

BUYER'S DISCLOSURE STATEMENT

CITY OF WALNUT CREEK INCLUSIONARY HOUSING PROGRAM

The City of Walnut Creek (the "City") has adopted an Inclusionary Housing Ordinance that makes it possible for very-low, low and moderate income households to buy a house at a price that is affordable to them.

The price that you are paying for your house is below the market rate, as required by the Inclusionary Housing Ordinance. In exchange for giving you the opportunity to buy your house at a below-market affordable price, the City will require you to sign a Promissory Note, Deed of Trust, Occupancy, Refinancing, and Resale Restriction Agreement with Option to Purchase (the "Resale Agreement"), and a Notice of Affordability Restrictions on Transfer of Property (the "Notice"). **The Deed of Trust, Resale Agreement, and Notice will be recorded against your property.** These documents are enforceable by the City, the Walnut Creek Redevelopment Agency, and other parties. In general, the Promissory Note, Deed of Trust and the Resale Agreement set forth conditions that you must meet, including but not limited to the following:

- The Resale Agreement requires you to live in your home as your principal place of residence and prohibits you from renting out your home.
- The Resale Agreement places controls on the sale of your home. There is a limit to the price at which you can sell the home. If you sell the home above the restricted price, you must pay the City the difference between the restricted price and the sales price. In addition, you must follow certain steps and procedures when you decide to sell your home.
- The City has an option to purchase your home at a restricted price when you put the home up for sale or if you violate any agreements.
- Violating the Resale Agreement, Promissory Note, or Deed of Trust may result in the loss of your home by foreclosure or forced sale.
- The Resale Agreement limits your ability to refinance or take "cash out" of your home.

The purpose of the Promissory Note, Resale Agreement, and Deed of Trust is to make sure that the City's goal of providing affordable homeownership opportunities to low and moderate income buyers. If you decide to sell your home, the Promissory Note, Resale Agreement continues to be met by keeping your house affordable to other moderate income households should you choose to sell or move. The City has helped you to buy a home; it wants to help others as well.

This Disclosure Statement explains the major provisions of the Promissory Note, Deed of Trust, and Resale Agreement so that you will understand their requirements. The Notice does not add any new restrictions but simply summarizes the provisions of the Resale Agreement. **You should, of course, read the entire Promissory Note, the Resale Agreement, the Deed of Trust, and the Notice and become completely familiar with them.**

Numerical examples are included in this Disclosure Statement to help you better understand the concepts, terms, and provisions of the Buyer's Resale Agreement and Promissory Note. Please be aware that these are simply to show how things work and that they are not intended to represent your specific situation. If you follow along with a calculator, you may not get exactly the same answers. Any differences are probably due to how your calculator "rounds-off" numbers.

A. REQUIREMENTS IN EFFECT FOR 45-YEAR TERM

The requirements that are in the Resale Agreement apply until the earlier of (i) forty-five (45) years from the date of the recordation of the Resale Agreement, or (ii) the date you sell or transfer your home in accordance with the Resale Agreement and the Deed of Trust. If you own and live in your home for the whole 45-year term, all of the requirements of the Resale Agreement go away.

B. PRIMARY RESIDENCE AND LEASING YOUR HOME

Your house must be your main place of residence. This means you must live in your home for at least ten (10) months out of each calendar year. Each year during the 45-year term, you must tell the City in writing that you are meeting this requirement by sending the City an Owner Occupancy Certification.

You are not allowed to lease or rent the house to anyone, except that in the event of substantial hardship, you may rent-out the house for no more than twelve (12) months, with prior written City approval. If the City permits you to rent out your home for up to twelve (12) months, you may only rent the home to a **moderate** income household, and the rent you may charge is restricted by the City to an affordable rent, as defined by the City's Inclusionary Housing Ordinance (approximately 30% of the tenant's household income, less an allowance for utilities). If you violate these requirements, the City may sue to enforce them, and you will owe the City any Excess Rental Proceeds you have collected (i.e., the rent in excess of the restricted amount you are permitted to charge). You will also be in default under the Resale Agreement, and the City may require you to sell the home to the City in the manner described in the Resale Agreement.

C. MAINTAINING YOUR HOME/ PROPERTY INSURANCE

By signing the Resale Agreement and Deed of Trust, you agree to keep your home and landscaping in good repair and in neat, clean, and orderly condition and to prevent deterioration of the home. You agree to maintain your home in good repair and in conformance with all applicable government regulations. You agree not use or dispose of any hazardous substances on the property, except those commonly used on residential properties. You also agree to keep a standard homeowner's insurance policy, with the City named as an additional insured. The insurance policy shall be in an amount equal to the replacement value of the home. Every five (5) years, the replacement value will be reviewed and adjusted as needed, if requested by the City. If you hire a contractor to work on your home, the contractor must be licensed and carry liability and workers compensation insurance.

D. NOTICE TO CITY UPON SALE, ASSIGNMENT, TRANSFER, OR MORTGAGE

If you decide to move from your home, or to sell, assign or transfer your home or any partial interest in your home, you must promptly notify the City by sending the City a completed "Owner's Notice of Intent to Transfer" which is Exhibit C to the Resale Agreement .

There are restrictions on your ability to mortgage or borrow against your home. If you want to record a mortgage or deed of trust against your home (for example, to refinance your first mortgage or to take out a home equity loan), you must let the City know promptly in writing of your intention, you must promptly notify the City by sending the City a completed "Refinancing Request Notice" which is Exhibit F to the Resale Agreement.

Any notice you must give to the City must be sent by certified mail, return receipt requested, or express delivery service with a delivery receipt. Notices are considered effective as of the date received or the date delivery was refused. Some types of refinancing are prohibited under the Resale Agreement.

E. CITY HAS OPTION TO PURCHASE

In exchange for the opportunity given to you to buy your home at an affordable, below-market price, you agree that the City has an option to buy your home at a restricted price if you sell your home during the term of the Resale Agreement. In other words, the City has the first opportunity to buy your house before anyone else. The City may also give its option to purchase your house to a public agency, a nonprofit organization, or a person or family meeting income and other requirements. The City does not have the option to purchase your home, however, in the case when a transfer is to an existing husband, wife, or domestic partner who signed the Promissory Note, to a husband, wife, or domestic partner who then becomes a co-owner of the home, to a husband or wife as part of a marriage or a divorce, to an inter vivos trust in which you are the beneficiary, or to a husband, wife, or domestic partner upon death of the borrower.

If the City in fact decides to use (or assign) its option to buy your house, it will notify you, by sending you a City Response Notice, within thirty (30) days after it receives your Owner's Notice of Intent to Transfer and other required information, including a pest control report. The purchase of your house under the City option shall take place within ninety (90) days of the date of the City Response Notice.

F. SALES PRICE OF HOME IS RESTRICTED: MAXIMUM RESTRICTED RESALE PRICE

The City wants to make sure that your home remains affordable to **moderate** income households. Therefore, the Resale Agreement limits the sales price of your home. The Maximum Restricted Resale Price that you can receive is the **lower** of the Indexed Price described in Section F.1 below and the Fair Market Value as described in Section F.2.

1. INDEXED PRICE

- (a) Owner's Base Price (price at which you bought it)

(b) increased by the percentage increase of the Area Median Income for Contra Costa County for a household size of 4 persons from the date of your original purchase (the recording date of the Grant Deed for the property) to the date of receipt by the City of the Owner's Notice of Intent to Transfer

plus

(c) Appraised Value (not cost) of any Eligible Capital Improvements, meeting the requirements of Section 7A(5) (Notice of Intended Transfer; Preparation of Home for Sale) and Section 11A(1) (Determination of Maximum Restricted Resale Price for City Purchase or Restricted Sale) of the Resale Agreement. Note that Eligible Capital Improvements, among other requirements, must be approved in writing by the City before they are installed, as further described in the Resale Agreement.

minus

(d) Cost of repairs to correct any violations of building or other codes or to put the house in a "sellable condition," such as cleaning, painting, appliance and other repairs, and deferred maintenance.

Example 1 shows how the Indexed Price formula works.

EXAMPLE 1 You sell your house at the end of eight years. The original price of your three-bedroom home when you bought it was \$300,000. The median income for a family of four in Contra Costa County when you bought your home was \$86,100. Median income increases by 5% over the eight years. Five years after buying your home, you remodel your kitchen (with prior City written approval) and the remodeling work is valued by an appraiser as worth \$3,000 at the time you sell. There is no deferred maintenance.

(a)	Original Price of Home	\$300,000
(b)	Median Income Increases by 5% over eight years	
	multiply (a) by 5%, then add result (\$15,000) to (a)	<u>15,000</u> \$315,000
(c)	Appraised Value (not cost) of Eligible Capital Improvements	<u>+ 3,000</u>
	<u>INDEXED PRICE</u>	\$318,000

2. FAIR MARKET VALUE

Under the Resale Agreement, the Fair Market Value can be determined in one of two ways. First, it can be established by a real estate appraiser approved in advance by the City. If possible, the appraisal will be based on sales prices of homes similar to yours that are sold in your market area during the preceding three-month period. The appraisal will not take into account the fact that the resale price of your home is restricted by the Resale Agreement. The value of any (i) Eligible Capital Improvements that you have made to your home that meet the requirements set forth in Section 7A(5) and Section 11A(1) of the Resale Agreement, or (ii) damage or deferred maintenance that occurred while you owned the house that decreased its value shall be included in the appraisal. The cost of the appraisal used to determine Fair Market Value will be paid by you, unless a new buyer has obtained an appraisal that you may utilize.

The Resale Agreement also allows you and the City to set the Fair Market Value of your home by mutual agreement instead of relying on an appraiser. Both you and the City would have to agree to this particular method (instead of hiring an appraiser) and to the final Fair Market Value amount. If you and the City fail to agree on the Fair Market Value, either one can require use of the appraisal method.

Example 2 shows how the Indexed Price and the Fair Market Value of the home are compared to determine the Maximum Restricted Resale Price at which you can offer your house for sale.

EXAMPLE 2 The assumptions are the same as in Example 1. You sell your house at the end of eight years. The original sales price of your home was \$341,000. The median income for a family of four in Contra Costa County when you bought the home was \$86,100. Median income increases by 5% over the eight years. Five years after buying your home, you remodel your kitchen. The Fair Market Value of your home is determined by appraisal, the cost of which is paid by you. The appraisal determines the Fair Market Value at \$450,000. This amount includes the value of the kitchen improvements, at \$3,000.

<u>INDEXED PRICE</u>	is less than	<u>FAIR MARKET VALUE</u>	then	<u>MAXIMUM RESTRICTED RESALE PRICE</u>
\$318,000	<	\$450,000	⇒	\$318,000

Since the Fair Market Value of the home is greater than the Indexed Price of the house, the Maximum Restricted Resale Price which you can receive from the sale of your home is \$318,000.

G. SELLING YOUR HOME

Under the terms of the Resale Agreement, when you go to sell your home within the term of the Resale Agreement, there are two different ways that the sale can take place:

- The City chooses to use its option to purchase your house at the restricted sales price or assigns the option to a third party who purchases the house at the restricted sales price.
- You sell the home at the restricted sales price to someone who meets specific income requirements like you had to meet. This buyer is called an "Eligible Purchaser" in the Resale Agreement.

These two cases are described below.

1. CITY EXERCISES ITS OPTION TO PURCHASE YOUR HOME

When you decide to sell your home, you must let the City know in writing before you contact a real estate broker or lender and before you list the home in the Multiple Listing Service. This notice is called the "Owner's Notice of Intent to Transfer." The Owner's Notice of Intent to Transfer (see Exhibit C of the Resale Agreement for a form of this notice) must be sent in a particular way and must include specific information (for example, it must include a pest report) as detailed in Section 7 (Notice of Intended Transfer; Preparation of Home for Sale) and Section 32 (Notices) of the Resale Agreement. If you fail to send the City this notice, you will be in default under the Resale Agreement, and the sale of your home may be delayed.

The City will then let you know in a notice called the "City Response Notice" whether or not it will use its option to purchase. See Section 8 (City Response to Owner's Notice of Intended Transfer) and Section 9 (Owner Acknowledgment of City Response Notice) of the Resale Agreement for details on what you must do once you receive the City Response Notice.

If the City decides to use its option to purchase (or assigns this right) and the City or a City designated buyer purchases the home at the restricted sales price. The City will let you know that it wants to buy your home and provide the restricted sales price amount in the City Response Notice. The purchase by the City shall take place within ninety (90) days of the date the City Response Notice is sent to you.

When your home is bought by the City or a City designee under the City's option to purchase, you will pay to the City a transaction fee equal to six percent of the sales price. This fee takes the place of the fee for a broker's services. The City will be performing those services when it purchases your home.

You should not contact a broker to sell your home until the City has informed you that it will not exercise its option to purchase your home. If you contact a broker and the City exercises its option, you will owe the City a six percent transaction fee and you will be solely responsible for any additional broker fee.

2. SALE TO AN "ELIGIBLE PURCHASER" AT THE RESTRICTED SALES PRICE

If the City does not choose to exercise its option to purchase your home, you must sell your home to an Eligible Purchaser. See Section 8B (Owner Sale at Restricted Sales Price to Eligible Purchaser) and Section 12 (Sale By Owner If City Does Not Exercise Option to Purchase) of the Resale Agreement. An Eligible Purchaser is a household (1) who will live in the home; and (2) whose income is equal to or less than the income level designated in the City Response Notice; and (3) who will agree to sign resale restriction documents required by the City and to otherwise cooperate with the City.

Once you find a potential Eligible Purchaser, you must refer the proposed buyer to the City so that the City can determine if in fact he or she meets the requirements of an Eligible Purchaser. You and the proposed buyer must give specific information and documents to the City as described in Section 12 (Sale By Owner If City Does Not Exercise Option to Purchase) of the Resale Agreement.

When the sale of your home to the Eligible Purchaser is completed, you must submit to the City the information and documents listed in Section 12D(7) of the Resale Agreement.

3. TRANSFER IN VIOLATION OF RESALE AGREEMENT; PAYMENT OF "EXCESS SALES PROCEEDS" TO CITY

If you sell or transfer your home in a way that violates the terms of the Resale Agreement, then you must pay to the City any "Excess Sales Proceeds" that result from the sale of your house. For example, if you do not sell your home to the City pursuant to the City Option

or to an Eligible Purchaser, but to someone else for market value, then you will owe the City any "Excess Sales Proceeds" that result from the sale.

The term "Excess Sales Proceeds" is defined in Section 13 of the Resale Agreement (Payment To City Of Excess Sales Proceeds) as the amount by which the gross sales proceeds you receive from the ineligible buyer exceed the Maximum Restricted Resale Price for the home. Another way to put it is the following:

$$\begin{aligned} &\text{Gross Amount of Money the New Buyer Paid for the House} \\ &\quad \text{MINUS} \\ &\quad \text{Maximum Restricted Resale Price} \\ &\quad \text{(from City Response Notice)} \\ &\quad \text{EQUALS} \\ &\quad \text{Payment to the City of Excess Sales Proceeds} \end{aligned}$$

The amount of Excess Sales Proceeds that you pay to the City is used by the City for other affordable housing programs. You were given the chance to buy your home at a price that was affordable to you. If you sell your home at an unrestricted price in violation of the resale restriction, your home will be lost as an affordable unit. When you pay the Excess Sales Proceeds to the City, the funds will be used to help other low and moderate income families purchase a home, who, like you, would not be able to obtain affordable housing without assistance.

Example 3 shows how the Excess Sales Proceeds are calculated.

EXAMPLE 3 You sell your house at the end of eight years. You originally paid \$300,000 for your home. The City Response Notice sets the Maximum Restricted Resale Price at \$318,000. You do not notify the City that you intend to sell your home. You sell your home to someone who does not qualify as an Eligible Purchaser. The house is appraised at \$450,000, and you sell the house for \$500,000. You must pay the City Excess Sales Proceeds as calculated below:

Total Amount Market Purchaser Paid For House	\$ 500,000
MINUS	
Maximum Restricted Resale Price (from City Response Notice)	<u>- 315,000</u>
Amount of Excess Sales Proceeds You Pay to City	<u>\$182,000</u>

In cases where transfer of your home to another person is by means other than sale (with the exception of a creditor taking title), the amount of Excess Sales Proceeds is the difference between the original purchase price and the Fair Market Value of the home at the time of transfer.

H. CAPITAL IMPROVEMENTS YOU MAKE TO THE HOME

If you make improvements to your home, and you want the value of the capital improvements to be taken into account when the Maximum Restricted Resale Price (or option price) is calculated, you must obtain written approval of the improvements by the City before the improvements are made (see Exhibit E of the Resale Agreement for a form to use when requesting this approval). The initial cost of such improvements must be at least \$2,000 or more, and the improvements must conform to existing building codes and to all applicable government standards.

I. DEFAULT PROVISIONS

Because you are buying your home at a below-market rate affordable price, you agree to meet all of the conditions of all of the City resale restriction documents, including the Promissory Note, Resale Agreement, and Deed of Trust. **If you violate any provisions of the City documents, you are considered to be in default under the Resale Agreement.** Also, if you default under any loan on the home, such as a mortgage or home equity loan, you would also be considered to be in default under the Resale Agreement. If you do not correct the violation, the City could require you to repay Excess Sales Proceeds and/or exercise its option and buy your home for the Maximum Restricted Resale Price. The City could also go to court and get a court order to enforce the provisions of the City documents, which may result in a foreclosure (**or forced sale**) of your home.

California redevelopment law also allows other parties to enforce the Resale Agreement if you violate certain provisions of the Resale Agreement, including the provisions requiring that the home remain affordable to future purchasers. The other parties who may take legal action to enforce the Resale Agreement include the Walnut Creek Redevelopment Agency, a residents' association, a resident of another affordable unit, a former resident of your home, a person on an affordable housing waiting list, and others who are listed in State law.

J. REFINANCE OF YOUR FIRST MORTGAGE

The Resale Agreement allows, under certain limited circumstances, you to refinance your first mortgage loan but places restrictions on the amount received by you from the refinancing. Following refinancing of your first mortgage, the principal amount of all debt secured by your house must not be greater than the larger of: (i) 90 percent of the Maximum Restricted Resale Price; or (ii) the original amount of all the loans you took out to finance the purchase of your home. If you are considering a refinance of your first mortgage, you must contact the City for a calculation of the Maximum Restricted Resale Price amount before you contact your financial institution. The City will not approve any mortgage loan which includes negative amortization and or adjustable rate mortgages. Example 4 shows how the City refinance requirements work.

EXAMPLE 4 The assumptions are the same as in Example 1, except that you wish to refinance (instead of sell) your house at the end of eight years. The original sales price of your home was \$300,000. You have a first mortgage of \$270,000. The median income for a family of four in Contra Costa County when the home was bought was \$86,100. Median income increases by 5% over the eight years. Five years after buying your home, you remodel your kitchen (with prior City written approval) and the remodeling work is valued by an appraiser as worth \$3,000 at the time you sell.

(a)	Original Price of Home	\$300,000
(b)	Median Income Increases by 5% over eight years	
	multiply (a) by 5%, then add result (\$15,000) to (a)	<u>15,000</u> 315,000
(c)	Appraised Value (not cost) of Eligible Capital Improvements	<u>+ 3,000</u>
	<u>INDEXED PRICE</u>	\$318,000
	Indexed Price is less than fair market value, so Indexed Price is Maximum Restricted Resale Price	
(d)	Total of all Mortgages limited to 90% of Restricted Resale Price (multiply \$318,000 by .9)	\$286,200
(e)	Maximum principal amount of refinanced first Mortgage (assumes no other financing is secured by the Home)	\$286,200

K. JUNIOR LOAN AND EQUITY LINES OF CREDIT

The Resale Agreement limits your ability to enter into additional mortgage loans or equity lines of credit. Under very limited circumstances, and only with the prior written approval from the City, the Resale Agreement allows you to place a second mortgage or equity line of credit on your Home, subject to the requirement that the total of debt secured against your house cannot exceed ninety percent (90%) of the Maximum Restricted Resale Price, as established by the City. If you are considering obtaining a junior mortgage loan or equity line of credit, you should contact the City for a calculation of the Maximum Restricted Resale Price amount before you contact your financial institution. Example 5 shows how the junior loan requirements work:

EXAMPLE 5 The assumptions are the same as in Example 4, except that you wish to place a second mortgage (instead of refinance the first mortgage) on your house at the end of eight years.

Maximum Restricted Resale Price is \$318,000

(a)	Total of all Mortgages limited to 90% of Restricted Resale Price (multiply \$361,050 by .9)	\$286,200
(b)	Subtract outstanding principal balance of first mortgage loan (\$300,000)	<u>\$270,000</u>
(c)	Maximum principal amount of second mortgage or maximum draw on equity line of credit	\$ 16,200

L. INHERITANCE

In the event that someone inherits your home, the administrator of your estate or the person inheriting your home must contact the City within thirty (30) days of your death. If the

person inheriting your home qualifies as an Eligible Purchaser, he or she may keep your home, but he or she will have to execute new homebuyer documents with the City. If the person inheriting your home does not qualify as an Eligible Purchaser, he or she will have to sell the home in accordance with the Resale Agreement, but he or she may live in the home for up to twelve (12) months, leave the home vacant for up to twelve (12) months, or rent the home to a low income tenant at a restricted rent for up to a year. If the person inheriting your home does not qualify as an Eligible Purchaser, and does not comply with the terms of the Resale Agreement, he or she will be in default under the Resale Agreement, and the City may exercise its option to purchase the home at the Maximum Restricted Resale Price. These provisions do not apply to a spouse or domestic partner of the owner.

M. DATABASE OF AFFORDABLE HOUSING

Because the City and the Walnut Creek Redevelopment Agency are reporting your property as an affordable housing unit, State law requires that your property be listed on a database that must be made available to the public on the internet. The listing will include the following information about your property: street address; assessor's parcel number; number of bedrooms; the year in which it was built or substantially rehabilitated; the date on which these restrictions expire; and information about the Notice of Affordability Restrictions on Transfer of Property that will be recorded.

Please sign this Buyer's Disclosure Statement in the space provided below, and keep a signed copy for your records, and return the original to the City at the following address:

City of Walnut Creek
Community Development Department
1666 North Main Street
Walnut Creek, CA 94596
Attn: Housing Manager

I have received, read and understand the above Buyer's Disclosure Statement. I also understand the following:

1. The restrictions last for 45 years.
2. The home may be sold only to a **moderate** income household for 45 years.
3. The resale restrictions will usually reduce the property's sale price compared to the sales price of other homes. The sales price that I receive may be less than half the price of an unrestricted home. The Agency has the right to set the Maximum Restricted Resale Price.
4. Refinancing of the property is restricted.
5. Home Equity and Lines of Credit are prohibited.

6. I must contact the City of Walnut Creek before any sale or refinancing of the property and before applying for a home equity loan. Any sale or refinancing or home equity loan must be approved by the City. Selling or refinancing the property without consent is a default under the agreements I have signed and may lead to the foreclosure or forced sale of my Home.
7. I must live in the home. I cannot lease or rent it unless approved by the City for hardship. If I rent the home I may be forced to pay Excess Rents to the City.
8. The City has the right to buy my home at the Maximum Restricted Resale Price when I decide to sell it or if I violate any of the provisions of the agreements I have signed.
9. Violating any of the restrictions contained in the agreements that I have signed may lead to the foreclosure or forced sale of my Home.

By: _____
Signature of Buyer

Dated: _____

Print Name of Buyer

By: _____
Signature of Buyer

Dated: _____

Print Name of Buyer