to correct the violation, City may declare a Default under this Agreement and may exercise the Option to Purchase or other remedies provided hereunder.

11. **Permitted Transfers.** Transfer of title to the Property to the spouse of Owner pursuant to marriage, divorce, or by inheritance upon the death of Owner, shall not constitute a Prohibited Transfer, and will not be subject to the Option to Purchase provisions of this Agreement, provided that all terms and conditions set forth in this Agreement shall continue to run with the Property following any such Transfer. The recipient of the Transfer must be named on the Senior Lien Holder's First Deed of Trust. Without limiting the foregoing, all terms and conditions set forth in this Agreement, including without limitation, the prohibition on rental or leasing of the Property, the continuation of the City's Option to Purchase, and the continuation of restrictions upon Sale or Refinance of the Property shall continue to apply.

12. **Default.** Owner's breach of any of the terms, covenants, or obligations under this Agreement, including, without limitation, Owner's unauthorized leasing or rental of the Property or failure to occupy the Property as Owner's principal residence, and/or any other Prohibited Transfer, shall be deemed a Default hereunder. City's remedies for a Default include, but are not limited to, the following: City may exercise its Option to Purchase, and/or City may apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting a proposed Transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, for an award of damages and attorneys' fees, and for such other relief as may be

appropriate. Upon the occurrence of a Default, City may declare all sums due under the Excess Proceeds Note immediately due and payable and City may invoke the power of sale under the Performance Deed of Trust. Each of the remedies provided herein is cumulative and not exclusive, and City may exercise, from time to time, any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

13. **Distribution of Insurance and Condemnation Proceeds.** In the event that the Property is partially or totally destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild, or in the event of condemnation, if proceeds thereof are distributed to Owner, or in the event of termination of any applicable homeowner's association and distribution of the assets of the association to the members thereof, including Owner, any surplus proceeds so distributed remaining after payment of encumbrances of said Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount that Owner would have received under the formula set forth in Section 8 above had City exercised its Option to Purchase the Property on the date of the destruction, condemnation valuation date, or liquidation, shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to City or its successors or assigns.

14. **Payment to City of Excess Sales Proceeds.** If a Prohibited Transfer of the Property occurs, Owner shall immediately pay the Excess Sales Proceeds to the City. For purposes of this Agreement, "**Excess Sales Proceeds**" shall mean the amount by which the gross sales proceeds paid for the Property by the new purchaser exceeds the Purchase Price for the Property as determined pursuant to Section 8.b above. This amount shall be a debt of Owner to City, further evidenced by the Excess Proceeds Note and secured by the Performance Deed of Trust. Owner acknowledges that City shall have no obligation to cause reconveyance of this Agreement or the Performance Deed of Trust until any Excess Sales Proceeds payable to the City are paid in full. Owner and City acknowledge that the formula for calculation of the amount of Excess Sales Proceeds due from Owner to City is intended to cause Owner to receive the same net sales proceeds from sale of the Property at an unrestricted price to a market purchaser (in violation of this Agreement) as Owner would receive from sale of the Property to City or to City's assignee pursuant to City's exercise of the Option to Purchase.

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

To Owner: **OWNER NAME**
 ADDRESS
 Morgan Hill, CA 95037

To City: Community Development Agency - Housing
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, California 95037

Any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of delivery thereof.

16. **Successors Bound.** The terms of the Agreement shall be binding upon the parties hereto and their respective heirs, successors and assigns.

17. **Attorneys' Fees and Costs.** If any legal action is filed that arises out of the terms of this Agreement, or the interpretation or enforcement thereof, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred therein.

18. **Right to Enforce.** This Agreement shall not benefit or be enforceable by any person or entity except City and Owner and their respective successors and assigns.

19. **Entire Agreement.** This Agreement, the Excess Proceeds Note and the Performance Deed of Trust set forth the entire understanding between Owner and City. Any previous representations, warranties, agreements, and understandings among the Parties regarding the subject matter of this Agreement, the Excess Proceeds Note and the Performance Deed of Trust whether written or oral, are superseded by the terms of this Agreement, the Excess Proceeds Note and the Performance Deed of Trust.

20. **Amendments; No Waiver.** This Agreement may be modified or amended only by a written instrument duly executed by all parties hereto. Any waiver of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by a Party to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by a Party at any time to require strict performance of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

21. **Severability.** 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 the document, and the document shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein.

22. **Controlling Law and Venue.** The terms of the Agreement shall be interpreted under the laws of the State of California. The Agreement was entered into and is to be performed in the County of Santa Clara, which is the exclusive venue for any action or dispute arising out of said Agreement.

23. **Captions.** All captions and headings in the Agreement are for the purposes of reference and convenience and shall be disregarded for all other purposes, including the construction or enforcement of any of provisions thereof.

24. **Joint and Several.** The obligations of each party comprising Owner shall be joint and several.

25. **Time of the Essence.** Time is of the essence with regard to all matters contained in the Agreement.

26. **Further Assurances.** The parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement

27. **Parties Not Co-Venturers; No Agency Relationship.** Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Property.

28. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, the Parties have executed this Resale Restriction Agreement and Option to Purchase as of the date first written above.

CITY OF MORGAN HILL
a municipal corporation

City Manager

OWNER:

Print Name:_____

Print Name:_____

APPROVED AS TO FORM:

City Attorney

(All signatures, except City Attorney, must be acknowledged by a Notary Public.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

State of California
County of Santa Clara} ss.

On _____, 20__, before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person/s whose name/s is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity/ies, and that by his/her/their signature/s on the instrument the person/s, or the entity upon behalf of which the person/s acted, executed the instrument.

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

WITNESS my hand and official seal

Signature of Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

State of California
County of Santa Clara} ss.

On _____, 20__, before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person/s whose name/s is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity/ies, and that by his/her/their signature/s on the instrument the person/s, or the entity upon behalf of which the person/s acted, executed the instrument.

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

WITNESS my hand and official seal

Signature of Notary Public

EXHIBIT A
LEGAL DESCRIPTION

[insert legal description]

APN: _____

ADDRESS: _____
MORGAN HILL, CA 95037

EXHIBIT B

EXCESS PROCEEDS NOTE

(Attach form of Note.)

EXHIBIT C

PERFORMANCE DEED OF TRUST

(Attach form of Deed of Trust.)