

RD:MDC

Recording Requested By:  
and  
When Recorded Return to:  
City of San José, Housing  
200 E. Santa Clara Street ,12<sup>th</sup> Floor  
San José, CA 95113  
Attention: **Julie Nieto**

TO BE RECORDED WITHOUT FEE PER GOVERNMENT CODE  
SECTIONS 6103 AND 27383 AND HEALTH AND SAFETY CODE SECTION 33334.3 (f)2

**TEACHER HOMEBUYER PROGRAM  
Refinance and Resale Control Agreement  
(Affordability Restrictions)**

**Loan # \_\_\_\_\_**

This Refinance and Resale Control Agreement ("Restriction") is made by \_\_\_\_\_, a(n) xxxxxxxxxx \_\_\_\_\_, ("Owner") on the \_\_\_ day of \_\_\_\_\_, with respect to the following facts:

A. Owner will be acquiring a residential unit on certain real property located at \_\_\_\_\_ in the City of San José, Santa Clara County, California, and more particularly described in **EXHIBIT A** attached hereto and incorporated herein by this reference (the "Property").

This loan is funded with:

**20% Tax Increment Funds**

B. The Redevelopment Agency of the City of San José ("Agency") is allocated certain property taxes ("Tax Increments") pursuant to Health and Safety Code Section 33670 and pursuant to Health and Safety Code Section 33486 which applies to merged redevelopment project areas. At least twenty percent (20%) of the Tax Increment ("20% Funds") must be used by the Agency to assist in increasing, improving and preserving the supply of housing units which will be available to Persons and Families of Low or Moderate Income and Very Low Income Households for a period of not less than forty-five (45) years.

Pursuant to an agreement between the City and the Agency, the City is acting as agent of the Agency in administering the obligations of the Agency under Health and Safety Code Sections 33000, et. seq., to assist low and moderate income housing with 20% Funds.

The City will be providing 20% funds to the Owner to finance the acquisition of a for-sale unit for Low Income Households and Moderate Income Persons and Families whose income does not exceed 120% of the area median income (the "Assisted Unit") on the Property.

Health and Safety Code Section 33334.3(f) requires a covenant or restriction be recorded against all units constructed or substantially rehabilitated with the assistance of 20% Funds restricting such units to remain available at Affordable Housing Costs to Persons and Families of Low or Moderate Income and Very Low Income Households. Health and Safety Code Section 33413 (b)(2)(C) includes the same provision for units that are subject to the Redevelopment Area Inclusionary Housing requirement. The restrictions or covenants must be enforceable against Owner and the successors in interest of Owner pursuant to Health and Safety Code Section 33334.3(f) and 33413 (b)(2)(C). This Restriction is intended to implement the law by requiring that the Assisted Units can be sold only to Eligible Persons and only at Affordable Housing Cost. Therefore, there are limits imposed by this Restriction on the persons who can own or occupy the Assisted Units and on the price for which the Assisted Units may be sold.

**HOME Funds**

C. The HOME INVESTMENT PARTNERSHIP PROGRAM implemented by the Department of Housing and Urban Development (HUD) has created funds available to Participating Jurisdictions (PJs) to be used by developers, to increase and improve the supply of lower housing in the City of San José pursuant to the Home Regulations contained in 24 CPR Part 92 *et seq.*

**Other Source: (SJSU, developer funds, In-lieu fees, etc.)**

NOW, THEREFORE, Owner hereby declares and covenants:

1. Definitions.

- (a) "Affordable Housing Cost" shall have the same definition as set forth in Health and Safety Code Section 50052.5.
- (b) "Agency" shall mean The Redevelopment Agency of the City of San José.
- (c) "Area Median Income" shall have the same definition as set forth in Health and Safety Code Section 50093.
- (d) "Assisted Unit" shall mean the owner-occupied, restricted unit on the Property.
- (e) "Assumption" shall mean assumption of the City Loan. Approval of the assumption shall be at the sole discretion of the City.
- (f) "Capital Improvement" shall mean improvements to an Assisted Unit which has 1) an initial cost in excess of \$2,000, 2) a useful life of more than one year, and 3) was commenced subsequent to the purchase of the Assisted Unit by the Owner.

The maximum allowable amounts of any capital improvement shall not exceed the lesser of the actual cost or appraised value.

- (g) "City" shall mean the City of San José.
- (h) "Eligible Person or Family" shall mean a person or family which is a Person or Family of Low or Moderate Income and which also meets the City's eligibility requirements.
- (i) "Event of Default" shall mean those events described in paragraph 8.
- (j) "Fair Market Value" shall mean the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obligated to sell, and a buyer, being ready, willing and able to buy but under no particular or urgent necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the Assisted Unit is reasonably adaptable and available but as though this Restriction did not exist.
- (k) "Housing Cost" of a person or family purchasing an Assisted Unit shall be calculated in accordance with the provisions of California Code of Regulation, Title 25, Section 6910, et. seq., as amended from time to time, which as of the date hereof include all of the following associated with that Assisted Unit:
  - (i) Principal and interest on a mortgage loan including any rehabilitation loans.
  - (i) Property taxes and assessments.
  - (ii) Fire and casualty insurance covering replacement value of property improvements.
  - (iii) Property maintenance and repair.
  - (iv) A reasonable allowance for utilities (excluding telephone service).
  - (v) Any homeowner association fees.
  - (vi) Mortgage insurance premiums.
  - (vii) Ground rent, if the unit is situated on rented land.
  - (viii) Parking fees.

Monthly housing cost of a purchaser shall be an average of estimated costs for the next twelve (12) months.

- (m) "Notice of Intent to Transfer" shall mean a notice delivered by Owner to the City

pursuant to paragraph 4.

- (n) "Owner Occupied Housing Unit" shall have the same definition as set forth in Health and Safety Code Section 50092.1.
- (o) "Owner" shall mean Owner and any successor in interest of Owner in all or any part of the Property or in all or any part of an Assisted Unit.
- (p) "Owner's Closing Costs" shall mean the following:
  - (i) Upon a Transfer of an Assisted Unit by Owner/Seller, not Developer, all of the following to the extent, and only to the extent that such costs are actually paid by Owner:
    - (1) Escrow fees.
    - (2) City conveyance taxes.
    - (3) County documentary transfer taxes.
    - (4) Brokerage commissions.
    - (5) Title insurance policy premiums.
    - (6) Recording costs and notary fees.
    - (7) Appraisal fee.
  - (ii) Upon foreclosure, there shall be no Owner's closing costs.
- (q) "Persons or Families of Low or Moderate Income" shall have the same definition as set forth in Health and Safety Code Section 50093.
- (r) "Proposed Transferee" shall mean an Eligible Person or Family to whom the Owner desires and proposes to Transfer the Assisted Unit.
- (s) "Sales Price" shall mean all sums paid by a purchaser to a seller for, or in conjunction with, the acquisition of an Assisted Unit, including but not limited to the purchase price designated in any purchase agreement, consideration for personal property and all other costs and fees paid by the purchaser to or for the benefit of the seller.
- (t) "Seller" shall mean the City-assisted Owner of the Property or Assisted Unit.
- (u) "Subordinate Loan" shall mean a subordinate loan from the City to an Eligible Person or Family to assist in the acquisition of an Assisted Unit.
- (v) "Section", unless stated otherwise defined, shall refer to sections in the California Health and Safety Code, as amended from time to time.
- (w) "Seller's Closing Cost" shall mean actual closing costs incurred by Owner in connection with the sale of an Assisted Unit, including reasonable real estate commissions, transfer taxes, and other selling costs customarily paid by seller, as

determined by the City. Closing costs customarily paid by buyer shall not be included in the calculation of this cost.

- (x) "Term" shall be forty-five (45) years, commencing on the date this Restriction is recorded on the Property.
- (y) "Transfer" shall mean any sale, assignment, conveyance or transfer, voluntary or involuntary, of any interest in each Assisted Unit. Without limiting the generality of the foregoing, Transfer shall include (i) a transfer by devise, inheritance or intestacy to a party who does not meet the definition of Eligible Person or Family, (ii) a lease or occupancy agreement of all or any portion of an Assisted Unit, except pursuant to paragraph 6, (iii) creation of a life estate, (iv) creation of a joint tenancy interest, (v) execution of a land sale contract by which possession of an Assisted Unit is transferred to another party and title remains in the transferor, (vi) a gift of all or any portion of an Assisted Unit, or (vii) any voluntary conveyance of an Assisted Unit. Transfer shall not include transfer by devise, inheritance or intestacy to a spouse, a transfer to a spouse pursuant to the right of survivorship under a joint tenancy, or a transfer to a spouse in a dissolution proceeding, however any subsequent Transfer shall be subject to this Restriction.
- (z) "Transferee" shall mean any natural person or entity who obtains ownership or possessory rights in the Property or Assisted Unit pursuant to a Transfer.

2. Owner's Acknowledgment of Equity Limitation. Owner hereby acknowledges and agrees that:

- (a) Owner understands all of the provisions of this Restriction.
- (b) Subject to paragraph 13, supra, for the Term hereof, Owner hereby subjects the Property to certain restrictions, and limits the price for which Owner and Owners may re-sell the Property or any Assisted Unit and the persons to whom Owner and Owners may sell the Property or any Assisted Unit. The resale price limitation, and other provisions contained in this Agreement, restrict the full benefits of owning the Property and of owning an Assisted Unit. Owner and Owners may not enjoy the same economic or other benefits from owning the Property or an Assisted Unit that Owner would enjoy if this Restriction did not exist.
- (c) Absent the assistance provided by 20% Funds, HOME Funds or other funds, and the provisions of this Restriction, the Assisted Unit could not be made available to Eligible Persons or Families at an Affordable Housing Cost.
- (d) In recognition of the acknowledgments and agreements stated in subparagraphs 2(b) and (c) above, Owner accepts and agrees to the provisions of this Restriction with the understanding that this Restriction will remain in full force and effect as to any Assisted Unit following any Transfer of any Assisted Unit throughout the Term.

3. Restrictions on Transfer of the Property or Any Assisted Unit. OWNER UNDERSTANDS THAT THE DETERMINATION OF THE SALES PRICE OF THE ASSISTED UNIT TO AN ELIGIBLE PERSON OR FAMILY CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER TAKING INTO CONSIDERATION INTEREST RATES, PROPERTY TAXES AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED AND THAT THE SALES PRICE PERMITTED HEREUNDER MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS RESTRICTION. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALES PRICE OF THE ASSISTED UNIT THE PRIMARY OBJECTIVE OF THE CITY AND THIS RESTRICTION IS TO PROVIDE HOUSING TO ELIGIBLE PERSONS OR FAMILIES AT AFFORDABLE HOUSING COST. THE SALES PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES WHICH HAVE NO RESTRICTIONS.

\_\_\_\_\_  
[initialed by Owner(s)]

Transfer of an Owner-Occupied Assisted Unit. Owner may transfer an Assisted Unit only in strict accordance with the provisions of this Restriction. Specifically, except as set forth in paragraph 5 herein, Owner may Transfer an Assisted Unit (i) only to an Eligible Person or Family and (ii) only if the Housing Cost does not exceed Affordable Housing Cost for the Eligible Person or Family and (iii) only if the Transfer has been approved in writing by the City in accordance with the provisions of paragraph 4, except when paragraph 6 applies.

In order to comply with this paragraph 3, Owner must calculate the Affordable Housing Cost (including the City's Subordinate Loan) for the Proposed Transferee of the Assisted Unit in accordance with the definition set forth in Paragraph 1 (d) of this Restriction. After calculating the Affordable Housing Cost (including the City's Subordinate Loan) for the Proposed Transferee, the Owner must ensure that the sum of the Sales Price and all costs listed in the definition of Housing Cost set forth in Paragraph 1(k) of this Restriction do not exceed that Affordable Housing Cost (including the City's Subordinate Loan). The calculation of the Sales Price under this Paragraph 3 is illustrated by example in **Exhibit B** attached hereto, unless such example is modified or amended by mutual agreement between Owner and the City.

4. Process to Obtain Approval of Transfer of An Assisted Unit. In the event Owner desires to Transfer an Assisted Unit, prior to the Transfer the Owner shall notify the City by delivering a "Notice of Intent to Transfer" in the form attached hereto as **Form 1** and Owner shall indicate in the Notice of Intent to Transfer whether Owner desires to attempt to locate an Eligible Person or Family to purchase the Assisted Unit at Affordable Housing Cost (a "Proposed Transferee") . In the event the Owner desires to locate a Proposed Transferee, the Owner shall have ninety (90) days from the date the City receives the Notice of Intent to Transfer within which to locate a Proposed Transferee. At such time as the Owner identifies a Proposed Transferee to whom Owner wishes to Transfer the Assisted Unit, the following process shall be followed:

- (a) Notice to City: Owner shall send to the City of San José Department of Housing (or its successor), at 200 East Santa Clara Street, 12<sup>th</sup> Floor, San José, California 95113, the form attached hereto as **Form 2** fully completed and executed by Owner and the Proposed Transferee (the "Approval Request").

- (b) Qualification of Proposed Transferee: The Proposed Transferee shall provide the City with sufficient information in form required by the City for the City to determine if the Proposed Transferee meets the following requirements:
  - (i) The Proposed Transferee shall certify its intent to occupy the Assisted Unit as the Proposed Transferee's principal residence.
  - (ii) The Proposed Transferee shall be an Eligible Person or Family.
  
- (c) Qualification of Transaction: For the Transfer to qualify as an approved Transfer the transaction shall meet the following requirements:
  - (i) The Sales Price shall not exceed the lesser of:
    - (A) The Fair Market Value of the Assisted Unit, or
    - (B) The maximum price at which the Housing Cost to be paid by the Proposed Transferee would not exceed Affordable Housing Cost. The calculation of the Sales Price under this subsection (B) is illustrated by example in Exhibit B attached hereto, unless such example is modified or amended by mutual agreement between Owner and the City. However, in adjusting for family size to determine the maximum income level on which to base the calculation of Affordable Housing Cost, the Proposed Transferee may request that it be permitted by City to make the following adjustments according to the number of bedrooms in each Assisted Unit; the family size of the Proposed Transferee shall be: (i) for 2 bedroom units, 3 persons (ii) for 3 bedroom units, 4 persons (iii) for 4 bedroom units, 5 persons and (iv) 5 bedroom units, 6 persons. The City shall have the sole discretion whether to grant the request to make the adjustment.
  - (ii) The price paid to Owner by the Proposed Transferee for Owner's personal property shall not exceed the Fair Market Value of such property. No other consideration of any nature whatsoever shall be delivered by the Proposed Transferee to Owner unless fully disclosed to and approved by the City.
  
- (d) Certificates from Parties: The Owner and Proposed Transferee each shall certify in writing, in a form acceptable to the City, that the Transfer shall be closed in accordance with and only with the terms of the sales contract and other documents submitted to and approved by the City and that all consideration delivered by the Proposed Transferee to Owner has been fully disclosed to the City. The written certificate shall also include a provision that in the event a Transfer is made in violation of the terms of this Restriction or false or misleading statements are made in any documents or certificate submitted to the City for its approval of the

Transfer, the City or Owner shall have the right to file an action at law or in equity to make the parties terminate and/or rescind the sale contract and/or declare the sale void notwithstanding the fact that the Transfer may have closed and become final as between Owner/seller and his/her transferee. In any such event, any costs, liabilities or obligations incurred by the Owner/seller and his/her transferee for the return of any monies paid or received in violation of this Restriction or for any costs and legal expenses, shall be borne by the Owner/seller and/or his/her transferee and the Owner/seller shall hold the City and/or Owner and its designees harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Restriction.

- (e) Written Consent of City Required Before Transfer. An Assisted Unit, and any interest therein, shall not be Transferred except with the express written consent of the City, which consent shall be given only if the Transfer is consistent with the City's goal of creating, preserving, maintaining and protecting housing in San José for Eligible Persons and Families and shall be in accordance with the provisions of paragraph 4 of this Restriction. This provision shall not prohibit the encumbering of title for the sole purpose of securing financing; however, in the event of foreclosure or transfer by deed in lieu of foreclosure the provisions of paragraph 10 of this Restriction shall apply with regard to proceeds and this Restriction shall continue to apply to the Property subject to foreclosure in accordance with paragraph 16, except as otherwise required by any subordination agreement executed by the City. Unless City receives a written request from Owner to transfer the Assisted Unit and the City gives its approval, then the Owner shall be subject to a recapture of any City investment (Equity Share/Additional Charge).
  - (f) Delivery of Documents. Upon the close of the proposed Transfer, the Owner and Transferee shall provide the City with a copy of the final sales contract, settlement statement, escrow instructions, and any other document which the City or Owner may reasonably request.
5. Equity Share/Additional Charge. In the event there does not exist an uncured Event of Default, and the owner of the Assisted Unit, (the "Owner"), wishes to transfer the Assisted Unit to a Person or Family who is not an Eligible Person or Family, and subject to the provisions contained in the Restriction, then Owner can Transfer the Assisted Unit only if the City receives the lesser of (i) an amount equal to the Equity Share as determined under the Note, or (ii) eight percent (8%) per annum on the full amount of the Note commencing on the date of the recording of the deed of trust on the Property ("Additional Charge"). Upon Transfer of the Assisted Unit to a Person or Family who is not an Eligible Person or family, the City shall remove or cause to be removed this Restriction as a lien for the Assisted Unit and this Restriction will cease to be a covenant running with the land for the Assisted Unit. This Equity Share/Additional Charge Recapture provision shall be utilized at the time of transfer of the Assisted Unit. Owner may request that the City review Owner's request to transfer the Assisted Unit to another Eligible Person or Family who shall assume the Loan.
6. Transfer by Devise, Inheritance or Intestacy. Notwithstanding anything to the contrary in this Restriction, in the event a Transfer is by devise, inheritance or intestacy this

paragraph 6 shall govern the Transfer. Within thirty (30) days of the Transfer, the Transferee shall deliver written notice to the City that the Transfer has occurred. If such Transferee is not an Eligible Person or Family, this Transferee shall market the Assisted Unit for sale to an Eligible Person or Family unless the provisions of Section 5 above applies. Unless the provisions of Section 5 above applies, the provisions of all Sections of this Restriction shall govern any subsequent transfer of the Property and Assisted Unit.

7. Covenants of Owner. Owner of each Assisted Unit by acceptance of a deed to the Assisted Unit covenants and agrees that, at all time during the Term of this Restriction, its Assisted Unit:
  - (a) Owner Occupancy. Will be continuously occupied by Owner, except as provided in paragraph 6 above.
  - (b) No Rental. Except as provided in paragraph 6 above, and except for temporary rental of up to sixty (60) days, with the prior written consent of the City stating the limited specific reasons for such temporary rental, such as family medical emergencies or temporary job relocations, or as otherwise agreed to by the City in advance, shall not be rented, subleased, or subject to any other business arrangement whereby consideration shall be paid by any occupant of an Assisted Unit to the Owner of the Assisted Unit; provided, if the Unit is occupied by a Family of Low or Moderate Income, the family members, whose income was considered in determining the eligibility of that family, may make monetary contributions toward the Housing Costs of the Assisted Unit.
  
8. Default. As to the Property as a whole and upon creation of an Assisted Unit, individually as to the Assisted Unit, the occurrence of any of the following events shall constitute an Event of Default under this Restriction after City has given Owner written notice and a 30 day opportunity to cure; unless the City reasonably determines that such default cannot be cured within 30 days, then the Owner shall begin to cure such default within 15 days after notice from the City and diligently pursue to completion in a period of time reasonably determined by the City:
  - (a) Breach of Covenant. Breach of any covenant of Owner contained in this Restriction and the failure of the Owner to cure such breach within fifteen (15) days after receipt of written notice of such violation; provided, in the event of a second similar violation within a twenty-four (24) month period, Owner shall have only ten (10) days within which to cure any such subsequent violation.
  - (b) Transfer. Any Transfer in violation of the provisions of paragraph 3 above.
  - (c) Notice. Failure of Owner to give notice required in paragraph 4 above.
  - (d) Breach of Section 6. If and when applicable, a breach of paragraph 6 hereof.
  - (e) Further Encumbrance. Unless otherwise consented to by the City, the recordation of any deed of trust (a "Further Encumbrance") securing a note having an original

principal sum which, when added to the sum of the principal amount(s) of any notes secured by any deeds of trust against the Assisted Unit as of the date of recordation of the Further Encumbrance, exceeds the appraised value of the Property As agreed to by the City.

- (f) Default on Encumbrance. Recordation of a Notice of Default under the provisions of the California Civil Code by any lender having a security interest in an Assisted Unit.
  - (g) Failure to Maintain. The failure of Owner to maintain an Assisted Unit in good condition and repair throughout the Term.
  - (h) Other Breach. Any other breach by Owner of any provision of this Restriction, determined by the City in its reasonable discretion.
9. Remedies. After notice from the City and a ninety (90) day opportunity to cure, upon the occurrence of an Event of Default, the City shall have the following remedies:
- (a) Right to Excess Proceeds. In the event the Event of Default is a Transfer in violation of paragraph 3 above then, in addition to any other remedy which the City may have, the City shall be entitled to receive a sum ("Unpermitted Proceeds") equal to the difference between (i) the total consideration paid by the transferee less (ii) an amount equal to the Maximum Sales Price as calculated in Exhibit B. The Unpermitted Proceeds shall be due and payable by the Owner to the City at escrow closing, or transfer of possession if there is no escrow closing prior to transfer of possession with regard to the noncomplying Transfer. The payment of the Unpermitted Proceeds to the City shall not terminate this Restriction, which shall continue through the Term hereof.
  - (b) Specific Performance. The City shall have the right to bring an action for specific performance of this Restriction to require the Owner to comply with the terms and provisions of this Restriction. Owner acknowledges that it is the intention of Owner/ and the City that these provisions be specifically enforceable to maintain the supply of affordable housing for Eligible Persons and Families.
  - (c) Application to Court. The City may apply to a court of competent jurisdiction for an injunction prohibiting a proposed Transfer in violation of this Restriction, for a declaration that a Transfer is void or for any other such relief as may be appropriate.
  - (d) All Remedies Available and Cumulative. Upon the occurrence of an Event of Default, the City or Agency shall have the right to exercise all the rights and remedies, and to maintain any action at law or suits in equity or other real property proceedings, to enforce the provisions of this Restriction and to cure any Event of Default or violation hereof. No delay in enforcing the provisions hereof as to any Event of Default or violation shall impair, damage or waive the right of the City or the Agency to enforce the provisions of this Restriction in the future or any

continuing or new breach or violation of any of the covenants or restrictions contained in this Restriction. All rights and remedies, including without limitation those set forth in subparagraphs (a) through (d) above, of any party legally entitled to enforce this Restriction shall be cumulative and the exercise of any such right or remedy shall not impair or prejudice and shall not be a waiver of the right to exercise any other such right and remedy.

10. Restrictions on Condemnation, Insurance and Foreclosure Proceeds. Except as otherwise required by a senior lender and approved by the City, in the event (i) of a judicial foreclosure, a trustee's deed upon a nonjudicial foreclosure, a deed in lieu of foreclosure or any other involuntary Transfer to the holder of a secured interest in an Assisted Unit, (collectively "Foreclosure"), (ii) an Assisted Unit is destroyed and insurance proceeds are to be distributed to Owner instead of being used to rebuild the Assisted Unit, (iii) of a condemnation or Transfer in lieu of condemnation, if the proceeds thereof are to be distributed to the Owner or (iv) if the Assisted Unit is a condominium or townhouse unit, upon liquidation of the homeowner's association and distribution of the assets of the association to the members thereof, including Owner, to the extent that the proceeds of any event described above exceed the proceeds that otherwise would be payable to Owner under the Maximum Sales Price formula specified in Exhibit B on the date of the relevant event ("Excess Proceeds"), all Excess Proceeds shall be paid to the City when available to Owner.
11. Non-Discrimination Clauses. All deeds made relative to an Assisted Unit shall contain or be subject to substantially the following non-discrimination and non-segregation clauses:
12. Deeds. In Deeds/Leases: "The Grantee/Lessee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, marital status, national origin, ancestry or handicap in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Grantee/Lessee or any person claiming under or through Grant/Lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

The failure of any deed to contain this provision shall not affect the validity of the deed or lease.

13. Covenants Running with the Land. Except as otherwise provided in Section 5 of this Restriction, Owner hereby subjects the Property to the covenants and restrictions set forth in this Restriction.

Owner hereby declares its express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon all parties having any interest in the Property throughout the Term. Each and every

contract, deed, lease or other instrument covering, conveying or otherwise transferring the Property or an Assisted Unit or any interest therein, as the case may be, (a "Contract") shall conclusively be held to have been executed, delivered and accepted subject to this Restriction regardless of whether the other party or parties to such Contract have actual knowledge of this Restriction.

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

All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon Owner for the benefit of the City, the Agency and Eligible Persons and Families and such covenants and restrictions shall run in favor of such parties for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the City or the Agency is an owner of any land or interest therein to which such covenants and restrictions relate.

14. Successors, Assigns. The provisions contained in this Restriction shall bind the Owner and each successor Owner, and shall inure to the benefit of the City and the Agency.
15. Lienor's Remedies. The provisions of this Restriction do not limit the right of any holder of an obligation which is secured by the Property to exercise any of its remedies for the enforcement of any pledge or lien; provided, however, except as may be required by any subordination agreement executed by the City, that in the event of any foreclosure, the purchaser (or other transferee) and their successors in interest and assigns and the Property shall continue to be subject to this Restriction.
16. Amendments. The City or the Agency and their successors and assigns, and the Owner, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the provisions contained in this Restriction without the consent of any easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property. This Restriction shall not be amended or modified except upon the written consent of the City or the Agency and the Owner and its successor or designee, and upon the recordation of an amendment hereto duly executed and acknowledged by the City or the Agency and by Owner.
17. Severability. If any provision of this Restriction, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid,

unenforceable, or void, the remainder of this Restriction and such provisions as applied to other persons, places, and circumstance shall remain in full force and effect.

18. Governing Law. This Restriction shall be governed by and construed in accordance with the law of the State of California.
  
19. Subordination. Notwithstanding any other provision hereof, the provisions of this Deed of Trust shall be subordinate to the lien of the senior deeds of trust (i.e., recorded senior to any other deeds of trust) and any deed of trust in the name of or held by the California Housing Finance Agency, its successors and assigns ("Senior Deeds of Trust") against the Property, and shall not impair the rights of any institutional lender which is the holder of the loan secured by such senior deeds of trust, or such lender's assignee or successor in interest, to exercise its remedies under the deed of trust in the event of default by Owner. These remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. After such a foreclosure, sale or acceptance of a deed in lieu of foreclosure, this Restriction shall be forever terminated and shall have no further effect as to this property or any transferee thereafter; provided, however, if the holder of such deeds of trust acquired title to this property pursuant to a deed or assignment in lieu of foreclosure, this Restriction shall automatically terminate upon such acquisition of title, provided that (a) the City has been given a 30-day written notice of a default (which requirement shall be satisfied by recordation of a notice of default under California Civil Code Section 2924), and (b) the City shall not have cured the default under such deeds of trust within the 30-day period provided in such notice sent to the City.

In witness whereof, the Owner has executed this Restriction as of the date first written above.

OWNER(S):

\_\_\_\_\_  
Name of Owner #1

\_\_\_\_\_  
Name of Owner #2

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT B**

Illustration of the calculation of the maximum Sales Price for a Person or Family of Moderate Income\* to be paid by a **Purchaser** of the Assisted Unit: Pursuant to the provisions of Health and Safety Code section 50052.5, the calculation in this Exhibit is based on the following assumptions for family size occupancy: studio, one person; one bedroom, two persons; two bedrooms, three persons; three bedrooms, four persons and four bedrooms, five persons.

Assumptions:

1. Unit Size = \_\_\_\_\_
2. Family Size = \_\_\_\_\_
3. Interest Rate = \_\_\_\_\_
4. Property taxes and assessments (per month) = \_\_\_\_\_
5. Hazard insurance (per month) = \_\_\_\_\_
6. Property maintenance and repair (per month)\*\* = \_\_\_\_\_  
(if not included in homeowner's association dues)
7. Homeowner's Association Dues = \_\_\_\_\_
8. Utility allowance (per month)\*\*\* = \_\_\_\_\_
9. Mortgage Insurance Premium, if any = \_\_\_\_\_
10. The first mortgage loan financing the purchase of the Assisted Unit is a 30-year, fully amortizing loan.

Pursuant to Health & Safety Code §50052.5, Affordable Housing Cost shall not be less than 28% of the Gross Income of the household nor exceed 35% of 110% Area Median.

\*Pursuant to 25 Cal. Code of Regulations §6932, as of February 20<sup>th</sup>, 2008, the current maximum income level for a Person or Family of Moderate Income at 120% of the area medium income with a family size of 4 is \$126,600.00. The State of California periodically changes income amounts, by household size, pursuant to said Code of regulations. The amount may change in the future, and if so, the new number will be used for calculating the maximum income level at that point in time.

\*\*Amount is obtained from schedule of allowances provided by City.

\*\*\*Amount is obtained from the Housing Authority of the County of Santa Clara's most recent schedule of allowances for tenant purchased utilities.

ILLUSTRATIVE CALCULATION OF SALES PRICE: (3 Bedroom/4 Person Household)<sup>11</sup>

I. Calculate monthly Affordable Housing Cost:

\$116,050.00	[110% of Area Median Income adjusted for family size (4 person)(\$105,500.00)]
<u>    X    .35</u>	[Affordable Housing Cost cannot exceed 35% times 110% of Area Median Income]
\$40,617.50	
<u>divided by 12</u>	[to calculate the maximum <u>monthly</u> Affordable Housing Cost]
\$ 3,385	[As this hypothetical illustrates, no Family of Moderate Income with a family size of 4 shall spend more than \$3,385.00 per month, as of the date hereof, on the sum of the items which make up the Affordable Housing Cost.]

II. Calculation of maximum amount to be spent on principal and interest of all mortgage loans and loan insurance fees, if any.

- A. \$ 3,385 [Maximum monthly Affordable Housing Cost]
- B. [-]\_\_\_\_\_ [Property taxes and assessments (per month)]
- C. [-]\_\_\_\_\_ [Hazard insurance (per month)]
- D. [-]\_\_\_\_\_ [Utility allowance (per month)]
- E. [-]\_\_\_\_\_ [Mortgage Insurance Premiums (per month), if any]
- F. [-]\_\_\_\_\_ [Property maintenance and repair (per month) if not included in Homeowner's Association dues]
- G. [-]\_\_\_\_\_ [Homeowner's Association dues]
- H. \_\_\_\_\_ Maximum amount (per month) to be spent on principal and interest on all mortgage loans

III. Calculation of Sales Price:

1. At a \_\_\_\_\_% interest rate, \$H\_\_\_\_\_ can carry a total mortgage loan(s) of \$\_\_\_\_\_.
2. Add amount (if any) of the City deferred payment subordinate Loan \*\*\*\*\$\_\_\_\_\_.
3. Add amount of any downpayment funds from Borrower \$\_\_\_\_\_:
4. Maximum Sales Price: \$\_\_\_\_\_

\*\*\*\* The City's Subordinate Loan amount and any payments will be determined at the time the unit is sold or transferred.

**FORM 1**  
NOTICE OF INTENT TO TRANSFER

From: \_\_\_\_\_ ("Owner")

To: City of San José  
Housing Department

Re: \_\_\_\_\_ (street address)  
San José, California  
(the "Property")

Owner desires to [sell, convey, transfer by inheritance or devise, lease, gift, otherwise convey] (circle appropriate words) the Property.

Owner desires to attempt to locate an Eligible Person or Family to purchase the Property at Affordable Housing Cost.

If the Owner wants to find the Eligible Person or Family, the Owner has ninety (90) days to find the Eligible Person or Family and notify the City in writing (see Approval Request).

If the City has a program to help locate an Eligible Person, does the Owner want the City to help look for an Eligible Person or Family to buy the Property?

\_\_\_\_\_ Yes  
\_\_\_\_\_ No

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Day time phone number of Owner

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Day time phone number of Owner

**FORM 2**  
Approval Request

\_\_\_\_\_, 20\_\_\_\_

San José Department of Housing

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

Attention:     Housing Director

Re:             Request for Approval of Proposed Transferee

To Whom It May Concern:

      The undersigned is the owner of real property in San José, located at \_\_\_\_\_(the "Property"), of which certain units were financed by the City of San José ("City").

      The Owner now desires to transfer the Property, or the Assisted Unit, as the case might be, and by this letter is requesting the City to approve the proposed transferee.

1.     The Proposed Transferee is:

Names:        \_\_\_\_\_  
                  \_\_\_\_\_  
                  \_\_\_\_\_

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

Telephone No.: \_\_\_\_\_

///

2. The terms of the proposed transfer are:

(a) Sales price of \$\_\_\_\_\_. This sales price is based on the lesser of

(choose one)

\_\_\_\_\_ (i) Fair market value; or

\_\_\_\_\_ (ii) The maximum price at which the Housing Cost of the Proposed Transferee would not exceed Affordable Housing Cost. The calculation of the Sales Price under this subsection (ii) is illustrated in Exhibit B attached to the Use Restriction.

Price of any personal property being sold by the owner to the proposed transferee:  
\$ \_\_\_\_\_ (if none, so state)

(b) The price of \$\_\_\_\_\_ to be paid by the proposed transferee for any services of Owner. (if none, so state).

(c) All other amounts of money or other consideration, if any, concerning the Property or any other matter to be paid by the proposed transferee to the Owner: \$\_\_\_\_\_. (if none, so state)

(d) Sources of payment of sales price

sales price \$\_\_\_\_\_

cash down payment \$\_\_\_\_\_

1st loan \$\_\_\_\_\_

2nd loan \$\_\_\_\_\_

other - describe \$\_\_\_\_\_

Total \$\_\_\_\_\_

///

///

///

(e) The financing, obtained by the proposed transferee to purchase the Property is as follows:

1st Loan:

loan amount: \$ \_\_\_\_\_

monthly payments: \$ \_\_\_\_\_

interest rate \_\_\_\_\_%

if variable interest, describe adjustment mechanism: \_\_\_\_\_

due date: \_\_\_\_\_

balloon payment amount: \_\_\_\_\_

points and fees: \_\_\_\_\_

lender: \_\_\_\_\_

lender's address: \_\_\_\_\_

2nd Loan:

loan amount: \$ \_\_\_\_\_

monthly payments: \$ \_\_\_\_\_

interest rate \_\_\_\_\_%

if variable interest, describe adjustment mechanism: \_\_\_\_\_

due date: \_\_\_\_\_

balloon payment amount: \_\_\_\_\_

points and fees: \_\_\_\_\_

lender: \_\_\_\_\_

lender's address: \_\_\_\_\_

Other Loans: (describe, if none, so state)

\_\_\_\_\_

(f) The monthly Housing Cost to be paid by the proposed transferee:

1st loan monthly payment	\$_____
2nd loan monthly payment	\$_____
other loans monthly payment	\$_____
taxes (1/12 of yearly taxes)	\$_____
utilities	\$_____
estimated monthly maintenance	\$_____
insurance (1/12 of yearly premium)	\$_____
Mortgage insurance Premiums, if any	\$_____
homeowner's association dues	\$_____
Total	\$_____

3. The proposed transferee represents and warrants the following:

- (a) The Property will be the principal residence of the proposed transferee.
- (b) The combined maximum annual income for all household members of the proposed transferee is \$\_\_\_\_\_
- (c) The proposed transferee will deliver to the City a signed financial statement on a form acceptable to City.

4. The proposed transferee household consists of the following persons who will reside in the Property:

Adults (18 and over) - [name of each]

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Minors (under 18) - [name of each]:

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5. The proposed transferee must submit to the City, on a form available from the City, an income certification so the City may determine if the proposed transferee is an Eligible Person or Family.

6. A true and correct copy of the agreement between the owner and the proposed transferee is attached hereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Owner:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name [print]

\_\_\_\_\_  
Name [print]

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City, State, Zip Code

Proposed Transferee:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name [print]

\_\_\_\_\_  
Name [print]

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City, State, Zip Code