

RECORDING REQUESTED BY

Chicago Title Company
Escrow # FWPS-4475180100 -CM

AND WHEN RECORDED MAIL TO

CITY OF MENLO PARK
c/o CITY CLERKS OFFICE
701 LAUREL STREET
MENLO PARK, CA 94025

SPACE ABOVE THIS LINE FOR RECORDER'S USE _____

**AGREEMENT AND DEED RESTRICTIONS
REGARDING RESALE CONTROLS
FOR BELOW MARKET RATE PROPERTY**

This Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property is junior and subordinate to a first Deed of Trust in favor of **Boston Private Bank and Trust Company** in the amount of **\$XXX,XXX.**

NOTICE: THIS DOCUMENT IS A LEGALLY BINDING AGREEMENT WHICH IMPOSES SEVERAL OBLIGATIONS AND RESTRICTIONS REGARDING THE USE AND TRANSFER OF YOUR PROPERTY. READ IT CAREFULLY.

This Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property ("Agreement") is entered into as of this **20th day of June, 2022**, by and between the CITY OF MENLO PARK ("City") and **NAME, an unmarried woman and NAME, an unmarried woman as Joint Tenants** ("Owner").

RECITALS

WHEREAS, the City adopted a Below Market Rate Housing Program, codified in the Menlo Park Municipal Code at Chapters 16.96 and 15.36 (the "Ordinance") and governed by and the Below Market Rate Housing Program Guidelines (the "Guidelines"), to provide housing opportunities to persons with low or moderate incomes to purchase homes at prices which are below market rates prevailing in the community; and

WHEREAS, the intent of the City is to preserve the number and availability of affordable homes in the program for persons with low or moderate incomes for as long as possible;

NOW, THEREFORE, in consideration of the benefits received by the Owner, Owner and City agree as follows:

1. **Premises.** The real property which is the subject of this Agreement is commonly known as **PROPERTY ADDRESS, Menlo Park, CA 94025** more fully described in the legal description attached hereto and incorporated herein by reference as Exhibit "A". Said real property ("Premises") is hereby designated as a Below Market Rate Unit ("BMR unit") and shall be subject to the terms and conditions herein set forth, as well as the applicable provisions of the Ordinance and the Guidelines,

together with any amendments which may be adopted from time to time.

2. Supersession. This Agreement shall supersede any and all resale agreements, deed restrictions and other similar conditions and/or restrictions previously imposed on the Premises whether or not such previous agreements or restrictions were recorded.

3. Misrepresentation of Fact as a Material Breach. Owner hereby declares and agrees that the financial, residence address, employment, occupancy, or any other information previously provided to the City for the purpose of qualifying to purchase the Premises was true and correct at the time it was given and remains true and correct as of the date of this Agreement, or, in the alternative, the financial and other information has been updated to be true and correct today. Owner further understands that any material misstatement or misrepresentation shall be deemed to be a material breach of this Agreement and shall be grounds for declaring a default, terminating the Agreement, or seeking other such relief and remedies as are appropriate under the circumstances.

4. Occupancy. The Owner must occupy the Premises as their primary residence and remain in residence for the duration of the Deed Restrictions (55 years). "Occupy" shall mean residing in the Premises for at least 10 months in every 12 month period. Owner may not terminate occupancy of the BMR property and allow the property to be occupied by a relative, friend, or tenant. Owner's failure to maintain a homeowner's property tax exemption shall be construed as evidence that the BMR property is not Owner's primary residence. As necessary, the City may request that Owner provide evidence that their units are currently occupied by them as their primary residences. Examples of such evidence may include current copies of any of the following: homeowner's insurance, car/vehicle registration, and utility bills.

5. Conditions of Transfer. For purposes of this Agreement, "transfer" shall mean any voluntary or involuntary sale, assignment or transfer of ownership or any interest in the Premises, including, but not limited to, a fee simple interest, joint tenancy interest, or life estate. A "transfer" shall also include the recording of one or more deeds of trust against the Premises to secure one or more loans or to refinance an existing loan. Until such time as the City's right of first refusal is exercised, waived, or expired, there shall be no transfer of the Premises to any person or entity except with the express written consent of City or its designee, which consent shall be consistent with the City's goal of creating, preserving, maintaining, and protecting housing in Menlo Park for persons of low and moderate income. Any transfer of the Premises shall be subject to the conditions set forth in this Agreement, and any and all conditions contained in the Ordinance and the Guidelines, including any amendments thereto which may be adopted from time to time, as long as these amendments do not have a materially adverse affect on the interests of Owner.

A. Prohibited Transfer/Default. Any transfer which is not in substantial compliance with the above conditions shall be deemed a "Prohibited Transfer". Upon receipt of any evidence of a Prohibited Transfer or any other violation of the terms of this Agreement, City shall give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within ten (10) days after the date of the notice, or within such further time as City determines is necessary to correct the violation, City may declare a default under this Agreement. Upon the declaration of a default, City may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate under the circumstances.

B. Permitted Transfer. Notwithstanding the foregoing, the following transfers are exempt from City's right of first refusal and do not re-start the fifty-five (55) year deed restriction clock (each, a "Permitted Transfer"):

- (i) Transfer by devise or inheritance to Owner's spouse;
- (ii) Transfer of title by an Owner's death to a surviving joint tenant, tenant in common, or a surviving spouse of community property (that is, another owner already on title);
- (iii) Transfer of title to the Owner's spouse as part of divorce or dissolution proceedings;
- (iv) Transfer of title or an interest in the property to the Owner's spouse in conjunction with marriage;
- (v) Transfer to Fannie Mae through foreclosure or its acceptance of a deed in lieu of foreclosure.

In the event of a Permitted Transfer, an instrument shall be executed, acknowledged and recorded by the transferee containing the following covenant:

"This property is subject to the terms and provisions of that certain 'Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property'. Transferee, on behalf of transferee, and transferee's successors and assigns, covenants and agrees to be bound by, and to perform in accordance with, such Agreement, and to include this covenant in any further transfer of the property."

C. Conditional Permitted Transfers. Owner may transfer the Premises to a child or other relative by devise or inheritance provided that: a) Owner provides written notice to the City with the transferee's name, contact information, and household income information and the City consents; b) the transferee household is an eligible, qualifying household under the BMR Guidelines at the time of the transfer; c) the transferee signs a new Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property and Performance Deed of Trust and Security Agreement in a form acceptable to City and occupies the Premises. In the event that the transferee is not an eligible, qualifying household, the transferee may inherit the Premises but must offer the Premises for sale in accordance with Paragraph 11 below within ninety (90) days of the recording of the deed or probate order conveying title to the Premises to transferee. Failure to comply with the provisions of this Paragraph 5.C shall constitute a Prohibited Transfer.

6. Prohibition on Leasing. Owner may not lease or rent the Premises, or enter into any contract transferring physical possession of the Premises, for any period of time without the express, prior, written permission of City, and such transfer shall be subject to such further conditions as may be necessary to ensure compliance with the purpose and intent of the City's affordable housing program. Transferee shall execute a rental agreement or lease in a form acceptable to City under the terms of which the transferee shall assume all of the obligations and duties and agree to be bound by the restrictions of this Agreement.

7. Senior Lien Holder. Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage ("First Deed of Trust") held by a Senior Lien Holder and/or a federally or state chartered bank or savings and loan association qualified to do business in the State of California which mortgage was obtained at the time owner purchased the Property ("Senior Lien Holder"). City and Owner acknowledge and agree that this Agreement is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust held by a Senior Lien Holder

including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by the Owner under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust, or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Premises. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the Premises to low or moderate income households or otherwise restricting the Owner's ability to sell the Premises shall have no further force or effect on subsequent owners or purchasers of the Premises. Any person, including his or her successors or assigns (other than the Owner or a related entity of the Owner), receiving title to the Premises through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Premises free and clear from such restrictions. Further, if the Senior Lien Holder acquires title to the Premises pursuant to a deed in lieu of foreclosure, the lien of this Agreement shall automatically terminate upon the Senior Lien Holder's acquisition of title, provided that (i) the City has been given written notice of a default under the First Deed of Trust, and (ii) the City shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the 60-day period provided in such notice sent to the City. Any and all deeds of trust recorded against the Premises, other than the First Deed of Trust held by the Senior Lien Holder and/or such Senior Lien Holder's successor or assignee of its interest, shall be subordinate and subject to the terms and provisions of this Agreement.

8. Attorneys' Fees. Owner hereby agrees to reimburse City the full cost and expense, including staff time and attorneys' fees and costs, incurred by City in an effort to correct any default or enforce any violation of the terms of this Agreement, and Owner further understands and agrees that if such funds are not reimbursed, City may deduct same from the proceeds upon resale of the Premises.

9. Covenant Running with the Land. The terms and conditions set forth herein are intended to run with the land and shall bind Owner and all successors, heirs, grantees and assigns, unless and until superseded by subsequently recorded Agreements. These terms and conditions shall be made part of each deed subsequently recorded and shall bind each successor in interest until the earlier of (a) fifty-five (55) years from the date of recordation, or (b) the recordation of a subsequent and superseding Agreement. This Agreement and the covenants contained herein shall survive delivery of any transfer of the Premises.

10. Right of First Refusal. Except as provided herein, Owner hereby grants and gives to the City of Menlo Park, or another governmental entity or tax-exempt nonprofit organization to whom City may assign the rights set forth in this Paragraph 10 ("Assignee"), a right to purchase the Premises solely for resale as a BMR unit pursuant to the terms of the City's Below Market Rate Housing Program, under conditions set forth below. City, at its sole discretion, may also assign this right to an individual buyer who meets the City's eligibility qualifications to participate in the City's Below Market Rate Housing Program ("Eligible Buyer"). City shall select an Eligible Buyer from the BMR Purchase and Rental Interest List or the BMR Purchase Legacy List or, if neither list exist, City shall market the Premises and shall have the right to retain a realtor to locate Eligible Buyers. City reserves the right to reassign the right to another Eligible Buyer in the event the initial Eligible Buyer fails or is unable to complete the transaction. Notwithstanding the foregoing, no assignment or reassignment of this right shall extend any time limits for performance under this Agreement without the mutual, express and written agreement signed by both the Owner and any assignee.

11. Resale Procedures.

A. Notice of Offer to Sell. Whenever the Owner no longer desires to own the Premises, Owner shall notify City of their intent to offer the property for sale in accordance with the

terms of this Agreement. Such notice shall be in writing, and must be sent by certified mail through the United States Postal Service, addressed to the Community Development Director, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025. Owner's offer to sell may be withdrawn by Owner, provided that notice of withdrawal has been received by City or its designee, in writing, prior to acceptance by City or its designee.

B. Acceptance. City, its designee or Assignee shall have sixty (60) days from the date of receipt of Owner's notice to exercise the right of first refusal to accept Owner's offer to sell the Premises. This acceptance shall be in writing, shall indicate that City believes the Premises are in salable condition in accordance with Paragraph 18, state the purchase price for the Premises as determined in Paragraph 14, and whether City is exercising the right of first refusal on its own behalf or has located an Eligible Buyer, and shall be sent by certified mail through the United States Postal Service, addressed to the Owner of record at the official address of the Premises. For purposes of fulfillment of the terms of this procedure, the notice of intent to sell the Premises shall be deemed to be an offer to sell, and the exercise of the right to purchase by the City or its designee or Assignee shall be deemed to be an acceptance of that offer. Acceptance by City or its designee or Assignee shall constitute a legally binding contract for the transfer of title, and once accepted, the offer to sell may not be withdrawn without the express, written consent of the party who accepted the offer. The Owner is responsible for all fees and expenses related to the sale of the unit, including but not limited to real estate commissions and inspections.

C. Escrow. Within sixty (60) days of the date of acceptance, an escrow account shall be opened by the City or its designee or Assignee. At the closing, a title insurance company approved by City shall issue to the City, its designee, or Assignee, or the Eligible Buyer a CLTA owner's title insurance policy, in a form reasonably approved by City and subject only to such title exceptions as reasonably approved by City. Taxes and assessments shall be prorated as of the date of closing. Taxes must be paid current as of the closing date and all liens must be satisfied and removed from title unless City expressly agrees otherwise in writing. The City, its designee, or Assignee or the Eligible Buyer shall pay the cost of the title insurance. Closing shall utilize the form of escrow agreement customarily used by such title company for residential transactions with the City, modified to the extent necessary to conform to this transaction. If the Premises are sold to an Eligible Buyer, prior to the Closing, City and the Eligible Buyer shall deliver an executed Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property and a Performance Deed of Trust and Security Agreement in a form acceptable to City. The Eligible Buyer must also certify at Closing that he or she will occupy the Premises as his or her primary residence. At the Closing, the Owner shall convey title to the City, the Assignee, or the Eligible Buyer by grant deed.

City reserves the right, at any time during this process, to subsequently assign its right to purchase to an Eligible Buyer. In no case shall the time between Owner's receipt of City's acceptance of an offer to sell and the date of close of escrow exceed one hundred eighty (180) days, unless both parties mutually agree, in writing, to extend that date, or if for any reason the time periods herein are tolled.

12. Termination of Conditions. If the City or its designee or Assignee does not accept an offer of sale within sixty (60) days of the date of receipt of Owner's notice, or escrow for the purchase of the Premises is not closed within one hundred eighty (180) days of the date the offer has been accepted, all restrictions, resale controls, and other terms of this Agreement shall cease and become null and void and of no further effect as to the Premises, unless the time period has been tolled, or extended by mutual, written agreement of the parties.

13. Owner's Obligation to Cooperate. At all times commencing on the date that the Owner provides the notice set forth in Paragraph 11.A, Owner shall ensure that the Premises are clean and in

good repair, and available to be shown to prospective Eligible Buyers. Owner shall cooperate with the City of Menlo Park and their respective officers, employees and representatives. Failure to comply with these conditions shall be deemed a material breach of Owner's obligations pursuant to the terms of this Agreement, and upon determination by the City that Owner has failed to comply with any of the above conditions, City shall notify Owner that the time periods stated herein shall be tolled, and the applicable time periods extended accordingly, until Owner has complied with all of the conditions of this Agreement. Acts by Owner which shall be deemed to be a breach of this obligation include, but are not limited to, failure to make the Premises available for showing to prospective Eligible Buyers upon reasonable notice, willful or deliberate actions to dissuade prospective buyers from purchasing the Premises, and failure or refusal to return telephone calls, complete forms, provide required reports, or perform other actions ordinarily required by a party to a real estate transaction in a timely manner. In addition to tolling the applicable time periods, the City may pursue any other remedies for breach based upon this paragraph.

14. Purchase Price. The purchase price shall be paid in cash at the close of escrow or as may be otherwise provided by mutual agreement of buyer and seller. The purchase price of the Premises shall be **fixed at the lower amount** as determined by using the following two methods:

A. Fair Market Value. City or its designee or Assignee shall have an appraisal made by an appraiser of its choice to establish the fair market value. The Owner, at his or her own expense, may also have an appraisal made by a qualified appraiser of Owner's choice to establish the market value. If Owner elects to obtain their own appraisal, the time period during which the City has the option to perform pursuant to this Agreement shall be tolled for the period of time between the time the City obtains an appraisal and Owner submits a separate appraisal. If an agreement cannot be reached as to the fair market value, the average of the two appraisals shall be deemed the market price, unless the difference between the two appraisals is greater than ten (10) percent of the amount of the higher appraisal, in which case City has the option of requesting a third appraisal be conducted by a qualified appraiser agreed upon by both City and Owner, who will make an independent appraisal without knowledge of the results of the first two appraisals. The amount of the first two appraisals which is closer to the amount determined by the third appraiser shall be deemed the fair market value for purposes of this Agreement.

B. Adjusted by Consumer Price Index. Base Price: **\$XXX,XXX (ORIGINAL SALE PRICE)** plus an amount, if any, to compensate for any increase in the cost of living during Owner's ownership of the Premises as measured by one-third (1/3) of the Consumer Price Index, All Urban Consumers, for the San Francisco-Oakland-San Jose area, published by the US Department of Labor, Bureau of Labor Statistics. For that purpose, the Index prevailing on the date of the recorded purchase by the selling Owner of said Premises shall be compared with the latest Index available on the date of receipt by City of notice of intent to sell. One-third (1/3) of the percentage increase in the Index during Owner's ownership of the Premises, if any, shall be computed and the base price shall be increased by that percentage; provided, however, that the price shall in no event be lower than the purchase price paid by the selling Owner when that Owner purchased the Premises. The purchase price shall be adjusted to include the amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, minus any costs necessary to bring said unit into conformity with all applicable provisions of the Ordinance and the Guidelines.

In establishing the purchase price under either method, City shall also consider homeowners' dues, insurance, and taxes.

15. Wood Destroying Pests and Organisms. Owner shall bear the expense of providing a current written report of an inspection by a licensed Structural Pest Control Operator. All work recommended in said report to repair damage caused by infestation or infection of wood-destroying

pests or organisms found and all work to correct conditions that caused such infestation or infection shall be done at the expense of the Owner. Any work to correct conditions usually deemed likely to lead to infestation or infection of wood-destroying pests or organisms, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of the Owner, and such work shall be done only if requested by the buyer and then at the expense of the buyer.

16. Real Estate Transfer Disclosure Statement. Owner is obligated to provide the City with a full disclosure of the condition of the premise under Civil Code Section 1102, Et Seq. The City will provide the Owner with a Real Estate Transfer Disclosure form which shall be completed by the Owner and submitted to the City with the Owner's notice of intent to sell. The Owner shall cure all noted deficiencies in accordance with Paragraph 18.

17. Improvements. The adjusted price described in Paragraph 14.B above shall be increased by the value of any substantial structural or permanent fixed improvements which cannot be removed without substantial damage to the Premises or substantial or total loss of value of said improvements, and by the value of any appliances, fixtures, or equipment which were originally acquired as part of the Premises by Owner; provided that such price adjustment for replacement appliances, fixtures, or equipment shall be allowed only when the expenditure is necessitated by the non-operative or otherwise deteriorated condition of the original appliance, fixture, or equipment.

A. If at any time of replacement the original appliance, fixture, or equipment had in excess of twenty percent (20%) of its original estimated useful life remaining, Owner shall document to the City's satisfaction the condition of the appliance, fixture, or equipment which necessitated its replacement. A written statement from a certified repair person can satisfy this requirement.

B. No such price adjustment shall be made significantly in excess of the reasonable cost to replace the original appliance, fixture, or equipment with a new appliance, fixture, or equipment of comparable quality as hereinafter provided.

(1) No such adjustment shall be made except for improvements, appliances, fixtures, or equipment made or installed by the selling Owner.

(2) No improvements, appliances, fixtures, or equipment shall be deemed substantial unless the actual initial cost thereof to the Owner exceeds one percent (1.0%) of the purchase price paid by the Owner for the Premises; provided that this minimum limitation shall not apply in either of the following situations:

(a) Where the expenditure was made pursuant to a mandatory assessment levied by the homeowners association for the development in which the Premises is located, whether levied for improvements or maintenance to the Premises, the common area, or related purposes.

(b) Where the expenditure was made for the replacement of appliances, fixtures, or equipment which were originally acquired as part of the Premises by Owner.

C. No adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless the Owner shall present to the City valid written documentation of the cost of said improvements. The value of such improvements by which the sale price shall be adjusted shall be determined as follows:

(1) The value of any improvement, appliance, fixture, or equipment, the original cost of which was less than Five Thousand Dollars (\$5,000), shall be the depreciated value of the improvement, appliance, fixture, or equipment calculated in accordance with principles of straight-line depreciation applied to the original cost of the improvement, appliance, fixture, or equipment based upon the estimated original useful life of the improvement, fixture, or equipment.

(2) The value of any improvement, appliance, fixture, or equipment, the original cost of which was Five Thousand Dollars (\$5,000) or more, shall be the lesser of the appraised value of the improvement, appliance, fixture, or equipment when considered as an addition or fixture to the Premises (i.e., the amount by which said improvement, appliance, fixture, or equipment enhances the value of the Premises), or the depreciated value of the improvement as described in C.(1) above, at the time of sale. The appraised value shall be determined in the same manner as the market value of the Premises in Method A above.

(3) On January 1, 1988 and every two years thereafter, regardless of the date of execution or recordation hereof, the amount of Five Thousand Dollars (\$5,000) referred to in paragraphs (1) and (2) immediately above shall be automatically adjusted for the purpose of those paragraphs in the following manner. On each adjustment date, the Consumer Price Index for San Francisco-Oakland area published by the US Department of Labor, Bureau of Labor Statistics ("Index") prevailing on January 1, 1988, shall be compared with the Index prevailing on the date of recordation of this Agreement. The percentage increase in the Index, if any, shall be computed and the sum of Five Thousand Dollars (\$5,000) shall be increased in the same percentage. In no event shall the sum be reduced below Five Thousand Dollars (\$5,000).

(4) No price adjustment will be made except upon presentation to the City of written documentation of all expenditures made by Owner for which an adjustment is requested.

D. Notwithstanding any other provision herein, no adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless said improvements were completed with required permits and in accordance with applicable provisions of the municipal code. Moreover, no adjustment shall be made for any improvements, appliances, fixtures, or equipment which were installed or completed in violation of any applicable provision of the homeowners' association by-laws, Covenants, Conditions and Restrictions (CC&Rs), or other similar restrictions or regulations.

18. Deferred Maintenance. Any purchase price determined through the use of this method shall be adjusted by decreasing said price by an amount to compensate for deferred maintenance costs, which amount shall be determined in the following manner. Upon receipt of notice of Owner's intent to sell, City or its designee or Assignee shall be entitled to inspect the Premises. City or its designee or Assignee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire, or housing codes or any other provisions of Title 12 of the Menlo Park Municipal Code exist and that the Premises are in salable condition as determined in the reasonable discretion of the City Manager.

19. Property Deficiency. In the event deficiencies are noted, the City or its designee or Assignee shall obtain estimates to cure the deficiencies. The Owner shall cure the deficiencies in a reasonable manner acceptable to City or its designee or Assignee within sixty (60) days of being notified of the results of the inspection, but in no event later than close of escrow. Should Owner fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of City, its designee or Assignee, escrow may be closed, title passed and money paid to the selling Owner, subject to the condition that such funds as are necessary to pay for curing such deficiencies (based upon written estimates obtained by City, its designee or Assignee), shall cause such deficiencies to be cured, and upon certification by City of completion of work, escrow holder shall utilize such funds to pay for said

work. Any remaining funds shall be paid to the selling Owner. No other payment shall be due said Owner.

20. Non-Liability of City. In no event shall City become in any way liable to Owner, nor become obligated in any manner, by reason of the assignment of its right to purchase, nor shall City be in any way obligated or liable to Owner for any failure of City's designee, Assignee, or Eligible Buyer to consummate a purchase of the Premises or to comply with the terms of any purchase and sale agreement. Nothing in this Agreement shall be construed to obligate City to purchase any unit in the event that an Eligible Buyer fails to complete actions to close escrow.

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

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

21. Security; Default; Remedies.

A. Security. As security for the performance of this Agreement, Owner has delivered the Performance Deed of Trust and Security Agreement dated ____, to be recorded concurrently herewith ("City Deed of Trust").

B. Event of Default. The following shall be an Event of Default:

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

(2) Any actual, attempted or pending Prohibited Transfer of the Premises or of any estate or interest therein, if the violation is not corrected to the satisfaction of the City within ten (10) days after written notice by the City, or within such further time as City determines is necessary to correct the violation;

(3) A lease of the Premises without City's prior written consent;

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

(5) Commencement of a judicial foreclosure proceeding regarding the Premises;

(6) Execution by Owner of a deed in lieu of foreclosure transferring ownership of the Premises;

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

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

C, Remedies. If there is an Event of Default, City shall have the remedies set forth in the City Deed of Trust, in addition to any other remedies at law or equity, including without limitation specific performance, declaratory relief, or injunctive relief. With respect to Paragraph 21.B (4) through (6), City shall also have the remedies set forth in Paragraph 22.

22. Default Under a Mortgage and Foreclosure. Owner covenants to cause to be filed for record in the Office of the Recorder of the County of San Mateo a request for City to receive a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering said Premises pursuant to Section 2924(b) of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to the City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025. Any notice of sale given pursuant to Civil Code Section 2924(f) shall constitute a notice of intent to sell hereunder and City may exercise its preemptive right prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure. In the event Owner fails to file such request for notice, City's right to purchase shall run from the date City obtains actual knowledge of a sale or proposed sale. City or its designee or assignee shall have the right to cure any such notice of default. The exercise of such right to cure shall in no way affect the operation of the notice of default as a notice of intent to sell by Owner. City, its designee or assignee, shall be entitled to recover all costs incurred in curing such default from Owner. Such costs shall be paid through escrow from the proceeds of sale if the sale is consummated. If the sale is not consummated and Owner retains ownership of the Premises, City, its designee or assignee, shall be entitled to recover its costs directly from Owner. None of the foregoing shall be interpreted to impair the right of the FNMA (Fannie Mae) to take legal action under the terms of its First Deed of Trust or to require FNMA to send default or foreclosure notice to any third party. In the event City fails to exercise its preemptive rights to purchase or prevent foreclosure or trustee's sale, a completed action of foreclosure or trustee's sale shall render this Agreement and the restrictions imposed thereby to be null and void and of no further force or effect. In the event City elects not to exercise its right to purchase upon default, any surplus to which Owner may be entitled pursuant to Code of Civil Procedure Section 727 shall be paid as follows: That portion of surplus (after payment of encumbrances), if any, up to but not exceeding the net amount that Owner would have received after payment of encumbrances under the formula set forth above had City exercised its right to purchase the Premises on the date of the foreclosure sale, shall be paid to Owner on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the City in order to compensate the City for the loss of the BMR unit and to preserve the purposes of the City's Below Market Rate Housing Program.

23. Entirety of Agreement. This Agreement comprises the entire agreement between the

parties, and no other terms or conditions shall be deemed to apply, unless by a mutually executed, written amendment, modification or superseding agreement which references this Agreement and is recorded in the Official Records. Owner covenants that he or she has not, and will not execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that in any event, Owner understands and agrees that this Agreement shall control the rights and obligations between and among the parties and respective successors.

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

25. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

26. Distribution of Insurance and Condemnation Proceeds. Except as may be required to satisfy the first claim of the FNMA pursuant to the Community Partnership Program, in the event that the Premises are condemned or destroyed (or in the event that the Premises consist of a unit in a condominium project and the condominium project is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild), if proceeds thereof are distributed to Owner; or in the event of termination of the condominium, liquidation of the association and distribution of the assets of the association to the members thereof, including Owner, any surplus of proceeds so distributed remaining after payment of encumbrances of said Premises shall be distributed as follows: That portion of the surplus up to but not to exceed the net amount that Owner would have received under the formula set forth above had City exercised its right to purchase the Premises on the date of the destruction, condemnation valuation date, or liquidation, shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to City.

27. Non-waiver. Any waiver of any term or provision of this Agreement must be in writing. With the exception of the City's right to exercise a right of first refusal to purchase the Premises, pursuant to Paragraph 10 hereinabove, the failure of the City to take an action to enforce a right or to seek a remedy under the terms and conditions of this Agreement shall not be deemed to be a waiver by the City to take such action or enforce any rights it may otherwise have pursuant to this Agreement.

28. Compliance with the Menlo Park Municipal Code. It is the purpose and intent of this Agreement to fulfill and be consistent with the requirements set forth in the Ordinance and the Guidelines, which are incorporated by reference herein, as presently written and as amended from time to time hereafter. In the event of a discrepancy or conflict between a particular provision of this Agreement and any provision of the Ordinance and the Guidelines, the provisions of the Ordinance and the Guidelines, shall be controlling.

29. Notices. All notices required herein shall be sent to the following addresses:

CITY:

Community Development Director
City of Menlo Park
701 Laurel Street

OWNER:

NAME 1
NAME 2
ADDRESS

Menlo Park, CA 94025-3483

Menlo Park, CA 94025

DATED: _____

Signature of Owner

Print or Type Name

Signature of Owner

Print or Type Name

ADDRESS
Menlo Park, CA 94025

DATED: _____

City of Menlo Park
CITY MANAGER NAME

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

STATE OF CALIFORNIA }
COUNTY OF SAN MATEO }

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

STATE OF CALIFORNIA }
COUNTY OF SAN MATEO }

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"
Legal Description

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF MENLO PARK, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A CONDOMINIUM COMPRISED OF:

PARCEL 1:

AN UNDIVIDED FEE SIMPLE INTEREST AS A TENANT IN COMMON IN AND TO THE COMMON AREA IN THE MODULE IN WHICH THE RESIDENTIAL UNIT DESCRIBED IN PARCEL 2 BELOW IS LOCATED EQUAL TO THE RECIPROCAL OF THE NUMBER OF RESIDENTIAL UNITS LOCATED WITHIN SUCH MODULE, AS SHOWN ON THE CONDOMINIUM PLAN FOR MARQUIS MODULE 6, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, CALIFORNIA, ON SEPTEMBER 6, 2018 AS INSTRUMENT NO. 2018-069918 AND ANY AMENDMENTS OR SUPPLEMENTS THERETO (COLLECTIVELY "CONDOMINIUM PLAN"), WHICH IS A PORTION OF PARCEL 1 OF THAT CERTAIN MAP ENTITLED "FINAL MAP ENCINAL", IN THE CITY OF MENLO PARK, COUNTY OF SAN MATEO, CALIFORNIA, FILED ON MAY 9, 2018 IN BOOK 141 OF MAPS, PAGES 96, 97 AND 98 IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY ("MAP").

PARCEL 2:

RESIDENTIAL UNIT NO. 21, AS SHOWN AND DESCRIBED ON THE CONDOMINIUM PLAN; RESERVING FROM PARCELS 1 AND 2, ALL EASEMENTS RESERVED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS OF MARQUIS, RECORDED SEPTEMBER 6, 2018, SERIES NO. 2018-069907, OFFICIAL RECORDS ("DECLARATION"), THE CONDOMINIUM PLAN, THE MAP, AND ALL OTHER EASEMENTS OF RECORD AS OF THE DATE HEREOF.

PARCEL 3:

AN EXCLUSIVE EASEMENT TO USE EACH PORTION OF THE ASSOCIATION PROPERTY, IF ANY, DESIGNATED IN THE CONDOMINIUM PLAN AS BEING AN EXCLUSIVE USE EASEMENT AREA APPURTENANT TO THE RESIDENTIAL UNIT DESCRIBED IN PARCEL 2 ABOVE FOR THE PURPOSES DESCRIBED IN THE DECLARATION.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT, IN COMMON WITH OTHER OWNERS, FOR ACCESS, INGRESS AND EGRESS, IN, TO, OVER, UNDER AND ACROSS CERTAIN PORTIONS OF THE ASSOCIATION PROPERTY DESCRIBED IN THE DECLARATION AND/OR SUPPLEMENTAL DECLARATION, SUBJECT TO THE LIMITATIONS SET FORTH THEREIN, WHICH EASEMENT IS APPURTENANT TO THE RESIDENTIAL UNIT DESCRIBED ABOVE. THESE EASEMENTS ARE GRANTED SUBJECT TO:

A. EACH EXCLUSIVE USE EASEMENT, EACH EASEMENT AND ALL OTHER RESERVATIONS SET FORTH IN THE DECLARATION

B. THE EASEMENT AND OTHER RIGHTS RESERVED IN THE DECLARATION IN FAVOR OF GRANTOR FOR MARKETING AND DEVELOPMENT, INCLUDING, WITHOUT LIMITATION,

GRANTOR'S RIGHT TO MAINTAIN MARKETING UNITS IN THE CONDOMINIUMS OWNED BY GRANTOR, AS WELL AS THE RIGHT OF ACCESS, INGRESS, AND EGRESS FOR VISITORS TO THE SALES OFFICE AND MARKETING UNITS AND THE RIGHT TO MAINTAIN SIGNS OR OTHER MARKETING MATERIALS WITHIN THE ASSOCIATION PROPERTY OF THE COMMUNITY (DEFINED IN THE DECLARATION)

C. GRANTOR'S EASEMENT FOR INGRESS AND EGRESS, IN, ON, OVER, THROUGH AND ACROSS THE ASSOCIATION PROPERTY TO PERMIT GRANTOR TO INSTALL IMPROVEMENTS THEREON

D. GRANTOR'S RIGHT TO PREVENT ACCESS OVER PORTIONS OF ASSOCIATION PROPERTY BY PLACING A CONSTRUCTION FENCE OR OTHER BARRIER THEREON PRIOR TO COMPLETION OF CONSTRUCTION OF ALL IMPROVEMENTS WITHIN THE PROJECT, PROVIDED THAT GRANTEE HAS AT LEAST ONE ROUTE OF ACCESS BETWEEN THE RESIDENTIAL UNIT DESCRIBED IN PARCEL 1 ABOVE AND A PUBLIC STREET.

APN: 060-344-270 (PORTION)