

**BUYER'S OCCUPANCY, REFINANCING AND
RESALE RESTRICTION AGREEMENT WITH OPTION TO PURCHASE**

**CITY OF WALNUT CREEK
INCLUSIONARY HOUSING PROGRAM**

ADMINISTRATIVE COVER SHEET

(Remove Upon Completion)

BLANK LINES: CHECKLIST

- _____ Name of Owner, p. 1, upper left
- _____ Address of Home, p. 1, upper left
- _____ Income Category of Buyer, p. 1, upper left
- _____ Owner's Base Price, p. 1, upper left
- _____ Median Income for a Household of Four on date of this Agreement, p. 1, upper left
- _____ Date of Document, p. 1, first paragraph
- _____ Owner's Name, p. 1, first paragraph
- _____ Developer's Name and Entity Type, p. 1, Recital B
- _____ Date of Inclusionary Agreement, p. 2, Recital B
- _____ Description of the Development, p. 2, Recital B
- _____ Planning Commission Resolution Number and Date, p. 2-3, Recital B
- _____ Number of Affordable Units in the Development, p. 3, Recital B
- _____ Income Category of Home and Future Sale Income Category, p. 3, Recital C
- _____ First Mortgage Lender, Amount, and Recording Information, p. 3, Recital H
- _____ Number of First Lender Deeds of Trust, p. 3, Recital H
- _____ Proposed tenant income level (low or moderate), p. 5, Section 3B
- _____ Income Category for Eligible Purchaser, p. 13, Section 12B(1)

- _____ Address of Owner, p. 22, Section 32
- _____ Address of First Lender, p. 22, Section 32
- _____ Initials of Owner, p. 24
- _____ Signatures of City and Owner, p. 24
- _____ Notary Acknowledgements, p. 25
- _____ Attach Legal Description of the Home, p. A-1

SAMPLE

RECORDING REQUESTED PURSUANT
TO GOVERNMENT
CODE SECTION 27383

When Recorded Mail To:

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

**BUYER'S OCCUPANCY, REFINANCING AND
RESALE RESTRICTION AGREEMENT WITH OPTION TO PURCHASE**

**CITY OF WALNUT CREEK
INCLUSIONARY HOUSING PROGRAM**

**NOTE TO BUYER, THIS DOCUMENT RESTRICTS THE RESALE VALUE OF YOUR
HOME**

Owner: [Name of Owner]

Address of Home: [Address of Home]
Walnut Creek, CA [Zip code]

Income Category of Buyer: [Income Category of Buyer- Low- Income, Moderate- Income]

Sales Price at Original Purchase (Owner's Base Price): \$ [Owner's Base Price]

Median Income on Agreement Date: \$ [Median Income for a Household of 4] (household of 4 persons)

This Buyer's Occupancy, Refinancing and Resale Restriction Agreement with Option to Purchase (the "Agreement") is entered into as of this [__st. nd, rd, th day of Month, Year], by and between the City of Walnut Creek (the "City") and [Owner's Name] (the "Owner").

RECITALS

A. Pursuant to City of Walnut Creek Ordinance 2025, Title 10, Chapter 2, Article 9, Part III, Article 9, Section 10-2.3.901 through 10-2.3.910 of the Walnut Creek Municipal Code (the "Inclusionary Housing Ordinance"), a portion of all new housing constructed in the City of Walnut Creek is required to be affordable to low- and moderate-income households.

B. [Developer's Name and Entity Type- Stoneridge Walnut Creek, LP, a California Limited Partnership], the developer of the [Development Name- Club Villas, Citrus Walk, Walden Park, etc.] development (the "Developer"), entered into an Inclusionary Housing Agreement with the City dated [Date of Inclusionary Agreement]. Pursuant to the Inclusionary Housing Agreement and City Planning Commission Resolution No. [Planning Commission

[Resolution Number], adopted [Planning Commission Resolution Date] (the "Resolution"), the Developer agreed to sell [Number of Affordable Units in the Development] homes in the Development to low and [Income Category- low-income, moderate-income] households at an affordable price (the "Affordable Units").

C. Owner intends to purchase the property located in the City of Walnut Creek and more particularly described in Exhibit A attached hereto and incorporated herein (the "Home"), which is an Affordable Unit. The Home has been designated by the City and the Developer as a Moderate Income Home, and this Agreement restricts future sales of the Home to persons who qualify as Moderate Income Households ("Income Eligible Households") at a **Maximum Restricted Resale Price**, as set by the City, which is below the fair market value of the Home.

D. The purchase price of the Home paid by the Owner is set forth on Page 1 of this Agreement (the "Owner's Base Price").

E. Pursuant to the Inclusionary Housing Ordinance and the Inclusionary Housing Agreement, the Developer and the City are required to ensure the continued affordability of the Home as an Affordable Unit, and the City therefore requires the Owner to execute this Agreement as a condition of the Owner's purchase of the Home. The Owner has agreed to execute and comply with this Agreement in consideration of the Developer's agreement to sell the Home to the Owner at an affordable price, **the Maximum Restricted Resale Price**, which is below the fair market value of the Home.

F. Pursuant to Health and Safety Code Section 33413(b)(2)(A)(i), specified percentages of all new and substantially rehabilitated dwelling units developed in redevelopment project areas in the City shall be available at affordable housing cost to persons and families of low or moderate income and to very low income households, and such requirements shall be set forth in recorded covenants running with the land, enforceable as required by Health and Safety Code Section 33413(e)(3). This Agreement is intended to implement this requirement of law, and to cause the Home to be eligible for redevelopment housing production credit pursuant to Section 33413(b)(2)(A)(i) for units built within a project area or Section 33413(b)(2)(A)(ii) for units built outside a project area. This Agreement also causes the Home to be available for replacement housing credit pursuant to Section 33413(a).

G. The purpose of this Agreement is to place resale controls on the Home, restricting the sale of the Home at a Maximum Restricted Resale Price set by the City and to require the payment of any excess proceeds of sale or excess rental proceeds to the City. This Agreement also provides the City an option to purchase the Home at a Maximum Restricted Resale Price, given in consideration of the economic benefits to the Owner resulting from purchase of the Home at a below market price under the City's Inclusionary Housing Program. This Agreement is accompanied by a promissory note from the Owner to the City (the "City Note") pursuant to which the Owner agrees to pay any excess proceeds of sale or excess rental proceeds to the City.

H. The Owner is receiving the following purchase money loans:

	<u>Name of Lender</u>	<u>Amount</u>	<u>Date Deed of Trust Recorded</u>
1.	[First Mortgage Lender]	\$ [Amount]	[Date]

All purchase money loans are, collectively, referred to herein as the "First Lender Loan". All lenders of purchase money loans are, collectively, referred to herein as the "First Lender". The First Lender Loan is secured by [Number of First Lender Deeds of Trust] deed(s) of trust executed by the Owner in favor of First Lender and recorded in the County of Contra Costa concurrently with this Agreement, (collectively, the "First Lender Deed of Trust").] As used in this Agreement, "First Lender" includes all successors and assigns of the First Lender.

I. This Agreement and the accompanying City Note shall be secured by a deed of trust on the Home (the "City Deed of Trust"). This Agreement and the City Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust.

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

1. DEFINITIONS AND EXHIBITS

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

- (1) "Affordable Rent" – p. 6, Section 3B
- (2) "Affordable Units" – Recital B
- (3) "Agreement" - first sentence of the Agreement on page 1
- (4) "City" – first sentence of the Agreement on page 1
- (5) "City Deed of Trust" - Recital I
- (6) "City Designated Purchaser" – p. 10, Section 10B
- (7) "City Note" – Recital G
- (8) "City Option" – p. 10, Section 10A
- (9) "City Purchase Option Upon Default" – p. 17, Section 17
- (10) "City Response Notice" – p. 10, Section 8

- (11) "Developer" – Recital B
- (12) "Domestic Partners" – p. 7, Section 6A
- (13) "Eligible Capital Improvements" – p. 12, Section 11A(1)
- (14) "Eligible Purchaser" – p. 13, Section 12B
- (15) "Excess Rental Proceeds" – p. 6, Section 3B
- (16) "Excess Sales Proceeds" – p. 14, Section 13
- (17) "Fair Market Value" – p. 12, Section 10
- (18) "First Lender" - Recital H.
- (19) "First Lender Deed of Trust" - Recital H
- (20) "First Lender Loan" - Recital H
- (21) "Home" - Recital C
- (22) "Inclusionary Housing Ordinance" – Recital A
- (23) "Indexed Price" – p. 11, Section 11A
- (24) "Inheriting Owner" – p. 7, Section 6B(1)
- (25) "Maximum Restricted Resale Price" – p. 11, Section 11
- (26) "Median Income" – p. 11, Section 11A
- (27) "Owner" - first sentence of the Agreement on page 1.
- (28) "Owner's Base Price – p. 1, upper left and p. 11, Section 11A
- (29) "Owner's Notice of Intent to Transfer" – p. 8, Section 7
- (30) "Permitted Encumbrance Amount" – p. 19, Section 24B
- (31) "Proposed Purchaser" – p. 13, Section 12A
- (32) "Refinance Request Notice" – p. 19, Section 24B
- (33) "Resolution" – Recital B

(34) "Term" – p. 18, Section 21

(35) "Transfer" – p. 7, Section 6

B. The following Exhibits are attached to this Agreement:

(1) Exhibit A: Legal Description of Property (Home)

(2) Exhibit B: Form of Owner Occupancy Certification

(3) Exhibit C: Form of Owner's Notice of Intent to Transfer

(4) Exhibit D: Form of Owner Acknowledgement of City Response Notice

(5) Exhibit E: Form of Request for City Approval of Improvements to the Home

(6) Exhibit F: Form of Refinance Request Notice

2. OWNER CERTIFICATIONS

The Owner certifies that (i) the financial and other information previously provided in order to qualify to purchase the Home is true and correct as of the date first written above, (ii) the Owner has not held an ownership interest in a home during the three (3)-year period immediately prior to the date of this Agreement and (iii) the Owner shall occupy the Home as the Owner's principal place of residence.

3. OWNER OCCUPANCY AND LEASING OF HOME

A. The Owner shall occupy the Home as the Owner's principal place of residence within sixty (60) days of close of escrow on the purchase of the Home by the Owner. Failure by the Owner to occupy the Home as the Owner's principal place of residence shall constitute a default under this Agreement for which the City may exercise its option to purchase pursuant to Section 17 below. The Owner shall be considered as occupying the Home if the Owner is living in the Home for at least ten (10) months out of each calendar year. The Owner shall provide an annual written certification in the form shown in the attached Exhibit B, to the City that the Owner is occupying the Home as his or her principal place of residence.

B. The Owner shall not rent or lease the Home to another party, unless such rental or lease is first approved in writing by the City. The City shall approve the renting or leasing of the Home only if all of the following conditions are met: (1) the term of the rental or lease is not greater than twelve (12) months and cannot be extended without City approval; (2) the Owner demonstrates to the City's reasonable satisfaction that the Owner will incur substantial hardship if he or she is not permitted to rent or lease the Home to a third party; (3) the proposed tenant

qualifies as a [Proposed tenant income level (low-income, moderate-income)] household, as certified to the City, and (4) the rent for the Home does not exceed rent determined by the City to be affordable to [Proposed tenant income level (low-income, moderate-income)] household, in accordance with the Ordinance (the "Affordable Rent"). Any rental or lease of the Home in violation of this Agreement is prohibited, and shall be a default under this Agreement and the City Deed of Trust. The Owner further agrees that, in the event the Owner rents or leases the Home to a third party in violation of this Section 3B, any excess rents ("Excess Rental Proceeds") paid to the Owner by the lessee over the "Affordable Rent" shall be due and payable to the City immediately upon receipt thereof by the Owner. Such Excess Rental Proceeds shall be considered a recourse debt of the Owner to the City, as evidenced by the Note, which the City may collect by legal action against the Owner, including by foreclosure under the City Deed of Trust.

4. FIRST TIME HOMEBUYER EDUCATION CLASS

The Owner shall attend all sessions of a first-time homebuyer education class offered by a HUD Certified First Time Homebuyer Counselor in conjunction with a local lender or a non-profit service provider.

5. MAINTENANCE AND INSURANCE PROCEEDS

A. The Owner shall maintain the Home, 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 Home, and shall make all repairs and replacements necessary to keep the Home in good condition and repair. Failure by the Owner to maintain the Home shall constitute a default under this Agreement for which the City may exercise the City Purchase Option Upon Default to purchase the Home pursuant to Section 17 below.

B. In the event that the Owner breaches any of the covenants contained in this section and such default continues for a period of ten (10) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter the Home and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter the Home and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas, and to attach a lien on the Home, or to assess the Home, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, which amount shall be promptly paid by the Owner to the City, plus an administrative charge equal to ten percent (10%) of the cost of such work upon demand.

C. The Owner shall maintain a standard all risk property insurance policy equal to the replacement value of the Home (adjusted every five (5) years by appraisal, if requested by City), naming the City as an additional insured and loss payee. Additional insurance requirements are set forth in Section 6 of the City Deed of Trust.

6. TRANSFER AND SALE RESTRICTIONS

A. Transfer. Any Transfer of the Home will be subject to the provisions of this Agreement including, without limitation, exercise of the City Option pursuant to Section 10 below. "Transfer" shall mean any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home, 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 Home 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 for which the City may exercise the City Purchase Option on Default pursuant to Section 17 Below. A Transfer shall not include a transfer: (i) to an existing spouse or Domestic Partner who is also an obligor under the Note; (ii) by the Owner to a spouse or Domestic Partner where the spouse or Domestic Partner becomes the co-owner of the Home; (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 trust in which Owner is the beneficiary; (vi) by deed of trust or imposition of a lien subordinate to the Deed of Trust or (vii) refinance of the First Lender Loan meeting the requirements of Section 24 of this Agreement; provided, however, that Owner shall provide written notice of all such transfers to City pursuant to Section 7 below; and Owner shall continue to occupy the Home 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 Home and affirmatively assume Owner's obligations under this Agreement, the City Note and the City Deed of Trust). For the purposes of this Section 6, "Domestic Partners" 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 City.

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 or the person inheriting the Home shall provide written notice to the City of the Owner's death within thirty (30) days of the date of death and the following procedures shall apply:

(1) The person inheriting the Home (the "Inheriting Owner") shall provide the City with income information, to be verified by the City, so that the City may determine if the Inheriting Owner is an Income Eligible Household. If the Inheriting Owner fails to provide required financial information and/or documentation, he or she shall be deemed not to qualify as an Income Eligible Household. If the Inheriting Owner qualifies as an Income Eligible Household, he or she shall succeed to the Owner's interest and obligations under this Agreement,

the City Note, and the City Deed of Trust and new documents shall be executed between the Inheriting Owner and the City and recorded against the Home. If the Inheriting Owner fails to qualify as an Income Eligible Household, he or she shall be required to Transfer the Home to an Eligible Purchaser at a price not exceeding the Maximum Restricted Resale Price, pursuant to the procedures set forth in Sections 7 through 13 below and the City may exercise the City Option pursuant to Section 10 below; provided, however that the Inheriting Owner may own and occupy the Home for up to twelve (12) months prior to providing an Owner's Notice of Intent to Sell to the City pursuant to Section 7 below, and provided further that the Inheriting Owner remains in compliance with the requirements of this Agreement and the City Deed of Trust. The Inheriting Owner shall not be required to occupy the Home during this twelve (12)-month time period, but shall not rent the Home except as provided in Section 3B above.

(2) 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 City may then exercise any of the remedies set forth in Section 14 below, including, without limitation, exercise of the City Purchase Option upon Default.

7. NOTICE OF INTENDED TRANSFER; PREPARATION OF HOME FOR SALE

A. In the event the Owner intends to transfer (including without limitation all "Transfers" as defined in Section 6) or vacate the Home, the Owner shall promptly give the City written notice of such intent (the "Owner's Notice of Intent to Transfer") in the form shown in the attached Exhibit C. The Owner shall give the City the Owner's Notice of Intent to Transfer prior to notifying real estate brokers or lenders of Owner's intent to Transfer the Home and prior to listing of the Home on the Multiple Listing Service. The Owner's Notice of Intent to Transfer shall be sent to the City by certified mail, return receipt requested at the address provided in Section 32 of this Agreement. The Owner's Notice of Intent to Transfer shall include the information necessary for the City to determine the Maximum Restricted Resale Price of the Home, including the following information:

- (1) the address of the Home;
- (2) the date of purchase of the Home by the Owner;
- (3) the purchase price of the Home paid by the Owner at the time of his/her purchase;
- (4) a copy of the HUD-1 Settlement Statement or equivalent document from the close of escrow on the Owner's purchase of the Home;
- (5) if Owner has made Eligible Capital Improvements to the Home that he/she wishes to include in the calculation of Indexed Price, a description of the improvements, the date the improvements were made, a copy of the letter granting prior City approval of the improvements, evidence of cost of the improvements, and an appraisal of the value added to the Home by the Eligible Capital Improvements;

(6) if the Owner believes the Home is in good repair, with no deferred maintenance that would warrant a downward adjustment of the Indexed Price, a request for City inspection to verify good condition;

(7) the date on which Owner intends to vacate Home;

(8) the date the Home will be placed on the market; and

(9) the name and phone number of the person to contact to schedule inspection of the Home by the City.

B. The Owner may not wish to contract with a real estate broker to sell the Home until the Owner has received the City Response Notice pursuant to Section 10 below, as the services of a broker will not be required if the City exercises the City Option to purchase the Home pursuant to Section 10 below. Contacting a real estate broker may add unnecessary costs for which the Owner will be responsible.

C. Following delivery to the City of the Owner's Notice of Intent to Transfer, the Owner shall prepare the Home for sale, as follows:

(1) within thirty (30) days of delivery of the Owner's Notice of Intent to Transfer, the Owner shall obtain and deliver to the City a current written report of inspection of the Home 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 close of escrow on the Transfer, the Owner shall repair all Type I damage noted in the pest report including Type I damage caused by infestation or infection by wood-destroying pests; Owner will not be liable for repairs necessary to correct Type II damage;

(3) within thirty (30) days of the date of the Owner's Notice of Intent to Transfer, the Owner shall allow the City to inspect the Home to determine its physical condition and, if requested by the City, following such inspection, the Owner shall obtain and deliver to the City a home inspection report prepared by a licensed home inspector;

(4) if the Home is vacant, the Owner shall maintain utility connections until the close of escrow on the Transfer;

(5) request from the City a list of qualified Eligible Purchasers, if available;
and

(6) in the event of purchase of the Home by the City or City Designated Purchaser, the Owner shall permit a final walk-through of the Home by the City or City Designated Purchaser, in the final three (3) days prior to close of escrow on the Transfer.

8. CITY RESPONSE TO OWNER'S NOTICE OF INTENDED TRANSFER

City shall respond in writing (the "City Response Notice") to the Owner's Notice of Intent to Transfer within thirty (30) days of City receipt of a complete Owner's Notice of Intent to Transfer that includes all information required under Section 7 above, including City receipt of the pest control report and home inspection report (if any) required pursuant to Section 7C above. The City Response Notice shall inform the Owner of the City's election to proceed under one (1) of the following two (2) alternatives:

A. City Exercise of City Purchase Option. The City Response Notice may notify the Owner that the City or a City Designated Purchaser elects to exercise the City Option to purchase the Home. The City Response Notice shall include the City's calculation of the (i) Maximum Restricted Resale Price pursuant to Section 11 below to be paid by the City or a City Designated Purchaser and (ii) the transaction fee to be paid by the Owner pursuant to Section 10 below.

B. Owner Sale at a Restricted Sales Price to Eligible Purchaser. Alternatively, the City Response Notice may notify the Owner that the City or a City Designated Purchaser will not exercise the City Option to purchase the Home. Upon receipt of such notice, the Owner may proceed to sell the Home to an Eligible Purchaser at a price not to exceed the Maximum Restricted Resale Price, as set forth in Section 11 and pursuant to the procedure set forth in Section 12 below. In this event, the City Response Notice shall include the following information: (1) the maximum qualifying income for an Eligible Purchaser; (2) the certifications required of an Eligible Purchaser; (3) the Maximum Restricted Resale Price the Owner may receive for the Home, calculated by the City pursuant to Section 11 below; and if available, a list of Eligible Purchasers.

9. OWNER ACKNOWLEDGEMENT OF CITY RESPONSE NOTICE

No later than seven (7) days following the date of the City Response Notice, the Owner shall acknowledge in writing to the City, in the form shown in the attached Exhibit D, that he/she has received the City Response Notice and still intends to Transfer the Home.

10. CITY PURCHASE OPTION

A. The Owner agrees that if the Owner decides to Transfer the Home, the City shall have the option to purchase the Home for the Maximum Restricted Resale Price calculated by the City pursuant to Section 11 of this Agreement (the "City Option"). The Owner shall pay the City a transaction fee equal to up to six percent (6%) of the Maximum Restricted Resale Price if the City or a City Designated Purchaser exercises the City Option and purchases the Home. The City Option may be exercised by the City or by a City Designated Purchaser in the City Response Notice. If the City Response Notice notifies the Owner that the City or a City Designated Purchaser will exercise the City Option to purchase the Home, the City or the City Designated Purchaser shall purchase the Home within ninety (90) days of the date of the City Response Notice and title shall be delivered by the Owner to the City by grant deed, free and clear of any mortgage or other liens, unless approved in writing by the City. In the event of exercise of the City Option and purchase of the Home by the Agency or a City-Designated

Purchaser, the Owner shall permit a final walk-through of the Home by the City or the City-Designated Purchaser in the final three (3) days prior to close of escrow on the Transfer.

B. The City may assign the City Option to another public agency, a nonprofit corporation, or an Eligible Purchaser selected by the City (any of which shall be referred to herein as a "City Designated Purchaser"). If the City assigns the City Option to a City Designated Purchaser, the City Response Notice shall be executed by the City Designated Purchaser and shall notify the Owner that a City Designated Purchaser is exercising the City Option in lieu of the City.

C. The City acknowledges and agrees that the City Option shall only be exercised by the City or a City Designated Purchaser for the purpose of retaining the Home as an affordable housing unit and that the Home may only be resold by the City or a City Designated Purchaser as an affordable housing unit in compliance with the City's Inclusionary Housing Program and/or other City affordable housing programs.

11. DETERMINATION OF MAXIMUM RESTRICTED RESALE PRICE FOR CITY PURCHASE OR RESTRICTED SALE

If the City (or its assignee) exercises the City Option, or if Owner sells to an Eligible Purchaser, the Maximum Restricted Resale Price (the "Maximum Restricted Resale Price") that the Owner shall receive from the City, City Designated Purchaser or Eligible Purchaser (or from any other sale or transfer by the Owner of the Home) shall be the lesser of (i) the Indexed Price of the Home; or (ii) the Fair Market Value of the Home.

A. Indexed Price. The Indexed Price of the Home means the sales price of the Home at the time of purchase by the Owner, as set forth on page 1 of this Agreement (the "Owner's Base Price"), increased by the percentage of increase in the Median Income from the date of the original purchase of the Home by the Owner to the date of receipt by the City of the Owner's Notice of Intent to Transfer, and, where applicable, adjusted pursuant to subsection (2) below to reflect the value of capital improvements or the cost of deferred maintenance. A decrease in Median Income shall have no affect the Index Price. "Median Income" shall refer to the median yearly income, adjusted for a household size of four (4), in Contra Costa County, as published by the California Department of Housing and Community Development ("HCD"), or, in the event such income determination is no longer published by HCD, or has not been updated for a period of at least eighteen (18) months, the City may use or develop such other reasonable method as it may choose in order to determine the median yearly income in Contra Costa County. The Median Income for a household of four (4) persons as of the date of this Agreement is shown on the first page of this Agreement.

(1) Where applicable, the Indexed Price shall include an upward adjustment reflecting the value of any substantial structural or permanent fixed improvements which the Owner has made to the Home after purchase of the Home. No such adjustment shall be made except for improvements: (a) made or installed by the Owner which conform with applicable building codes; (b) approved in advance of installation by the City; (c) whose initial costs were Two Thousand Dollars (\$2,000) or more; and (d) that conform to Federal Housing Quality Standards. Capital improvements meeting the above requirements are referred to herein as

"Eligible Capital Improvements." A form for use in requesting City approval of an Eligible Capital Improvement is attached hereto as Exhibit E. The adjustment to the Indexed Price for Eligible Capital Improvements shall be limited to appraised increases in value to the Home as a result of the improvements (pursuant to an appraisal performed as described in Section 11B below), including any depreciation in value of the capital improvements since the time of installation, and not the cost of construction of the improvements to the Home.

(2) The Indexed Price shall include a downward adjustment, where applicable, in an amount necessary to repair any violations of applicable building, plumbing, electric, fire or housing codes or any other provisions of the City of Walnut Creek Building Regulations, as well as any other repairs needed to put the Home into a "sellable condition." Items necessary to put a Home into sellable condition shall be determined by the City, and may include cleaning, painting and making needed structural, mechanical, electrical, plumbing and fixed appliance repairs and other deferred maintenance repairs collectively referred to as "Deferred Maintenance Repairs."

B. Fair Market Value. In certain circumstances it may be necessary to determine the fair market value of the Home without taking account of the resale restrictions imposed by this Agreement (the "Fair Market Value"). These circumstances include: (1) where either party wishes to determine if the Indexed Price exceeds the Fair Market Value in order to determine the Maximum Restricted Resale Price pursuant to Section 11; and (2) where either party wishes to determine the value of Eligible Capital Improvements or any Deferred Maintenance Repairs in order to calculate the Indexed Price pursuant to Section 11A. If it is necessary to determine the Fair Market Value of the Home, it shall be determined by a certified MAI or other qualified real estate appraiser approved in advance by the City. 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. In the event that the Owner has made capital improvements to the Home (which have been approved in advance by the City pursuant to Section 11A of this Agreement) which have increased the value of the Home or if damage or failure to make Deferred Maintenance Repairs has occurred while the Owner owned the Home which has decreased the value of the Home, 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 by utilizing the procedures outlined in Section 11A above for calculating the Indexed Price. Nothing in this section shall preclude the Owner and the City from establishing the Fair Market Value of the Home by mutual agreement in lieu of an appraisal pursuant to this section.

12. SALE BY OWNER IF CITY DOES NOT EXERCISE OPTION TO PURCHASE

In the event the City Response Notice notifies the Owner to proceed to sell the Home to an Eligible Purchaser at a price not exceeding the Maximum Restricted Resale Price, the Owner may proceed to sell the Home in compliance with the following requirements:

A. Marketing. The Owner shall use bona fide good faith efforts to sell the Home to an Eligible Purchaser in compliance with this Section 12, including listing the Home on the

Multiple Listing Service, keeping the Home in an orderly condition, making the Home available to show to agents and prospective buyers, and providing buyers with Eligible Purchaser requirements, including income qualifications and the County's form of disclosure statement summarizing the terms of the buyer's occupancy and resale restriction agreement with option to purchase. A proposed purchaser ("Proposed Purchaser") who the Owner believes will qualify as an Eligible Purchaser shall be referred to the City for an eligibility determination. If the Proposed Purchaser qualifies as an Eligible Purchaser the City will also determine if such Eligible Purchaser is eligible for City housing-related financial assistance that may be available at the time of resale. The City may, but is not obligated to, keep a list of individuals or households interested in participating in the Inclusionary Housing Program.

B. Eligible Purchaser. A Proposed Purchaser shall qualify as an "Eligible Purchaser" if he or she meets the following requirements, as determined by the City:

(1) Income Eligibility. The combined maximum income for all household members of the Proposed Purchaser shall not exceed the income level for [Income category for Eligible Purchaser (low-income, moderate-income)] households, as designated by the City in the City Response Notice.

(2) Intent to Owner Occupy. The Proposed Purchaser shall certify that he or she will occupy the Home as to his or her principal place of residence throughout his or her ownership. Co-signers are not required to occupy the Home.

(3) Agreement to Sign Resale Agreement and Other City Documents, and to Cooperate with the City. The Proposed Purchaser shall agree to sign a resale agreement, promissory note and deed of trust restricting future resale of the Home and shall agree to cooperate fully with the City in promptly providing all information requested by the City to assist the City in monitoring the Proposed Purchaser's compliance with the resale agreement.

(4) Meet Program Manual Requirements. The Proposed Purchaser shall meet all the program eligibility requirements as set forth under the Program Manual published by the City at the time of purchase.

C. Maximum Sales Price. The purchase price for the sale of the Home by the Owner to the Eligible Purchaser shall not exceed the Maximum Restricted Resale Price calculated by the City pursuant to Section 11 above, as set forth in the City Response Notice. The closing costs paid by the Eligible Purchaser shall not exceed reasonable customary buyer's closing costs in the County of Contra Costa.

D. Disclosure and Submittals. The Owner and the Proposed Purchaser shall provide the following information and documents to the City:

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

(2) A signed financial statement of the Proposed Purchaser in the form provided by City and any other supporting documentation requested by the City. The financial

information shall be used by the City to determine the income eligibility of the Proposed Purchaser.

(3) The proposed sales contract and all other related documents which shall set forth all the terms of the sale of the Home. 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.

(4) A written certification, from the Owner and the Proposed Purchaser in a form acceptable to the City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. 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 City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to foreclose on the Home 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 City harmless and reimburse the City's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(5) An executed buyer's resale agreement, promissory note to the City, and deed of trust to the City from the Proposed Purchaser in forms provided by the City. The recordation of the new deed of trust and buyer's resale agreement shall be a condition of the City's approval of the proposed sale.

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

(7) Upon the close of the proposed sale, certified copies of the recorded City deed of trust and Owner's resale agreement, the original City Note, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

13. PAYMENT TO CITY OF EXCESS SALES PROCEEDS

If the Owner makes a Transfer in violation of this Agreement, the Owner shall pay the Excess Sales Proceeds to the City. For purposes of this Agreement, "Excess Sales Proceeds" shall mean the amount by which the gross sales proceeds received by the Owner from the new purchaser exceed the Maximum Restricted Resale Price for the Home (in the amount that was stated in the City Response Notice). This amount shall be a debt of the Owner to the City, further evidenced by the City Note, and secured by the City Deed of Trust. The Owner

acknowledges that the City shall have no obligation to cause reconveyance of this Agreement or of the City Deed of Trust until the Excess Sales Proceeds are paid to the City. The City shall utilize the Excess Sales Proceeds for City affordable housing programs. The Owner and the City acknowledge that the formula for calculation of the amount of Excess Sales Proceeds due from the Owner to the City is intended to cause the Owner to receive the same or fewer net sales proceeds from sale of the Home at an unrestricted price to a market purchaser (in violation of this Agreement) as the Owner would receive from sale of the Home to the City, City Designated Purchaser or to an Eligible Purchaser at the Maximum Restricted Resale Price.

14. DEFAULTS

A. Any one of the following events shall constitute a Default by the Owner under this Agreement:

- (1) The Owner has made a misrepresentation to obtain the benefits of purchase of the Home or in connection with its obligations under this Agreement;
- (2) The Owner fails to owner occupy the Home, as required pursuant to Section 3 above;
- (3) The Owner rents or leases the Home in violation of Section 3B above;
- (4) The Owner fails to provide information to the City necessary to determine Owner's compliance with this Agreement, the City Note or the City Deed of Trust;
- (5) The Owner actually Transfers, or attempts to Transfer, the Home in violation of this Agreement;
- (6) An Inheriting Owner fails to comply with the requirements of this Agreement, including without limitation Paragraph 6 of this Agreement;
- (7) The Owner otherwise fails to comply with the requirements of this Agreement, the City Note or the City Deed of Trust;
- (8) A notice of default is issued under the First Lender Loan or any other financing secured by the Home, or the City receives any other notice of default pursuant to Civil Code 2924b, or the Owner is in default on any other financing secured by the Premises.
- (9) A lien is recorded against the Home other than the lien of a bona fide mortgage loan that is permitted pursuant to Section 24;
- (10) Judicial foreclosure proceedings are commenced regarding the Home;
- (11) The Owner executes any deed in lieu of foreclosure transferring ownership of the Premises;

(12) Owner declares bankruptcy or makes an assignment of assets for the benefit of creditors.

B. Upon a declaration of Default by the City and expiration of the applicable cure period, under this Agreement, the City may exercise any remedies at law or in equity, including without limitation, any or all of the following, none of which shall be an exclusive remedy:

(1) Declare all sums due and under the City Note, including without limitation the Excess Sales proceeds, and Excess Rental Proceeds, immediately due and payable without further demand;

(2) Invoke the power of sale under the City Deed of Trust;

(3) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;

(4) Take such enforcement actions as is authorized under the City of Walnut Creek Municipal Code;

(5) Declare a Default under the City Deed of Trust and pursue all City remedies under the City Deed of Trust;

(6) Enter the Home to correct maintenance failures, and place a lien upon the Home to collect City costs to remedy maintenance failures, pursuant to Section 5(B) above; and

(7) Exercise the City Option upon Default as described in Section 17 below.

15. NOTICE AND CURE

Upon Default or a violation of any of the provisions of this Agreement, the City may give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within 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 City determines is necessary to correct the violation, or if the Owner is in default under any other mortgage loan on the Home, the City may declare a default under this Agreement.

The City shall notify First Lender at the address provided by the First Lender to the City in the manner set forth in Section 32 of this Agreement, if the City has declared a default under this Agreement or under the City Note or City Deed of Trust.

16. NOTICE TO CITY OF DEFAULT

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Home shall be recorded by the City in the Office of the Recorder of the County of Contra Costa for the benefit of the City. The City may declare a

default under this Agreement upon receipt of any notice given to the City pursuant to Civil Code Section 2924b, and may exercise its rights as provide in Sections 14 and 17.

In the event of default and foreclosure under the First Lender Loan or any other mortgage loan on the Home, the City shall have the same right as the Owner to cure defaults and redeem the Home prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the City 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 City failed to file the request for notice of default, the City's right to purchase the Home shall commence from the date a notice of default is given by the City to the Owner.

17. PURCHASE OPTION UPON DEFAULT

A. Purchase Option. Notwithstanding, and in addition to, the remedies provided the City in Section 14, and the City Option provided in Section 10, the Owner hereby grants to the City or the Designee the option to purchase the Home upon the declaration of a Default by the City pursuant to Section 14 and expiration of the applicable notice and cure period herein (the "City Purchase Option Upon Default"). This option to purchase is given in consideration of the economic benefits received by the Owner resulting from ownership of the Home made possible by the financial assistance of the City in the purchase of the Home.

B. Exercise of Option. The City Purchase Option Upon Default may be exercised upon the expiration of the applicable cure period under this Agreement or upon default under any promissory note, deed of trust or any other lien, including a judgment lien, recorded against the Home. The City shall have thirty (30) days after the expiration of such cure period to notify the Owner and the First Lender of its decision to exercise its option to purchase. Not later than ninety (90) days after the notice is given by the City to the Owner of the City's intent to exercise its option, the City shall purchase the Home for the Maximum Restricted Resale Price set forth in Section 11 and title shall be delivered by the Owner to the Agency by grant deed, free and clear of any mortgage or other liens, unless approved in writing by the Agency. In the event of exercise of the Agency Option and purchase of the Home by the Agency or its assignee, the Owner shall permit a final walk-through of the Home by the Agency or its assignee in the final three (3) days prior to close of escrow on the Transfer. The City may assign its rights to purchase the Home under this Section 17 to a City Designated Purchaser.

18. NONLIABILITY OF THE CITY

A. No Obligation to Exercise Option. The City shall have no obligation to exercise any option granted it under this Agreement. In no event shall the City 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 10 and 17 nor shall the City 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 City is solely that of an owner and an administrator of a City inclusionary housing program, and that the City does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Home or any other matter. The City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Home 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 City for any loss, damage or other matter arising out of or resulting from any condition of the Property and will hold the City harmless from any liability, loss or damage for these things.

C. Indemnity. Owner agrees to defend, indemnify, and hold the City harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the City may incur as a direct or indirect consequence of: (1) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the Deed of Trust; (2) the failure at any time of any of Owner's representations to the City to be true and correct; or (3) Owner's purchase or ownership of the Home.

19. RESTRICTIONS ON FORECLOSURE PROCEEDS

If a creditor acquires title to the Home through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Owner when added to the proceeds paid or credited to the creditor exceed the Maximum Restricted Resale Price. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to the City in consideration of the benefits received by the Owner through purchase of the Home under this Agreement.

20. RESTRICTION ON INSURANCE PROCEEDS

If the Home is damaged or destroyed the Owner has an obligation to rebuild or repair the Home pursuant to Section 6 of the Deed of Trust. If the owner does not rebuild or repair the Home pursuant to Section 6 of the Deed of Trust, the Owner shall, subject to the rights of the First Lender, repay the City the portion of any insurance proceeds received by the Owner for such destruction or damage which is in excess of the Maximum Restricted Resale Price calculated pursuant to Section 11 above.

21. TERM OF AGREEMENT

All the provisions of this Agreement, including the benefits and burdens, run with the land and the Home and this Agreement shall bind, and the benefit hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the City and its successors for the "Term" of this Agreement, which is the earlier of (i) forty-five (45) years from the date of this Agreement or (ii) the date of Transfer of the Home to the City or another purchaser in compliance with this Agreement (including execution by the purchaser of a new resale agreement in a form provided by the City).

22. 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 of this Agreement hereof, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

23. SUBORDINATION

Notwithstanding any other provision hereof, the provisions of this Agreement shall be subordinate to the lien of the First Lender Loan and shall not impair the rights of the First Lender, or the First Lender's successor or assign, 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 or assignment in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Home or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquired title to the Home pursuant to a deed or assignment in lieu of foreclosure and no notice of default was recorded against the Home by such holder in connection therewith, this Agreement shall automatically terminate upon such acquisition of title, only if (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period (which requirement shall be satisfied by recordation of a notice of default under California Civil Code Section 2924), and (ii) the City shall not have cured the default within the sixty (60)-day period. Owner agrees to record any necessary documents to effect such termination, if applicable.

24. REFINANCE OF FIRST LENDER LOAN; SUBORDINATE LOANS

A. City Consent Required. The Owner covenants and agrees not to place any additional mortgage or deed of trust, including any line of credit, on the Home without obtaining prior written consent of the City.

B. Permitted Encumbrance Amount. At no time shall the total principal amount of the all debt secured by the Home exceed the "Permitted Encumbrance Amount," which is defined as the greater of: (i) ninety percent (90%) of the Maximum Restricted Resale Price calculated pursuant to Section 11 as of the date of the Owner's request to the City of approval of the Owner's refinance (the "Refinance Request Notice"); or (ii) the outstanding balance of the existing First Lender Loan as of the date of the Refinance Request Notice. Mortgage loans which include negative amortization and adjustable rate mortgages are prohibited. If escrow does not close on the refinance within one hundred twenty (120) days of the date of the Refinance Request Notice, the City shall have the right to recalculate the Permitted Encumbrance Amount. Owner shall not be in Default hereunder at the time of initial purchase of the Home by the Owner if, at that time, the initial debt secured by the Home exceeds the Permitted Encumbrance Amount And Owner does not further encumber the Home until the Permitted Encumbrance Amount complies with this paragraph. A form of Refinance Request Notice for

use by the Owner is attached hereto as Exhibit F. As part of its Refinance Request Notice, the Owner shall provide to the City a copy of the HUD-1 Settlement Statement, and a description of any Eligible Capital Improvements Owner has made to the Home.

C. Refinance of First Mortgage Loan. The City shall permit and approve a prepayment and refinance of the existing First Lender Loan and shall provide for the subordination of this Agreement and the City Deed of Trust to the refinanced First Lender Loan only if such refinance does not cause the total debt secured by the Home, including junior mortgage loan and equity lines of credit, to exceed the Permitted Encumbrance Amount. Borrower shall provide the City copies of all loan documents related to a potential refinancing loan. The City will not approve any mortgage loan which includes negative amortization, nor will the City approve any adjustable rate mortgages.

D. Junior Loans and Equity Lines of Credit. Mortgage loans or equity lines of credit junior in lien priority to this Agreement and the City Deed of Trust are not permitted, except as when expressly approved by the City in writing. The City shall only approve junior mortgage loans or equity lines of credit which will not cause the total of all debt secured by the Home (calculated assuming a maximum permitted draw on any equity line of credit) to exceed the Permitted Encumbrance Amount. The City will not approve any mortgage loan or equity line of credit which includes negative amortization, nor will the City approve any adjustable rate mortgages.

E. Request for Notice of Default. Any time an Owner enters into a new mortgage loan, including junior mortgage loans and equity lines of credit, the Owner shall cause to be recorded against the Home a request for notice of default, providing for notice of default under such loan to be delivered to the City.

F. Purpose of Restrictions on Refinance and Junior Loans. The City and the Owner agree that the requirements of this Section 24 are necessary to ensure the continued affordability of the Home to Owner and to minimize the risk of loss of the Home by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section 24 shall constitute a Default under this Agreement for which the City may exercise the City's option upon default pursuant to Section 17 above.

25. NONDISCRIMINATION

The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Home, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Home. The foregoing covenant shall run with the land.

26. MONITORING AND INSPECTION BY CITY

A. The City (or its designee) may enter the Home for inspection 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 City or its designee for inspection and copying upon five (5) business days advance written notice.

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

27. RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUSTS

This Agreement shall not diminish or affect the rights of the City under the City Note and the City Deed of Trust.

Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of the California Housing Finance Agency ("CalHFA"), HUD, the Federal National Mortgage Association ("FNMA"), or the Veterans Administration ("VA") under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Home in compliance with Section 24 above.

28. HUD FORBEARANCE RELIEF

Notwithstanding other provisions of this Agreement, the Option shall not be exercised by the City when a deed of trust insured by HUD is secured by the Home, and (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.

29. 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.

30. NO WAIVER

No delay or omission in the exercise of any right or remedy of City upon any default by Owner shall impair such right or remedy or be construed as a waiver. The City'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 City's right thereafter to enforce the provisions of the Agreement. The City 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 City.

31. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of California.

32. NOTICES

All notices required herein shall 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 or the date delivery was refused as indicated on the return receipt as follows:

To the Owner:

[Owner Name]
[Owner Address]
Walnut Creek CA [Zip code]

To the City:

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

To the First Lender:

[Lender Name]
[Lender Address]
[Lender City, State, Zip code]

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

33. INTERPRETATION OF AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid speculation on the Home and to insure to the extent possible that the mortgage payments remain affordable to low and moderate income households.

34. COVENANTS RUNNING WITH THE LAND

A. Owner hereby subjects the Home to the covenants and restrictions set forth in this Agreement. Owner hereby declares its express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land in perpetuity and shall pass to and be binding upon all parties having any interest in the Home throughout the term of this Agreement set forth in Section 21. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Home or any interest therein, as the case may be, shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties to such contract have actual knowledge of this Agreement.

B. The Owner and the City 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 Home in that the Owner's legal interest in the Home may be rendered less valuable thereby; and (iii) the benefit of the covenants and restrictions set forth in this Agreement touch and concern the land by enhancing and increasing the enjoyment and use of the Home by Eligible Purchasers, the intended beneficiaries of such covenants and restrictions.

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

35. ENFORCEMENT

Notwithstanding any other provision of the law, all covenants and restrictions contained herein which implement Health and Safety Code 33334.3 and/or 33413(c)(3), or successor provisions, shall run with the land and shall be enforceable by the City, the Redevelopment Agency of the City of Walnut Creek and any of the parties listed in Health and Safety Code Section 33334.3(b)(7), so long as such provision or successor provision remains in effect.

36. DATABASE

Owner hereby acknowledges and agrees that Health and Safety Code Section 33418(c) requires that the Home 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 Home.

37. OWNER'S ACKNOWLEDGEMENT OF RESALE RESTRICTION

Owner hereby acknowledges and agrees that:

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

B. Absent the provisions of the Resolution, the Inclusionary Housing Ordinance and the provisions of this Agreement, the Home 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 37, 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 Home following any Transfer of the Home throughout the term of this Agreement.

D. OWNER UNDERSTANDS THAT THE DETERMINATION OF THE MAXIMUM RESTRICTED RESALE PRICE OF THE HOME TO AN ELIGIBLE PURCHASER CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INCREASES IN MEDIAN INCOME AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED AND THAT THE SALES PRICE PERMITTED HEREUNDER MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS AGREEMENT. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALES PRICE OF THE HOME THE PRIMARY OBJECTIVE OF THE CITY AND THIS AGREEMENT IS TO PROVIDE HOUSING TO ELIGIBLE PURCHASERS AT AFFORDABLE HOUSING COST. THE MAXIMUM RESTRICTED RESALE PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES THAT HAVE NO RESTRICTIONS.

(Initials of Owner)

38. EXHIBITS

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

IN WITNESS WHEREOF, the parties have executed this Agreement on or as of the date first written above.

CITY:

OWNER:

CITY OF WALNUT CREEK,

a municipal corporation

Print Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

Name: _____

Title: _____

SAMPLE

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

State of California)

County of Contra Costa)

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)

County of Contra Costa)

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

SAMPLE

EXHIBIT A
LEGAL DESCRIPTION OF HOME

SAMPLE

EXHIBIT B

FORM OF OWNER OCCUPANCY CERTIFICATION

To: City of Walnut Creek ("City")

From: _____ [Insert name(s) of Owner] ("Owner(s)")

Address of Home: _____ ("Home")

Date: _____

By signature below, I _____ [Insert name(s) of Owner] hereby certify to the City under penalty of perjury that I/we occupy the home located at _____ [Insert address] (the "Home") as my/our principal place of residence and that I/we have occupied the Home 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.

This Owner Occupancy Certification is signed on _____, 20__, under penalty of perjury.

By: _____

Name: _____
Owner

By: _____

Name: _____
Owner

Due Date: February 1 of each calendar year.

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

EXHIBIT C

FORM OF OWNER'S NOTICE OF INTENT TO TRANSFER
(Inclusionary Housing Program)

To: City of Walnut Creek ("City")

From: _____ [Insert name(s) of Owner] ("Owner(s)")

Address of Home: _____ ("Home")

Date: _____

Please be notified pursuant to Section 7 of the Resale Agreement and Option to Purchase between Owner and City dated _____, that the Owner intends to transfer the Property listed above.

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

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

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

1. Copy of HUD-1 Settlement Statement from Owner's purchase of the Home
2. If Owner has made Eligible Capital Improvements to the Home that Owner wishes to include in the City's calculation of Indexed Price, check box below

Yes, I have made Eligible Capital Improvements pursuant to Section 11 of the Resale Agreement. They are _____ [describe improvements] and were completed on _____ [insert date]. I attach the following documents to this letter:

- a. copy of City letter granting prior approval of these improvements;
- b. evidence of cost of these improvements;
- c. appraisal showing value added to Home by the improvements.

C. I have not yet listed the Home for sale with a multiple listing service, or contacted a real estate broker or financial institution. I agree to prepare the Home 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 Home,
- 3. allowing the City or its designee to inspect the Home within thirty (30) days of this notice,
- 4. maintaining utility connections until the Home is transferred,
- 5. requesting a list from the City, if available, of persons or households interested in participating in the Inclusionary Housing Program,
- 5. permitting a walk through by the City 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: _____

Name: _____
Owner

By: _____

Name: _____
Owner

EXHIBIT D

FORM OF OWNER ACKNOWLEDGEMENT OF CITY RESPONSE NOTICE
(Inclusionary Housing Program)

Name: _____

Address of Home: _____

Date: _____

I, _____ **[insert name(s) of Owner]** hereby acknowledge that I received the City Response Notice (as described in Section 9 of the Resale Agreement on _____ **[Insert date]**).

By: _____

Name: _____

Owner

SAMPLE

EXHIBIT E

FORM OF REQUEST FOR CITY APPROVAL OF IMPROVEMENTS TO THE HOME
(Inclusionary Housing Program)

To: City of Walnut Creek ("City")
From: _____ ("Owner")
Property Address: _____ ("Home")
Date: _____

I hereby request City approval of the following capital improvements I intend to make to my Home:

Description of Improvements: _____

Estimated Cost: _____
Original Purchase Price: _____

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

The City 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 resale restricted price of the Home upon subsequent transfer.

*Notice: Proposed Improvements must cost at least Two Thousand Dollars (\$2,000) and must be approved by the City in writing prior to construction.

EXHIBIT F

FORM OF REFINANCE REQUEST NOTICE
(Inclusionary Housing Program)

To: City of Walnut Creek ("City")
From: _____ ("Owner")
Property Address: _____ ("Home")
Date: _____

A. FOR PROPOSED REFINANCE OF FIRST MORTGAGE LOAN

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

1. Original purchase price of Home: \$ _____
2. Date of purchase of Home: \$ _____
3. Original principal balance of existing First Lender Loan: \$ _____
4. Interest rate of existing First Lender Loan: \$ _____
5. Current outstanding principal balance of First Lender Loan: \$ _____
6. Outstanding principal balance of all loans secured by Home: \$ _____
 - a. First Lender Loan \$ _____
 - b. Junior Loan(s) \$ _____
7. Principal amount of proposed First Lender Loan Home: \$ _____
8. Interest rate of proposed First Lender Loan Home: \$ _____
9. Term of proposed First Lender Loan Home: \$ _____
10. Is proposed new First Lender Loan fully amortized?

B. FOR PROPOSED JUNIOR LOAN

1. Original purchase price of Home: \$ _____
2. Date of purchase of Home: \$ _____
3. Outstanding principal balance of all Loans secured by Home: \$ _____
 - a. First Lender Loan \$ _____
 - b. Junior Loan(s) \$ _____
\$ _____
4. Terms of proposed new junior loan (principal amount, term, interest rate, etc.): _____

C. FOR PROPOSED REFINANCE OF FIRST MORTGAGE LOAN OR JUNIOR LOAN

As required by Section 24 of the Resale Agreement, the following documents are attached to this Notice:

1. Copy of HUD-1 Settlement Statement from Owner's purchase of the Home
2. If Owner has made Eligible Capital Improvements to the Home that Owner wishes to include in the City's calculation of Indexed Price, check box below
3. Copies of all loan documents related to the proposed refinancing or junior loan.

Yes, I have made Eligible Capital Improvements pursuant to Section 11 of the Resale Agreement. They are _____ **[describe improvements]** and were completed on _____ **[insert date]**. I attach the following documents to this letter.

- a. copy of City letter granting prior approval of these improvements;
- b. evidence of cost of these improvements;
- c. appraisal showing value added to Home by the improvements.

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: _____

Name: _____
Owner

By: _____

Name: _____
Owner

SAMPLE