

RECORDING REQUESTED PURSUANT TO GOVERNMENT  
CODE SECTION 27383

When Recorded Mail To:

City of Campbell  
c/o Community Development  
70 N. First Street  
Campbell, CA 95008-1436

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**OCCUPANCY, RESALE, AND REFINANCING RESTRICTION AGREEMENT, WITH  
OPTION TO PURCHASE AT RESTRICTED PRICE**

CITY OF CAMPBELL INCLUSIONARY  
AFFORDABLE HOUSING PRODUCTION PROGRAM

**(Hamilton Square)**

Owners: **Chesung Ryu and Hyuhee Kim**

Address of Home:

**692 Gale Drive**  
**Campbell, CA 95008**

Income Category of Owner: **Moderate**

Affordable Housing Cost / Sales Price of the Home to Owner: **\$668,302.00**

Median Income at Time of Purchase (Household Size of 4): **\$141,600**

This Occupancy, Resale, and Refinancing Restriction Agreement, with Option to Purchase at Restricted Price (the "Agreement") is entered into as of this \_\_\_\_ day of February, 2021, by and between the City of Campbell ("City") and Chesung Ryu and Hyunhee Kim ("Owners").

## RECITALS

A. Pursuant to the City of Campbell's Inclusionary Ordinance no household shall be permitted to begin occupancy of an affordable unit unless the city or its designee has approved the household's eligibility to be that of a low income or moderate income household, as provided above. Once the household has been deemed income eligible, that household will become the "Owner" of one of the below market rate homes.

B. **Pulte Homes**, (the "Developer") has constructed **twenty-one (21) unit residential detached single family housing development**, commonly referred to as "**Hamilton Square**".

C. Owner intends to purchase an Affordable Unit, which is more particularly described in Exhibit A attached hereto and incorporated herein (the "Home").

D. Pursuant to the City's Inclusionary Ordinance, the City is required to record covenants against the Home to ensure its continued affordability for forty-five (45) years, and 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 which is below the fair market value of the Home.

E. The purpose of this Agreement is to place resale controls on the Home and to require the payment of any excess proceeds of sale to the City. This Agreement also provides the City an option to purchase the Home at a restricted 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 Affordable Housing Production Program.

F. The Owner is receiving the following loans:

<u>Name of Lender</u>	<u>Amount</u>	<u>Date Deed of Trust</u>
1) <u>Wells Fargo Bank</u>	<u>\$634,887.00</u>	<u>February 16, 2021</u>

All purchase money loans are, collectively, the "First Lender Loan". All lenders of purchase money loans are, collectively, the "First Lender." The First Lender Loan is secured by Loan # 0570502187 deeds of trust executed by the Owner in favor of the First Lender and recorded in the County of Santa Clara concurrently with this Agreement (collectively, the "First Lender Deed of Trust").

G. 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 rents to the City. This Agreement and the 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. Notice of these restrictions shall also be

provided by a “Notice of Affordability Restrictions,” recorded as required by Health and Safety Code Section 33413.

### **EXHIBITS**

The following exhibits are attached to this Agreement:

- Exhibit A: Legal Description of the Home
- Exhibit B: Form of Owner Occupancy Certification
- Exhibit C: Form of Owner's Notice of Intent to Transfer
- Exhibit D: Form of Owner Acknowledgement of First City Response Notice
- Exhibit E: Form of Request for City Approval of Improvements to the Home
- Exhibit F: Form of Owner's Notice of Failure to Locate Eligible Purchaser
- Exhibit G: Form of Owner Request for City Subordination to Refinance First Lender Loan

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

1. DEFINITIONS

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

- A. "Advances" – Section 12B, page 10
- B. "Affordable Housing Cost" (Sales Price) – page 1
- C. "Affordable Rent" (Lease) – Section 4, page 5
- D. "Agreement" – page 1
- E. "City" – page 1
- F. "City Deed of Trust" - Recital G, page 2
- G. "City Designated Purchaser" – Section 10, page 9
- H. "City Note" – Recital G, page 2
- I. "Default" – Section 16, page 17
- J. "Developer" – Recital B, page 2
- K. "Domestic Partners" – Section 6B, page 6
- L. "Eligible Capital Improvements" - Section 13A, page 11
- M. "Eligible Purchaser" - Section 14B, page 13
- N. "Excess Rents" – Section 4B, page 5
- O. "Excess Sales Proceeds" - Section 16, page 16
- P. "Fair Market Value" - Section 13B, page 12
- Q. "First City Response Notice" - Section 8, page 8
- R. "First Lender" - Recital F, page 2
- S. "First Lender Deed of Trust" - Recital F, page 2
- T. "First Lender Loan" - Recital F, page 2
- U. "Home" - Recital C, page 2
- V. "Indexed Price" - Section 13A, page 11
- W. "Market Purchaser" - Section 15, page 15
- X. "Marketing Period" - Section 14A, page 12
- Y. "Maximum Restricted Resale Price" - Section 13, page 10
- Z. "Median Income" – Section 13A, page 11
- AA. "Option" - Section 10A, page 9
- BB. "Owner(s)" - Page 1
- CC. "Owner's Notice of Failure to Locate Eligible Purchaser" - Section 15, page 15
- DD. "Owner's Notice of Intent to Transfer" - Section 7, page 6
- EE. "Permitted Encumbrance Amount" – Section 26, page 21
- FF. "Proposed Purchaser" – Section 14A, page 13
- GG. "Second City Response Notice" - Section 15A, page 15
- HH. "Term" – Section 23, page 20
- II. "Transaction Fee" – Section 10C, page 9
- JJ. "Transfer" - Section 6A, page 6

## 2. DESCRIPTION OF PROPERTY

This Agreement concerns the real property commonly known as 692 Gale Drive, Campbell, California 95008, which is more fully described in Exhibit A attached hereto and incorporated in this Agreement by reference (the "Home").

## 3. OWNER CERTIFICATIONS; OWNER OCCUPANCY REQUIREMENT

The Owner certifies that 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. The Owner shall occupy the Home as the Owner's principal place of residence. The Owner shall be considered as occupying the Home if the Owner is living in the unit for at least ten (10) months out of each calendar year. On or before February 1 of each calendar year, the Owner shall provide an annual written certification to the City, in the form shown on Exhibit B of this Agreement, that the Owner is occupying the Home as his or her principal place of residence, unless the City has approved the rental of the Home pursuant to Section 4 below. The Owner will fully cooperate with the City in promptly providing all information requested by the City to assist the City in monitoring Owner's compliance with this Agreement.

## 4. LEASING OF HOME

A. The Owner shall not lease the Home to another party, unless such lease is first approved in writing by the City. The City shall approve the leasing of the Home only if ALL of the following conditions are met: (1) the Owner demonstrates to the City's reasonable satisfaction that the Owner will incur substantial hardship if he or she is not permitted to lease the Home to a third party; (2) the term of the lease is not greater than twelve (12) months and cannot be extended without City approval; (3) the lease requires the tenant to maintain the Home and surrounding property in good condition and prohibits subleasing; and (4) the rent for the Home does not exceed the lesser of: (i) **thirty percent (30%)** of the income of the tenant household that is renting the Home, or (ii) the Owner's monthly cost of principal and interest on the First Lender Loan, and property insurance, property taxes, and homeowners association dues, if any, associated with Home (the lesser rent is the "Affordable Rent").

B. Any 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 leases the Home to a third party in violation of this Section 4, any excess rents ("Excess Rents") 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 Rents shall be considered a recourse debt of the Owner to the City, which the City may collect by legal action against the Owner and/or by foreclosure under the City Deed of Trust.

## 5. MAINTENANCE AND INSURANCE REQUIREMENTS

A. The Owner shall maintain the Home, including landscaping, in good repair and in a neat, clean and orderly condition and will not commit waste or permit deterioration of the Home.

B. 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. Additional insurance requirements are set forth in the City Deed of Trust.

#### 6. RESTRICTIONS ON RESALE AND TRANSFER OF THE HOME

A. **Transfer.** Any Transfer of the Home will be subject to the provisions of this Agreement including, without limitation, the Option described in Section 10 below. "Transfer" means 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 (unless approved pursuant to Section 4 of this Agreement), 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 its Option.

B. **Permitted Transfers.** Notwithstanding Section 6A, the following shall not be considered a Transfer for the purposes of this Agreement, but all such transferees shall continue to be bound by the requirements of this Agreement: (i) transfers by devise or inheritance to an existing spouse, Domestic Partner, child, surviving joint tenant, or a spouse as part of a dissolution proceeding or in connection with marriage; (ii) a transfer by an Owner into an inter vivos trust in which Owner is the beneficiary, trustor, and trustee; or (iii) refinance of the First Lender Loan in accordance with Section 26 of this Agreement, provided, however, that Owner shall provide written notice of all such transfers to the City pursuant to Section 7, and all owners of the Home shall continue to occupy the Home as his or her principal place of residence. For purposes of this Section, "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.

C. **Notice of Permitted Transfer.** Per Section 7 of this Agreement, Owner shall provide notice to the City no later than fifteen (15) days before the sale, assignment, or other transfer occurs. Where the transfer is by devise, inheritance, or operation of law after death of the Owner, notice shall be provided within thirty (30) days of the date of transfer, and the new owners of the Home shall affirmatively assume Owner's obligations under this Agreement, the City Note, and the City Deed of Trust.

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

A. In the event the Owner intends to Transfer 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 Exhibit C attached to this Agreement. 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 33 of this Agreement. The Owner's Notice of Intent to Transfer shall include the information necessary for the City to determine the Indexed 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 Affordable Housing Cost 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) the date on which Owner intends to vacate Home;
- (7) the date Home will be placed on the market; and
- (8) the name and phone number of the person to contact to schedule inspection of the Home by the City.

B. The Owner should not contract with a real estate broker to sell the Home until the Owner has received the First City Response Notice pursuant to Section 8 below, as the services of a broker will not be required if the City exercises the Option to purchase the Home.

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 damage noted in the pest report including damage caused by infestation or infection by wood-destroying pests;

(3) within thirty (30) days of the date of the Owner's Notice of Intent to Transfer, the Owner shall allow the City, or its designee, 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 the Home, including the exterior landscaping, in good condition and shall maintain utility connections until the close of escrow on the Transfer;

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

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

The City shall respond in writing (the "First City Response Notice") to the Owner's Notice of Intent to Transfer within sixty (60) days of City receipt of a complete Owner's Notice of Intent to Transfer that includes all information required under Section 7, including City receipt of the pest control report and home inspection report (if any) required pursuant to Section 9 above. The City Response Notice shall inform the Owner of the City's election to proceed under one of the following two alternatives:

**A. City Exercise of City Purchase Option.** The First City Response Notice may notify the Owner that the City elects to exercise the Option, or assign its right to a City Designated Purchaser, and shall include the City's calculation of the Maximum Restricted Resale Price to be paid by the City pursuant to Section 13 below and any Transaction Fee to be paid by the Owner. The City may choose to assign its Option to a City Designated Purchaser at any time after the City has decided to exercise its Option but before the close of escrow.

**B. Owner Sale at Restricted Sale Price to Eligible Purchaser.** Alternatively, the First City Response Notice may notify the Owner that the City will not at this time exercise the Option to purchase the Home and that the Owner may proceed to sell the Home to an Eligible Purchaser at a price not to exceed the Maximum Restricted Resale Price, pursuant to the procedure set forth in Section 14 below. In this event, the First City Response Notice shall include the following information: (1) the maximum qualifying income for an Eligible Purchase; (2) the certifications required of an Eligible Purchaser; and (3) the Maximum Restricted Resale Price the Owner may receive for the Home, calculated by the City pursuant to Section 13 below.

#### 9. OWNER ACKNOWLEDGMENT OF CITY RESPONSE NOTICE

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

## 10. GRANT OF OPTION TO PURCHASE; ASSIGNMENT OF OPTION BY CITY

A. In consideration of the economic benefits received by the Owner resulting from purchase and ownership of the Home at a price below fair market value, Owner hereby grants and gives to the City a right to purchase all of Owner's right, title, and interest in and to the Home ("Option") for the Maximum Restricted Resale Price, calculated pursuant to Section 13 below, upon the occurrence of the events specified in Section 7 of this Agreement, and subject to the terms and conditions included in this Agreement. The term of the Option extends for the Term of this Agreement.

B. The City may, instead of purchasing the Home itself, assign its right to purchase the Home pursuant to the Option to another public City, a nonprofit corporation, or to an Eligible Purchaser (a "City Designated Purchaser").

C. The City may require that the Owner pay the City a transaction fee (the "Transaction Fee") equal to three percent (3%) of the sales price if the City or a City Designated Purchaser exercises the Option and purchases the Home.

D. The City acknowledges and agrees that the 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 California Community Redevelopment Law and/or other City affordable housing programs.

E. In no event shall the City become liable or obligated in any manner to Owner by reason of the assignment of the Option, nor shall the City be in any way liable or obligated to Owner for any failure of the City Designated Purchaser to consummate a purchase of the Home or to comply with the terms of this Option, or any escrow instructions or agreement for the purchase of the Home.

## 11. EVENTS GIVING RISE TO RIGHT TO EXERCISE OPTION

A. The City shall have the right to exercise or to assign its Option if either of the following events occurs:

(1) The City receives an Owner's Notice of Intent to Transfer (defined in Section 7 of this Agreement) or Owner's Notice of Failure to Locate Eligible Purchaser (defined in Section 14 of this Agreement); or

(2) The City declares a Default pursuant to Section 17 of this Agreement.

B. If the City receives an Owner's Notice of Intent to Transfer, the City may exercise its Option pursuant to the procedures in Sections 10 through 13 of this Agreement. If a Default occurs, the City may exercise its Option pursuant to the procedures in Sections 17 through 19 of this Agreement.

C. The City's rights to exercise its Option shall survive any Transfer of the Home by the Owner in violation of this Agreement. As long as the Option has not been expressly abandoned, any actual or attempted Transfer of the Home in violation of the terms and conditions of this Agreement shall be a Default and shall be voidable at the election of the City.

## 12. EXERCISE OF CITY OPTION

A. **Escrow.** If the First City Response Notice notifies the Owner that the City intends to exercise the Option, the City or the City Designated Purchaser shall open an escrow account for its purchase of the Home. Close of escrow shall take place on such date which is the later to occur of the following: (a) ninety (90) days after the date of the First City Response Notice, or (b) ten (10) days after Owner has done all acts and executed all documents required for close of escrow.

B. **Deposit of Funds into Escrow.** Prior to the close of escrow, the City or the City Designated Purchaser shall ensure that funds are deposited to pay the Maximum Restricted Resale Price of the Home, as defined in Section 13 of this Agreement. All Advances previously paid by the City shall be repaid from escrow. "Advances" include any payment by the City of costs including, but not limited to, principal, interest, taxes, assessments, insurance premiums, homeowners' fees, and associated late fees, costs, interest, attorneys' fees, costs of investigation (including but not limited to costs of investigating compliance with the owner occupancy requirements of Section 3), costs incurred in connection with the negotiation or drafting of any agreement among the City, Owner, and any third party, pest inspections, resale inspections, and other expenses related to the Home, which Owner has failed to pay or has permitted to become delinquent or which are required to remove liens and encumbrances as described below or which are otherwise due to the City. Closing costs and title insurance shall be paid by City or its City Designated Purchaser and Owner pursuant to the custom and practice in the County of Santa Clara at the time of the opening of escrow, or as may be provided otherwise by mutual agreement. Owner agrees to do all acts and execute all documents necessary to enable the close of escrow and Transfer of the Home to the City or its City Designated Purchaser.

C. **Removal of Exceptions to Title.** The Owner shall convey title to the Home at the close of escrow free and clear of any mortgage, lien, or other encumbrance, unless approved in advance in writing by the City or its City Designated Purchaser. If the amounts deposited into escrow by the City or its City Designated Purchaser are not sufficient to satisfy all liens and encumbrances recorded against the Home, then the Owner shall deposit into escrow the additional sums that are required to remove the liens and encumbrances.

## 13. DETERMINATION OF RESTRICTED SALE PRICE FOR CITY OPTION OR RESTRICTED SALE TO ELIGIBLE PURCHASER

If the City or a City Designated Purchaser exercises the Option, or if the Owner sells to an Eligible Purchaser, the maximum sales price (the "Maximum Restricted Resale Price") that the Owner shall receive from the City, the City Designated Purchaser, or the Eligible Purchaser for purchase of the Home shall be the LESSER of the Indexed Price or the Fair Market Value

**A. Indexed Price.**

(1) The "Indexed Price" of the Home means the Affordable Housing Cost of the Home at the time of purchase by the Owner 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 A(2) below to reflect the value of capital improvements or the cost of deferred maintenance. "Median Income" shall refer to the median yearly income, adjusted for a household size of four, in Santa Clara 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 Santa Clara County.

(2) 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 conformed with applicable building codes at the time of installation;

(b) approved in writing in advance by the City or its designee; and

(c) whose initial costs exceed one percent (1%) of the purchase price paid for the Home by the Owner.

A form for use in requesting City approval of a capital improvement is attached to this Agreement as Exhibit E. Improvements meeting the above requirements are referred to in this Agreement as "Eligible Capital Improvements."

The adjustment to the Indexed Price for such 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 Subsection 13(B)(2) 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.

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 Campbell Building Code, 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 or its designee, and may include cleaning, painting and making needed structural, mechanical, electrical, plumbing and fixed appliance repairs and other deferred maintenance repairs.

**B. Fair Market Value.**

(1) 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:

a. where the parties wish to determine if the Indexed Price exceeds the Fair Market Value in order to determine the Maximum Restricted Resale Price pursuant to Section 15;

b. where the Owner is selling the Home to a Market Purchaser at an unrestricted price pursuant to Section 14;

c. where the parties wish to determine the value of Eligible Capital Improvements in order to calculate the Indexed Price pursuant to Subsection 13(A)(2) above; and

d. where the Owner wishes to refinance the First Lender Loan as described in Section 26 below, and it is necessary to determine the Maximum Restricted Resale Price in order to calculate the maximum principal amount of the refinanced First Lender Loan.

(2) 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 shared equally by the City and the Owner, unless the appraisal is obtained from a new purchaser, or unless the appraisal is necessary because the Owner wishes to refinance the First Lender Loan pursuant to Section 26 below, in which event the Owner shall pay the cost of the appraisal. In the event that the Owner has made capital improvements to the Home (which have been approved in advance by the City pursuant to Subsection 13(A)(2) above) which have increased the value of the Home or if damage or deferred maintenance 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 Home would be without such adjustments by utilizing the procedures outlined in Subsection 13(A) 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.

**14. RESTRICTED SALE OF HOME BY OWNER IF CITY DOES NOT EXERCISE OPTION**

In the event the First 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 Period.** The Owner shall have sixty (60) days from the date of the First City Response Notice (the "Marketing Period") to market the Home and find an Eligible Purchaser. During the Marketing Period, the Owner shall use bona fide good faith efforts to

sell the Home to an Eligible Purchaser in compliance with this Agreement, including 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 City's form of disclosure statement summarizing the terms of the buyer's resale agreement. If the Owner has not located an Eligible Purchaser within this sixty (60)-day marketing period, the Owner may request an additional sixty (60)-day marketing period. A proposed purchaser ("Proposed Purchaser"), whom the Owner believes will qualify as an Eligible Purchaser, shall be referred to the City or its designee for an eligibility determination.

**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) Intent to Owner Occupy. The Proposed Purchaser shall certify that he or she will occupy the Home as his or her principal place of residence throughout his or her ownership.

(2) Willingness to Sign City Agreements and to Cooperate with City. The Proposed Purchaser shall agree to sign a resale restriction agreement, promissory note, deed of trust, notice of affordability restrictions, and other documents as required by the City and California Community Redevelopment Law restricting the future resale price of the Home and shall further agree to cooperate fully with the City in promptly providing all information requested by the City to verify the Proposed Purchaser's eligibility.

(3) Income Eligibility. The combined maximum income for all household members of the Proposed Purchaser shall not exceed the qualifying limit for **MODERATE INCOME** households as defined in California Health and Safety Code Section 50079.5, adjusted for household size, as published annually by HCD. In the event such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen (18) months, the City shall provide other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD. The income of a household shall be calculated in accordance with 25 California Code of Regulations Section 6914 or a successor state housing regulation that sets forth a method of calculation of household income.

**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 13 above, as set forth in the First City Response Notice.

**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 a form acceptable to the 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 and its designee harmless and reimburse the City's and its designee'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 and deed of trust 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 buyer's resale agreement, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

15. SALE OF HOME IF OWNER IS UNABLE TO LOCATE ELIGIBLE PURCHASER

A. **Notice to City:** If, despite bona fide good faith documented marketing efforts (including listing the Home on the Multiple Listing Service for the entire Marketing Period), the Owner is unable to locate an Eligible Purchaser during the Marketing Period and any extensions to the Marketing Period granted by the City, the Owner shall provide written notice to the City of this fact (including documentation of the Owner's marketing efforts and the Multiple Listing Service listing), in the form shown in Exhibit F attached to this Agreement

(the "Owner's Notice of Failure to Locate Eligible Purchaser"). Within fifteen (15) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser, the City shall provide a second response notice to the Owner (the "Second City Response Notice") stating either (1) that the City will exercise the Option to purchase the Home, or (2) that the Owner may Transfer the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, at an unrestricted price which is at or near Fair Market Value (supported by an MAI or other qualified appraisal), but shall pay all Excess Sales Proceeds to the City as set forth in Section 16 below.

**B. City Option to Purchase:** If the City chooses to exercise its Option in response to the Owner's Notice of Failure to Locate Eligible Purchaser, then the Option shall be exercised pursuant to the provisions of this agreement, except that close of escrow shall take place on such date which is the later to occur of: (a) seventy-five (75) days after the date of the Second City Response Notice, or (b) ten (10) days after Owner has done all acts and executed all documents required for close of escrow.

**C. Unrestricted Sale:** If the Owner Transfers the Home to a Market Purchaser, the purchaser shall not be required to execute a resale agreement nor any other City document, and the City shall reconvey the liens of this Agreement, the City Deed of Trust, and the Notice of Affordability Restrictions from the Home, provided that the Owner pays the Excess Sales Proceeds to the City pursuant to Section 16 below. The Owner shall provide the City with the following documentation associated with such a Transfer:

- (1) the name and address of the purchaser;
- (2) the final sales contract and all other related documents which shall set forth all the terms of the sale of the Home, including a HUD-1 Settlement Statement. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Market Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.
- (3) a written certification, from the Owner and the Market 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 Market 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 Market 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 Market Purchaser for the return of any moneys paid or received in violation of this Agreement or for any costs and legal expenses, shall be borne by the Owner and/or the Market Purchaser and they shall hold the City and its designee harmless and

reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(4) a copy of the MAI or other qualified appraisal for the Home.

(5) upon the close of the proposed sale, a copy of the final sales contract, HUD-1 Settlement Statement, escrow instructions, and any other documents which the City may reasonably request.

#### 16. PAYMENT TO CITY OF EXCESS SALES PROCEEDS

If the Owner Transfers the Home at an unrestricted price pursuant to Section 15 above, or 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, reduced by the amount of any actual real estate commission paid by the Owner at Transfer, up to a maximum of six percent (6%) of gross sales proceeds. This amount shall be a debt of the Owner to the City, evidenced by this Agreement, 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 net sales proceeds from sale of the Home at an unrestricted price to an Market Purchaser as the Owner would receive from sale of the Home to the City or to an Eligible Purchaser at the Maximum Restricted Resale Price.

#### 17. DEFAULTS

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

(1) The City determines that 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, not in compliance with Section 4 above;

(4) The Owner actually Transfers, or attempts to Transfer, the Home in violation of this Agreement;

(5) The Owner fails to provide information to the City necessary to determine Owner's compliance with the requirements of this Agreement.

(6) Judicial foreclosure proceedings are commenced regarding the Home;

(7) A notice of default is issued under any financing secured by the Home, or the City receives any other notice of default pursuant to Civil Code Section 2924b, or the Owner is in default on any other financing secured by the Home.

(8) The Owner executes any deed in lieu of foreclosure transferring ownership of the Home;

(9) A lien is recorded against the Home other than the lien of the First Lender Loan or a refinance of the First Lender Loan approved by the City pursuant to Section 26; or

(10) The Owner otherwise fails to comply with the requirements of this Agreement, the City Note, or the City Deed of Trust. .

B. Upon a declaration of Default by the City 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 under the City Note immediately due and payable without further demand;

(2) Declare a default under the City Note;

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

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

(5) Take such enforcement action as is authorized under the Campbell Municipal Code;

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

(7) Exercise the Option.

#### 18. NOTICE OF DEFAULT AND FORECLOSURE

A. The City shall notify the First Lender in the manner set forth in Section 33 of this Agreement if the City has declared a Default under this Agreement or under the City Note or the City Deed of Trust.

B. Requests 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 Santa Clara 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 or through any other means and may exercise its rights as provided in this Section.

#### 19. EXERCISE OF OPTION UPON DEFAULT

A. **Notice and Cure.** Upon Default, 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 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. However, if the Owner is in default under any financing secured by the Home, the City may declare a Default upon receipt of any notice given to the City pursuant to Civil Code Section 2924b or through any other means and may exercise its rights as provided in Section 17 through Section 19.

B. **Declaration of Default and Exercise of Option Upon Default.** If Owner has not cured a Default within any applicable cure period, or if there is no applicable cure period, the City may declare a Default by written notice to Owner and shall have thirty (30) days after declaration of the Default to notify Owner and First Lender of its intent to exercise its Option. Not later than ninety (90) days after the City has notified the Owner of its intent to exercise the Option under this Section, Owner and the City shall complete all acts and execute all documents necessary to enable the close of escrow and transfer of the Home to the City, including but not limited to removal of all exceptions to title as required by Section 12. If Owner has cured all Defaults prior to close of escrow, City and Owner, at City's sole discretion, may by written agreement determine that City shall not exercise its Option.

C. **Court Order.** If there is a stay or injunction imposed by court order precluding the City from exercising the Option within the applicable time period, then the running of such period shall be tolled until such time as the stay is lifted or injunction dissolved and the City has been given written notice thereof, at which time the period for exercise of the Option shall again begin to run.

D. **Right of City to Reinstate Mortgages.** In the event of default and foreclosure, the City shall have the same right as the Owner to cure defaults and redeem the Home prior to the foreclosure sale and shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor sections) solely for the purposes of reinstating any mortgage on the Home that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the City shall be entitled, but not required, to pay all amounts of principal, interest, taxes, assessments, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. 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.

#### 20. 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, 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.

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 affordable 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 Home 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 and the City of Campbell and their officers, employees, agents, board members and/or council members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the City or 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 City Deed of Trust; or (2) the failure at any time of any of Owner's representations to the City to be true and correct.

## 21. 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 addition to any other amounts due the City from the Owner pursuant to this Agreement), in consideration of the benefits received by the Owner through purchase of the Home at a price below fair market value.

## 22. RESTRICTION ON INSURANCE PROCEEDS

If the Home is damaged or destroyed and the Owner elects not to rebuild or repair the Home, the Owner shall pay 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 13 above.

## 23. TERM OF AGREEMENT

All the provisions of this Agreement, including the benefits and burdens, run with 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, until the earlier of (i) forty-five (45) years from the date of purchase of the Home by Owner, 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 copy of this Agreement), or (iii) the date of Transfer of the Home to another purchaser at an unrestricted price and payment of all principal and interest due under the City Note pursuant to the terms of the City Note, including but not limited to payment of all Excess Sales Proceeds (the "Term").

#### 24. SUPERIORITY OF AGREEMENT

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

#### 25. SUBORDINATION

Notwithstanding any other provision hereof, the provisions of this Agreement and the City Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the City Deed of Trust 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 acquires title to the Home pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the City Deed of Trust 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 or its designee shall not have cured the default within such sixty (60)-day period.

#### 26. REFINANCE OF FIRST LENDER LOAN

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 Property without obtaining prior written consent of the City. A form for use by the Owner in requesting City subordination to a refinanced First Lender loan is attached as Exhibit G to this Agreement.

B. **Permitted Encumbrance Amount.** The "Permitted Encumbrance Amount", is defined as the greater of: (i) ninety percent (90%) of the Maximum Restricted Resale Price, or (ii) the remaining balance of the original First Lender Loan.

C. **Refinance.** The City shall permit a prepayment and refinance of the First Lender Loan and shall agree to subordinate this Agreement and the City Deed of Trust to the refinanced First Lender Loan provided that:

- (1) following such refinance, the principal amount of all debt secured by the Property does not exceed the Permitted Encumbrance Amount;
- (2) the refinanced First Lender Loan is a fully amortized fixed rate loan, is fully documented, and requires no balloon payments;
- (3) if the remaining balance of the original First Lender Loan exceeds ninety percent (90%) of the Maximum Restricted Resale Price, then the refinanced First Lender Loan reduces the Owner's principal and interest payments; and
- (4) the total new housing cost to the Owner after the refinance does not exceed the Owner's ability to pay.

D. **Request for Notice of Default.** As a condition for subordination of the City Deed of Trust, a request for notice of default and notice of sale regarding the refinanced First Lender Loan shall be recorded in the Office of the Recorder of the County of Santa Clara for the benefit of the City.

E. **Purpose of Restrictions.** Mortgage loans or equity lines of credit junior in lien priority to the City deed of trust are not permitted. The City and the Owner agree that the requirements of this Section 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 shall constitute a Default under this Agreement.

## 27. 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.

## 28. RIGHTS OF HUD, CALHFA AND VA

Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of the United States Department of Housing and Urban

Development ("HUD"), the California Housing Finance City ("CalHFA") 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. Notwithstanding any other provisions in this Agreement to the contrary, all of the provisions of this Agreement shall terminate and have no further force and effect if the title is acquired by HUD, CalHFA, or VA, or another party upon foreclosure of a deed of trust securing a loan insured by HUD, funded by CalHFA, or guaranteed by VA.

#### 29. 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 a HUD program.

#### 30. 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.

#### 31. CONTROLLING LAW

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

#### 32. 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.

#### 33. NOTICES

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

To the Owner: Chesung Ryu & Hyunhee Kim

Address of the Home. 692 Gale Drive, Campbell, CA 95008  
To the City:

Campbell Community Development Department  
c/o City of Campbell  
70 No. First Street  
Campbell, CA 95008-1436

To the First Lender:

Wells Fargo  
6200 Park Ave, Des Moines, IA 50321

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

#### 34. 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 its sales price and mortgage payment remain affordable to persons and families of lower income.

#### 35. EXHIBITS

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

#### 36. 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 and shall pass to and be binding upon all parties having any interest in the Home throughout the Term of this Agreement. 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.

### 37. SPECIFIC PERFORMANCE

Owner acknowledges that any breach in Owner's performance of Owner's obligations under this Agreement shall cause irreparable harm to the City. Owner agrees that the City is entitled to equitable relief in the form of specific performance upon its exercise of the Option, and that an award of damages shall not be adequate to compensate the City for Owner's failure to perform according to the terms of this Agreement.

### 38. ENFORCEMENT

Notwithstanding any other provision of the law, all covenants and restrictions contained herein which implement Health and Safety Code Sections 33334.3 and/or 33413, or successor provisions, shall run with the land and shall be enforceable by the City and the City of Campbell 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.

### 39. 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.

### 40. 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. \_\_\_\_\_

initialed by Owner(s)

B. Absent the provisions of this Agreement, the Home could not be made available to Eligible Purchasers, including Owner. \_\_\_\_\_

initialed by Owner(s)

C. Owner understands all of the provisions of this Agreement. In recognition of the acknowledgments and agreements stated in this Section, 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 throughout the Term of this Agreement. \_\_\_\_\_  
initialed by Owner(s)

D. Owner understands that the determination of the maximum restricted resale price of the property can be made only at the time of the proposed transfer, taking into consideration increases in area median income, which cannot be accurately predicted, and that the sales price may not increase or decrease in the same manner as other similar real property which is not encumbered by this agreement. \_\_\_\_\_  
initialed by Owner(s)

E. Owner further acknowledges that at all times in setting the sales price of the property 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. \_\_\_\_\_  
initialed by Owner(s)

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

\_\_\_\_\_  
**Chesung Ryu**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Hyunhee Kim**

\_\_\_\_\_  
**Date**

**ALL SIGNATURES MUST BE NOTARIZED**

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

By:

\_\_\_\_\_  
Stephen Rose, Senior Planner  
City of Campbell, a public body, corporate and politic

## **EXHIBIT A**

### **Legal Description of the Home**

Real property in the City of Campbell, County of Santa Clara, State of California, described as follows:

#### **PARCEL ONE:**

LOT 5 OF TRACT MAP 10090, FILED NOVEMBER 7, 2011, IN BOOK 848 OF MAPS, PAGES 30 THROUGH 33, INCLUSIVE, AND AS AMENDED BY CERTIFICATE OF CORRECTION RECORDED APRIL 6, 2012, INSTRUMENT NO. 21614119, OFFICIAL RECORDS OF SANTA CLARA COUNTY RECORDS ("OFFICIAL RECORDS").

EXCEPTING THEREFROM AN EASEMENT FOR THE BENEFIT OF LOT 4 OF TRACT MAP 10090 FOR YARD PURPOSES, ALONG WITH ALL INCIDENTS THERETO, OVER, UNDER, ALONG AND THROUGH THAT AREA OF LOT 5 SHOWN AS EXCLUSIVE USE EASEMENT ("EUE") ON TRACT MAP 10090. SAID EASEMENT IS LIMITED AND DESCRIBED MORE PARTICULARLY IN THE DECLARATION.

FURTHER EXCEPTING THEREFROM A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF LOT 4 OF TRACT MAP 10090 FOR PRIVATE STORM DRAINAGE PURPOSES, ALONG WITH ALL INCIDENTS THERETO, OVER, UNDER, ALONG AND THROUGH THAT AREA OF LOT 5 SHOWN AS PRIVATE STORM DRAINAGE EASEMENT ("PSDE") ON TRACT MAP 10090.

EXCEPTING THEREFROM WATER RIGHTS AS DESCRIBED AND CONTAINED IN THAT CERTAIN INSTRUMENT ENTITLED "WATER RIGHTS QUITCLAIM DEED", RECORDED JUNE 25, 2012, SERIES NO. 21721058.

#### **PARCEL TWO:**

NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS, FOR USE, OCCUPANCY AND ENJOYMENT, OVER, UNDER, ALONG AND THROUGH THE "COMMON AREA", AS DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HAMILTON SQUARE, RECORDED MARCH 19, 2012, SERIES NO. 21585362, OFFICIAL RECORDS ("DECLARATION"); FOR THE BENEFIT OF PARCEL ONE HEREINABOVE.

#### **PARCEL THREE:**

A NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS FOR INSTALLATION, INSPECTION, MAINTENANCE, REPAIR AND REPLACEMENT OF A PIPELINE OF AT LEAST 8" IN DIAMETER, TOGETHER WITH NECESSARY PUMPING EQUIPMENT RELATED THERETO FOR THE PURPOSE

OF CARRYING SEWAGE AND WASTE WATER, AS DESCRIBED IN THAT CERTAIN ACCESS AND UTILITY EASEMENT AGREEMENT EXECUTED BY AND BETWEEN PHILIPP L. KARPEL, TRUSTEE, AND VIVIAN A. KARPEL, TRUSTEE; OF THE PHILIPP & VIVIAN KARPEL FAMILY TRUST, AS GRANTOR, AND GALE DRIVE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS GRANTEE, RECORDED JULY 7, 2011, AS INSTRUMENT NO. 21228869 OF OFFICIAL RECORDS AND AS AMENDED BY FIRST AMENDMENT TO ACCESS AND UTILITY EASEMENT RECORDED JANUARY 26, 2012, INSTRUMENT NO. 21512740, OFFICIAL RECORDS.

BEING A PORTION OF LOT 1, AS SAID LOT 1 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN PARCEL MAP, RECORDED MAY 14, 1973, IN BOOK 323 OF MAPS AT PAGE 15, IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING THE EASTERN TEN (10.00) FEET OF SAID LOT 1.

APN: 307-39-042

**Exhibit B**

**Form of Owner Occupancy Certification**

Date: \_\_\_\_\_ Due: February 1 of each calendar year

To: City of Campbell ("City")

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

Home Address: \_\_\_\_\_ ("Home")

By signature below, I \_\_\_\_\_ **[insert name or names 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.

The Owner hereby certifies that the above information is true and correct and this Owner Occupancy Certification is signed under penalty of perjury on \_\_\_\_\_ **[Insert Date]**

\_\_\_\_\_  
OWNER PRINTED NAME (and signature above)

\_\_\_\_\_  
Date

\_\_\_\_\_  
OWNER PRINTED NAME (and signature above)

\_\_\_\_\_  
Date

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

**Exhibit C**  
**Owner's Notice of Intent to Transfer BMR Home**

The Owner's Notice of Intent to Transfer shall be sent to the City of Campbell by certified mail, return receipt to the address listed below. The Owner's Notice of Intent to Transfer shall include the information necessary for the Agency to determine the Restricted Future Sales Price of the Home, including the following information:

To: **City of Campbell**  
**70 No. First Street**  
**Campbell, CA 95008-1436**  
Attn: **Cindy McCormick, Senior Planner**

Date Notice Mailed: \_\_\_\_\_

Owner Name: \_\_\_\_\_ ("Owner")

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

Date Owner purchased Home: \_\_\_\_\_

Date Owner signed Resale Restriction Agreement: \_\_\_\_\_

Purchase Price paid by Owner when Home was purchased: \_\_\_\_\_

Date Property will be listed for sale: \_\_\_\_\_

Date Owner intends to vacate Home: \_\_\_\_\_

Contact Info for Home inspection: \_\_\_\_\_  
(name) (phone number)

☐ I have made Eligible Capital Improvements and have attached the required documents and approvals pursuant to Section 11 of the Resale Agreement.

This Owner's Notice of Intent to Transfer is certified by the Owner to be true and correct under penalty of perjury.

\_\_\_\_\_  
OWNER PRINTED NAME (and signature above)

\_\_\_\_\_  
Date

\_\_\_\_\_  
OWNER PRINTED NAME (and signature above)

\_\_\_\_\_  
Date

*Please initial each item below:*

**Following delivery to the Agency 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 Agency a current written report of inspection of the Home by a licensed structural pest control operator; and
- (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 damage noted in the pest report including damage caused by infestation or infection by wood-destroying pests; and
- (3) within thirty (30) days of the date of the Owner's Notice of Intent to Transfer, the Owner shall allow the Agency, or its designee, to inspect the Home to determine its physical condition; and
- (4) if the Home is vacant, the Owner shall maintain utility connections until the close of escrow on the Transfer; and
- (5) the Owner shall permit a final walk-through of the Home by the Agency in the final three (3) days prior to close of escrow on the Transfer. If requested by the City following the City's inspection, the Owner will obtain a home inspection report from a licensed home inspector.

**As required by Section 7 of the Resale Restriction Agreement, the owner shall attach the following documents to this Notice:**

- Copy of HUD-1 Settlement Statement or equivalent document from the close of escrow on the Owner's purchase of the Home;
- If Owner has made Eligible Capital Improvements to the Home that Owner wishes to include in the City's calculation of Indexed Price, the owner shall attach ALL of the following documents to this letter:
  - a. Copy of letter from City granting prior approval of stated improvements
  - b. Date of Improvements
  - c. Description of improvements
  - d. Evidence of cost of these improvements
  - e. Appraisal showing value added to Home by the improvements

**Exhibit D**

**Form of Owner Acknowledgement of First City Response Notice**

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

Address of Home: \_\_\_\_\_

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

I, \_\_\_\_\_ (insert name) hereby acknowledge that I received the First City Response Notice (as described in the Resale Restriction Agreement on \_\_\_\_\_ (insert date) and still desire to transfer my Home.

\_\_\_\_\_  
OWNER PRINTED NAME (and signature above)

\_\_\_\_\_  
Date

\_\_\_\_\_  
OWNER PRINTED NAME (and signature above)

\_\_\_\_\_  
Date

**Exhibit E**

**Form of Request for City Approval of Improvements to the Home**

To: City of Campbell ("City")

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

Home 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 of Home: \_\_\_\_\_

\*Percent of Purchase Price: \_\_\_\_\_

\*\*Attach a copy of the building permit (if required)

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

\* Notice: Proposed Improvements must be approved by the City in writing, including any required \*\*building permit(s) prior to construction. Approved improvements must cost at least one percent (1%) of the purchase price in order to be considered an "Eligible Capital Improvement" for the purpose of determining the indexed price of the home.

\_\_\_\_\_  
OWNER PRINTED NAME (and signature above)

\_\_\_\_\_  
Date

\_\_\_\_\_  
OWNER PRINTED NAME (and signature above)

\_\_\_\_\_  
Date

**Exhibit F**

**Form of Owner's Notice of Failure to Locate Eligible Purchaser**

To: City of Campbell ("City")

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

Home Address: \_\_\_\_\_ ("Home")

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

The Owner hereby certifies to the City that he/she has made bona fide good faith efforts (including listing the Home in the Multiple Listing Service) to locate an Eligible Purchaser for the Home, but has been unable to locate an Eligible Purchaser.

A copy of the multiple listing for the Home is attached.

Signed under penalty of perjury:

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

**Exhibit G**  
**Form of Owner Request for City Subordination to Refinance First Mortgage Loan**

To: City of Campbell ("City")

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

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

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

The Owner hereby requests the City to approve the Owner's refinance of the existing first mortgage(s) on the Home (collectively, the "First Mortgage Loan")

The Owner provides the following information which it certifies to be true and correct:

Original Purchase Price of Home: \$ \_\_\_\_\_

Original First Mortgage Loan Lender Name and Address: \_\_\_\_\_

Original First Mortgage Loan Amount (time of purchase): \$ \_\_\_\_\_

Original First Mortgage Loan Current Balance: \$ \_\_\_\_\_

Original First Mortgage Loan Interest Rate: \$ \_\_\_\_\_

New First Mortgage Loan Lender Name and Address: \_\_\_\_\_

New First Mortgage Loan Amount: \$ \_\_\_\_\_

New First Mortgage Loan Interest Rate: \$ \_\_\_\_\_

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

\_\_\_\_\_  
OWNER PRINTED NAME (and signature above)

\_\_\_\_\_  
Date

\_\_\_\_\_  
OWNER PRINTED NAME (and signature above)

\_\_\_\_\_  
Date