

**When recorded return to:**  
**City of Emeryville**  
**Emeryville Civic Center**  
**1333 Park Avenue**  
**Emeryville, CA 94608**  
**Attn: City Attorney**

**RESALE RESTRICTION AGREEMENT**  
**FOR MODERATE INCOME SET-ASIDE UNITS**  
**(AFFORDABLE HOUSING SET-ASIDE PROGRAM)**

This Resale Restriction Agreement (the "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Emeryville (the "City") and \_\_\_\_\_ (the "Owner"). Pursuant to the City's Affordable Housing Set Aside Ordinance applicable when this unit was first built, and in consideration of \_\_\_\_\_, (the "Developer") agreeing to convey the Property described in attached Exhibit A at a price affordable to a purchaser whose income is one hundred twenty percent (120%) or less of median income, as determined by the U.S. Department of Housing and Urban Development based on the Oakland Primary Metropolitan Statistical Area (PMSA) median income levels, adjusted for household size, Owner hereby agrees as follows:

1. Sales Price

The Sales Price for a subsequent conveyance of the Property by Owner to a subsequent purchaser shall be limited to the lesser of the amounts calculated as follows:

- (a) The purchase price contained in a written bona fide offer for the purchase of the Property received by Owner.
- (b) The purchase price that would be considered affordable to a purchaser whose income is one hundred twenty percent (120%) or less of median income, as determined by the U.S. Department of Housing and Urban Development based on the Oakland Primary Metropolitan Statistical Area (PMSA) median income levels, adjusted for household size, as calculated by the City, pursuant to California Health and Safety Code Section 50052.5, adjusted for household size, depending on the number of bedrooms (or bedroom size equivalent) in the Property (the "Moderate Income Sales Price").

2. Eligible Purchaser

To be an Eligible Purchaser, any subsequent purchaser shall have an income, certified by the City or its designee, which is one hundred twenty percent (120%) or less of current median income, as determined by the U.S. Department of Housing and Urban Development based on the Oakland Primary Metropolitan Statistical Area (PMSA) median income levels, adjusted for household size.

3. Definition of Sale/Transfer

"Sale" or "Transfer" means any voluntary or involuntary sale, conveyance, assignment or transfer of ownership of or any interest in the Property, including a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate, leasehold interest or any rental of the Residence, or any interest evidenced by a land contract. Any Sale or Transfer without satisfaction of the conditions of this Agreement shall be deemed a "Prohibited Sale/Transfer".

4. Procedure on Sale/Transfer

(a) If Owner desires to transfer the Property, Owner shall send City a written notice of intent ("Notice of Intent") to sell the Property and City shall, within ten (10) working days of receipt of the Notice of Intent, provide Owner the current maximum household income for an Eligible Purchaser as set forth in Section 2 above and the eligible Sales Price, as set forth in Section 1 above.

(b) The Owner shall then enter into and execute a listing agreement for the sale of the Property with an approved real estate agent (the "Listing Agreement"), and provide a copy of the executed Listing Agreement to the City. Owner shall be responsible for payment of all real estate sales commissions arising from the purchase and sale of the Property. City shall have no obligation or liability for the payment of any such real estate sales commissions.

(c) The Owner shall market the Property to Eligible Purchasers for a period of not less than ninety (90) days from the date of the Listing Agreement to sell the Property, with the sale being completed within ninety (90) days thereafter ("Closing Date").

(d) When Owner has a written offer to purchase, then Owner shall send the City a copy of this written offer and an address and telephone number where the Offeror can be reached. Within ten (10) working days thereafter, City shall send an income certification application to the Offeror. At least fifteen (15) working days prior to the Closing Date, Owner shall send a completed income certification application. City shall notify Owner in writing within ten (10) working days after receipt of a complete income certification application whether the Offeror is an Eligible Purchaser as defined in Section 2 above.

(e) If City certifies that the Sales Price is in compliance with Section 1 above, and the Offeror is an Eligible Purchaser as defined in Section 2 above, then the sales transaction can proceed and the City shall have no further rights under this Section, except that a Resale Restriction Agreement and a Performance Deed of Trust must be recorded against the Property.

(f) If Owner does not have an offer from an Eligible Purchaser at the Sales Price set forth in Section 1 above after the ninety (90) day marketing period, then City may elect to market the Property to secure an Eligible Purchaser or purchase the Property at the eligible Sales Price within sixty (60) days with the sale of the Property to be completed

within ninety (90) days after this sixty (60) day marketing period. During this ninety (90) day period, the City may exercise the option to purchase the Property. The City agrees that its option to purchase the Property shall only be exercised by the City or its assignee for the purpose of resale of the Property to an Eligible Purchaser in accordance with this Agreement.

(g) Within fifteen (15) calendar days of City's exercise of the option to purchase pursuant to paragraph (e) above, Owner shall obtain evidence of marketable title to the Property and submit it to City for examination. Thereafter, City shall have ten (10) working days within which to notify Owner as to any defects in or objections to the title as so evidenced, and Owner shall have the opportunity to remedy any such defects or objections within thirty (30) calendar days. If by the end of the last period specified, Owner cannot show satisfactory title, City shall have the option of either (1) continuing the transaction with such contract modifications as the parties may mutually agree to, or (2) rescinding the contract between the parties. Notwithstanding the terms of such bona fide offer, brokers' fees, closing costs and title insurance shall be paid pursuant to the custom and practice in the City of Emeryville at the time of the opening of such escrow. Owner shall bear the expense of providing a current written report of an inspection by a licensed Structural Pest Control Operator. All work recommended in said report to repair damage caused by infestation or infection of wood-destroying pests or organisms found and all work to correct conditions that caused such infestation or infection shall be done at the expense of the Owner. Any work to correct conditions usually deemed likely to lead to infestation or infection of wood-destroying pests or organisms, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of the Owner, and such work shall be done only if requested by the City and then at the expense of the City. The Sales Price shall be paid in cash at the close of escrow or as may be otherwise provided by mutual agreement of City and Owner.

(h) If City fails to give Owner the notice of its election to market or purchase the Property as provided in paragraph (e) above or fails to complete a sale after the marketing period set forth in paragraph (e), Owner shall be relieved of all obligation to sell the Property to an Eligible Purchaser or to the City, and may sell the Property to a non-Eligible Purchaser. However, all other terms of this Agreement shall continue to apply including the limitation on the Sales Price as set forth in Section 1.

(i) Owner shall not levy or charge any additional fees nor shall any finders fee or other monetary consideration be allowed other than customary real estate commissions and closing costs.

(j) City shall have the right to assign its interests under this Section and/or to designate an individual or entity to exercise its rights under this Section.

## 5. Prohibited Sale/Transfer

(a) Any attempt by Owner to make a Prohibited Sale/Transfer of title to or any interest in the Property in violation of this Agreement shall be void, shall be a breach of

this Agreement as set forth in Section 10, and shall be subject to exercise by the City of its right to purchase or to have a designee purchase the Property at the Sales Price set forth in Section 1.

(b) The following are not considered Prohibited Sales/Transfers and therefore are not subject to exercise by the City of its right to purchase the Property as described in paragraph (a) above: (i) Transfer of title by gift, devise, or inheritance to the Owner's spouse or natural or adopted children; (ii) Transfer of title due to Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property; (iii) Transfer of title to a spouse as part of divorce or dissolution proceedings; (iv) Transfer of title by Owner into an inter vivos trust in which Owner is a beneficiary; or (v) Transfer of title or an interest in the Property to the spouse in conjunction with marriage. However, for these not to be deemed Prohibited Transfers all of the following three conditions must be met: (i) at the time of the Transfer, the Property was the transferee's primary place of residence as set forth in Section 8 and will continue to be transferee's primary place of residence or transferee meets the definition of an "Eligible Purchaser" and will make the Property his or her primary place of residence as set forth in Section 8; (ii) these covenants shall continue to run with the title to the Property following said Sale/Transfer; and (iii) and transferee shall execute and record this Resale Restriction Agreement. A transferee who satisfies the conditions of this Section 5(b) shall then be considered the Owner.

6. Refinancing Approval

The Owner shall obtain the City's approval prior to refinancing the Property.

7. Term of Restrictions

The restrictions contained herein shall continue in full force and effect for a period of forty-five (45) years after the date of recordation of this Agreement. With each Sale or Transfer, the Owner shall ensure that the Purchaser or Transferee executes this Resale Restriction Agreement and Performance Deed of Trust and records them with the Alameda County Recorder. Said forty-five (45) year period shall start over with each resale, should such resale occur within forty-five (45) years of the previous sale.

8. Primary Residency

Owner shall maintain the Property as his/her/their primary place of residence. Owner shall be considered as occupying the Property as his/her/their primary place of residence if Owner is living in the Property for at least ten (10) months out of each calendar year. The City may, in its sole discretion, grant a temporary waiver of this occupancy requirement for good cause such as to facilitate a Sale of the Property to an Eligible Purchaser, illness, temporary job relocation, or sabbatical. Owner shall provide a written request to the City for a temporary waiver of the owner occupancy requirement at least thirty (30) days prior to such temporary vacancy or rental or lease of the Property. Owner's failure to comply with the provisions of this paragraph may, following a six (6)

month Notice to Cure, at City's election, be deemed a breach of this Agreement, allowing the City or designee to purchase the Property as set forth in Section 10.

9. Performance Deed of Trust

This Resale Restriction Agreement shall be secured by a Performance Deed of Trust. The Performance Deed of Trust must be recorded against the Property upon purchase.

10. Breach of the Agreement

- (a) Upon a violation of any of the provisions of this Agreement, the City shall give written notice to the Owner by certified mail return receipt requested, 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, the City may declare a default under this Agreement.
- (b) Upon the declaration of a default, the City may invoke any remedies available to it under the this Agreement and/or the Performance Deed of Trust including but not limited to seeking a court order for specific performance of the obligations of this Agreement, for an injunction prohibiting a proposed Sale or Transfer in violation of this Agreement, for a declaration that a Sale or Transfer in violation of this Agreement is void, or for any such other relief at law or in equity as may be appropriate.
- (c) In the event of default by the Owner, and/or by the Owner's transferee in those circumstances where a transfer has occurred in violation of this Agreement, the Owner and/or the Owner's transferee shall hold the City and its officials, employees, and agents harmless and reimburse the expenses, legal fees and costs for any action the City takes to enforce the provisions of this Agreement. In addition to these remedies, City has the option to purchase the Property effective upon the declaration of a default. The City shall have thirty (30) days after a default is declared to notify the Owner of its decision to exercise its option to purchase the Property, with the sale proceeding as outlined in Section 4(f).

11. Notice of Default under any Deed of Trust or Mortgage

- (a) Owner covenants to cause to be filed for record in the Office of the Recorder of the County of Alameda a request for a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering said Property pursuant to Section 2924 of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to the Director of Economic Development and Housing, City of Emeryville, 1333 Park Avenue, Emeryville, California, 94608 and to the City Attorney, City of Emeryville, 1333 Park Avenue, Emeryville, CA 94608.

- (b) Any notice of sale given pursuant to Civil Code Section 2924 shall be deemed a Prohibited Transfer and breach of this Agreement allowing City to exercise its preemptive right to purchase prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure under Section 10 above.
- (c) In the event Owner fails to file such request for notice, City's right to purchase shall run from the date City obtains actual knowledge of a sale or proposed sale. In the event City elects not to exercise its right to purchase upon default, any surplus to which Owner may be entitled pursuant to Code of Civil Procedure Section 727 shall be paid as follows: That portion of surplus (after payment of encumbrances), if any, up to but not exceeding the net amount that Owner would have received after payment of encumbrances under Section 1 above had City exercised its right to purchase the Property on the date of the foreclosure sale, shall be paid to Owner on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the City.

12. Distribution of Insurance and Condemnation Proceeds

In the event that the improvements on the Property are destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild, or in the event of condemnation, if proceeds thereof are distributed to Owner, or in the case of a condominium project, in the event of liquidation of the homeowners' association and distribution of the assets of the association to the members thereof including Owner, any surplus of proceeds so distributed remaining after payment of encumbrances of said Property, with the first claim accruing to the primary lender, shall be distributed as follows: That portion of the surplus up to but not to exceed the net amount that Owner would have received under Section 1 above had City exercised its right to purchase the Property on the date of the destruction, condemnation valuation date, or liquidation, shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the City.

13. Covenant To Keep Property Drug Free

A material inducement to City's willingness to certify Owner as an eligible purchaser under the affordable housing set-aside program, is Owner's representation to City that Owner shall maintain a drug free environment on the Property. Therefore, Owner covenants to City that Owner and all persons residing on the Property shall not unlawfully manufacture, distribute, dispense, possess or use controlled substances, as said term is defined in 21 United States Code Section 812 and California Health and Safety Code Section 11007, including marijuana, heroin, cocaine, and amphetamines, on the Property. If Owner or any person residing on the Property is convicted, pleads guilty or nolo contendere to a charge of unlawfully manufacturing, distributing, dispensing, possessing or using controlled substances on the Property, then such event shall be a breach of this Agreement, which shall entitle City to exercise its remedies including the right to purchase the Property as set forth in Section 10 above within sixty (60) days after

City's notice of said breach at a price equal to the lesser of the amounts calculated under Section 1 above. This covenant shall run with the land.

14. Maintenance and Inspection of Property

The Owner shall maintain the Property and improvements thereon in good condition and repair throughout the Owner's period of ownership of the Property. In addition, upon City's receipt of a Notice of Intent to sell the Property as detailed in Section 4 above, City shall be given the right, but not the obligation, to enter and to inspect the Property to determine whether any violations of applicable building, plumbing, electric, fire, housing, or other applicable codes exist and whether the Property has been maintained in good condition. City shall notify Owner with regard to any noted code violations and maintenance deficiencies (collectively, the "Deficiencies"), and the Owner shall cure the Deficiencies in a reasonable manner acceptable to City within thirty (30) days of being notified in writing of the result of the inspections. If the Owner fails to cure all the Deficiencies prior to the scheduled Closing Date, at the option of City or a subsequent Eligible Purchaser, escrow may be closed, title passed and money withheld from the Owner and to be paid by the escrow agent to the Eligible Purchaser upon certification that the Deficiencies have been cured. Any remaining funds shall be paid to the Owner.

15. Non Liability of the City

In no event shall the City become in any way liable or obligated to the Owner or to any successor-in-interest of the Owner by reason of its option to purchase under Section 4 or Section 10 herein nor shall the City be in any way obligated or liable to Owner or any successor-in-interest of the Owner for City's failure to exercise such option to purchase.

16. Binding on Successor and Assigns

This Agreement shall bind, and the benefit hereof shall inure to, the Owner and his heirs, legal representative executors, successors in interest and assigns, and to the City and its successors.

17. Controlling Law

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

18. Subordination

Notwithstanding any of the foregoing provisions, the rights of the City under this Agreement shall in no way impair a lender's rights to take legal action following a default by Owner under a lender's deed of trust and shall terminate and have no further force and effect upon title to the Property being acquired by a lender/beneficiary/mortgagee, HUD, or some other third party upon foreclosure or acceptance of a deed in lieu of foreclosure of a loan, mortgage or other indebtedness with a secured position against the Property.

19. Owner Acknowledgment of Resale Restriction Agreement

Owner covenants that he/she has read this Agreement in its entirety and understands the terms and conditions set forth herein. Owner covenants that he/she has read the Disclosure Statement found as Exhibit B to this Agreement and has signed and dated this Disclosure Statement.

**OWNER**

\_\_\_\_\_ **Date:** \_\_\_\_\_, 20\_\_

**CITY**

\_\_\_\_\_ **Date:** \_\_\_\_\_, 20\_\_

**John A. Flores**  
**City Manager**

(Signatures to be notarized)

Exhibits Attached

A – Property Legal Description  
B – Disclosure Statement



## **EXHIBIT A**

### **PROPERTY LEGAL DESCRIPTION**

## EXHIBIT B

### DISCLOSURE STATEMENT

**PROJECT NAME:**  
**PROPERTY ADDRESS:**

IN RETURN FOR THE BENEFIT OF PURCHASING A BELOW MARKET RATE "SET-ASIDE" UNIT WITHIN THE \_\_\_\_\_ AT *SUBSTANTIALLY BELOW* THE MARKET RATE SALES PRICES OF OTHER UNITS WITHIN THE DEVELOPMENT, THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. YOU ARE REQUIRED TO EXECUTE A **RESALE RESTRICTION AGREEMENT** WITH THE CITY OF EMERYVILLE WHICH WILL BE RECORDED AGAINST YOUR UNIT. THE **RESALE RESTRICTION AGREEMENT** ENSURES THE LONG-TERM AFFORDABILITY OF THE SET-ASIDE UNIT FOR ELIGIBLE HOUSEHOLDS.

THIS PROPERTY MAY ONLY BE SOLD TO AN **ELIGIBLE HOUSEHOLD** AT AN **AFFORDABLE HOUSING COST SUBJECT TO THE TERMS AND CONDITIONS OF THE RESALE RESTRICTION AGREEMENT**.

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE. THESE RESTRICTIONS WILL BE IN EFFECT UNTIL FORTY-FIVE (45) YEARS FROM RECORDING OF THE **RESALE RESTRICTION AGREEMENT** ON YOUR UNIT. THIS FORTY-FIVE (45) YEAR PERIOD SHALL START OVER WITH EACH RESALE, SHOULD SUCH RESALE OCCUR WITHIN FORTY-FIVE (45) YEARS OF THE PREVIOUS SALE.

TO DETERMINE WHO IS AN ELIGIBLE HOUSEHOLD AND WHAT AN AFFORDABLE HOUSING COST IS, YOU SHOULD CONTACT THE ECONOMIC DEVELOPMENT AND HOUSING DEPARTMENT OF THE CITY OF EMERYVILLE AT (510) 596-4350.

IF YOU DESIRE TO SELL OR TRANSFER THE PROPERTY, YOU ARE REQUIRED TO FOLLOW THE "PROCEDURE ON SALE/TRANSFER" TERMS CONTAINED IN **THE RESALE RESTRICTION AGREEMENT**.

IN SIGNING THIS DISCLOSURE STATEMENT, I UNDERSTAND THAT THE PROPERTY WILL NOT NECESSARILY APPRECIATE IN VALUE DURING THE TIME THAT I OWN THE PROPERTY, AND THAT THE RESTRICTED SALE PRICE TO A SUBSEQUENT OWNER MAY BE LESS THAN WHAT I ORIGINALLY PAID FOR THE PROPERTY.

I UNDERSTAND THAT IF I FAIL TO SELL TO AN APPROVED ELIGIBLE BUYER AT THE RESTRICTED SALES PRICE, THE CITY HAS THE RIGHT TO REVOKE THE SALE AND PURCHASE THE PROPERTY OR SELL THE PROPERTY AT THE RESTRICTED SALE PRICE. I ALSO UNDERSTAND THAT IF I DO NOT SELL THE PROPERTY TO AN APPROVED ELIGIBLE BUYER, I WILL BE LIABLE TO PAY THE AGENCY THE FULL AMOUNT OF THE SALE PRICE IN EXCESS OF MY ORIGINAL PURCHASE PRICE ACCORDING TO THE TERMS OF THE RESALE RESTRICTION AGREEMENT.

I UNDERSTAND THAT I MUST OBTAIN CITY APPROVAL PRIOR TO REFINANCING OR OBTAINING NEW MORTGAGE FINANCING OF THE PROPERTY.

I INTEND TO, AND I UNDERSTAND THAT I MUST, CONTINUOUSLY OCCUPY THE PROPERTY AS MY PRIMARY RESIDENCE AND THAT I MAY NOT RENT OR LEASE THE PROPERTY. I FURTHER UNDERSTAND THAT THE AGENCY HAS THE RIGHT TO AND WILL CONDUCT AN ANNUAL MONITORING OF PUBLIC RECORDS TO VERIFY THAT I CONTINUE TO OCCUPY THE PROPERTY AS MY PRIMARY RESIDENCE.

I HAVE READ THIS ***DISCLOSURE STATEMENT AND ATTACHED HYPOTHETICAL EXAMPLE OF THE RESALE OF A SET-ASIDE UNIT***, AND THE ***RESALE RESTRICTION AGREEMENT*** AND I UNDERSTAND WHAT THEY MEAN, AND OF MY OWN FREE WILL, WITHOUT COERCION OR THREAT, I AGREE TO THE TERMS OF THE RESALE RESTRICTION AGREEMENT, INCLUDING THE RESTRICTIONS DESCRIBED THEREIN.

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Owner

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Owner

**HYPOTHETICAL EXAMPLE OF RESALE OF UNIT  
FOLLOWING TERMS OF  
CITY OF EMERYVILLE'S RESALE RESTRICTION AGREEMENT**

Based on the terms of the RESALE RESTRICTION AGREEMENT (as set forth in Section 1 of the Agreement), the Sales Price for a subsequent conveyance of the Property will be limited to the **lesser** of the amounts calculated below:

**METHOD 1: WRITTEN BONA FIDE PURCHASE OFFER**

The purchase price in a written bona fide offer for the purchase of the property.

**METHOD 2: AFFORDABLE PURCHASE PRICE PURSUANT TO STATE LAW**

City will compute the maximum affordable sales price for an Eligible Purchaser (as defined in the Resale Restriction Agreement, for example, moderate income) based on California Health and Safety Code Section 50052.5, adjusted for household size and the number of bedrooms (or bedroom size equivalent).

**EXAMPLE:** A Moderate Income Owner purchased a one-bedroom below market rate Set-Aside Unit in March 2000 for \$207,495\*\* and provided written notice to the City of his/her intent to sell the Set-Aside Unit to an Eligible Purchaser in March 2002.

**Method 1:** Written Bona Fide Offer received is \$245,000.

**Method 2:** Maximum allowable affordable sales price under State Law as of March 2002, calculated for the designated unit, is \$243,000\*\*.

**Owner must accept the purchase price established by Method 2 (\$243,000)**

\*\* Sales prices in example are based on the City's "Affordable Housing Set Aside Ordinance Maximum Sales Prices and Rents" chart, published annually based on the Alameda County area median income limits issued by the Department of Housing and Urban Development (HUD). The actual original sales price and allowable affordable resale price take into account factors such as the current interest rate, utility payments, and condominium fees/dues.