

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS APPROVING THE AMENDMENT TO THE REGULATORY AGREEMENT AND ASSOCIATED DOCUMENTS WITH WESTERN PACIFIC HOUSING, INC.**

**WHEREAS**, Agency and Western Pacific entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated as of September 8, 2006 (the "Original Regulatory Agreement") with respect to certain real property located in Milpitas, California, and described in the Exhibit A to the Original Regulatory Agreement (the "Property"); and

**WHEREAS**, the Redevelopment Agency of the City of Milpitas ("Agency") and Western Pacific Housing, Inc. ("Western Pacific") entered into an Owner Participation Agreement dated September 8, 2006 (the "Original OPA") with respect to certain real property located in Milpitas, California, described in Exhibit A to the Original OPA (the "Property"); and

**WHEREAS**, pursuant to the Original Regulatory Agreement and Original OPA, twenty (20) of the residential units to be constructed on the Property were designated for sale to qualified moderate income purchasers (the "Moderate Affordable Units"); and

**WHEREAS**, as the result of current real estate market conditions and resulting lack of sufficient qualified moderate income purchasers as of the reference date, none of the Moderate Affordable Units have been sold and deeded to qualified moderate income purchasers as of the date of this Resolution; and

**WHEREAS**, Health and Safety Code Section 33334.3(f)(1)(B) authorizes a redevelopment agency to create an Equity Sharing Program for owner-occupied units which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy; and

**WHEREAS**, Agency and Western Pacific desire to increase the marketability of the Moderate Affordable Units in order to fulfill the regional housing goals of the City of Milpitas by creating a pilot Equity Sharing Program for units sold to moderate-income households within the City; and

**WHEREAS**, the Agency and City have determined that amending the Original Regulatory Agreement and the Original OPA and creating the pilot Equity Sharing Program using the Moderate Affordable Units at the Paragon Residential Project will assist the Agency in fulfilling the regional housing goals of the City of Milpitas.

**NOW, THEREFORE**, the Board of the Redevelopment Agency of Milpitas hereby finds, determines, and resolves as follows:

1. The Board has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager/Executive Director is authorized to execute amendments to the Regulatory Agreement and the Owner Participation Agreement with Western Pacific Housing, Inc., accompanying this resolution and to create the pilot Equity Sharing Program using the Paragon Residential Project.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, Agency Secretary

\_\_\_\_\_  
Robert Livengood, Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, Agency Counsel

AMENDMENT NO. 1 TO REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

This Amendment to Regulatory Agreement and Declaration of Restrictive Covenants (“Amendment”), dated for reference purposes only as of \_\_\_\_\_, 2010 (the “Reference Date”), is entered into by and among the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS (“Agency”), and WESTERN PACIFIC HOUSING, INC. (“Developer”).

RECITALS

A. Agency and Developer entered into that certain Regulatory Agreement and Declaration of Restrictive Covenants dated as of September 8, 2006 (the “Original Regulatory Agreement”) with respect to certain real property located in Milpitas, California, and described in the Original Regulatory Agreement in Exhibit A (the “Property”).

B. Pursuant to the Original Regulatory Agreement, twenty (20) of the residential units to be constructed on the Property were designated for sale to qualified Moderate Income purchasers (the “Moderate Affordable Units”).

C. As the result of current real estate market conditions and resulting lack of sufficient qualified Moderate Income purchasers as of the Reference Date, none of the Moderate Affordable Units have been sold and deeded to qualified Moderate Income purchasers as of the Reference Date.

D. Agency and Developer desire to increase the marketability of the Moderate Affordable Units in order to fulfill the regional housing goals of the City of Milpitas. In addition, the Agency wishes to better leverage its funds to assist a higher percentage of moderate income households within the Agency’s jurisdiction.

E. The Agency has determined that amending the Original Regulatory Agreement on the terms and conditions set forth in this Amendment will assist the Agency in accomplishing the goals described in Recital D, above, will effectuate the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, is in the vital and best interests of the City of Milpitas and the health, safety, morals, and welfare of its residents, and is in accord with the public purposes and provisions of all applicable federal, state, and local laws and requirements, including without limitation state redevelopment laws.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, Agency and Developer agree as follows:

1. Effective Date; Defined Terms. As used in this Amendment, “Amendment Effective Date” means the date that all of the following have occurred: (i) three (3) copies of this Amendment have been fully executed by Agency and Developer, (ii) five (5) copies of that certain Amendment to Owner Participation Agreement (“OPA Amendment”) which have been signed by Developer and delivered to Agency concurrently with the delivery of this Amendment, have been fully executed by Agency and Developer, and (iii) this Amendment and the OPA Amendment have been approved by all requisite action of Agency and City. Upon execution of

three (3) copies of this Amendment and five (5) copies of the OPA Amendment by Developer, Developer shall deliver such executed copies to the Agency for processing and signature by the Agency, as appropriate, so that each party signing an amendment will receive a fully-executed original of such amendment. As used in the Original Agreement, “Effective Date” means the date the governing body of the Agency approved the Original Regulatory Agreement and the Original Regulatory Agreement was executed by the last of Developer or Agency. From and after the Amendment Effective Date, except as otherwise provided in this Amendment, the terms “Agreement” or “Regulatory Agreement” as used in the Original Regulatory Agreement or this Amendment shall mean the Original Regulatory Agreement as amended by this Amendment. Except as otherwise defined or expressly provided in this Amendment, capitalized terms used in this Amendment shall have the meanings assigned in the Original Regulatory Agreement.

2. Paragraph 3(ii) is deleted in its entirety and amended to read as follows:

(ii) Twenty (20) of the Restricted Units shall be sold at market rate to Eligible Buyers whose household Gross Income does not exceed Moderate-Income. Developer will provide as needed funding, in an amount determined solely by Developer, but not less than Five Thousand Dollars (\$5,000), for the Agency to provide a deferred payment second mortgage to the Eligible Buyer (“Agency Loan”) in order to ensure the affordability of the Restricted Unit. Each Eligible Buyer receiving financing from the Agency in connection with the purchase of a Moderate Affordable Unit shall be required to execute a promissory note in the amount of the Agency Loan, an Equity Share Agreement, and a deed of trust (“Agency Deed of Trust”), which shall provide the Agency with a security interest in the Moderate Affordable Unit to secure repayment of the Agency Loan and the performance of Purchaser’s obligations under the Equity Share Agreement.

3. Paragraph 3(vii) is deleted in its entirety and amended to read as follows:

(vii) In connection with the sale of each of the nine Very Low-Income Restricted Units, Developer shall require the purchaser to execute a Resale Restriction Agreement and Option to Purchase (“Resale Agreement”) in the form provided by Agency and shall cause such Resale Agreement to be recorded in the Official Records of Santa Clara County concurrently with the recordation of the grant deed conveying title of the low income Restricted Unit. The Resale Agreement shall provide that the Very Low-Income Restricted Unit may only be sold to Eligible Households at an affordable price as specified in the Resale Agreement, and will further provide that the Agency shall have a right of first offer to purchase the Very Low-Income Restricted Unit and an option to purchase such unit upon the occurrence of specified triggering events.

4. Paragraph 3(viii) is added as follows:

(viii) In connection with the sale of each Moderate Affordable Unit, Developer shall require the purchaser to execute an Occupancy, Refinancing, Equity Share Agreement and Option to Purchase (“Equity Share Agreement”) in the form provided by Agency and shall cause such Equity Share Agreement to be recorded in the Official

Records of Santa Clara County concurrently with the recordation of the grant deed conveying title of the Moderate Affordable Unit. The Equity Share Agreement shall provide that the restricted Unit may be sold at market rate and the increased equity in the home shared between the Agency and the purchaser and further provide that the Agency shall have an option to purchase such unit upon the occurrence of specified triggering events.

5. Effect of Amendment. Except to the extent modified by this Amendment, the Original Regulatory Agreement shall remain unchanged and in full force and effect. In the event of any conflict between the Original Regulatory Agreement and this Amendment, this Amendment shall control. This Amendment may be executed in counterparts, and when the executed signature pages are combined, shall constitute one single instrument.

REDEVELOPMENT AGENCY OF THE  
CITY OF MILPITAS

WESTERN PACIFIC HOUSING, INC.

By: \_\_\_\_\_  
Thomas C. Williams, Executive Director

By: Rich Ambrosini  
Its: Vice President

Attest:

\_\_\_\_\_  
Mary Lavelle, Agency Secretary

Approved as to Form:

\_\_\_\_\_  
Michael J. Ogaz  
Redevelopment Agency Counsel

List of Exhibits:

Exhibit A: Form of OPA Amendment

Exhibit B: Form of Occupancy, Refinancing, Equity Share Agreement and Option to Purchase

AMENDMENT NO. 1 TO OWNER PARTICIPATION AGREEMENT BY AND  
BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS AND  
WESTERN PACIFIC HOUSING, INC.

This Amendment to Owner Participation Agreement (“Amendment”), dated for reference purposes only as of March 10, 2010 (the “Reference Date”), is entered into by and among the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS (“Agency”), and Western Pacific Housing, Inc. (“Developer”).

RECITALS

A. Agency and Developer entered into that certain Owner Participation Agreement by and between the Redevelopment Agency of the City of Milpitas and Western Pacific Housing, Inc. dated as of September 8, 2006 (the “Original OPA”) with respect to certain real property located in Milpitas, California, and described in the Original OPA in Exhibit A (the “Property”).

B. Pursuant to the Original OPA, twenty (20) of the residential units to be constructed on the Property were designated for sale to qualified Moderate Income purchasers (the Moderate Affordable Units).

C. As the result of current real estate market conditions and resulting lack of sufficient qualified Moderate Income purchasers as of the Reference Date, none of the Moderate Affordable Units have been sold and deeded to qualified Moderate Income purchasers as of the Reference Date.

D. Agency and Developer desire to increase the marketability of the Moderate Affordable Units in order to fulfill the regional housing goals of the City of Milpitas. In addition, the Agency wishes to better leverage its funds to assist a higher percentage of moderate income households within the Agency’s jurisdiction.

E. The Agency has determined that amending the Original OPA on the terms and conditions set forth in this Amendment will assist the Agency in accomplishing the goals described in Recital D above, will effectuate the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, are in the vital and best interests of the City of Milpitas and the health, safety, morals, and welfare of its residents, and are in accord with the public purposes and provisions of all applicable federal, state, and local laws and requirements, including without limitation State Redevelopment laws.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, Agency and Developer agree as follows:

1. Effective Date; Defined Terms. As used in this Amendment, “Amendment Effective Date” means the date that all of the following have occurred: (i) five (5) copies of this Amendment have been fully executed by Agency and Developer, (ii) three (3) copies of that certain Amendment to the Regulatory Agreement and Declaration of Restrictive Covenants (“Regulatory Agreement Amendment”) which have been signed by Developer and delivered to

Agency concurrently with the delivery of this Amendment, have been fully executed by Agency and Developer, and (iii) this Amendment and the Regulatory Agreement Amendment have been approved by all requisite action of Agency and City. Upon execution of five (5) copies of this Amendment and three (3) copies of the Regulatory Agreement Amendment by Developer, Developer shall deliver such executed copies to the Agency for processing and signature by the Agency, as appropriate, so that each party signing an amendment will receive a fully executed original of such amendment. As used in the Original Agreement, “Effective Date” means the date the governing body of the Agency approved the Original OPA and the Original OPA was executed by the last of Developer or Agency. From and after the Amendment Effective Date, except as otherwise provided in this Amendment, the terms “Agreement” or “OPA” as used in the Original OPA or this Amendment shall mean the Original OPA as amended by this Amendment. Except as otherwise defined or expressly provided in this Amendment, capitalized terms used in this Amendment shall have the meanings assigned in the Original OPA.

2. Paragraph 4.1 is deleted in its entirety and amended to read as follows:

4.1 Agency Financial Assistance. Using funds from the Low- and Moderate-Income Housing Fund that the Agency maintains pursuant to CRL Sections 33334.2 and 33334.3 or other available resources, the Agency shall provide financial assistance (“Agency Financial Assistance”) to eligible purchasers of the nine Restricted Units which, pursuant to the Regulatory Agreement are set aside for purchase by Very Low-Income Households. The aggregate amount of the Agency Financial Assistance shall be One Million Two Hundred Thousand Dollars (\$1,200,000) (“Agency Financial Assistance Fund”) which shall be provided to eligible purchasers in the form of deferred payment second mortgages and/or down payment assistance as determined by Agency in its discretion.

Using funds from the Developer of a minimum of \$100,000, as determined by Developer in its sole discretion, the Agency shall provide financial assistance to eligible purchasers of the twenty Restricted Units, pursuant to the Regulatory Agreement for purchase by Moderate-Income Households. These funds from Developer shall provide the funding for the Agency issued deferred payment second mortgages and/or down payment assistance as determined by Agency in its discretion (“Agency Loans”).

3. Paragraph 4.1.2 is deleted in its entirety and amended to read as follows:

4.1.2 Financial Assistance Limited. The Agency shall provide no financing or other assistance to the Developer or the Project. Developer acknowledges and agrees that (i) Developer is obligated to sell the Restricted Units at Affordable Housing Cost (as defined in the Regulatory Agreement) to eligible households of Very Low- and Moderate-Income pursuant to the terms and conditions of the Regulatory Agreement, (ii) it may be necessary for Developer, in its sole discretion, to reduce the sales price of the Restricted Units and/or provide funding for Agency Loans (as described in Section 4.1 hereof) to the Moderate-Income purchasers in order to comply with such requirements, and (iii) Agency is under no obligation to provide assistance to Developer

or to provide assistance to the purchasers of the Restricted Unites in greater than the amount set forth in Section 4.1.

4. Effect of Amendment. Except to the extent modified by this Amendment, the Original OPA shall remain unchanged and in full force and effect. In the event of any conflict between the Original OPA and this Amendment, this Amendment shall control. This Amendment may be executed in counterparts, and when the executed signature pages are combined, shall constitute one single instrument.

REDEVELOPMENT AGENCY OF THE  
CITY OF MILPITAS

WESTERN PACIFIC HOUSING, INC.

By: \_\_\_\_\_  
Thomas C. Williams, Executive Director

By: Rich Ambrosini  
Its: Vice President

Attest:

\_\_\_\_\_  
Mary Lavelle, Agency Secretary

Approved as to Form:

\_\_\_\_\_  
Michael J. Ogaz  
Redevelopment Agency General Counsel

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

MILPITAS REDEVELOPMENT AGENCY  
455 East Calaveras Boulevard  
Milpitas, CA 95035

To be recorded without fee.  
(Gov. Code, §§ 6103 and 27383.)

(Space Above This Line For Recorder's Use Only)

**OCCUPANCY, REFINANCING, EQUITY SHARE AGREEMENT  
AND OPTION TO PURCHASE**

Owner:

Property:

Milpitas, California 95035

Name of Development:

This OCCUPANCY, REFINANCING, EQUITY SHARE AGREEMENT AND OPTION TO PURCHASE AGREEMENT ("Agreement") is entered into by and between the Redevelopment Agency of the City of Milpitas ("the Agency") \_\_\_\_\_ ("Owner") regarding certain improved real property, which is more particularly described in Exhibit A attached hereto and incorporated herein and commonly known as \_\_\_\_\_, Milpitas., CA 95035 (the "Property") effective as of \_\_\_\_\_, 2010 (Effective Date"). Agency and Owner are hereinafter collectively referred to as the "Parties."

**RECITALS**

A. The Agency pursuant to the Community Redevelopment Law (Health & Safety Code section 33000 et seq.) and the Agency's Redevelopment Plan maintains an affordable housing fund, which it uses for the purpose encouraging the construction of housing within the Redevelopment Plan Area that is affordable to persons of very low, low, and moderate income ("the Program").

B. Pursuant to the Program, the Agency and \_\_\_\_\_ ("Developer"), entered into a Memorandum of Understanding, and Owner Participation Agreement, dated September 8, 2006, (collectively "the Agreements") under which Developer has agreed to construct 20 homes and fund Agency loans to persons of moderate incomes in order for them to purchase these Properties at prices that are affordable and in exchange the Agency has agreed to provided certain financial incentives.

C. Owner is the owner of certain real property located within the City of Milpitas, legally described in Exhibit A and commonly known as \_\_\_\_\_, Milpitas, CA 95035 ("the Property"). The Property is one of the affordable Properties constructed by Developer pursuant to the Agreements.

D. Owner is an eligible moderate-income purchaser under the Program, intends to live in the Property as an owner occupant, and agrees to maintain the Property as Owner's principal residence. Owner purchased the Property for \_\_\_\_\_ Dollars, (\$\_\_\_\_\_) ("Purchase Price"). The Owner is receiving a first mortgage loan in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "First Lender Loan") from \_\_\_\_\_ (the "First Lender"). The First Lender Loan is secured by a deed of trust recorded concurrently herewith, executed by the Owner in favor of First Lender and recorded in the County of Santa Clara concurrently herewith (the "First Lender Deed of Trust").

E. The purpose of this Agreement is to ensure that the Agency receives a reasonable equity share on the Property thus recovering its investment in the Property and providing an opportunity for the Property to remain affordable to subsequent purchasers. This Agreement provides the Agency an option to purchase the Property, given in consideration of the economic benefits to the Owner resulting from the loan provided by the Agency and funded by the Developer.

F. The Property constitutes a valuable community resource by providing decent, safe, and sanitary housing to persons and families of moderate income who otherwise would be unable to afford such housing. To protect and preserve this resource it is necessary, proper, and in the public interest for the Agency to administer occupancy and resale controls consistent with the Program by means of this Agreement.

G. The amount owed by the Owner to the Agency under this Agreement is evidenced by a promissory note (the "Agency Note") attached hereto as Exhibit I. This Agreement and the Agency Note shall be secured by a deed of trust recorded against the Property (the "Agency Deed of Trust") attached hereto as Exhibit J.

H. This Agreement and the Agency Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the Program, Owner and Agency hereby agree as follows:

### **1. DEFINITIONS AND EXHIBITS**

A. The following terms are specially defined for this Agreement and their definitions can be found in the sections indicated below:

- (1) "Agency" - First sentence of the Agreement on Page 1
- (2) "Agency Deed of Trust" - Recital G
- (3) "Agency Note" – Recital G
- (4) "Agency Response Notice" - Section 8
- (5) "Agreement" - First sentence of the Agreement on Page 1
- (6) "Eligible Purchaser" - Section 6
- (7) "Fair Market Value" - Section 10
- (8) "First Lender" - Recital D
- (9) "First Lender Deed of Trust" - Recital D
- (10) "First Lender Loan" - Recital D
- (11) "HCD" – Section 6B
- (12) "Inheriting Owner" – Section 6B
- (13) "Owner" - First sentence of the Agreement on Page 1
- (14) "Owner's Notice of Intent to Transfer" - Section 7
- (15) "Program Requirements" – Section 2
- (16) "Property" – First sentence of the Agreement on Page 1
- (17) "Purchase Price" – Recital D
- (18) "Refinance" - Section 22
- (19) "Shared Appreciation" – Section 12
- (20) "Transfer" - Section 6

B. The following exhibits are attached to this Agreement:

- (1) Exhibit A: Legal Description of Property
- (2) Exhibit B: Form of Owner Occupancy Certification

- (3) Exhibit C: Form of Notice of Resale or Refinance Price
- (4) Exhibit D: Form of Owner's Notice of Intent to Transfer
- (5) Exhibit E: Form of Owner Acknowledgement of Agency Response  
Notice
- (6) Exhibit F.: Form of Owner Request for Agency Subordination to  
Refinanced First Lender Loan
- (7) Exhibit G: Sample Calculation of Shared Appreciation
- (8) Exhibit H: Form of Request for Agency Approval of  
Improvements to the Property
- (9) Exhibit I: Promissory Note
- (10) Exhibit J: Subordinate Deed of Trust

## 2. **OWNER CERTIFICATIONS; OWNER OCCUPANCY REQUIREMENT**

The Owner certifies that (i) the financial and other information previously provided in order to qualify to purchase the Property is true and correct as of the date first written above, (ii) the Owner shall occupy the Property as the Owner's principal place of residence within sixty (60) days after the Effective Date, (ii) the Owner is a first time Propertybuyer as defined in accordance with Milpitas's affordable Propertyownership requirements (the "Program Requirements"); and (iii) the Owner will fully cooperate with the Agency in promptly providing all information requested by the Agency to assist the Agency in monitoring Owner's compliance with this Agreement. The Agency reserves the right to request additional information from the Owner necessary in the Agency's judgment to verify the financial and other information provided by the Owner in order to qualify to purchase the Property including information regarding the Owner's residency prior to acquisition of the Property. The Owner shall provide any additional information requested by the Agency to the Agency within fifteen (15) days of any such request.

## 3. **OCCUPANCY OF PROPERTY**

The Owner shall occupy the Property as the Owner's principal place of residence. The Owner shall be considered as occupying the Property if the Owner is living in the Property for at least ten (10) months out of each calendar year. On or before February 1 of each calendar year, the Owner shall provide an annual written certification to the Agency, in the form shown in the attached Exhibit B, that the Owner is occupying the Property as his or her principal place of residence. The Agency reserves the right to request additional information from the Owner necessary in the Agency's judgment to verify that the Property is the Owner's principal place of residence. The Owner shall provide any additional information requested by the Agency to the Agency within fifteen (15) days of any such request. Without limiting the generality of the foregoing, any absence from the Property by Owner for a period of sixty (60) or more

consecutive days shall be deemed an abandonment of the Property as the principal residence of Owner, in violation of the conditions of this paragraph.

#### 4. **LEASING OF PROPERTY**

The Owner shall not lease the Property to another party. Any lease of the Property in violation of this Agreement is prohibited, and shall constitute a Default under this Agreement. The Owner may apply to the Agency for written approval of a temporary and limited exception to the leasing prohibition of this paragraph in the event of extended hospitalization or convalescent care of Owner, or other hardship circumstance, to be determined by the Agency. Rentals approved by the Agency shall not exceed twelve (12) months, shall be to a tenant whose household income is equal to, or lower than, moderate-income, as defined in Health and Safety Code Section 50093 (with income eligibility certified by the Agency), and rent shall not exceed the Owner's monthly cost of mortgage payments, property taxes, Propertyowners' association fees, and insurance, and in no event shall such rent exceed the amount set forth in Health and Safety Code Section 50052.5(a) based on such tenant's household income ("Limited Rent"). Any rental or lease of the Property in violation of this Agreement is prohibited, and shall be a Default by Owner under this Agreement for which the Agency may exercise its Option. The Owner further agrees that, in the event the Owner rents or leases the Property to a third party in violation of this paragraph, any excess rents paid to the Owner by the lessee over the Limited Rent ("Excess Rental Proceeds") shall be due and payable to the Agency immediately upon receipt thereof by the Owner. Such Excess Rental Proceeds shall be evidenced by the Agency Note, and shall be considered a recourse debt of the Owner to the Agency, which the Agency may collect by legal action against the Owner, including by foreclosure under the Agency Deed of Trust.

#### 5. **MAINTENANCE AND INSURANCE REQUIREMENTS**

A. Maintenance. The Owner shall maintain the Property, including landscaping, in good repair and in a neat, clean and orderly condition (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Owner will not commit waste or permit deterioration of the Property, and shall make all repairs and replacements necessary to keep the Property in good condition and repair. Failure by the Owner to maintain the Property shall constitute a Default under this Agreement and the Agency may then exercise any of the remedies set forth in Section 13 below, including, without limitation, exercise of the Agency Option upon Default.

B. No Nuisance. The Owner shall not permit any condition to exist on the Property that is defined as a nuisance, nor shall the Owner permit the Property to be used for the commission of any misdemeanor or felony.

C. Insurance. The Owner shall maintain a standard all risk property insurance policy equal to the replacement value of the Property (adjusted every five (5) years by appraisal, if requested by the Agency), naming the Agency, the City and their employees, agents, officers, board members and/or council members as additional insureds. Additional insurance requirements are set forth in Section 6 of the Agency Deed of Trust.

D. Agency Right to Inspect. Owner hereby grants to the Agency and its duly authorized representatives the right to enter the Property at reasonable times and in a reasonable manner, upon reasonable notice to Owner, for purposes of inspecting the Property to determine compliance with the Agency Note, this Agreement, and the Agency Deed of Trust.

E. Insurance Proceeds. In the event the Property is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild or repair the Property, or in the event of condemnation, if the proceeds thereof are distributed to Owner, the Owner shall pay the Agency the portion of any insurance or condemnation proceeds which is equal to the Agency's Portion of Shared Appreciation (calculated as of the date immediately prior to the casualty or condemnation event).

## 6. **RESTRICTIONS ON RESALE OR TRANSFER OF THE PROPERTY**

A. Transfer. Any Transfer of the Property will be subject to the provisions of this Agreement. Transfer means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title, or a deed of trust. Any Transfer without satisfaction of the provisions of this Agreement is prohibited and shall constitute a Default under this Agreement and the Agency may then exercise any of the remedies set forth in Section 13 below, including, without limitation, exercise of the Agency Option upon Default. A Transfer shall not include a transfer: (i) to an existing spouse or domestic partner; (ii) by a Owner to a spouse or domestic partner where the spouse or domestic partner becomes the co-owner of the Property; (iii) between spouses as part of a marriage dissolution proceeding; (iv) to an existing spouse or domestic partner of Owner by devise or inheritance following the death of Owner; (v) by Owner into an inter vivos revocable trust in which Owner is the beneficiary; or (vi) refinancing of the First Lender Loan meeting the requirements of Section 22 of this Agreement; provided, however, that Owner shall provide written notice of all such transfers to Agency; and Owner shall continue to occupy the Property as his or her principal place of residence (except where the transfer occurs pursuant to subsection (iii) or (iv) above, in which event the transferee shall owner-occupy the Property and affirmatively assume Owner's obligations under this Agreement, the Agency Note, and the Agency Deed of Trust). Transfers to someone other than a spouse or domestic partner which occur by devise or inheritance due to death of the Owner shall be governed by Section 6B. All other Transfers shall require written notice to the Agency pursuant to Section 7 below. For purposes of this section, "domestic partner" shall mean two unmarried people, at least eighteen (18) years of age, who have lived together continuously for at least one (1) year and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of

California. For purposes of this section, an individual shall be considered a domestic partner of Owner upon presentation of an affidavit or other acceptable evidence by Owner to the Agency.

B. Inheritance. In the event a Transfer occurs by devise or inheritance due to death of the Owner, the administrator of the Owner's estate, the trustee of Owner's trust or the person inheriting the Property shall provide written notice to the Agency of the Owner's death within thirty (30) days of the date of death and the following procedures shall apply:

(1) If the person inheriting the Property ("Inheriting Owner") is the child, spouse, sibling or parent of the Owner, the Inheriting Owner shall succeed to the Owner's interest and obligations under this Agreement, the Agency Note and the Agency Deed of Trust, and, if requested by the Agency, new documents shall be executed between the Inheriting Owner and the Agency and recorded against the Property. The new equity share agreement and option to purchase between Inheriting Owner and Agency shall have a forty-five (45) year term that shall commence upon the recordation of such new agreement.

(2) If the Inheriting Owner is not the child, spouse or parent of the Owner ("Non-Relative Inheriting Owner"), the Non-Relative Inheriting Owner shall provide the Agency with income and other information, to be verified by the Agency, so that the Agency may determine if the Non-Relative Inheriting Owner qualifies as an Eligible Purchaser. If the Non-Relative Inheriting Owner fails to provide required documentation, he or she shall be deemed not to qualify as an Eligible Purchaser. If the Non-Relative Inheriting Owner qualifies as an Eligible Purchaser, he or she shall succeed to the Owner's interest and obligations under this Agreement, the Agency Note, and the Agency Deed of Trust, and, if requested by the Agency, new documents shall be executed between the Non-Relative Inheriting Owner and the Agency and recorded against the Property. If the Non-Relative Inheriting Owner fails to qualify as an Eligible Purchaser, the Agency shall have the right to exercise the Agency Option pursuant to Section 13.

(3) Failure of an Inheriting Owner to follow the procedures and file the notices described in this Section 6 shall constitute a Default under this Agreement and the Agency may then exercise any of the remedies set forth in Section 13 below, including, without limitation, exercise of the Agency Option upon Default.

(4) For the purposes of this Agreement, an "Eligible Purchaser" shall mean a household that meets the following requirements:

i. Income Eligibility. The combined gross income for all household members of the household, as determined by the Agency pursuant to Section 8 of the United States Housing Act of 1937, shall not exceed 120% of median yearly income, adjusted for household size, in Santa Clara County, as published by the State of California Department of Housing and Community Development ("HCD").

ii. First Time Propertybuyer. The household shall be a first time Propertybuyer as defined in the Program Requirements.

iii. Intent to Owner Occupy. The household shall certify that it will occupy the Property as his or her principal place of residence.

iv. Agreement to Sign Equity Share Agreement and to Cooperate with Agency. The household shall agree to sign an equity share agreement, a new Agency Deed of Trust, and a new Agency Note providing for Shared Appreciation as that term is defined herein and shall agree to cooperate fully with the Agency in promptly providing all information requested by the Agency; to assist the Agency in monitoring the household's compliance with the equity share agreement.

## **7. NOTICE OF INTENDED TRANSFER; PREPARATION OF PROPERTY FOR SALE**

A. Prior to Transfer or Refinance of the Property, the Owner shall notify the Agency that Owner is considering Transferring or Refinancing the Property pursuant to the notice in the form shown in Exhibit D attached to this Agreement (the "Owners Notice of Intent to Transfer") and request that the Agency provide the Owner with the Agency's estimated Agency's Portion of Shared Appreciation as defined herein. The Agency shall, within thirty (30) days after the latest of (i) receipt of such notice from the Owner (ii) receipt of payment of the costs of preparing an appraisal necessary to determine Fair Market Value in accordance with Section 10, and (iii) the determination of the Fair Market Value, the Agency shall provide the Owner with Notice of Shared Appreciation Amount substantially in the form of Exhibit C attached hereto.

B. Following delivery to the Agency of the Owner's Notice of Intent to Transfer, the Owner shall prepare the Property for sale, as follows, if requested by the Agency:

(1) within thirty (30) days after delivery of the Owner's Notice of Intent to Transfer, the Owner shall obtain and deliver to the Agency a current written report of inspection of the Property by a licensed structural pest control operator;

(2) within the sooner of (a) sixty (60) days from the date of delivery of the Owner's Notice of Intent to Transfer, or (b) prior to two (2) weeks before close of escrow on the Transfer, the Owner shall perform or cause to be performed pest control work in order to repair all damage noted in the pest report including damage caused by infestation or infection by wood-destroying pests;

(3) within thirty (30) days after the date of the Owner's Notice of Intent to Transfer, the Owner shall allow the Agency, or its designee, to inspect the Property to determine its physical condition, and, if requested by the Agency, following such inspection, the Owner shall obtain and deliver to the Agency a Property inspection report prepared by a licensed Property inspector.

(4) if the Property is vacant the Owner shall maintain the Property, including the exterior landscaping in a good condition and shall maintain utility connections until the close of escrow on the Transfer;

(5) in the event of Agency purchase of the Property, the Owner shall permit a final walk-through of the Property by the Agency, or the Agency's designee, in the final three (3) days prior to close of escrow on the Transfer.

## **8. AGENCY RESPONSE TO OWNER'S NOTICE OF INTENDED TRANSFER**

The Agency shall respond in writing (the "Agency Response Notice") to the Owner's Notice of Intent to Transfer within thirty (30) days of Agency receipt of a complete Owner's Notice of Intent to Transfer that includes all information required under Section 7, including Agency receipt of the pest control report and Property inspection report (if any) required pursuant to Section 7B above.

## **9. OWNER ACKNOWLEDGMENT OF AGENCY RESPONSE NOTICE**

No later than seven (7) days following the date of the Agency Response Notice, the Owner shall acknowledge in writing to the Agency, in the form shown in Exhibit E attached to this Agreement, that he/she has received the Agency Response Notice as applicable and still intends to Transfer the Property.

## **10. DETERMINATION OF FAIR MARKET VALUE**

Fair Market Value of the Property shall be determined by a certified MAI or other qualified real estate appraiser retained by the Agency. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. The cost of the appraisal shall be paid by the Owner, unless the appraisal is obtained from a new purchaser (and the Agency has approved such appraisal). In the event that the Owner has made capital improvements to the Property which have increased the value of the Property or if damage or deferred maintenance has occurred while the Owner owned the Property which has decreased the value of the Property, the appraisal shall specifically ascribe a value to these adjustment factors and state what the fair market value of the Property would be without such adjustments. In the event the Owner disagrees with the determination of the Agency appraiser, then within five (5) days after the Agency's delivery of such appraisal to the Owner the Owner may hire a certified MAI, or other qualified real estate appraiser, reasonably acceptable to the Agency to determine the value of the Property. In such event, Fair Market Value shall be determined by using the lower of the Agency's appraisal or the Owner's appraisal. Nothing in this section shall preclude the Owner and the Agency from establishing the Fair Market Value of the Property by mutual agreement in lieu of an appraisal pursuant to this section.

## **11. SALE BY OWNER**

The Owner may proceed to sell the Property in compliance with the following requirements:

A. Marketing. The Owner shall use best efforts to market the Property including listing the Property on the Multiple Listing Service, keeping the Property in an orderly condition, making the Property available to show to agents and prospective buyers.

B. Disclosure and Submittals. The Owner and the proposed purchaser of the Property (the "Proposed Purchaser") shall provide the following information and documents to the Agency:

(1) The name, address and telephone number in writing of the Proposed Purchaser.

(2) The proposed sales contract and all other related documents which shall set forth all the terms of the sale of the Property. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Proposed Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.

(3) A written certification, from the Owner and the Proposed Purchaser in a form acceptable to the Agency that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the Agency. The certification shall also provide that the Proposed Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Proposed Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the Agency. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement (including, but not limited to, the failure to convey the Property for Fair Market Value) or false or misleading statements are made in any documents or certification submitted to the Agency, the Agency shall have the right to foreclose on the Property or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Proposed Purchaser for the return of any moneys paid or received in violation of this Agreement or for any of the Owner's and/or the Proposed Purchaser's costs and legal expenses, shall be borne by the Owner and/or the Proposed Purchaser and they shall hold the Agency harmless and reimburse the Agency's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(4) The name of the title company escrow holder for the sale of the Property, the escrow number, and name, address, and phone number of the escrow officer.

(5) The name of the proposed lender providing a mortgage to the Proposed Purchaser and the name, address, and phone number of the loan officer.

(6) Upon the close of the proposed sale, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the Agency may reasonably request.

## 12. REPAYMENT OF AGENCY NOTE

The Agency Note shall evidence all amounts owed by the Owner to the Agency pursuant to this Agreement. Upon Transfer of the Property, the outstanding amounts due under the Agency Note including the Agency's Portion of Shared Appreciation shall be repaid pursuant to the Agency Note. The Agency's Portion of Shared Appreciation shall be calculated pursuant to the Agency Note but by way of information the following sets forth as the method for determining the Shared Appreciation. If there is any inconsistency between the Agency Note and this Agreement with respect to the determination of the Agency's Portion of Shared Appreciation, the Agency Note shall control.

"Shared Appreciation" means the amount equal to the Purchase Price subtracted from the Property's Fair Market Value minus the costs associated with the Transfer for which the Borrower is legally liable, and consists of the Owner's Portion of Shared Appreciation and the Agency's Portion of Shared Appreciation, each defined below. The "Owner's Portion of Shared Appreciation" means the amount resulting from multiplying the Shared Appreciation by the percentage associated with the number of full years that have expired since the execution date as follows:

FULL YEARS	APPLICABLE PERCENTAGE
1-5	20
6-10	30
11-15	40
16-20	50
21-25	60
26-30	70
31-35	80
36-45	90

The remaining amount of the Shared Appreciation (less the Owner's Portion of Shared Appreciation) is referred to as "Agency's Portion of Shared Appreciation" and shall be paid to the Agency, in addition to any other amounts due under the Agency Note, upon the Owner's Transfer of the Property. The Owner's Portion of Shared Appreciation, the Agency's Portion of Shared Appreciation, and the Transfer costs shall collectively equal one hundred percent (100%) of the Shared Appreciation. Exhibit G sets forth, for illustrative purposes only, the calculation of Shared Appreciation.

### 13. DEFAULTS

A. The following events shall constitute a Default by the Owner under this Agreement:

- (1) The Agency determines that the Owner has made a misrepresentation to obtain the benefits of purchase of the Property or in connection with its obligations under this Agreement;
- (2) The Owner fails to owner occupy the Property, as required pursuant to Section 3 above;
- (3) The Owner leases the Property to a third party, as prohibited by Section 4 above;
- (4) The Owner makes a Transfer in violation of this Agreement;
- (5) The Owner otherwise fails to comply with the requirements of this Agreement, the Agency Note, or the Agency Deed of Trust and such violation is not corrected to the satisfaction of the Agency within thirty (30) days after the date of written notice by the Agency to the Owner of such violation;
- (6) A notice of default is issued under the First Lender Loan; and
- (7) A lien is recorded against the Property other than the lien of a bona fide first mortgage loan.
- (8) Owner places a mortgage on the Property in violation of Section 25 below.
- (9) Inheriting Owner fails to qualify as an Eligible Purchaser.

B. Upon a declaration of Default by the Agency under this Agreement, the Agency may:

- (1) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;
- (2) Declare a Default under the Agency Note and Agency Deed of Trust and pursue all Agency remedies under the Agency Deed of Trust; and
- (3) Exercise the Agency Option Upon Default as described in Section 16 below.

- (4) Enter the Property in the event the Property is vacant in order to maintain the Property.

#### **14. NOTICE OF DEFAULT AND FORECLOSURE**

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Property shall be recorded by the Agency in the Office of the Recorder of the County of Santa Clara for the benefit of the Agency. The Agency may declare a Default under this Agreement upon receipt of any notice given to the Agency pursuant to Civil Code Section 2924b, and may exercise its rights as provided in Sections 13 and 16.

In the event of default and foreclosure, the Agency shall have the same right as the Owner to cure defaults and redeem the Property prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the Agency to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

If the Agency failed to file the request for notice of default, the Agency's right to purchase the Property shall commence from the date a notice of default is given by the Agency to the Owner.

#### **15. NOTICE AND CURE**

Upon Default or a violation of any of the provisions of this Agreement, the Agency may give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of Agency within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as the Agency determines is necessary to correct the violation, or if the Owner is in default under any other mortgage loan on the Property, the Agency may declare a Default under this Agreement.

The Agency shall notify the First Lender at the address provided by the First Lender to the Agency in the manner set forth in Section 26 of this Agreement, if the Agency has declared a default under this Agreement or under the Agency Note or the Agency Deed of Trust.

#### **16. PURCHASE OPTION UPON DEFAULT**

Notwithstanding, and in addition to, the remedies provided the Agency in Section 13, the Owner hereby grants to the Agency (or its assignee) the option to purchase the Property upon the declaration of a Default by the Agency pursuant to Section 13. This option to purchase is given in consideration of the economic benefits received by the Owner resulting from purchase and ownership of the Property.

The Agency shall have thirty (30) days after a Default is declared to notify the Owner and the First Lender of its decision to exercise its option to purchase under this section. Not later than ninety (90) days after the notice is given by the Agency to the Owner of the Agency's intent to

exercise its option under this section, the Agency shall purchase the Property for the Fair Market Value (as of the date of the Default).

## **17. NONLIABILITY OF THE AGENCY**

A. No Obligation to Exercise Option. The Agency shall have no obligation to exercise any option granted it under this Agreement. In no event shall the Agency become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its option to purchase under Sections 16 nor shall the Agency be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

B. Nonliability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and the Agency is solely that of an owner and an administrator of a Agency affordable housing program, and that the Agency does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Property or any other matter. The Agency owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Property and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against the Agency for any loss, damage or other matter arising out of or resulting from any condition of the Property and will hold the Agency harmless from any liability, loss or damage for these things.

C. Indemnity. Owner agrees to defend, indemnify, and hold the Agency and the City, and their agents, employees, officers and board members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the Agency, City, or such persons may incur as a direct or indirect consequence of: (1) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the Agency Deed of Trust; or (2) the failure at any time of any of Owner's representations to the Agency to be true and correct.

## **18. RESTRICTIONS ON FORECLOSURE PROCEEDS**

If a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise or if the Property is acquired through condemnation, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Agency pursuant to the Agency Note. The Owner shall instruct the holder of such proceeds to pay to the Agency any amounts due the Agency from the Owner pursuant to the Agency Note, in consideration of the benefits received by the Owner through purchase of the Property.

## **19. RESTRICTION ON INSURANCE PROCEEDS**

If the Property is damaged or destroyed and the Owner does not elect to rebuild or repair the Property pursuant to Section 5 of the Deed of Trust, the Owner shall, subject to the rights of the First Lender, pay the Agency in accordance with Section 5 of this Agreement.

## **20. SUPERIORITY OF AGREEMENT**

The 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, this Agreement is controlling as to the rights and obligations between and among the Owner, the Agency and their respective successors.

## **21. SUBORDINATION**

Notwithstanding any provision herein, this Agreement shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Property in compliance with Section 22 of this Agreement.

Notwithstanding any other provision hereof, the provisions of this Agreement and the Agency Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the Agency Deed of Trust shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquires title to the Property pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the Agency Deed of Trust shall automatically terminate upon such acquisition of title, only if (i) the Agency has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the Agency or its designee shall not have cured the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender.

## **22. REFINANCE OF FIRST LENDER LOAN; JUNIOR LOAN**

Refinancing may include the refinancing of the first mortgage on the Property and/or adding a third mortgage on the Property subordinate to this Agreement and the Agency Deed of Trust. Owner may refinance so long as the total outstanding balance of principal and any accrued interest on all loans secured by the Property do not exceed ninety percent (90%) of the Fair Market Value minus the amount of the Agency's Portion of Shared Appreciation owed to the Agency on the Agency Note. Prior to refinancing the First Mortgage or obtaining any third mortgage, the Owner shall provide the Agency with a notice of Owner's intent to refinance and shall include payment of the cost of obtaining an appraisal necessary to determine Fair Market Value pursuant to Section 10. The Agency shall respond to such notice of intent to refinance within thirty (30) days of receipt of such notice by providing the Owner with the Agency's Notice of Shared Appreciation Amount, substantially in the form attached as Exhibit C which notice shall include the amount of the Agency's Portion of Shared Appreciation owed at the time

of receipt of the Owner's notice of intent of refinance determined after receipt of an appraisal determining Fair Market Value in accordance with Section 10.

The Agency and the Owner agree that the requirements of this Section 22 are necessary to ensure that the Agency receives the full value of the Agency's Portion of Shared Appreciation and to minimize the risk of loss of the Property by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section 22 shall constitute a Default under this Agreement. In no case shall the Agency Deed of Trust and this Agreement be in lower than second lien position on the Property. Any subordination agreement to be executed by the Agency shall include notice and cure rights for the Agency regarding any defaults in the mortgage to which the Agency is subordinating. A form for use by the Owner in requesting Agency subordination to a refinanced first mortgage loan is attached as Exhibit F to this Agreement.

### **23. NONDISCRIMINATION**

The Owner covenants by and for itself and its successors and assigns that Owner shall comply with the following nondiscrimination covenant:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee 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 of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

The foregoing covenant shall run with the land.

### **24. RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUSTS**

This Agreement shall not diminish or affect the rights of the Agency under the Agency Deed of Trust.

Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of HUD or the Veterans Administration ("VA") under the

First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Property in compliance with Section 2 above.

Notwithstanding any other provisions in this Agreement to the contrary, all of the provisions of this Agreement shall terminate and have no further force in the event title is acquired by HUD or VA or another party upon foreclosure of a deed of trust insured by HUD or guaranteed by VA.

**25. HUD FORBEARANCE RELIEF**

Notwithstanding other provisions of this Agreement, the Agency Option on Default pursuant to Section 16 above shall not be exercised by the Agency when a deed of trust insured by HUD is secured by the Property, and the Owner has provided written verification, reasonably acceptable to the Agency, that: (i) the owner is undergoing consideration by HUD for assignment forbearance relief; or (ii) the owner is undergoing consideration for relief under HUD's Temporary Mortgage Assistance Payment (TMAP) program.

**26. NOTICES**

All notices required herein shall be sent by certified mail, return receipt requested, express delivery service with a delivery receipt, or personal delivery with a delivery receipt and shall be deemed to be effective as of the date received, the date delivery was refused, or the date returned as undeliverable as indicated on the return receipt as follows:

To the Owner:

\_\_\_\_\_

To the Agency:

Milpitas Redevelopment Agency  
455 Calaveras Boulevard  
Milpitas, CA 95035  
Attn: Executive Director

To the First Lender:

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

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this section.

## 27. GENERAL PROVISIONS

A. Attorneys' Fees. If either party initiates legal proceedings to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and costs in addition to any other recovery to which it is entitled under this Agreement.

B. No Joint Venture; No Third-Party Beneficiary. No joint venture or other partnership exists or is created between the Parties by virtue of this Agreement. Except as expressly stated herein, this Agreement does not benefit any third party.

C. Successors; Assignment. This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns. Agency shall have the right to assign all of its rights and obligations under this Agreement without the consent of Owner.

D. Entire Agreement; Amendment. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements with respect thereto. There are no representations, promises, agreements or other understandings between the Parties relating to the subject matter of this Agreement that are not expressed herein. This Agreement may be modified only by an instrument in writing executed by the Parties or their respective successors in interest.

E. Survival; No Merger. All of the terms, provisions, representations, warranties and covenants of the Parties under this Agreement shall survive the close of escrow of any sale of the Property and shall not be merged in any deed transferring the Property.

F. Authority And Execution. Each Party represents and warrants that it has full power and authority to enter into this Agreement and to undertake all of its obligations hereunder, that each person executing this Agreement on its behalf is duly and validly authorized to do so.

G. Construction. The section headings and captions used in this Agreement are for convenience of reference only and shall not modify, define, limit or amplify any of the terms or provisions hereof. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

H. Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California.

I. Time of the Essence. Time is of the essence in this Agreement as to each provision in which time is an element of performance.

J. Further Assurances. Each Party will, upon reasonable request of the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such

further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Agreement.

K. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all which together shall constitute one and the same instrument.

L. Interpretation of Agreement. The terms of this Agreement shall be interpreted so as to avoid speculation on the Property and to insure to the extent possible that its sales price and mortgage payment remain affordable to Eligible Purchasers.

M. Exhibit. Any exhibits referred to in this Agreement are incorporated in this Agreement by such reference.

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

O. Controlling Law. The terms of this Agreement shall be interpreted under the laws of the State of California. The venue for any legal action pertaining to this Agreement shall be Santa Clara County, California.

P. No Waiver. No delay or omission in the exercise of any right or remedy of Agency upon any default by Owner shall impair such right or remedy or be construed as a waiver. The Agency's failure to insist in any one or more instance upon the strict observance of the terms of this Agreement shall not be considered a waiver of the Agency's right thereafter to enforce the provisions of the Agreement. The Agency shall not waive its rights to enforce any provision of this Agreement unless it does so in writing, signed by an authorized agent of the Agency.

## **28. MONITORING AND INSPECTION BY AGENCY**

A. The Agency (or its designee) may enter the Property for inspections following two (2) business days advance written notice.

B. The Owner shall retain all records related to compliance with obligations under this Agreement for a period of not less than five (5) years, and shall make such records available to the Agency or its designee for inspection and copying upon five (5) business days advance written notice.

C. The Agency shall monitor Owner's compliance with the requirements of this Agreement on an annual basis. Owner shall cooperate with Agency monitoring and provide required certifications and other information required by the Agency to determine compliance within ten (10) days of receipt of a written request by the Agency.

## **29. COVENANTS RUNNING WITH THE LAND**

A. Owner hereby subjects the Property to the covenants and restrictions set forth in this Agreement.

B. The Owner and the Agency hereby declare their understanding and intent that: (i) the covenants and restrictions contained in this Agreement 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 Agreement touch and concern the Property in that the Owner's legal interest in the Property may be rendered less valuable thereby.

C. All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon Owner for the benefit of the Agency 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 is an owner of any land or interest therein to which such covenants and restrictions relate.

## **30. OWNER'S ACKNOWLEDGEMENT OF EQUITY SHARE RESTRICTION**

Owner hereby acknowledges and agrees that:

A. Owner hereby subjects the Property to certain restrictions, and limits the proceeds for which Owner may receive from the sale of the Property and the persons to whom Owner may sell the Property. The limitations, and other provisions contained in this Agreement, restrict the full benefits of owning the Property. Owner may not enjoy the same economic or other benefits from owning the Property that Owner would enjoy if this Agreement did not exist.

B. Absent the provisions of this Agreement, and the Agency's sale of the Property to the Owner for the Purchase Price, the Property could not be made available to Eligible Purchasers at an affordable price, including Owner.

C. Owner understands all of the provisions of this Agreement. In recognition of the acknowledgments and agreements stated in this Section 30, Owner accepts and agrees to the provisions of this Agreement with the understanding that this Agreement will remain in full force and effect as to the Property following any Transfer of the Property throughout the term of this Agreement, or until the Agency Note is repaid in full.

D. Owner acknowledges that, notwithstanding any other provision of law, all covenants and restrictions contained herein which implement Health and Safety Code Sections 33334.3 and/or 33413(a) or (b), or successor provisions, shall run with the land and shall be enforceable by the Agency, the City of Milpitas, and any of the parties listed in Health and Safety Code Section 33334.3(f)(7), including but not limited to: a resident of an affordable unit; a resident's association that includes residents of affordable units; the last person who resided in the unit; a low or moderate income person who is qualified to live in the unit but was denied

occupancy due to a violation of the affordability restrictions; or a low or moderate income person on an affordable housing waiting list, so long as such provision or successor provision remains in effect.

E. Owner hereby acknowledges and agrees that Health and Safety Code Section 33418(c) requires that the Property be listed in a database that shall be made available to the public on the internet and which will include the street address, assessor's parcel number, and other information about the Property.

OWNER UNDERSTANDS THAT THE DETERMINATION OF THE MAXIMUM RESALE PRICE OF THE PROPERTY CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER PURSUANT TO THE AGENCY OPTION, TAKING INTO CONSIDERATION INCREASES IN MEDIAN INCOME, MORTGAGE INTEREST RATES, PROPERTY TAXES AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED AND THAT THE SALES PRICE PERMITTED HEREUNDER MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS A SIMILAR PROPERTY WHICH IS NOT ENCUMBERED BY THIS AGREEMENT. OWNER FURTHER ACKNOWLEDGES THAT WHEN THE SALES PRICE OF THE PROPERTY IS DETERMINED FOR THE AGENCY'S OPTION, THE PRIMARY OBJECTIVE OF THE AGENCY AND THIS AGREEMENT IS TO PROVIDE HOUSING TO ELIGIBLE PURCHASERS AT AN AFFORDABLE HOUSING COST.

\_\_\_\_\_  
Initialed by Owner

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

AGENCY:

Milpitas Redevelopment Agency  
a public body, corporate and politic

OWNER:

\_\_\_\_\_  
Thomas C. Williams  
Executive Director

Agency General Counsel

\_\_\_\_\_  
Michael J. Ogaz

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public in and for said county and state, personally appeared \_\_\_\_\_ personally known to me (or 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.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

CERTIFICATE OF ACCEPTANCE  
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by the Occupancy, Refinancing, Equity Share Agreement and Option to Purchase Agreement dated February 24, 2010 from \_\_\_\_\_ to Milpitas Redevelopment Agency is hereby accepted by the undersigned office or agent on behalf of the Milpitas Redevelopment Agency pursuant to authority conferred by the Resolution No. RA242 dated August 16, 2007 and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A

Legal Description

**[To be inserted]**

EXHIBIT B

Form of Owner Occupancy Certification

To: Milpitas Redevelopment Agency ("Agency")

From: \_\_\_\_\_ [name of owner(s)] ("Owner(s)")

Address of Property: \_\_\_\_\_ ("Property")

Date: \_\_\_\_\_

By signature below, I/we \_\_\_\_\_ [Owner/s] hereby certify to the Milpitas Redevelopment Agency under penalty of perjury that I/we occupy the Property located at \_\_\_\_\_ [insert address] (the "Property") as my/our principal place of residence and that I/we have occupied the Property for \_\_\_\_\_ (\_\_) [insert number] months of the calendar year \_\_\_\_\_ [insert previous calendar year]. Attached to this letter is a copy of \_\_\_\_\_ [insert utility bill or driver's license] showing my place of residence or other documentation as required by the Agency.

This Owner Occupancy Certification is signed on \_\_\_\_\_, 20\_\_, under penalty of perjury.

By: \_\_\_\_\_  
Owner [type name]

By: \_\_\_\_\_  
Owner [type name]

Due Date: February 1 of each calendar year.

Attach copy of utility bill or driver's license showing address of Property.

EXHIBIT C

Notice of Shared Appreciation Amount

Date: \_\_\_\_\_

To:

From: Milpitas Redevelopment Agency

\_\_\_\_\_

\_\_\_\_\_

Attn: Housing Services Division

**NOTE: This notice must be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as of the date received,**

Property located at: \_\_\_\_\_

(Street address of Property)

\_\_\_\_\_

(City, State, Zip Code)

\_\_\_\_\_

(Owner(s) Daytime Phone no.)

\_\_\_\_\_

(Owner(s) Evening Phone no.)

In accordance with the terms and conditions of the Occupancy, Refinancing, Equity Share Agreement and Option to Purchase Agreement (the "Agreement") recorded against your Property, referenced above, the Milpitas Redevelopment Agency ("Agency") determined the current amount owed to the Agency as the "Agency's Portion of Shared Appreciation" is

\_\_\_\_\_ Dollars (\$\_\_\_\_\_) which amount is based on an assumed Fair Market Price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and an assumed transaction cost of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Attached to this notice is the calculation setting forth how the Agency's Portion of Shared Appreciation was calculated. In the event the Fair Market Price or the actual purchase price for the Property differs, the amount owed and the Shared Appreciation will differ as well.

The determination of the Shared Appreciation is only valid for 90 days from the date of this notice. If you desire to refinance your Property, you must complete your application for refinancing and advise the lender to call the Agency for approval of the refinancing prior to recordation of any related instruments against the title to the Property. Failure to do so constitutes a Default of the Agreement. Please call the Redevelopment Agency at (phone #) if you have questions.

Sincerely,

\_\_\_\_\_  
Milpitas Redevelopment Agency

EXHIBIT D

Form of Owner's Notice of Intent to Transfer

To: Milpitas Redevelopment Agency ("Agency")  
From: \_\_\_\_\_ [name of owner(s)] ("Owner(s)")  
Address of Property: \_\_\_\_\_ ("Property")  
Date: \_\_\_\_\_

Please be notified pursuant to Section 7 of the Occupancy, Refinancing, Equity Share Agreement and Option to Purchase between Owner and Agency dated \_\_\_\_\_, (the "Equity Share Agreement") that the Owner intends to transfer the Property listed above.

A. The following information is provided to the Agency pursuant to Section 7 of the Resale Agreement:

1. Address of Property: \_\_\_\_\_
2. Date Owner purchased Property: \_\_\_\_\_
3. Purchase Price paid by Owner when Property was purchased: \_\_\_\_\_
4. Date Owner intends to vacate Property: \_\_\_\_\_
5. Date Property will be placed on market: \_\_\_\_\_
6. Name and phone number of person for Agency to contact to schedule inspection:  
\_\_\_\_\_ and \_\_\_\_\_  
(Name) (Phone number)

B. As required by Section 7 of the Equity Share Agreement, the following documents are attached to this Notice:

1. Copy of HUD-1 Settlement Statement from Owner's purchase of the property.

C. I have not yet listed the Property for sale with a multiple listing service, or contacted a real estate broker or financial institution. I agree to prepare the Property for sale by:

1. Obtaining a pest control report within thirty (30) days of the date of this notice,

2. Repairing all damage noted in the pest report within the sooner of: (i) sixty (60) days from the date of this notice, or (ii) two (2) weeks prior to close of escrow or the transfer of the Property ,

3. Allowing the Agency or its designee to inspect the Property within thirty (30) days of this notice,

4. If requested by the Agency following the Agency's inspection, I will obtain a Property inspection report from a licensed Property inspector,

5. Maintaining utility connections until the Property is transferred,

6. Permitting a walk through by the Agency prior to close of escrow or the transfer.

This Owner's Notice of Intent to Transfer is certified by Owner to be true and correct and is signed on \_\_\_\_\_ **[insert date]** under penalty of perjury.

By: \_\_\_\_\_  
Owner

By: \_\_\_\_\_  
Owner

EXHIBIT E

Form of Owner Acknowledgement of Agency Response Notice

Name: \_\_\_\_\_

Address of Property: \_\_\_\_\_

Date: \_\_\_\_\_

I, \_\_\_\_\_ (insert name) hereby acknowledge that I received the Agency Response Notice (as described in Section 9 of the Occupancy, Refinancing, Equity Share Agreement and Option to Purchase on \_\_\_\_\_ (insert date).

By: \_\_\_\_\_

By: \_\_\_\_\_

EXHIBIT F

Form of Owner Request for Agency Subordination  
To Refinanced First Lender Loan

To: Milpitas Redevelopment Agency ("Agency")  
From: \_\_\_\_\_ ("Owner")  
Property Address: \_\_\_\_\_ ("Property")  
Date: \_\_\_\_\_

The Owner hereby requests the Agency to approve the Owner's refinance of the existing first mortgage on the Property. The Owner provides the following information which it certifies to be true and correct:

1. Original Purchase Price of Property: \$ \_\_\_\_\_
2. Original principal balance of existing First Lender Loan: \$ \_\_\_\_\_
3. Interest rate of existing First Lender Loan: \$ \_\_\_\_\_
4. Principal amount of proposed new First Lender Loan: \$ \_\_\_\_\_
5. Interest rate of Proposed new First Lender Loan: \$ \_\_\_\_\_

The Owner hereby certifies the above information is true and correct and this Owner Request is executed under penalty of perjury on \_\_\_\_\_ **[insert date]**.

By: \_\_\_\_\_  
Owner

By: \_\_\_\_\_  
Owner

## EXHIBIT G

### Determination Of Shared Appreciation Upon Sale

#### ASSUMPTIONS:

Original Fair Market Value of Property - \$400,000

Sales Price of Property upon Resale - \$480,000

Resale Occurs in 10<sup>th</sup> year of Shared Appreciation Period

1. Determine Appreciation Amount

Fair Market Value of Property – Original purchase  
 $480,000 - 400,000 = 80,000$

2. Determine Shared Appreciation

a) Cost of transfer (sale) is 6% of sales price, \$28,800

b) Percentage for 10 years is 30%

b) Multiply result of (a) above by Appreciation Amount (1)

$$\$51,200 \times 30\% = \$15,360$$

c) Owner's Portion of Shared Appreciation = \$15,360

d) Agency's Portion of Shared Appreciation = \$35,840

e) Sale Proceeds to Owner

$\$480,000$  (Sale Proceeds) –  $\$28,800$  (transfer costs) -  $\$35,840$  (Agency Portion of Shared Appreciation) =  $\$415,360$

EXHIBIT H

Form of Request for Agency Approval of Improvements to the Property

To: Milpitas Redevelopment Agency ("Agency")

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

Property Address: \_\_\_\_\_ ("Property")

Date: \_\_\_\_\_

I hereby request Agency approval of the following capital improvements I intend to make to my Property:

Description of Improvements: \_\_\_\_\_  
\_\_\_\_\_

Estimated Cost: \_\_\_\_\_

Original Purchase Price: \_\_\_\_\_

A copy of the building permit (if required) is attached.

Agency will respond in writing to this request.

**NOTE: Owner should retain copies of contracts, invoices, and receipts for all completed capital improvements. These documents will be necessary to establish the restricted resale price of the Property upon subsequent transfer.**

**NOTE: Only improvements described on the following page may be approved by the Agency as Eligible Improvements.**

\* Notice: Proposed Improvements must cost at least one percent (1%) of the purchase price paid for the Property by the Owner and must be approved by Agency in writing prior to construction.

## **ELIGIBLE CAPITAL IMPROVEMENTS**

1. The term "Eligible Capital Improvement" as used in the Agreement shall only include the following:
  - a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacement and/or maintenance improvements;
  - b. Improvements for energy and water conservation;
  - c. Improvements for the benefit of seniors and/or handicapped persons;
  - d. Improvements for health and safety protection devices;
  - e. Improvements to add and/or finish permanent/fixd storage space; and/or
  - f. Improvements to finish unfinished space.
  
2. Eligible Capital Improvements as used in this Agreement shall **NOT** include the following:
  - a. Landscaping;
  - b. Upgrades/replacements of plumbing and mechanical fixtures and other similar items included as part of the original construction of the Improvement;
  - c. The cost of adding decks and balconies, and any extension thereto;
  - d. Jacuzzis, saunas, steam showers and other similar items; and/or
  - e. Improvements required repairing, replacing and maintaining existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting and other similar items.

EXHIBIT I  
PROMISSORY NOTE

## PROMISSORY NOTE

\$\_\_\_\_\_,000

Date: February 9, 2010  
City of Milpitas, CA 95035

**FOR VALUE RECEIVED**, the undersigned \_\_\_\_\_ jointly and severally promises to pay to the Milpitas Redevelopment Agency, a public body, corporate and politic, and its assigns ("Agency"), or to Agency's order, at 455 East Calaveras Boulevard, Milpitas, California, 95035, or at such other place as Agency may from time to time designate by written notice to Borrowers, lawful money of the United States of America as hereafter set forth.

**1. Purpose.** The Borrower acknowledges that the Agency is providing the Agency Loan to the Borrower in order to assist the Borrower in purchasing the Property as part of the Agency's program to assist low and moderate income households with the purchase of homes. This Note evidences the Agency Loan made by the Agency to the Borrower. Because of the Agency Loan, the Borrower is required and has agreed to execute an Occupancy, Refinancing, Equity Share Agreement and Option to Purchase (the "Equity Share Agreement"), which requires the Borrower to pay any Excess Sales Proceeds and the Agency's Portion of Shared Appreciation to the Agency. In addition the Equity Share Agreement prohibits the Borrower from renting the Property except under limited circumstances and requires the Borrower to pay any Excess Rental Proceeds to the Agency. In addition to evidencing the Borrower's obligation to repay the Agency Loan, this Note evidences the obligation of Borrower to pay any Excess Rental Proceeds, Excess Sales Proceeds and the Agency's Portion of Shared Appreciation to the Agency pursuant to the Equity Share Agreement.

**2. Definitions.** The terms set forth in this section shall have the following meanings in this Note. Any capitalized term not defined in this Note shall have the meaning set forth in the Equity Share Agreement.

2.1 "Agency Option" shall mean the Agency's options to purchase the Property pursuant to Sections 11 and 18 of the Equity Share Agreement.

2.2 "Appreciation Amount" shall mean the amount calculated by subtracting \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_,000.00), which is the original purchase price of the Property paid by Borrower, from one of the following amounts, as applicable:

(a) in the event of (a) a Transfer (including the sale of the Property), (b) in the event of prepayment, (c) at the end of the Term, (d) in the event of damage or default triggering repayment pursuant to Section 15 of the Resale Agreement, or (e) in the event of a default, the Fair Market Value of the Property; or

(b) in the event a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Property at a creditor's sale of the Property.

2.3 "Fair Market Value" shall be determined in accordance with Section 12 of the Equity Share.

2.4 "First Agency Loan" shall mean the promissory note and deed of trust evidencing and securing a first mortgage loan for the Property.

2.5 "Property" shall mean the dwelling and the real property, on which the dwelling is located, which secure the deed of trust executed in connection with this Note.

2.6 "Equity Share Agreement" shall mean the Occupancy, Refinancing, Equity Share Agreement and Option to Purchase executed by the Borrower and the Agency in connection with the sale of the Property to the Borrower.

2.7 "Transfer" shall mean any sale, assignment or transfer, voluntary or involuntary, of any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, an interest evidenced by a land contract by which possession of the Property is transferred and Borrower retains title, or a deed of trust. Any Transfer without satisfaction of the provisions of this Note is prohibited. A Transfer shall not include a transfer: (i) in whole or in part to an existing spouse or domestic partner; (ii) by a Borrower to a spouse or domestic partner where the spouse or domestic partner becomes the co-owner of the Property and holds partial title to the Property; (iii) between spouses as part of a marriage dissolution proceeding; (iv) to an existing spouse or domestic partner of Borrower by devise or inheritance following the death of Borrower; (v) by Borrower into a inter vivos revocable trust in which Borrower is the beneficiary; or (vi) refinance of the First Agency Loan meeting the requirements of Section 24 of the Equity Share Agreement; provided, however, that Borrower shall provide written notice of all such transfers to Agency; and Borrower shall continue to occupy the Property as his or her principal place of residence (except where the transfer occurs pursuant to subsection (iii) or (iv) above, in which event the transferee shall owner-occupy the Property and affirmatively assume Borrower's obligations under this Note, the Equity Share Agreement, and the Deed of Trust). For purposes of this section, "domestic partner" shall mean two unmarried people, at least eighteen (18) years of age, who have lived together continuously for at least one (1) year and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of California. For purposes of this section, an individual shall be considered a domestic partner of Borrower upon presentation of an affidavit or other acceptable evidence by Borrower to the Agency.

3. **Shared Appreciation.** "Shared Appreciation" means the amount equal to the Purchase Price subtracted from the Property's Fair Market Value at the time of Transfer, minus the costs associated with the Transfer for which the Borrower is legally liable, and consists of the Owner's Portion of Shared Appreciation and the Agency's Portion of Shared Appreciation, each defined below. The "Owner's Portion of Shared Appreciation" means the amount resulting from multiplying the Shared Appreciation by the applicable percentage as set forth in the Equity Share Agreement. The result of such calculation is referred to in this Agreement as "Owner's Portion

of Shared Appreciation”. The remaining amount of the Shared Appreciation (less the Owner's Portion of Shared Appreciation) is referred to as “Agency’s Portion of Shared Appreciation” and shall be paid to the Agency, in addition to any other amounts due under the Agency Note, upon the Owner’s Transfer of the Property. The Owner’s Portion of Shared Appreciation and the Agency’s Portion of Shared Appreciation shall collectively equal one hundred percent (100%) of the Shared Appreciation. For the purposes of this Note, the Agency’s Portion of Shared Appreciation shall be deemed to be contingent interest.

#### 4. **Repayment.**

4.1 **Deferral.** Repayment of the Agency Loan and the Agency’s Portion of Shared Appreciation amount of this Note shall be deferred for the Term of the Note, except as provided in subsections (4.2) and (4.3) below.

4.2 **Repayment in Full.** The total amount of the Agency Loan, the Agency’s Portion of Shared Appreciation owed under this Note, and any other amounts owed under this Note, including but not limited to Excess Rental Proceeds, or Excess Sales Proceeds shall immediately become due and payable (i) in the event of a default by the Borrower under this Note, the Equity Share Agreement, the Deed of Trust, or the First Agency Loan, (ii) on the date Transfer is made whether voluntarily, involuntarily, or by operation of law and whether by deed, contract of sale, gift, devise, bequest or otherwise, or (iii) in the event Borrower ceases to occupy the Property as his or her principal place of residence. Failure to declare such amounts due shall not constitute a waiver on the part of the Agency to declare them due in the event of a subsequent Transfer.

4.3 **Inheriting Owner.** If during the Term, an Inheriting Owner inherits the Property, the Inheriting Owner shall succeed to all the obligations of the Borrower under this Note; provided, however, to the extent applicable the Agency may require such Inheriting Owner to execute a new promissory note.

5. **Security.** This Note is secured by a deed of trust dated the same date as this Note (the "Deed of Trust"). Borrower and Agency have also executed the Equity Share Agreement.

6. **Assumption of Note by Subsequent Buyers.** Borrower acknowledges that this Note is given in connection with the purchase of the Property as part of a program of the Agency to assist in the purchase of homes by low and moderate income households. Consequently, the Agency’s Portion of Shared Appreciation, or any other amounts due under this Note, is not assumable. The Note is due in full upon all Transfers, except as expressly set forth in the Equity Share Agreement.

7. **Default.** The Borrower shall be in default under this Note if he or she is in default under any mortgage loan on the Property (including the First Agency Loan) following the expiration of applicable cure periods, or if, after the notice and cure period provided by the Agency to the Borrower pursuant to the notice and cure provisions of the Deed of Trust, the Borrower (i) fails to pay any money when due under this Note; (ii) breaches any representation

or covenant made in this Note or the Equity Share Agreement in any material respect; or (iii) breaches any provision of the Deed of Trust.

8. **Acceleration.** Upon the occurrence of a default under this Note, the Equity Share Agreement, the Deed of Trust, or the First Agency Loan, the Agency shall have the right to declare the full amount of the Agency Portion of Shared Appreciation, as well as any other amount owed to the Agency, under this Note immediately due and payable. Any failure by the Agency to pursue its legal and equitable remedies upon default shall not constitute a waiver of the Agency's right to declare a default and exercise all of its rights under this Note, the Equity Share Agreement, and the Deed of Trust. Nor shall acceptance by the Agency of any payment provided for herein constitute a waiver of the Agency's right to require prompt payment of any remaining amount owed under this Note.

9. **Nonliability for Negligence, Loss, or Damage.** Borrower acknowledges, understands and agrees that the relationship between Borrower and Agency is solely that of borrower and Agency, and that Agency neither undertakes nor assumes any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality, adequacy or suitability of the Property or any other matter. Agency owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction or any condition of the Property and Borrower agrees that neither Borrower, or Borrower's heirs, successors or assigns shall ever claim, have or assert any right or action against Agency for any loss, damage or other matter arising out of or resulting from any condition of the Property and will hold Agency harmless from any liability, loss or damage for these things.

10. **Indemnity.** Borrower agrees to defend, indemnify, and hold Agency, the City of Milpitas, and their employees, agents, officers, and/or council members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that Agency may incur as a direct or indirect consequence of:

- (a) The conveyance of the Property to the Borrower;
- (b) Borrower's failure to perform any obligations as and when required by this Note, the Deed of Trust, and the Equity Share Agreement; or
- (c) The failure at any time of any of Borrower's representations or warranties to be true and correct.

11. **Interest.** Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the Agency may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

**12. No Waiver by Agency.** Failure by Agency to pursue its legal and equitable remedies upon Borrower's default shall not constitute a waiver of Agency's right to declare a default and exercise all of its rights under this Note, the Deed of Trust and the Equity Share Agreement. Failure to declare amounts due shall not constitute a waiver on the part of Agency of the right to declare them due in the event of any subsequent Transfer. Nor shall acceptance by Agency of any payment provided for herein constitute a waiver of Agency's right to require prompt payment of any remaining principal owed. A waiver of any term of the Note must be made in writing and shall be limited to the express written terms of such waiver.

**13. Attorney's Fees and Costs.** Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition to principal and accrued interest, all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

**14. Joint and Several Obligations.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

**15. No Offset.** Borrower hereby waives any rights of offset it now has or may hereafter have against Agency, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

**16. Waiver.** Borrower and any endorsers or guarantors of this Note, for themselves, their heirs, legal representatives, successors and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of non-payment of this Note, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waive the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

**17. Controlling Law.** This Note shall be construed in accordance with and be governed by the laws of the State of California.

**18. Assignment by Agency.** The Agency may assign its right to receive the proceeds under this Note to any person and upon notice to the Borrower by the Agency all payments shall be made to the assignee. The Agency may not transfer or assign the Note to a profit-making entity without first obtaining approval of the Agency of the First Agency Loan. The Agency may transfer or assign this Note to a government agency or non-profit entity without obtaining approval of the Agency of the First Agency Loan.

**19. Severability.** Any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

20. **Entire Agreement.** This Note (along with the Equity Share Agreement and Deed of Trust) sets forth the entire understanding and agreement of the Agency and the Borrower and any amendment, alteration or interpretation of this Note must be in writing signed by both the Agency and the Borrower.

**BORROWERS**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Name**

**Acknowledgement**

\_\_\_\_\_  
**Agency**

EXHIBIT J

SUBORDINATE DEED OF TRUST

RECORDING REQUESTED PURSUANT TO  
GOVERNMENT CODE SECTION 27383

When Recorded Mail to:

Milpitas Redevelopment Agency  
455 Calaveras Blvd  
Milpitas, CA 95035  
Attn: Executive Director

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**SUBORDINATE DEED OF TRUST**  
**(\$\_\_\_\_,000)**

THIS DEED OF TRUST is made this \_\_\_\_\_ Day of \_\_\_\_\_ 2010 among the Trustor, \_\_\_\_\_ (herein "Borrower"), and City of Milpitas (herein "Trustee"), and the Beneficiary, Milpitas Redevelopment Agency, a public body, corporate and politic, organized and existing under the laws of the State of California, whose address is 455 Calaveras Boulevard, Milpitas, California 95035 (herein "Agency").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, WITH POWER OF SALE, the located in the County of Santa Clara, State of California described in the attached Exhibit A and more commonly known as: \_\_\_\_\_, **Milpitas, CA 95035** (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Agency to collect and apply such rents), all of which shall be deemed to be and remain a part of the property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property";

TO SECURE to Agency the performance of the covenants and agreements of Borrower contained in that certain Occupancy, Refinancing, Equity Share Agreement and Option to Purchase executed by and between the Borrower and the Agency on the same date as this Deed of Trust (the "Equity Share Agreement");

TO SECURE to Agency the repayment of the amounts evidence by that certain promissory note executed by Borrower in favor of Agency on the same date as this Deed of Trust; and

TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Agency covenant and agree as follows:

1. Repayment of Sums Owed under Note and Equity Share Agreement. Borrower shall promptly pay to Agency all sums due under the Note and Equity Share Agreement, including all principal and the Agency's Portion of Shared Appreciation (as defined in the Note) required by the Note. The Note contains the following provisions concerning repayment:
2. Assumption of Note by Subsequent Buyers. Borrower acknowledges that this Note is given in connection with the purchase of the Home (as defined in the Note) as part of a program of the Agency to assist in the purchase of homes by low and moderate income households. Consequently, the Agency's Portion of Shared Appreciation, and all other amounts due under this Note, is assumable only by Eligible Purchasers of the Home (as defined in the Resale Agreement). The Note is due in full upon all other Transfers. In the event this Note is assumed by an Eligible Purchaser, the Eligible Purchaser shall execute a new deed of trust and resale restriction with new forty-five (45) year terms in forms approved by the Agency.
3. Application and Payments. Unless applicable law provides otherwise, all payments received by Agency under the Note and paragraph 1 hereof shall be applied by Agency first in payment of interest payable on the Note, and then to the principal of the Note.
4. Equity Share Agreement. Borrower will observe and perform all of the covenants and agreements of the Equity Share Agreement.
5. Prior Mortgages and Deeds of Trust; Charges, Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed or trust, or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.
6. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards, included within the term "extended coverage", and such other hazards as Agency may require and in such amounts and for such periods as Agency may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Agency; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Agency and shall include a standard mortgage clause in favor of and in a form acceptable to Agency. Agency shall have the right to hold policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien, which has priority over this Deed of Trust.

In the event of loss, Borrower shall give prompt notice the insurance carrier and Agency. Agency may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Agency within thirty (30) days from the date notice is mailed by Agency to Borrower that the insurance offers to settle a claim for insurance benefits, Agency is authorized to collect and apply insurance proceeds at Agency's option either to restoration and repair of the Property or to sums secured by this Deed of Trust.

7. Preservation and Maintenance of Property. Borrower shall keep the property in good repair and shall not commit waste or permit impairment or deterioration of the Property. If this Deed of Trust is on a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

8. Protection of Agency's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Agency's interest in the Property, then Agency, at Agency's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect Agency's interest, including reinstating any default under the senior loan by payment of the amount in default, excluding accelerated principal, but including reasonable costs and expenses and trustees' and attorneys' fees. If Agency required mortgage insurance is a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Agency's written agreement or applicable law.

Any amounts disbursed by Agency pursuant to this paragraph 6, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Agency agree to other terms of payment, such amounts shall be payable upon notice from Agency to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Agency to incur any expense or take any action hereunder.

9. Inspection. Agency may make or cause to be made reasonable entries upon and inspections of the Property, provided that Agency shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Agency's interest in the Property.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Agency, subject to the terms of any mortgage, Deed of Trust or other security agreement with a lien which priority over this Deed of Trust.

11. Borrower Not Released; Forbearance by Agency Not a Waiver. Extension of time for payment or modification or amortization of the sums secured by this Deed of Trust granted by Agency to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Agency shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successor's in interest. Any forbearance by Agency in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Agency and Borrower, subject to the provisions and paragraph 15 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property of Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and (c) agrees that Agency and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or note, without the Borrower's and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

13. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Agency as provided herein, and (b) any notice to Agency shall be given by certified mail to Agency's address stated herein or to such other address as Agency may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to borrower or Agency when given in the manner designated herein.

14. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, “costs”, “expenses” and “attorneys’ fees” include all sums to the extent not prohibited by applicable law or limited herein.

15. Borrower’s Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

16. Mortgage Loan Agreement. Borrower shall fulfill all of Borrower’s obligations under any home rehabilitation, improvement, repair, or other loan agreement, which Borrower enters into with Agency. Agency, at Agency’s option, may require Borrower to execute and deliver to Agency, in a form acceptable to Agency, an assignment of any rights, claims, or defenses, which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

17. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person), Agency may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Agency if exercise is prohibited by federal law as of the date of this Deed of Trust, or if Agency has executed a separate written waiver of this option.

If Agency exercises this option, Agency shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Agency may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

NON-UNIFORM COVENANTS. Borrower and Agency further covenant and agree as follows:

18. Acceleration; Remedies. Except as provided in paragraph 15 hereof, upon Borrower’s breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Agency prior to acceleration shall give notice to Borrower as provided in paragraph 11 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than ten (10) days from the date of notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such reach on or before the date specified in the

notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or other defense of Borrower to acceleration and sale. Agency shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 16, including but not limited to, reasonable attorney's fees.

If Agency invokes the power of sale, Agency shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Agency election to cause the Property to be sold and shall cause such notice to be recorded in each county which the Property or some part thereof is located. Agency or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall have public notice of sale to the persons and in the manner prescribed by applicable law. After lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of any previously scheduled sale. Agency or Agency's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made herein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

19. Borrower's Right to Reinstate. Notwithstanding Agency's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Agency to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Agency all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Agency and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Agency's and Trustee's remedies as provided herein, including but not limited to , reasonable attorney's fees; and (d) Borrower takes such action as Agency may reasonably require to assure that the lien of this Deed of Trust, Agency's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. Assignment of Rents; Appointment of Receiver; Agency in Possession. As additional security hereunder, Borrower hereby assigns to Agency the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 16 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 16 hereof or abandonment of the Property, Agency, in person, by agent, or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Agency or the receiver shall be applied first to premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Agency and the receiver shall be liable to account only for those rents actually received.

21. Subordination. Agency and Borrower acknowledge and agree that this Deed of Trust 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 including all sums advanced for the purpose of protecting or further securing the lien of the first deed of trust, or curing defaults by the Borrower under the first deed of trust.

Except as specifically set forth in this paragraph 19, Borrower may not subordinate this Deed of Trust to any other security instrument, promissory note, lien or other such similar document without first obtaining prior written approval of Agency. Additionally, Borrower agrees that the property subject to this Deed of Trust shall not be refinanced in order that Borrower may withdraw cash from the equity in the Property, unless such a refinance is for hardship reasons which shall be reviewed and approved in the sole and absolute discretion of the Agency.

22. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Agency shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay costs of recordation, if any.

23. Substitute Trustee. Agency, at Agency's option, may from time to time appoint a successor trustee to any trustee appointed hereunder by an instrument executed and acknowledged by Agency and recorded in the office of the Recorder of the county where the Property is located. The instrument shall contain the name of the original Agency, Trustee and Borrower, the book and page where this Instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

24. Request for Notices. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address. Agency requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Agency's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the Civil Code of California.

25. Statement of Obligation. Agency may collect a fee not to exceed \$50 for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

26. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

"Hazardous Substances" shall mean those substances defined as toxic or hazardous substances or hazardous waste under any Environmental Law, and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

"Environmental Law" shall mean all federal and state of California laws that relate to health, safety or environmental protection.

Borrower shall promptly give Agency written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

27. Nondiscrimination. The Borrower covenants by and for itself and its successors and assigns that Borrower shall comply with the following nondiscrimination covenant:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee 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 of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

The foregoing covenant shall run with the land.

28. Nonliability for Negligence, Loss, or Damage. Borrower acknowledges, understands and agrees that the relationship between Borrower and the Agency is solely that of a Borrower and the administrators of an Agency affordable housing program, and that the Agency does not undertake or assume any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality, adequacy or suitability of the Security or any other matter. The Agency owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction or any condition of the Security and Borrower agrees that neither Borrower, or Borrower's heirs, successors or assigns shall ever claim, have or assert any right or action against the Agency for any loss, damage or other matter arising out of or resulting from any condition of the Security and will hold Agency harmless from any liability, loss or damage for these things.

29. Indemnity. Borrower agrees to defend, indemnify, and hold the Agency, the City of Morgan Hill and their officers, employees, agents, board members, and/or council members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the Agency may incur as a direct or indirect consequence of:

A. Borrower's failure to perform any obligations as and when required by the Note, Resale Agreement, and this Deed of Trust; or

B. the failure at any time of any of Borrower's representations or warranties to be true and correct.

30. Residency. Borrower agrees that the Property subject to this Deed of Trust shall be owner-occupied by Borrower, and failure to do so occupy constitutes a default under the Deed of Trust and the Note.

31. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other

document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

**BORROWER**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name