

When Recorded Return to:
City of San Jose – Housing Department
200 E. Santa Clara Street, 12th Floor
San Jose, California 95113-1905
Attention: Loan Management

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

**AFFORDABILITY RESTRICTIONS
IMPLEMENTING HEALTH & SAFETY CODE SECTION 33413
(FOR SALE – INCLUSIONARY)
(MODERATE INCOME UNITS)**

This Affordability Restrictions Implementing Health and Safety Code Section 33413 (“Agreement” or “Restriction”) is made by _____, a California _____ (“Developer”) on this _____ day of _____, 200__, with respect to the following facts:

A. Developer is the owner of certain real property located in San Jose, Santa Clara County, California, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (“Property”). The Property is located within _____ Redevelopment Project Area (“Project Area”)

B. The Developer is proposing to develop up to _____ (__) for-sale housing units on the Property (the “Development” or “Project”).

C. Health and Safety Code Section 33413(b)(2) provides that at least fifteen percent (15%) of all new or substantially rehabilitated dwelling units developed within the Project Area by public or private entities other than the Agency shall “be available at affordable housing cost to persons and families of low or moderate income” and that at least forty percent (40%) of that fifteen percent (15%) of dwelling units shall be available at affordable housing costs to very low-income households, as such income levels are defined in California Health and Safety Code §§ 50093 and 50105 (“Inclusionary Housing Requirement”).

D. Pursuant to Section I.C(2) of the City of San Jose Policy on Implementation of the Inclusionary Housing Requirement of Health & Safety Code Section 33413(b)(2) (“Inclusionary Housing Policy”), as amended, the Inclusionary Housing Requirement, for projects with for-sale housing units, shall be met through the development of units situated within the development as follows:

At the option of the Developer:

- a) At least twenty percent (20%) of the “for sale” units developed within a residential project subject to this policy must be made available for the term

of the restriction at "affordable housing cost" to "low or moderate income" households; or

- b) At least six percent (6%) of the "for sale" units developed within a residential project subject to this policy must be made available for the term of the restriction at "affordable housing cost" to "very low income" households and nine percent (9%) must be made available to "low or moderate income" households, for a total of 15% of the units restricted pursuant to the requirements of Health and Safety Code Section 33413(b)(2)."

E. Developer has selected option (___) as described in Section D above. Based on the number of units in the Project, Developer is required to provide ____ residential units to satisfy the Inclusionary Housing Requirement. To satisfy the Inclusionary Housing Requirement, Developer has designated _____ (___) residential units within the Development ("Affordable Units") [and shall pay an in-lieu fee for the fractional ___ unit as provided in Section 24 below]. The Affordable Units shall be made available at affordable housing costs to persons and families of low or moderate income ("Moderate Income Units"). Notwithstanding the above, the number of Affordable Units to be provided under this Agreement shall be based on the actual number of units in the Project and, to the extent the actual number of units in the Project are different from the planned units described above, the number of Affordable Units to be provided by Developer under this Agreement shall be changed accordingly.

F. The Developer wishes to enter into this Agreement which specifies the terms and conditions of the Developer's obligation to provide the Affordable Units pursuant to Health and Safety Code § 33413(b)(2).

NOW, THEREFORE, Developer hereby declares and covenants:

1. Definitions.

- (a) "Affordable Housing Cost" shall have the same definition as set forth in Section 50052.5 of the Health and Safety Code.
- (b) "Agency" shall mean The Redevelopment Agency of the City of San Jose.
- (c) "Affordable Unit" shall mean the Moderate Income Units described in Recital E above.
- (d) "City" shall mean the City of San Jose.
- (e) "Eligible Person or Family" shall mean a person or family which is a Person or Family of Moderate Income and which meets the City's eligibility requirements regarding family size for the Project.
- (f) "Event of Default" shall mean those events described in Section 9.
- (g) "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 Affordable Unit is reasonably adaptable and available but as though this Restriction did not exist.

- (h) For Persons or Families of Moderate Income, "Housing Cost" of a person or family purchasing an Affordable 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 Affordable Unit:
 - (i) Principal and interest on a mortgage loan including any rehabilitation loans, and any loan insurance fees associated therewith.
 - (ii) Property taxes and assessments.
 - (iii) Fire and casualty insurance covering replacement value of property improvements.
 - (iv) Property maintenance and repair.
 - (v) A reasonable allowance for utilities (excluding telephone service).
 - (vi) Any homeowner association fees.
 - (vii) Ground rent, if the unit is situated on rented land.

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

- (i) "Notice of Intent to Transfer" shall mean a notice delivered by Developer to the City pursuant to Section 5.
- (j) "Owner" shall mean Developer and any successor in interest of Developer in all or any part of the Affordable Unit.
- (k) "Persons or Families of Moderate Income" shall have the same definition as set forth in Section 50093 of the Health and Safety Code.
- (l) "Proposed Transferee" shall mean an Eligible Person or Family to whom the Developer or any successor in interest of Developer desires and proposes to Transfer the Affordable Unit.
- (m) "Sales Price" shall mean all sums paid by a purchaser to a seller for, or in conjunction with, the acquisition of an Affordable 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.

- (n) "Section" shall refer to sections in the California Health and Safety Code, as amended from time to time.
- (o) "Term" shall be forty five (45) years, commencing on the date of the earlier of the recordation of the Notice of Completion for the Affordable Unit, or the date on which the Affordable Unit is occupied unless a sale occurring under Section 6 applies which may create a shorter term.
- (p) "Transfer" shall mean any sale, assignment, conveyance or transfer, voluntary or involuntary, of any interest in the Affordable 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 Affordable Unit, (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 Affordable Unit is transferred to another party and title remains in the transferor, (vi) a gift of all or any portion of an Affordable Unit, or (vii) any voluntary conveyance of an Affordable 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.
- (q) "Transferee" shall mean any natural person or entity that obtains ownership or possessory rights in the Affordable Unit pursuant to a Transfer.

2. Developer's Acknowledgement of Equity Limitation. Developer hereby acknowledges and agrees that:

(a) Developer understands all of the provisions of this Restriction.

(b) For the Term hereof, Developer hereby subjects the Affordable Units to certain restrictions, and limits the price for which Developer may sell the Affordable Units and the persons to whom Developer may sell the Affordable Units. The resale price limitation, and other provisions contained in this Agreement, restrict the full benefits of owning the Affordable Units. Developer may not enjoy the same economic or other benefits from owning the Affordable Units that Developer would enjoy if this Restriction did not exist.

(c) Developer accepts and agrees to the provisions of this Restriction with the understanding that this Restriction will remain in full force and effect as to the Affordable Units following any Transfer of any Affordable Unit throughout the Term.

(d) Developer acknowledges and agrees that the Proposed Transferees of the Affordable Units will be purchasing the Affordable Units at a discount which is equal to the difference between (i) the Fair Market Value of the Affordable Unit at the close of escrow for the sale to such Proposed Transferee less (ii) the actual Sales Price of the Affordable Unit to such Proposed Transferee ("Developer Discount"). The Developer

Discount shall be also defined herein as the "City Loan". The City Loan shall be repaid to the City by Owner upon an Event of Default hereunder or upon any Transfer which requires the payment of an equity share as described in Section 6 below. Upon any Transfer by the Developer of an Affordable Unit, Developer shall notify the City in writing of the amount of the Developer Discount in connection with any such Transfer, and a deed of trust in a form acceptable to the City shall be recorded by the proposed transferee against the Affordable Unit to secure repayment of the City Loan.

3. Restrictions on Transfer of Any Affordable Unit. OWNER UNDERSTANDS THAT THE DETERMINATION OF THE SALES PRICE OF THE ASSISTED UNIT 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.

4. Transfer of an Affordable Unit. Owner may transfer an Affordable Unit only in strict accordance with the provisions of this Restriction. Specifically, except as set forth in Section 6 herein, Owner may Transfer an Affordable 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 Section 5, except when Section 7 applies. In order to comply with this Section, Owner must calculate the Affordable Housing Cost for the Proposed Transferee of the Affordable Unit in accordance with the definition set forth in Section 1(a) of this Restriction. After calculating the Affordable Housing Cost 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 Section 1(g) of this Restriction do not exceed that Affordable Housing Cost). The calculation of the Sales Price under this Section is illustrated by example in **EXHIBIT B** attached hereto, unless such example is modified or amended by mutual agreement between Developer and the City.

5. Process to Obtain Approval of Transfer of An Affordable Unit. In the event Owner desires to Transfer an Affordable 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. When the Owner identifies a Proposed Transferee to whom Owner wishes to Transfer the Affordable Unit, the following process shall be followed:

(a) Notice to City: Owner shall send to the San Jose Department of Housing (or its successor), at 200 East Santa Clara Street, 12th Floor Tower, San Jose, California 95113 and to the San Jose Department of Public Works Real Estate Division at 200 East Santa Clara Street, 5th Floor Tower, San Jose, 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 Affordable 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 Affordable 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 Developer 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 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 any the request to make an adjustment to the above referenced family size.

(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 Form 2 delivered 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 Developer 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

Developer 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 Affordable 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 Jose for Eligible Persons and Families and shall be in accordance with the provisions of Section 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 Section 11 of this Restriction shall apply with regard to proceeds and this Restriction shall continue to apply to the Affordable Unit subject to foreclosure in accordance with Section 17, except as otherwise required by Fannie Mae or other similar mortgage insurer or secondary purchaser.

(f) Delivery of Documents. Upon the close of the proposed Transfer, the Owner and Transferee shall provide the City with a certified copy of the recorded Assumption Agreement, (a copy of which is attached hereto as Form 3) a copy of the final sales contract, settlement statement, escrow instructions, and any other document which the City or Developer may reasonably request.

(g) Assistance by City. In the event that the Owner desires to locate a Proposed Transferee, the City shall be available, at the Owner's request, to assist the Owner during the process outlined in Section 4(a)-(f) above. Specifically and without limitation, the City shall assist the Owner in identifying a Proposed Transferee, determining whether the Proposed Transferee is an Eligible Family and in calculating the Affordable Housing Cost and the Sales Price for the Proposed Transferee. The City shall have the right to designate a third party to provide such assistance to the Owner. If such a third party is designated by the City, that third party shall have the right to charge a reasonable fee for the assistance provided to the Owner. Developer shall have the right to approve such a designated third party, which approval shall not be unreasonably withheld.

6. Equity Share. In the event there does not exist an Event of Default, and Owner, who is not the Developer, wishes to Transfer the Affordable Unit to a Person or Family who is not an Eligible Person or Family, then Owner can Transfer the Affordable Unit only if, in addition to repayment of the City Loan, a share of the equity from the Affordable Unit is paid to the City in the same percentage as the percentage of the City's Loan to the Fair Market Value of the Affordable Unit at the time of the City Loan (the "Equity Share"). Equity subject to sharing shall be calculated by subtracting the Fair Market Value of the Affordable Unit at the time of the Owner's acquisition of the Affordable Unit from the sales price for a sale to a Person or Family who is not an Eligible Person or Family (less Borrower's Closing Costs and "capital improvements" as such terms are defined herein). When the total amount due to the City under this Agreement, including the Equity Share, is paid, the Agency and City shall remove or cause to be removed this Agreement as a lien on the Affordable Unit, and this Agreement will cease to be a covenant running with the land.

7. 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 Section 7 shall govern the Transfer. Within thirty (30) days of the Transfer, the Transferee shall deliver written notice to the Agency that the Transfer has occurred. If such Transferee is not an Eligible Person or Family, this Transferee shall market the Affordable Unit for rental to an Eligible Person or Family and shall rent the Affordable Unit to an Eligible Person or Family until the Transferee desires to Transfer the Affordable Unit. In all events, the provisions of all Sections of this Restriction shall govern any subsequent transfer of any Affordable Unit.

8. Covenants of Owner. Owner of each Affordable Unit by acceptance of a deed to the Affordable Unit covenants and agrees that, at all time during the Term of this Restriction, its Affordable Unit:

(a) Owner Occupancy. Will be continuously occupied by Owner, except as provided in Section 6 above.

(b) No Rental. Except as provided in Section 7 above, and as otherwise agreed to by the Agency in advance, shall not be rented, subleased, or subject to any other business arrangement whereby consideration shall be paid by any occupant of an Affordable Unit to the Owner of the Affordable Unit; provided, if the Unit is occupied by a Family of 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 Affordable Unit.

9. Default. As to the Affordable Units, the occurrence of any of the following events shall constitute an Event of Default under this Restriction:

(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 this Agreement.

(c) Notice. Failure of Owner to give notice required in Section 5 above.

(d) Breach of Section 7. If and when applicable, a breach of Section 7 hereof.

(e) Further Encumbrance. 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 Affordable Unit as of the date of recordation of the Further Encumbrance, exceeds the appraised value of the Affordable Unit.

(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 Affordable Unit.

(g) Failure to Maintain. The failure of Owner to maintain an Affordable 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 Agency in its reasonable discretion.

Notwithstanding the above, for the purpose of this Restriction, a default by any Owner of an Affordable Unit shall not constitute a default of any other Owner of an Affordable Unit and may not constitute a default of the Developer.

10. Remedies. Upon the occurrence of an Event of Default, the Agency shall have the following remedies:

(a) Specific Performance. The Agency 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. Developer acknowledges that it is the intention of Owner/Developer and the Agency that these provisions be specifically enforceable to maintain the supply of affordable housing for Eligible Persons and Families.

(b) Application to Court. The Agency 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.

(c) Right to Excess Proceeds. In the event the Event of Default is a Transfer in violation of Section 3 above then, in addition to any other remedy which the Agency may have, the Agency shall be entitled to receive a sum ("Excess Proceeds") equal to the amount the Agency would have received if the Transferee had complied with the terms of this Restriction. Any Excess Proceeds shall be due and payable by the Owner to the Agency 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 Excess Proceeds to the Agency shall not terminate this Restriction, which shall continue through the Term hereof.

(d) All Remedies Available and Cumulative. Upon the occurrence of an Event of Default, the Agency or City 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 Agency or the City 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 Sections (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.

11. Restrictions on Condemnation, Insurance and Foreclosure Proceeds. 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 Affordable

Unit, (collectively "Foreclosure"), (ii) an Affordable Unit is destroyed and insurance proceeds are to be distributed to Owner instead of being used to rebuild the Affordable 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 Affordable 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 in the event of a Transfer of the Affordable Unit in compliance with the terms of this Restriction, all such proceeds, in excess of those due to the Owner, shall be paid to the Agency when available to Owner.

12. No Discrimination. The Developer covenants and agrees that with regard to each Affordable Unit there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the 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 Government Code or on the basis of actual or perceived gender identity, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Affordable Unit, nor shall the Owner or any person claiming under or through Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of purchasers and owners of any Affordable Unit.

13. Non-Discrimination Clauses. All deeds made relative to an Affordable Unit shall contain or be subject to substantially the following non-discrimination and non-segregation clauses:

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 any basis listed in subdivision (a) or (d) of Section 12955 of the 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 Government Code or on the basis of actual or perceived gender identity, 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.

14. Covenants Running with the Land. Developer hereby subjects the Affordable Units to the covenants and restrictions set forth in this Restriction. Developer 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 Affordable Units, as the case may be, throughout the Term. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring an Affordable 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 Agency 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 Affordable Units in that the Owner's legal interest in the Affordable Unit 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 Affordable 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 Agency, the City 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 Agency or the City is an owner of any land or interest therein to which such covenants and restrictions relate.

15. Restriction to be Attached. Owner shall attach a copy of this Restriction to any purchase and sale contract (or lease, pursuant to Section 7 above) with respect to any Affordable Unit.

16. Successors, Assigns. The provisions contained in this Restriction shall bind the Developer and each Owner, and shall inure to the benefit of the Agency and the City, either of which shall have the right to enforce this Agreement or any of the terms contained herein and either of which may perform any of the obligations contained herein to be performed by either the Agency or City.

17. Lienor's Remedies. The provisions of this Restriction do not limit the right of any holder of an obligation which is secured by an Affordable Unit, as the case may be, to exercise any of its remedies for the enforcement of any pledge or lien; provided, however, except as may be required by Fannie Mae or other similar mortgage insurer or secondary purchaser, that in the event of any foreclosure, the purchaser (or other transferee) and their successors in interest and assigns and the Affordable Unit, shall continue to be subject to this Restriction.

18. Amendments. The Agency or the City 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 Affordable Unit. This Restriction shall not be amended or modified except upon the written consent of the Agency or the City and the Developer and its successor or designee, and upon the recordation of an amendment hereto duly executed and acknowledged by the Agency or the City and by Owner.

19. 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.

20. Governing Law. This Restriction shall be governed by and construed in accordance with the law of the State of California.

21. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

22. Rescission. Any rescission, partial or otherwise, of this Agreement to remove this Agreement of record against any or all of the Property may be executed by either the Agency or the City and shall be effective upon execution by either entity.

23. Distribution of For-Sale Units. The Affordable Units shall be distributed throughout the Project and not grouped or clustered or otherwise separated from other non-Affordable Units. Developer shall provide a mix of unit types (*i.e.*, number of bedrooms) for the Affordable Units in the same proportion, to the extent possible, as the Project's overall mix of unit types, and shall require that the Affordable Units be of comparable quality with similar amenities available to other non-Affordable Units in the Project excluding any upgrades paid separately for by the buyer of any unit. Owners of the Affordable Units shall have equal access and enjoyment to all common facilities of the Project.

24. Election to Make In Lieu Payment. Pursuant to the Inclusionary Housing Policy, as amended, a private developer shall have the option to pay an in-lieu fee as described in Section II of the Inclusionary Housing Policy in lieu of providing the Affordable Units ("In Lieu Election"). By entering into this Agreement, Developer has elected to either: (1) provide the Affordable Units as required hereunder, or (2) pay an in-lieu fee on or before the date of the sale of the first unit in the Project. The amount of the in-lieu fee shall be determined as provided under the Inclusionary Housing Policy. If Developer fails to pay the in-lieu fee on or before the date of the sale of the first unit in the Project, then Developer shall be deemed to have elected to provide the Affordable Units as required hereunder. If Developer elects to pay the in-lieu fee as provided hereunder, upon payment of the in-lieu fee, the Agency and/or the City shall release this Agreement from the Property.

25. Payment of In Lieu Fee for Fractional Units. If Developer elects to provide the Affordable Units, based on the number of units in the Project and Developer's election in Recital E above, the Developer is required to provide _____ Affordable Units as part of the Project. Since the calculation of the number of Affordable Units results in a fraction of a unit, pursuant to Section II E of the Inclusionary Housing Policy, Developer has the option of either (i) providing _____ (___) Affordable Units within the Project at the affordable price, or (ii) providing _____ (___) Affordable Units and making an in-lieu payment to the City of San Jose Department of Housing in an amount equal to the percentage represented by the fractional unit (0.____) multiplied by the Fractional Unit In-Lieu Fee as defined below. "Fractional Unit In-Lieu Fee" shall be defined as the amount calculated by determining the total in-lieu fee for the Project as provided under the Inclusionary Housing Policy divided by the total number of Affordable Units required for the Project under the Inclusionary Housing Policy. Payment of the in-lieu fee for a fractional unit shall be made on or prior to the date of the sale by Developer of the first unit in the Project. If Developer fails to pay the in-lieu fee by the date of the sale of the first unit in the

Project, then Developer shall be deemed to have elected to provide the full Affordable Unit as required hereunder.

IN WITNESS WHEREOF, the Developer has executed this Restriction as of the date first written above.

DEVELOPER

By: _____

EXHIBIT A

Description of Property

[To Be Attached]

EXHIBIT B

MODERATE INCOME STANDARD: CALCULATION OF MAXIMUM SALES PRICE

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 Affordable Unit, pursuant to the provisions of Health and Safety Code section 50052.5. The calculation in this Exhibit is based on the following definition of household size: the defined household size is equal to one person greater than the number of bedrooms in the unit.

Assumptions for calculating the maximum Sales Price:

1. Unit Size = _____
2. Family Size = _____
3. Interest Rate** = _____
4. Property taxes and assessments (per month) = _____
(based on actual tax rate with value based on the Market Price of unit)
5. Actual insurance premiums (per month) = _____
(if not included in homeowner's association dues)
6. Property maintenance and repair (per month)*** = _____
(if not included in homeowner's association dues)
7. Project's budgeted Homeowner's Association Dues = _____
8. Utility allowance (per month)**** = _____
9. Mortgage Insurance Premium, if any = _____

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, the current maximum income level for a Person or Family of Moderate Income at 120% of the area median income with a family size of 4 for example is \$126,600.00, effective March 2004. 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.

** The interest rate shall be based on a 5% down, 30 year, fully amortizing fixed rate mortgage that is widely available in the current owner occupied real estate loan market.

*** 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 MAXIMUM SALES PRICE
MODERATE INCOME LEVEL:

I. Calculate monthly Affordable Housing Cost:

\$116,050.00	[110% of Area Median Income adjusted for family size (4 person household \ 3 bedroom unit)(\$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] *less:*
- B. [-]_____ [Property taxes and assessments (per month)]
- C. [-]_____ [Insurance premiums (per month)]
- D. [-]_____ [Utility allowance (per month)]
- E. [-]_____ [Mortgage Insurance Premiums (per month)]
- F. [-]_____ [Property maintenance and repair (per month)]
- G. [-]_____ [Homeowner's Association dues (per month)] *equals:*
- H. _____ Maximum Monthly Mortgage Payment

III. Calculation of Sales Price: The Sales Price is calculated by adding the Maximum Mortgage Amount to the down payment. The Maximum Mortgage Amount will be based on a fixed rate, 5% down, 30 year, fully amortizing, widely available owner occupied loan, and the above calculated Maximum Monthly Mortgage Payment allowable. The calculation is as follows:

1. At a _____% interest rate, and a loan term of 30 years, the Maximum Monthly Mortgage Payment (H.) of \$_____ will allow a Maximum Mortgage Amount of \$_____.

2. The Maximum Mortgage Amount of \$_____divided by .95 equals a Sales Price of \$_____. For purposes of calculating the Sales Price, the down payment shall be deemed to be 5%.

(Note: The above steps requires the use of a financial calculator.)

FORM 1

NOTICE OF INTENT TO TRANSFER

From: _____ ("Owner")
_____ ("Owner") (collectively, "Owner")

To: City of San Jose, Housing Department

Re: _____ (street address)
San Jose, California 95_____, (the "Property")

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

Owner desires to [check one]:

_____ attempt to locate an Eligible Person to purchase
the Property at Affordable Housing Cost
or

_____ attempt to locate a non Eligible Person to purchase the Property and
pay any required Equity Share to the City

If the Owner wants to find the Eligible Person, the Owner has ninety (90) days to find the Eligible Person 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 to buy the Property?

_____ Yes
_____ No

Signature of Owner

Day time phone number of Owner

Signature of Owner

Day time phone number of Owner

Date: _____

FORM 2

APPROVAL REQUEST

_____, 2002

San Jose Department of Housing

Attention: Housing Director

Re: Request for Approval of Proposed Transferee

To Whom It May Concern:

The undersigned is/are the owner of real property in San Jose, located at _____ (the "Property"), of which certain units were financed by the City of San Jose ("City") with 20%-Funds.

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

1. The Proposed Transferee is/are:

Names: (1) _____
(2) _____
(3) _____

Current Address: (1) _____
(2) _____
(3) _____

Telephone No.: (1) _____(home/work)
(2) _____(home/work)
(3) _____(home/work)

2. The terms of the Proposed Transfer are:

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

Choose one:

Either (i) Fair Market Value of: \$_____

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 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) Price 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:

Cash down payment \$_____

First (1st) loan \$_____

Second (2nd) loan \$_____

Other (describe): _____ \$_____

Total, Sales Price: \$_____

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

First (1st) Loan:

Loan amount: \$_____

Monthly payments: \$_____

Interest rate _____%

If variable interest, describe adjustment mechanism: _____

Due date: _____

Balloon payment amount: \$_____

Points and fees: \$_____

Lender (name): _____

Lender's address: _____

Second (2nd) Loan:

Loan amount: \$_____

Monthly payments: \$_____

Interest rate _____%

If variable interest, describe adjustment mechanism: _____

Due date: _____

Balloon payment amount: \$_____

Points and fees: \$_____

Lender (name): _____

Lender's address: _____

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

(f) The monthly Housing Cost to be paid by the Proposed Transferee:

First (1st) loan monthly payment \$_____

Second (2nd) loan monthly payment \$_____

Other loans, total monthly payment(s) \$_____

Taxes (1/12 of yearly taxes):	\$ _____
Utilities	\$ _____
Maintenance (estimated monthly):	\$ _____
Insurance (1/12 of yearly premium):	\$ _____
Homeowner's dues (monthly):	\$ _____
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: (1) \$ _____; (2) \$ _____; (3) \$ _____.

(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]

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

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.

6. A true and correct copy of the agreement between the owner and the Proposed Transferee is attached hereto.

7. The Owner and Proposed Transferee each hereby certify 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.

8. The Owner and Proposed Transferee each hereby also certify 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 Developer 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 Developer 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.

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

City, State, Zip Code

Date:_____

Proposed Transferee(s):

signature

signature

name [print]

name [print]

telephone

street address

City, State, Zip Code

Date:_____

WHEN RECORDED RETURN TO:

ASSUMPTION AGREEMENT

This Assumption Agreement is entered into by:

The City of San Jose ("City") and

_____ ("Seller")

_____ ("Buyer")

Date of Agreement: _____

FACTS

- A. Seller is the owner of property commonly known as _____, San Jose, California (the "Property").
- B. The Property is subject to 45-Year Affordability Restrictions which restricts the purchase price that can be charged for the Property and the persons to whom the Property can be sold (the "Restriction").
- C. Buyer desires to purchase the Property. Buyer understands that the Restriction will limit the purchase price they can receive when they sell the Property and will limit the people to whom they can sell the Property.
- D. Buyer is able to purchase the Property because the purchase price of the Property is less than other similar property without Restrictions. For this reason Buyer desires to purchase the Property.
- E. In order to purchase the Property, Buyer must assume all obligations of Seller under the Restriction and must agree to be bound by all the provisions in the Restriction.

NOW, THEREFORE, Buyer agrees as follows:

1. Acknowledgment of Limitation on Future Sales Price. BUYER UNDERSTANDS THAT WHEN BUYER DESIRES TO SELL OR TRANSFER THE PROPERTY THAT THE SALES PRICE CAN BE DETERMINED ONLY AT THE TIME OF THE PROPOSED TRANSFER TAKING INTO CONSIDERATION INTEREST RATES, PROPERTY TAXES AND OTHER FACTS THAT CANNOT BE PREDICTED ACCURATELY AND THAT THE SALES PRICE MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR PROPERTY THAT IS NOT ENCUMBERED WITH THE RESTRICTION. BUYER ALSO ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALE PRICE THE PRIMARY OBJECTIVE OF THE CITY AND THE RESTRICTION IS TO PROVIDE HOUSING TO ELIGIBLE PERSONS OR FAMILIES AT AFFORDABLE HOUSING COST. THE SALES PRICE, WHEN BUYER DECIDES TO SELL THE PROPERTY, ALMOST CERTAINLY WILL BE LESS THAN OTHER SIMILAR PROPERTIES WHICH HAVE NO RESTRICTION.

2. Understand Restriction. Buyer represents that they have read the Restriction and fully understand the Restriction.

3. Owner Occupancy. Buyer agrees that they will occupy the Property as their primary residence and that they will comply with all provisions of the Restriction relating to occupancy of the Property.

4. Assumption of Obligations Under Restriction. As a material consideration to the City in approving Buyer, Buyer hereby assumes all obligations of Seller, as they relate to the Property, under the Restriction. Buyer agrees to be bound by all duties and obligations of Seller in the Restriction and agrees to comply with all provisions thereof for the term of the Restriction. Buyer agrees, as set forth above, in order to take advantage of the purchase price for which the Property is offered.

IN WITNESS WHEREOF, the parties have executed this Assumption Agreement to be effective on the date of recordation of a deed conveying the Property to Buyer.

Date: _____ Buyer

Date: _____ Buyer

RD:TM:MN
3/4/2003

Based on information provided by Seller and Buyer and on Buyer's execution hereof, the City of San Jose hereby approves Buyer to purchase the Property.
City of San Jose
Housing Department

Date: _____

By: _____

Its: _____

