

*****NOTE: Standard terms and conditions in this form do not conform to City's standard and will not be updated when we make revisions to City's standard terms and conditions.*****

[DP – delete note above when completing this form.]

RECORDING REQUESTED BY AND
PLEASE RETURN TO:

Community Development Department
City Property Tax Rebate Program
City of Mountain View
P.O. Box 7540
Mountain View, CA 94039-7540
Attn: Housing and Neighborhood
Services Manager

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: _____

AFFORDABLE HOUSING RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE

This AFFORDABLE HOUSING RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE (this "**Agreement**") is entered into as of this ____ day of _____ 20____, by and between the City of Mountain View, a California charter city and municipal corporation (the "**City**"), and _____ and _____ (collectively, the "**Owner**"), (City and Owner hereinafter collectively "**Parties**" or individually "**Party**").

RECITALS

A. The City has adopted an Affordable Housing Program Ordinance, codified in the Mountain View Municipal Code at Article XIV, Section 36.40, *et seq.* (the "**Ordinance**") to encourage the development of housing that will be affordable to Low- and Moderate-Income households, and that will be offered for sale at restricted prices that are below those otherwise prevailing in the market.

B. Pursuant to Section 36.40.10.h of the Ordinance, for a period of not less than fifty-five (55) years, below-market-rate units constructed pursuant to the Ordinance as for-sale/ownership units shall be restricted for sale at affordable prices to households of Moderate-Income or less. This Agreement has been recorded in order to carry out the intent of the Ordinance with respect to the Property (defined in Section 2 below).

C. The Property that is subject to this Agreement was developed as a below-market-rate unit pursuant to the Ordinance, and in accordance with the Ordinance, the

Owner was provided the opportunity to purchase the Property at a price considerably below the market-rate price.

D. This Agreement provides for restrictions on the resale price of the Property, establishes income-eligibility requirements for subsequent purchasers, and provides the City with an option to purchase the Property at a restricted price upon the occurrence of certain events, including, without limitation, upon Owner's delivery of notice of intent to sell or otherwise transfer the Property, upon the foreclosure of the Property, and upon the unauthorized refinancing or encumbrance of the Property or the occurrence of other defaults hereunder.

E. This Agreement shall be subordinate to the lien of that certain Deed of Trust executed by the Owner in favor of _____ (the "First Lender") and recorded in the Official Records substantially concurrently herewith (the "First Lender Deed of Trust").

NOW, THEREFORE, in consideration of the benefits received by the Owner, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree as follows:

1. **Definitions; Incorporation of Recitals and Exhibits.** The foregoing Recitals are hereby incorporated into this Agreement, and the Exhibits attached to this Agreement are hereby incorporated by reference. The following defined terms have the meanings indicated in this Section 1.

"Actual Household Size" means the actual number of persons in an Eligible Household.

"Adjusted Value" is defined in Section 9.1.

"Affordability Period" means the period commencing on the date of recordation of this Agreement and ending on the fifty-fifth (55th) anniversary of the date of recordation of this Agreement.

"Affordable Housing Cost" means a monthly obligation to pay mortgage payments (principal and interest), property taxes, property insurance, mortgage insurance, utilities, and homeowners association dues (if applicable) in an aggregate amount not greater than one-twelfth (1/12) of thirty percent (30%) of _____ percent (___%) of Area Median Income, adjusted for Assumed Household Size. The Ordinance specifies a range of eighty percent (80%) to one hundred percent (100%) AMI.

"Affordable Price" means the maximum sales price for the Property as determined by the City pursuant to Section 9.2 below.

“Affordable Rent” means a monthly rent (as defined in 25 Cal. Code Regs. Section 6918) that does not exceed $1/12 \times 30\% \times \underline{\hspace{1cm}}$ % of Area Median Income adjusted for Assumed Household Size.

“Agreement” means this Affordable Housing Resale Restriction Agreement and Option to Purchase.

“Area Median Income” or **“AMI”** means the Area Median Income for Santa Clara County, California, adjusted for Actual Household Size, as determined by the United States Department of Housing and Urban Development (“HUD”) and as published from time to time by the State of California Department of Housing and Community Development (“HCD”) in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

“Assumed Household Size” means a household of one (1) person for a studio unit, two (2) persons for a one-bedroom unit, three (3) persons for a two-bedroom unit, and one (1) additional person for each additional bedroom. The Property has () bedrooms, and therefore, the Assumed Household Size is a household of () persons.

“Business Day” means a day, other than a Saturday or Sunday, on which banks located in the County of Santa Clara are required to be open.

“Capital Improvement” means an improvement to the Property that meets all of the following requirements: (i) the improvement is a substantial structural or permanent fixed improvement that cannot be removed without substantial damage to the Property or such improvement; (ii) the improvement is not a replacement of existing improvements needed as part of routine upkeep of the Property; (iii) the improvement is approved in writing by the City Manager or his or her designee in advance of its installation, and that is installed following the issuance of all required permits; and (iv) the improvement costs at least Two Thousand Dollars (\$2,000) or increases the overall value of the Property by at least such amount, as determined by the City Manager or his or her designee. The written approval of the City Manager, or his or her designee, regarding the Capital Improvements shall state the estimated useful life of the Capital Improvements.

“City” means the City of Mountain View, a California charter city and municipal corporation.

“City Manager” means the City Manager of the City of Mountain View.

“**City Response Notice**” means the City’s written response to the Owner’s Notice of Intent to Transfer, as described in Section 9.

“**Eligible Household**” means a person or family of Moderate-Income as defined in Section 36.40.05 (g) of the Ordinance (i.e., a person or family whose Gross Income is between eighty percent (80%) and one hundred percent (100%) of Area Median Income, adjusted for Actual Household Size).

“**Estimated Owner’s Closing Costs**” is defined in Section 9.

“**Excess Rental Proceeds**” is defined in Section 5.2.

“**Excess Proceeds Note**” is defined in Section 2.

“**Excess Sales Proceeds**” is defined in Section 14.

“**First Lender**” is defined in Recital E.

“**First Lender Deed of Trust**” is defined in Recital E.

“**Gross Income**” shall have the meaning set forth in Section 6914 of Title 25 of the California Code of Regulations as such section may be revised from time to time.

“**Inheritance Notice**” is defined in Section 7(d).

“**Inheriting Owner**” is defined in Section 7(d).

“**Moderate-Income**” means a household for which the combined Gross Income for all members of the household is between eighty percent (80%) and one hundred percent (100%) of Area Median Income, adjusted for Actual Household Size.

“**Notice of Affordability Restrictions**” is defined in Section 2.

“**Official Records**” means the Official Records of the Santa Clara County Recorder.

“**Ordinance**” means the Affordable Housing Program Ordinance of the City of Mountain View, codified in the Mountain View Municipal Code at Article XIV, Section 36.40, *et seq.*

“**Original Purchase Price**” means _____ Dollars (\$_____) which is the total amount that the Owner paid as the purchase price for the Property.

“**Owner**” means the Owner as defined in the preamble to this Agreement, and all heirs, successors, assigns, and successors-in-interest to the Owner.

“**Owner’s Notice of Intent to Transfer**” means the notice to be delivered to the City pursuant to Section 8 when the Owner intends to Transfer the Property.

“**Performance Deed of Trust**” is defined in Section 2.

“**Purchase Option**” means the option to purchase granted by the Owner, as optionor, to the City, as optionee, pursuant to Section 6 of this Agreement.

“**Prohibited Transfer**” is defined in Section 7(b).

“**Property**” means the real property identified in Section 2 and more fully described in Exhibit A, including all improvements located thereon and appurtenances thereto.

“**Transfer**” is defined in Section 7(a).

2. **The Property.** The Property that is the subject of this Agreement has a street address of _____, Mountain View, California, 940___, and its legal description is set forth in Exhibit A attached to this Agreement. Owner is the owner of, or intends to purchase, the Property. The Property is subject to the terms and conditions set forth herein. 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 D (“Excess Proceeds Note”), a Performance Deed of Trust substantially in the form attached hereto as Exhibit E (“Performance Deed of Trust”), and a Memorandum of Option and Notice of Affordability Restrictions substantially in the form attached hereto as Exhibit F (“Notice of Affordability Restrictions”). The Performance Deed of Trust and the Notice of Affordability Restrictions shall be recorded in the Official Records substantially concurrent with the recordation of this Agreement.

3. **Owner Representations and Warranties.** The Owner represents and warrants to the City that: (a) the Owner is an Eligible Household; (b) the financial and other information provided by the Owner for the purpose of qualifying to purchase the Property was true and correct at the time it was given and remains true and correct as of the date of this Agreement; and (c) Owner will occupy the Property as Owner’s principal residence. Owner understands that any material misstatement or misrepresentation shall be a material breach of this Agreement and shall be grounds for declaring a default enabling the City to exercise its option to purchase the Property or pursue other remedies.

4. **Owner Occupancy, Maintenance, and Insurance Requirements.**

4.1 **Owner Occupancy.** The Owner shall occupy, use, and maintain the Property as the Owner's principal place of residence. On or before February 1 of each year, the Owner shall provide a written certification to the City, in the form shown in Exhibit B, together with supporting documentation acceptable to City, that the Owner is occupying the Property as the Owner's principal place of residence and that the Owner is not renting the Property to another party. Owner shall be considered to be occupying the Property as Owner's principal place of residence if Owner occupies the Property for at least ten (10) months out of each year. It is the responsibility of the Owner to submit the annual written certification and supporting documentation to the City to show that the Owner is in compliance with this Section 4.1, and the failure to do so is a default under this Agreement.

4.2 **Maintenance.** The Owner shall maintain the Property in good repair and in a neat, clean, and orderly condition and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all Federal, State, County, municipal, and other governmental agencies having jurisdiction over the Property, and all of their respective departments, bureaus, and officials. Owner will not commit waste or permit deterioration of the Property, and shall make all repairs and replacements necessary to keep the Property in good condition and repair.

4.3 **Insurance.** The Owner shall maintain a standard all-risk property insurance policy equal to the replacement value of the Property (adjusted every five (5) years by appraisal, if requested by City), naming the City as an additional insured. The Owner shall provide the City with evidence of required insurance coverage upon request of the City.

5. **Prohibition on Renting or Leasing.**

5.1 **Prohibition on Leasing.** The Owner shall not rent or lease the Property to another party unless the City has provided written approval and such rental or lease is in compliance with this Section 5. The Owner may request the City's approval to rent or lease the Property, which approval shall not be unreasonably denied, if all of the following conditions are met: (i) Owner delivers to City a copy of the proposed rental agreement or lease; (ii) the term of the rental or lease is not greater than twelve (12) months and cannot be extended without City approval; (iii) the Owner demonstrates to the City's reasonable satisfaction that the Owner will incur substantial hardship if he or she is not permitted to rent or lease the Property to a third party; (iv) the proposed tenant qualifies as an Eligible Household, as determined by the City; and (v) the rent for the Property does not exceed Affordable Rent. In addition, Owner shall not rent or enter into any contract to allow the use of all or any portion of the Property as a short-term rental,

such as through any “shared economy” online forums or services such as Craigslist, VRBO, Airbnb, or any similar program or company.

5.2 Affordable Rent; Lease Agreement; Excess Rents. If City approves the rental or lease of the Property, the Affordable Rent shall be stated in the written notice of such approval. Following City’s approval, the Owner shall deliver to City a fully executed copy of the rental agreement or lease. Any rental or lease of the Property in violation of this Agreement is prohibited, shall constitute a Prohibited Transfer under Section 7 herein, and shall be a default under this Agreement. The Owner further agrees that, in the event the Owner rents or leases the Property in violation of this Section 5, any rents paid to or for the benefit of Owner in excess of the Affordable Rent (“Excess Rental Proceeds”) shall be due and payable to the City immediately upon Owner’s receipt thereof. Owner’s obligation to pay Excess Rental Proceeds to the City shall be evidenced by the Excess Proceeds Note and secured by the Performance Deed of Trust. City’s acceptance of Excess Rental Proceeds shall not constitute City’s waiver of Owner’s obligation to comply with the requirements of this Section 5, nor a waiver of City’s rights to pursue remedies for Owner’s default under this Agreement. The City shall deposit the Excess Rental Proceeds into the City’s Below-Market-Rate Housing Fund, described in Section 36.40.30 of the Ordinance.

6. **Purchase Option.**

6.1 Grant of Option; Exercise Rights. The Owner hereby grants to the City an option to purchase the Property (“Purchase Option”) on the terms and in the manner set forth in this Agreement. The City shall have the right to exercise the option upon the occurrence of any of the following events:

(a) Receipt from the Owner of the Owner’s Notice of Intent to Transfer pursuant to Section 8 below;

(b) A notice of default or notice of sale is recorded against the Property by any lienholder (subject to any rights of Owner to cure the underlying default);

(c) A Prohibited Transfer occurs and continues in effect beyond any applicable cure period;

(d) Owner fails to occupy the Property as Owner’s principal residence in violation of the terms of this Agreement; or

(e) The occurrence of any event of default listed in Section 17 below.

6.2 Assignment; Terms. The City may assign the Purchase Option to another governmental entity or a tax-exempt nonprofit organization. The City or its assignee may further assign the Purchase Option to an Eligible Household, and the City reserves the right to reassign the Purchase Option to another Eligible Household if the initial or subsequent assignee fails or is unable to complete the purchase of the Property. The City's right to exercise the Purchase Option shall survive any Transfer of the Property, and as long as the Purchase Option exists, any actual or attempted Prohibited Transfer shall be voidable at the election of the City. City's exercise of the Purchase Option shall be governed by the terms of this Agreement, including, without limitation, Sections 6 and 8 through 12 below. In no event shall City become in any way liable to Owner, nor become obligated 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.

7. **Restrictions on Resale of the Property.** Any Transfer of the Property will be subject to the provisions of this Agreement. Any Transfer not in compliance with all provisions of this Agreement is prohibited, and shall constitute a default by the Owner pursuant to Section 17.

(a) **"Transfer"** means any voluntary or involuntary sale, assignment, or transfer of ownership of, or any interest in, the Property, including a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate, leasehold interest or any rental of the Property, or any interest evidenced by a land contract.

(b) **"Prohibited Transfer"** means any Transfer made in violation of the terms and conditions of this Agreement.

(c) Permitted Transfers. The following Transfers are not considered Prohibited Transfers, and therefore do not trigger the City's right to exercise the Purchase Option: (i) transfer of title upon an Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property; (ii) transfer of title to a spouse as part of divorce or dissolution proceedings; or (iii) transfer of title or an interest in the Property to a spouse in conjunction with marriage; provided, however: (A) the covenants and agreements set forth in this Agreement, including, without limitation, the City's Purchase Option, shall continue to run with the title to the Property following any such Transfer; and (B) an instrument must be executed, acknowledged, and recorded by the transferee containing the following covenant completed with applicable recording information: "This Property is subject to an Affordable Housing Resale Restriction Agreement and Option to Purchase dated as of _____, 20__, and recorded in the Official Records on _____ 20__ as Instrument No. _____, and transferee, on behalf of transferee and transferee's successors and assigns, covenants and agrees to be bound

by and comply with the requirements of the Agreement, including, without limitation, all restrictions on leasing, transfer, and encumbrance of the Property, and agrees to include in any further Transfer of the Property the covenant required by Section 7(c) of the Agreement.” A transferee who satisfies the conditions of this Section 7(c) shall be deemed to be the Owner hereunder. Prior to making any of the Transfers outlined in clause (ii) or (iii) of this Section 7(c), the Owner shall provide to the City the Owner’s Notice of Intent to Transfer pursuant to Section 8 below.

(d) Transfer by Inheritance. In the event a Transfer occurs by devise or inheritance due to the death of the Owner and it is not a Transfer listed in Section 7(c)(i) above, the administrator of the Owner’s estate or the person inheriting the Property shall provide written notice to the City of the Owner’s death within thirty (30) days of the date of death (the “**Inheritance Notice**”). The Inheritance Notice shall provide the City with the name and contact information of the person inheriting the Property (the “**Inheriting Owner**”) and household income information for the Inheriting Owner, so that the City may determine whether the Inheriting Owner is an Eligible Household. If the Inheriting Owner qualifies as an Eligible Household, as determined by the City, he or she may assume the Owner’s interest and obligations under this Agreement, and an instrument shall be executed between the Inheriting Owner and the City and recorded against the Property, pursuant to which the Inheriting Owner shall agree to assume the obligations of the Owner under this Agreement, including, without limitation, the obligation to occupy the Property as the Inheriting Owner’s principal residence. If the Inheriting Owner does not qualify as an Eligible Household and/or fails to assume the Owner’s obligations under this Agreement, the Inheriting Owner shall provide the Owner’s Notice of Intent to Transfer to the City pursuant to Section 8 and proceed to Transfer the Property pursuant to the requirements set forth in this Agreement. Failure of an Inheriting Owner to follow the procedures and notices described in this Section 7(d) shall constitute a default under this Agreement, and the City may then exercise any of the remedies set forth in Section 17.2 below.

8. Notice of Intent to Transfer. In the event that Owner intends to Transfer the Property, Owner shall promptly give the City written notice of such intent (the “**Owner’s Notice of Intent to Transfer**”). The Owner’s Notice of Intent to Transfer shall be sent to the City at the address and in the manner provided for notices in Section 25.3 of this Agreement. The Owner’s Notice of Intent to Transfer shall include the information necessary for the City to determine the Adjusted Value of the Property, and other information as set forth in the form Owner’s Notice of Intent to Transfer attached hereto as Exhibit C. During the thirty (30) day period following the date that the City receives the Owner’s Notice of Intent to Transfer, the Owner shall allow the City, or its designee, to inspect the Property to determine its physical condition, and, if requested by the City following such inspection, the Owner shall obtain and deliver to the City a home inspection report prepared by a licensed home inspector and/or a pest inspection report prepared by a licensed structural pest control operator.

The Owner should consider waiting to contract with a real estate broker to sell the Property until the Owner has received the City Response Notice pursuant to Section 9 below, as the City will choose a real estate broker if it exercises its Purchase Option.

9. **City Response Notice.** Following the receipt of a complete Owner's Notice of Intent to Transfer, the City shall have ninety (90) days to respond in writing (the "**City Response Notice**") to the Owner. Any response by the City to an incomplete Owner's Notice of Intent to Transfer shall not be considered a City Response Notice. Prior to issuing the City Response Notice, the City shall calculate both the Adjusted Value and the Affordable Price of the Property, pursuant to Sections 9.1 and 9.2, and the City Response Notice shall state both the Adjusted Value and the Affordable Price. The City Response Notice shall state the City's determination regarding whether or not it is exercising its Purchase Option, including whether or not the City intends to assign the Purchase Option pursuant to Section 6.2, and shall include an estimate of the reasonable closing costs to the Owner, including real estate commissions or sales administrative fees, real estate transfer taxes, and escrow costs that would be incurred by reason of the Transfer of the Property to an Eligible Household, which amount shall not include the costs of repair or rehabilitation of the unit for matters such as termite damage, appliance replacement, and the like ("**Estimated Owner's Closing Costs**"). If the City does not exercise the Purchase Option, the City Response Notice shall include the maximum qualifying income for an Eligible Household and the certifications required of prospective purchasers.

9.1 Calculation of Adjusted Value. The "**Adjusted Value**" of the Property shall mean:

(1) The Original Purchase Price; plus

(2) The value of any Capital Improvements made to the Property by the Owner (the value will be the original cost of the Capital Improvements depreciated on a straight-line basis based upon the estimated useful life of the Capital Improvements stated in the City's prior written acceptance of such Capital Improvements) provided such improvements were made with prior written approval of the City and satisfy all requirements specified in the definition of "Capital Improvements" set forth in Section 1 above; less

(3) The amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the City Manager, or his or her designee, including amounts attributed to cleaning, painting, replacing worn carpeting and draperies, making necessary structural, mechanical, electrical and plumbing repairs, repairing or replacing built-in appliances and fixtures, and correcting

any violations of the Mountain View Municipal Code and applicable building, plumbing, electrical, fire and housing codes.

9.2 Calculation of Affordable Price. The “Affordable Price” for the Property shall be the lowest of the amounts determined using the methods described in Paragraphs A, B, and C below, adjusted to add the value of Capital Improvements and subtract the cost of deferred maintenance and necessary repairs pursuant to Section 9.3.

A. Fair Market Value. City or its designee shall have an appraisal made by an appraiser of its choice to establish the fair market value of the Property. Owner, at Owner’s expense, may also have an appraisal made by a qualified appraiser of Owner’s choice to establish the fair market value. Notwithstanding any contrary provision hereof, by mutual agreement, City and Owner may elect to forego the use of appraisals and instead establish the Affordable Price pursuant to Paragraphs B and C below.

B. Adjusted by Consumer Price Index. The Affordable Price shall be determined by adding to the Original Purchase Price an amount to compensate for the increase in the cost of living as measured by the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-San Jose area as published periodically by the United States Department of Labor Bureau of Labor Statistics (the “**Index**”). For this purpose, the Index prevailing on the date this Agreement is recorded in the Official Records shall be compared to most recently published Index as of the date the City receives the Owner’s Notice of Intent to Transfer (or, if applicable, as of the date of an Event of Default hereunder). The percentage increase in the Index, if any, shall be computed, and an amount equal to the Original Purchase Price multiplied by one-third (1/3) of such percentage shall be added to the Original Purchase Price to compute the Affordable Price.

C. Median Income. City shall determine the price affordable to a household earning one hundred percent (100%) of Area Median Income, adjusted for Assumed Household Size, using then-current prevailing interest rates for a fixed thirty (30) year mortgage and an assumed down payment of not more than ten percent (10%) of the sales price.

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Example – For Illustrative Purposes Only
Calculation of Affordable Sales Price

Unit size:	3 bedrooms
Assumed Household Size:	4 people
Area Median Income (4 person household):	\$107,100
Affordable Housing Cost (1/12 x 30% x 100% AMI):	\$2,678 per month
Assumption re Taxes, Utilities, PMI, HOA Dues:	\$400 per month
Available for Monthly Mortgage Payments:	\$2,278 per month
30-Year Fixed Interest Rate:	4.25%
Supportable Mortgage	\$462,963
Assumed Down Payment @ 10%	\$46,296
Affordable Price	\$416,667 (*)

(*) Add cost of capital improvements and deduct cost to repair damage.

9.3 Adjustments for Capital Improvements and Deferred Maintenance. The Affordable Price determined pursuant to Section 9.2 shall be adjusted to add the value of Capital Improvements pursuant to Paragraph (2) of Section 9.1, and to subtract the cost to repair damage to the Property pursuant to Paragraph (3) of Section 9.1.

10. **Purchase Price upon City Exercise of Purchase Option.**

(a) If the Affordable Price is less than the sum of the Adjusted Value plus the Estimated Owner’s Closing Costs, the City shall state in the City Response Notice that it will either:

(1) Exercise (and/or assign) the Purchase Option, purchase the Property for the Adjusted Value, and pay that portion of the Owner’s closing costs in an amount not to exceed the difference between (x) the Adjusted Value plus the Estimated Owner’s Closing Costs; and (y) the Affordable Price; or

(2) Permit the Owner to sell the Property in a Market Rate Transaction pursuant to Section 14.

(b) If the Affordable Price is equal to or greater than the sum of the Adjusted Value plus the Estimated Owner’s Closing Costs, the City shall state in the City Response Notice that it will either:

(1) Exercise (and/or assign) the Purchase Option and purchase the Property for the Affordable Price; or

(2) Notify the Owner to proceed to sell the Property to an Eligible Household for the Affordable Price pursuant to the terms of Section 13 below.

11. **Procedure on City Exercise of Purchase Option.** If the City exercises and/or assigns the Purchase Option, the City shall designate a real estate agent to process the transaction, and shall open escrow concurrently with the delivery of the City Response Notice to the Owner, or as soon thereafter as possible. The Closing shall occur within ninety (90) days of the opening of escrow.

Closing shall be handled through an escrow through which a title insurance company approved by City shall issue to the City or its assignee a CLTA owner's title insurance policy, in form reasonably approved by City and subject only to such title exceptions as reasonably approved by City. Taxes and assessments shall be prorated as of the date of closing. Taxes must be paid current as of the closing date and all liens must be satisfied and removed from title unless City expressly agrees otherwise in writing. Closing shall utilize the form of escrow agreement customarily used by such title company for residential transactions with the City, modified to the extent necessary to conform to this transaction. At the close of escrow, the purchase price less the cost to clear liens from the Property and less closing costs payable by Owner shall be paid in cash to Owner, and Owner shall convey title to the Property to the City or its assignee by grant deed.

12. **Closing Costs.** Unless otherwise specified in this Agreement, upon City's exercise of the Purchase Option, or upon sale of the Property to an Eligible Household: (i) closing costs, home inspections, and the cost of title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of such escrow; and (ii) Owner shall bear the expense of providing a current written report of an inspection by a licensed structural pest control operator, and all work recommended in such report to repair damage caused by infestation or infection of wood-destroying pests or organisms and all work to correct conditions that caused such infestation or infection shall be done at the expense of Owner.

13. **Transfer by Owner to Eligible Household at Affordable Price.** If the City does not exercise the Purchase Option and the City Response Notice notifies the Owner to proceed to Transfer the Property to an Eligible Household at a price not exceeding the Affordable Price, the Owner shall proceed to sell the Property in compliance with the following requirements:

13.1 **Marketing.** Immediately following receipt of a City Response Notice informing the Owner that the City will not exercise the Purchase Option, the Owner shall request the City to refer Eligible Households from the City's Below-Market Housing waiting list to the Owner. The Owner shall make every effort to sell the Property to Eligible Households referred by the City. At the Owner's option, the Owner may also list

the Property on the multiple listing service. The Owner shall use bona fide good faith efforts to sell the Property to an Eligible Household in compliance with this Section 13, including keeping the Property in an orderly condition, making the Property available to show to agents and prospective buyers, and providing buyers with Eligible Household requirements, including income qualifications and the City's form of disclosure statement summarizing the terms of the buyer's occupancy and resale restriction agreement with option to purchase. A proposed purchaser who the Owner believes will qualify as an Eligible Household shall be referred to the City or its designee for an eligibility determination.

13.2 Proposed Purchaser. A proposed purchaser must satisfy all of the following requirements:

(1) Intent to Owner Occupy. The proposed purchaser shall certify that he or she will occupy the Property as his or her principal place of residence throughout his or her ownership of the Property.

(2) Agreement to Sign Resale Restriction Agreement and to Cooperate with City. The proposed purchaser shall agree to sign an Excess Proceeds Note, a Performance Deed of Trust, and an Affordable Housing Resale Restriction Agreement and Option to Purchase ("**Resale Restriction Agreement**") restricting the resale and refinancing of the Property for a term equal to the balance remaining of the original fifty-five (55) year term of this Agreement and including the requirements regarding Excess Sale Proceeds set forth in Section 14, each in the form provided by the City, and shall agree to cooperate fully with the City in promptly providing all information requested by the City to assist the City in monitoring the proposed purchaser's compliance with the Resale Restriction Agreement. The Resale Restriction Agreement and the Performance Deed of Trust securing performance thereunder shall be recorded at the closing for sale of the Property.

(3) Income Eligibility. The combined Gross Income for all members of the proposed purchaser's household shall not exceed Moderate-Income as specified in the City Response Notice.

13.3 Costs of Eligible Household to Close Escrow. The actual and reasonable costs to the Eligible Household incurred in connection with the purchase of the Property, including real estate commissions or sales administrative fees, real estate transfer taxes, and escrow costs, shall not exceed reasonable and customary buyers' closing costs in the County of Santa Clara.

13.4 Disclosure and Submittals to City. The Owner and the proposed purchaser shall provide the following information and documents to the City:

(1) The name, address, and telephone number of the proposed purchaser.

(2) A signed financial statement of the proposed purchaser in a form acceptable to the City and supporting documentation reasonably requested by the City. The financial information shall be used to determine the income eligibility of the proposed purchaser.

(3) The proposed sales contract and all other related documents which shall set forth all the terms of the sale of the Property. Such documents shall include at least the following terms: (x) the sales price; (y) the price to be paid by the proposed purchaser for the Owner's personal property, if any; and (z) any credits, allowances, or other consideration, if any.

(4) 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 certify that neither the proposed purchaser nor any other party has paid nor will pay to the Owner, and that the Owner has not received and will not receive from the proposed purchaser or any other party, money or other consideration, including personal property, other than as 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 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 exercise its Purchase Option 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 the Owner and the proposed purchaser shall hold the City harmless and reimburse the City's expenses, legal fees, and costs for any action it reasonably takes in good faith to enforce the terms of this Agreement.

(5) An Excess Proceeds Note, a Resale Restriction Agreement and Option to Purchase, and a Performance Deed of Trust, each executed and acknowledged by the proposed purchaser, in the form provided by the City. The buyer's execution of an Excess Proceeds Note, a Resale Restriction Agreement and Option to Purchase, and a Performance Deed of Trust shall be a condition precedent to the City's approval of the proposed sale. The Performance Deed of Trust and the Resale Restriction Agreement

shall be recorded against the Property at the closing for the purchase and sale of the Property.

(6) The name of the title company/escrow holder for the sale of the Property, the escrow number, and name, address, and telephone number of the escrow officer.

(7) Upon the close of the proposed sale, the Excess Proceeds Note and certified copies of the recorded Resale Restriction Agreement and Performance Deed of Trust shall be delivered to City together with a copy of the final sales contract, settlement statement, escrow instructions, and any other documents that the City may reasonably request.

14. **Transfer by Owner at Fair Market Value.** The Property may be sold at its fair market value (a “**Market-Rate Transaction**”) only in the following circumstances:

(a) If the City Response Notice states that the Affordable Price is less than the sum of the Adjusted Value and the Estimated Owner’s Closing Costs and pursuant to Section 10(a), the City declines to exercise its Purchase Option; or

(b) After diligent and good-faith efforts as documented in materials provided to the City, the Owner is unable to sell the Property to an Eligible Household at an Affordable Price pursuant to Section 13, and has received from the City a notice permitting a Market Rate Transaction; or

(c) Upon the expiration of the fifty-five (55) year term of this Agreement.

Any other Market Rate Transaction shall be a Prohibited Transfer and a default under this Agreement.

In connection with any Market-Rate Transaction (whether permitted or not), the Owner shall pay to the City, in the manner specified herein, the “Excess Sales Proceeds,” which shall be determined as follows:

(1) The gross sales proceeds from the sale of the Property; less

(2) The greater of the Affordable Price or the Adjusted Value; less

(3) The actual costs paid by the Owner, including real estate commissions or sales administrative fees, real estate transfer taxes, and escrow costs incurred in connection with Owner’s original acquisition of the Property as documented to the reasonable satisfaction of City; less

(4) The actual and reasonable costs paid by the Owner, including real estate commissions or sales administrative fees, real estate transfer taxes, and escrow costs incurred in connection with the Transfer of the Property, provided that this amount shall not include the costs of repair or rehabilitation of the Property for matters such as termite damage, appliance replacement, code compliance, and the like.

The right to receive the Excess Sales Proceeds shall be subject to the Owner's superior right to receive repayment of certain amounts as described in California Civil Code Section 1917.006(a)(3). The City shall deposit the Excess Sales Proceeds into the City's Below-Market-Rate Housing Fund, described in Section 36.40.30 of the Ordinance.

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 Purchase Option.

The Excess Sales Proceeds shall be a debt of the Owner to the City secured by the Performance Deed of Trust. The obligation to pay Excess Sales Proceeds shall survive the term of this Agreement, and Owner acknowledges that the City does not have an obligation to cause the reconveyance of this Agreement or the Performance Deed of Trust until the Excess Sales Proceeds are paid to the City.

15. **Default and Foreclosure.** The City shall cause to be recorded a request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Property. The recording by any lienholder of any notice of default or notice of sale pursuant to California Civil Code Section 2924, *et seq.*, shall constitute Owner's Notice of Intent to Transfer under Section 8 of this Agreement, and the City may exercise any of its remedies pursuant to the provisions of this Agreement, including, without limitation, the exercise of the Purchase Option, subject to any rights Owner may have to cure the underlying default; provided, that the City must complete such action 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.

In the event of default and foreclosure, the City 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 that would otherwise be assessed against the Owner. Nothing herein shall be construed as creating any obligation on the part 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.

In the event a foreclosure sale is consummated, any surplus proceeds to which the Owner might otherwise be entitled following foreclosure under California Code of Civil Procedure Section 727 and California law shall be paid as follows: after any required payment of encumbrances as required by law, that portion of surplus, if any, up to but not exceeding the net amount that the Owner would have received had the City exercised the Purchase Option on the date of the foreclosure sale shall be paid to the Owner; the balance of the surplus, if any, shall be paid to the City.

16. **Advances by City.** In the event the City advances any amounts for the payment of mortgages, including the curing of defaults on senior liens and redeeming the Property prior to a lien sale, taxes, assessments, insurance premiums, homeowner's fees, and/or associated late fees, costs, interest, attorneys' fees, pest inspections, resale inspections, and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent, the City shall be entitled to a lien against the Property in the amount of all costs and expenses incurred by the City.

17. **Defaults and Remedies.**

17.1 **Events of Default.** The following events shall constitute an Event of Default by the Owner under this Agreement:

(1) The City determines that the Owner has made a misrepresentation to obtain the benefits of purchasing the Property or in connection with Owner's obligations under this Agreement;

(2) The Owner fails to occupy the Property, as required pursuant to Section 4 above, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;

(3) The Owner rents the Property in violation of Section 5 above, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;

(4) The Owner fails to provide information to the City necessary to determine Owner's compliance with the requirements of this Agreement, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;

(5) The Owner fails to pay property taxes or maintain the proper insurance coverage for the Property;

(6) The Owner fails to maintain the Property pursuant to adopted City codes and standards, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;

(7) The Owner places a mortgage or encumbrance on the Property in violation of Section 21;

(8) Any actual, attempted, or pending Prohibited Transfer of the Property or of any estate or interest therein;

(9) Recordation of a notice of default and/or notice of sale pursuant to California Civil Code Section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;

(10) Commencement of a judicial foreclosure proceeding regarding the Property;

(11) Execution by Owner of a deed in lieu of foreclosure transferring ownership of the Property;

(12) Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership, or trusteeship, concerning the Owner; or

(13) Any other default or breach of any covenant, warranty, promise, or representation under this Agreement, and such default or breach continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice.

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

(1) Declare all Excess Sales Proceeds and/or Excess Rental Proceeds immediately due and payable without further demand;

(2) Exercise the Purchase Option granted to the City;

(3) 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 a Transfer in violation of this Agreement is void, for the acceleration of all amounts due under this Agreement and for

subsequent termination of this Agreement, or for any such other relief at law or in equity as may be appropriate.

17.3 Remedies Cumulative. Each of the remedies provided herein is cumulative and not exclusive. The 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. Any failure or delay by City in asserting any of its rights or remedies, as to any Event of Default shall not operate as a waiver of any default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

18. **Distribution of Insurance and Condemnation Proceeds.** In the event that the Property is condemned or destroyed (or in the event that the Property consists of a unit in a condominium project and the condominium project is destroyed and insurance proceeds are distributed to the Owner instead of being used to rebuild, or in the event of condemnation, if proceeds thereof are distributed to the Owner, or in the event of the termination and liquidation of the condominium association and distribution of the assets of the association to the members thereof, including the Owner), any surplus proceeds from insurance or condemnation remaining after payment of encumbrances on the 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 had the City exercised the Purchase Option on the date of destruction, condemnation valuation date, or date of liquidation, as applicable, shall be distributed to the Owner, and the balance of such surplus, if any, shall be distributed to the City.

19. **Nonliability of the City; Indemnity.** In no event shall the City become liable or obligated to the Owner or to any successor to the Owner by reason of the City's Purchase Option, set forth in Section 6 herein, nor shall the City become obligated or liable to the Owner or to any successor to the Owner for any failure to exercise the City's Purchase Option.

Owner acknowledges, understands, and agrees that the relationship between Owner and the City is solely that of an owner and an administrator of a municipal below-market-rate housing program, and that the City does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy, or suitability of the Property or any other matter. The City owes no duty of care to protect Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Property and Owner agrees that neither Owner, nor Owners' heirs, successors, or assigns shall ever claim, have, or assert any right or action against the City for any loss, damage, or other matter arising out of or resulting from any condition of the Property and will hold the City harmless from any liability, loss, or damage for these things. Nothing contained

herein shall be deemed to create or be construed to create a partnership, joint venture, or any relationship other than that of an owner and an administrator of a municipal below-market-rate housing program.

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

20. **Subordination.** This Agreement shall be subordinate to the lien of the First Lender Deed of Trust (as defined in Recital E), and upon City's written consent may be subordinated to deeds of trust recorded in connection with refinancing of the First Lender Deed of Trust if such refinancing and subordination is expressly approved in writing by City. This Agreement shall not impair the rights of the First Lender (defined in Recital E) or its successors-in-interest, or any institutional lender that is the beneficiary under a deed of trust to which City has agreed in writing to subordinate this Agreement ("**Senior Deed of Trust**"), to exercise its remedies under a Senior Deed of Trust in the event of default thereunder by the Owner. Such remedies 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 shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, if the holder of a Senior Deed of Trust acquires title to the Property pursuant to a deed or assignment in lieu of foreclosure, this Agreement shall automatically terminate upon such acquisition of title only if: (a) the City has been given written notice of a default under such Senior Deed of Trust; and (b) having been provided such notice, the City shall not have cured the default under such Senior Deed of Trust within a sixty (60) day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the lender; and (c) the City shall not have exercised the Purchase Option. Any subordination agreement to be executed by the City shall include notice and cure rights for the City regarding any defaults in the mortgage to which this Agreement will be subordinate consistent with this Section 20. Notwithstanding any contrary provision hereof, the provisions of this Section 20 shall not affect the City's right to receive surplus funds following foreclosure pursuant to Section 15.

21. **Refinancing; Restrictions on Financing Secured by Property.** The Owner shall not permit any mortgage, deed of trust, or other security instrument to be recorded against the Property other than the following: (a) a fixed-rate conventional first mortgage; and/or (b) other loan products approved by the City in writing. Owner acknowledges that violation of the provisions of this Section 21 shall constitute a default under this Agreement.

No refinancing of the mortgage debt on the Property or further encumbrance of the Property shall be permitted unless expressly approved by the City in writing, in the exercise of City's sole discretion, pursuant to the provisions of this Section 21. The Owner shall not cause or permit 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 without first giving written notice to the City by delivering a written Request to Refinance and obtaining the 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. Within sixty (60) days following receipt of notice of a Request to Refinance, the City may, in its sole discretion, either: (i) provide written notice of consent to the Refinance, which consent shall be consistent with the City's goal of creating, preserving, maintaining, the affordability of the Property; or (ii) provide written notice of denial of the Request to Refinance.

The Owner may refinance the existing mortgage debt only to: (a) reduce the Owner's interest rate and monthly payments of principal and interest; or (b) to obtain funds for the purpose of financing Capital Improvements (as defined in Section 1). The City's consent to the refinancing of existing mortgage debt shall be subject to the following conditions: (x) the refinancing will not result in the Owner's mortgage payments (principal and interest), property taxes, property insurance, mortgage insurance, utilities, and homeowners association dues (if applicable) exceeding Affordable Housing Cost; and (y) the combined loan-to-value ratio of the Property, calculated by comparing the total of all debt secured by a lien on the Property and the then-current Affordable Price (as determined pursuant to Section 9), shall not exceed ninety-five percent (95%).

Proceeds of refinancing permitted for the installation of Capital Improvements shall be deposited into an escrow account and shall only be disbursed to pay the costs of purchasing and installing the Capital Improvements. The Owner may request that the City approve an alternative disbursement mechanism reasonably calculated to provide assurance to the City that the refinancing funds are actually used to finance the Capital Improvements.

22. **Nondiscrimination.** The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code 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 any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property.

23. **Owner's Acknowledgment of Resale Restriction.** Owner hereby specifically acknowledges and agrees that:

(a) Owner subjects the Property to certain restrictions and limits the price for which Owner may sell the Property and the persons to whom Owner may sell the Property. The resale price limitation, and other provisions contained in this Agreement, restrict the full benefits of owning the Property. Owner may not enjoy the same economic or other benefits from owning the Property that Owner would enjoy if this Agreement did not exist.

(b) Absent the provisions of this Agreement, the Property could not be made available to Eligible Households, including Owner, at an Affordable Housing Cost.

(c) Owner understands that the determination of the Affordable Price of the Property to an Eligible Household can be made only at the time of the proposed Transfer, taking into consideration increases in median income, mortgage interest rates, property taxes, and other factors that cannot be accurately predicted, and that the sales price permitted under this Agreement may not increase or decrease in the same manner as other similar real property which is not encumbered by this Agreement. Owner further understands that at all times in setting the sales price of the Property, the primary objective of the City and this Agreement is to provide housing to Eligible Households at an Affordable Housing Cost. The Affordable Price will almost certainly be less than other similar properties that have no restrictions.

(d) Owner understands all of the provisions of this Agreement. In recognition of the acknowledgements and agreements stated in this Section 23, Owner accepts and agrees to the provisions of this Agreement with the understanding that this Agreement will remain in full force and effect as to the Property following any Transfer of the Property throughout the term of this Agreement.

(Owner's Initials)

(Owner's Initials)

24. **Rights of Beneficiaries Under Deeds of Trusts.** Notwithstanding any other provisions in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of the United States Department of Urban Development ("HUD"), the Federal National Mortgage Association ("FNMA"), the Veterans Administration ("VA"), or the California Housing Finance Agency ("CalHFA") under the First Lender Deed of Trust recorded against the Property.

25. Miscellaneous Provisions.

25.1 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 this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision(s) had never been contained herein.

25.2 Time of the Essence. Time is of the essence of this entire Agreement. Whenever under the terms of this Agreement the time for performance falls on a day which is not a business day, such time for performance shall be on the next day that is a business day.

25.3. Notices. Any notice given under this Agreement shall be in writing and shall be given by delivering the same to such Party in person, by delivering the same to such Party by reputable overnight courier or express service, or by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid. The address(es) of each Party for the giving of notices hereunder are, until changed as hereinafter provided, the following:

To City: _____ Director
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

To Owner: _____

With a copy to: _____ (optional)

Any notice will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. A Party may change its notice address(es) at any time by giving written notice of such change to the other Party in the manner provided herein. Notice given by counsel shall be deemed given by the Party represented by such counsel.

25.4 Amendments; No Waiver. This Agreement may be modified or amended only by a written instrument executed by City and Owner and recorded in the Official Records. 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.

25.5 Captions and Pronouns. The captions and headings of the various sections of this Agreement are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and masculine, feminine, and neuter shall be freely interchangeable. Use of the term “including” or variants thereof shall mean “including, without limitation.”

25.6 Binding on Successors. The terms and conditions set forth herein are intended to run with the land and shall bind Owner and all successors, heirs, grantees, and assigns, 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) the fifty-fifth (55th) anniversary of 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 grant deed conveying the Property. Pursuant to Section 13, all subsequent purchasers of the Property will be required to execute and record in the Official Records, an Affordable Housing Resale Restriction Agreement and Option to Purchase and a Performance Deed of Trust upon their acquisition of the Property, each in form approved by City. Pursuant to Section 14, notwithstanding the expiration of the Affordability Period, Excess Sales Proceeds shall be payable to the City upon the first market-rate sale following the expiration of the Affordability Period, and such obligation shall survive the expiration of the term of this Agreement.

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

25.8 Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction so that the intention of the Parties, to create a valid and enforceable Purchase Option, to prevent any Prohibited Transfer or any use of the Property in violation of this Agreement and to ensure to the extent possible that the sales price and mortgage payments for the Property remain affordable to Eligible Households, is carried out.

25.9 No Third-Party Beneficiaries. This Agreement shall not benefit or be enforceable by any person or entity other than the City and the Owner and their respective successors and assigns. There are no third-party beneficiaries to this Agreement.

25.10 Entire Agreement. This Agreement, together with the Excess Proceeds Note and the Performance Deed of Trust sets forth the entire understanding between Owner and the City with respect to the subject matter hereof and supersedes any prior written or oral agreement with respect thereto.

25.11 Controlling Law and Venue. The terms of the Agreement shall be interpreted under the laws of the State of California without regard to principles of conflict of laws. The Agreement was entered into and is to be performed in Santa Clara County, which is the exclusive venue for any action or dispute arising out of said Agreement.

25.12 Attorneys' Fees and Costs. If any action is brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs.

25.13 Joint and Several Obligations. The obligations of each Party comprising Owner shall be joint and several.

25.14 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

26. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which in the aggregate shall constitute one and the same instrument, and the Parties agree that signatures on this Agreement shall be sufficient to bind the Parties.

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

“CITY”:
CITY OF MOUNTAIN VIEW,
a California charter city and municipal
corporation

“OWNER”:
__[ALL CAPS]__ and __[ALL CAPS]__

By: _____

By: _____

Name: _____

Name: _____

Title: City Manager _____

By: _____

APPROVED AS TO FORM:

Name: _____

Name: _____

Title: City Attorney _____

ATTACH ACKNOWLEDGEMENTS; SIGNATURES MUST BE NOTARIZED

Exhibit A

PROPERTY

The land referred to herein is situated in the City of Mountain View, County of Santa Clara, State of California, and is more particularly described as follows:

(Attach Legal Description)

Exhibit B

FORM OF CERTIFICATE OF OWNER OCCUPANCY

TO: City of Mountain View

FROM: [State names of Owners]

Address of Property: _____

Date: _____

By signature below, the undersigned _____ and _____ **[insert name or names of Owner]** hereby certify to the City of Mountain View, under penalty of perjury, that: (i) I/we occupy the home located at _____ **[insert address]** (the "Property") as my/ our principal place of residence; (ii) that I/we have occupied the Property for _____ (__) **[insert number]** months of the calendar year _____ **[insert previous calendar year]**; and (iii) that I/we have not leased or rented part or all of the Property to a third party.

Attached to this letter are copies of the following documents showing the Property as my/our place of residence, which I/we certify are true and correct copies of the originals:

___ Utility bill or landline telephone bill dated within the past 60 days showing street address and Owner's name;

AND

___ Copy of payroll stub dated within the past 60 days showing street address and Owner's name;

AND

___ Copy of most recent mortgage statement for the Property

This Certificate of Owner Occupancy is signed on _____, 20__.

By: _____
Owner **[type name]**

By: _____
Owner **[type name]**

Due Date: February 1 of each calendar year.

Exhibit C

FORM OF OWNER'S NOTICE OF INTENT TO TRANSFER

TO: City of Mountain View

FROM: **[State names of Owners]**

Address of Property: _____

Date: _____

Please be notified pursuant to Section 8 of the Affordable Housing Resale Restriction Agreement and Option to Purchase between Owner and City dated _____, 20__ (the "Agreement"), that the Owner intends to transfer the Property listed above.

The following information is provided to the City pursuant to Section 8 of the Agreement:

1. Address of the Property: _____
2. Date Owner purchased the Property: _____
3. Purchase Price paid by Owner for the Property: _____
4. Date Owner intends to vacate the Property: _____
5. Name and telephone number for City to contact to schedule inspection:

6. Have Capital Improvements been made to the Property? Yes No

If yes, please attach copies of the City's written approval of the Capital Improvements, and all required permits for the Capital Improvements.

I agree to cooperate with the City to schedule an inspection of the Property by the City or its designee.

I/we certify that this Owner's Notice of Intent to Transfer is true and correct and is signed on _____.

By: _____
Owner **[type name]**

By: _____
Owner **[type name]**

Exhibit D

FORM OF EXCESS PROCEEDS NOTE

[Attach Form of Note]

Exhibit E

FORM OF PERFORMANCE DEED OF TRUST

[Attach form of Performance Deed of Trust]

Exhibit F

FORM OF NOTICE OF AFFORDABILITY RESTRICTIONS

[Attach form of Notice]