

**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

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

No fee for recording pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: _____

**AFFORDABLE HOUSING RESALE AND REFINANCING RESTRICTION
AGREEMENT WITH EQUITY SHARING AND
OPTION TO PURCHASE**

City of Campbell Density Bonus/Inclusionary Ordinance
Affordable Housing Production Program

This Affordable Housing Resale and Refinancing Restriction Agreement with Equity Sharing and Option to Purchase (this "**Agreement**") is entered into as of _____, 20____, by and between the City of Campbell, a municipal corporation ("**City**") and _____ and _____ (collectively, "**Owner**"). City and Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner is the owner of, or has the right to purchase, the real property located at _____ Street in the City of Campbell, California, known as Santa Clara County Assessor's Parcel No. _____, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. Pursuant to California Government Code Section 65915 *et seq.* (the "**Density Bonus Statute**") and the City of Campbell Municipal Code Chapter 21.20 (the "**Density Bonus Ordinance**"), the Planning Commission of the City of Campbell provided a density bonus and certain incentives and concessions for the development within which the Property is located (the "**Development**").

C. Pursuant to the Density Bonus Statute, the Density Bonus Ordinance, and [the Density Bonus Affordable Housing Regulatory Agreement executed by and between the City and the developer of the Development and recorded in the Official Records on _____, 20____ as Instrument No. _____], [the entitlements granted for the Development], the Property was sold to Owner at an affordable below-market price, and Owner is required to enter into and record this Agreement in the Official Records for the benefit of City.

D. In accordance with the Density Bonus Statute and the Density Bonus Ordinance, among other things, this Agreement places initial occupancy restrictions on the Property and requires Owner to pay a proportionate share of appreciation to City upon sale of the Property. Owner's payment obligations are evidenced by a Shared Appreciation Promissory Note executed by Owner for the benefit of City, and Owner's obligations under the Shared Appreciation Note and this Agreement are secured by a deed of trust recorded in the Official Records for the benefit of City substantially concurrently with the recordation of this Agreement.

E. In accordance with the Inclusionary Housing Ordinance, among other things, the Property is subject to restrictions on the price at which it can be sold for a period of forty-five (45) years from the date of its initial sale; and the restriction shall be renewed for forty-five (45) years upon any sale occurring prior to the expiration of any existing resale restriction

AGREEMENT

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

0.1 Basic Terms.

Transaction Type:	<input checked="" type="checkbox"/> Original Purchase	<input type="checkbox"/> Resale	<input type="checkbox"/> Other Permitted Transfer
Owner Name(s):			
Vesting			
Affordability Restriction	The Property can only be resold at Affordable Ownership Cost to a [Low-Income] [Moderate-Income] Household for a period of forty-five (45) years from the date that this Agreement is entered.		
Initial Market Value			
Initial Purchase Price			
Initial Subsidy Amount	Initial Market Value minus Initial Purchase Price: \$ Down payment/mortgage assistance: \$ Total Initial Subsidy: \$ 		
Bedroom Count			
Assumed Household Size			
Income Category Info	[Year] [Income Category Name] [Income Category Limit Dollar Amount]		
Lot Number			
Project File Number			

1. Incorporation of Recitals; Definitions; Exhibits.

1.1 Incorporation of Recitals; Acknowledgement. The Parties acknowledge the truth of the foregoing Recitals which are hereby incorporated into this Agreement, and acknowledge the accuracy of the terms listed in Section 0.1 above.

1.2 **Definitions.** The following terms shall have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

“Administrator” means the person or entity appointed or engaged by City to administer the City’s affordable housing program and this Agreement.

"Affordable Ownership Cost" means average monthly housing costs during the first calendar year of a household's occupancy, as determined by the City, including mortgage payments, loan insurance fees, if any, property taxes, reasonable allowances for utilities and property maintenance and repairs, homeowners insurance and homeowners association dues, if any, which do not exceed the following:

a. For lower-income households: one-twelfth of thirty percent of seventy percent of area median income, adjusted for assumed household size based on presumed occupancy levels of one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit and one additional person for each additional bedroom thereafter.

b. For moderate-income households: one-twelfth of thirty-five percent of one hundred ten percent of area median income, adjusted for assumed household size based on presumed occupancy levels of one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit and one additional person for each additional bedroom thereafter.

“Affordable Rent” means a monthly rent (as defined in as defined in California Government Code section 50053) that does not exceed the following: (a) for units that are restricted for rent to Low-Income Households, one-twelfth of 30% of 60% of Area Median Income, adjusted for Assumed Household Size, and (b) for units that are restricted for rent to Very Low-Income Households, one-twelfth of 30% of 50% of Area Median Income, adjusted for Assumed Household Size.

“Affordability Restriction Period” means the forty-five (45) year period from the date of the Property’s initial sale during which the Property cannot be transferred for more than the Affordable Ownership Cost for [lower-income households] [moderate-income households], as well as the forty-five year period commencing on the date of any Transfer of the Property that occurs during an Affordability Restriction Period.

“Appreciation Amount” means the difference between (a) the resale price of the Property (or, if applicable, the Fair Market Value of the Property at the time of any Prohibited Transfer if the Property is not sold, or the sale price of the Property at any foreclosure sale), and (b) the Initial Market Value, minus the appraised value of any Eligible Capital Improvements.

“Area Median Income” or **“AMI”** means the area median income for Santa Clara County, California, adjusted for actual household size, as determined by the United States Department of Housing and Urban Development (“HUD”) and as published from time to time by the State of California Department of Housing and Community Development (“HCD”) in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

“Assumed Household Size” means a household of one person for a studio unit, two persons for a one-bedroom unit, three persons for a two-bedroom unit, and one additional person for each additional bedroom. The Property has [REDACTED] bedrooms, and therefore, the Assumed Household Size is a household of [REDACTED] persons.

“Authorized ECI Appraisal” means an appraisal of Eligible Capital Improvements prepared by a certified Member Appraisal Institute (MAI) or other qualified real estate appraiser approved in advance by the City.

“Business Days” excludes Saturdays, Sundays, and State and federal holidays on which City of Campbell offices are closed. Any reference in this Agreement to a number of “days” means calendar days unless “Business Days” is specified.

“City” means the City of Campbell, a municipal corporation.

“City’s Authorized Representative” means the [City Manager] [Community Development Director] of the City of Campbell.

“City Council” means the City Council of the City of Campbell.

“City Deed of Trust” is defined in Section 2.

“City’s Equity Share Percentage” means the percentage equal to the Initial Subsidy divided by the Initial Market Value. The Parties agree that the City’s Equity Share Percentage is [REDACTED] percent ([REDACTED] %), provided that if the Resale Market Value is lower than the Initial Market Value, then this agreed percentage shall be recalculated in accordance with the definition of Initial Subsidy.

“City’s Share of Appreciation” means the amount calculated by multiplying the City’s Equity Share Percentage by the Appreciation Amount.

“Density Bonus Ordinance” means Chapter 21.20 of the City of Campbell Municipal Code.

“Density Bonus Statute” means California Government Code Section 65915 *et seq.*

“Eligible Capital Improvements” is defined in Section 11.

“Eligible Household” means a person or family that qualifies as meeting the requirements determined by the City, including that the combined income for all adult household members shall not exceed the income level designated by the City

“Excess Rental Proceeds” is defined in Section 5.3.

“Fair Market Value” means the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so

doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, if the Property were not subject to the resale and refinancing restrictions identified in this Agreement.

“First Lender” means [REDACTED] Bank.

“First Lender Deed of Trust” means the deed of trust to be recorded against the Property executed by Owner as trustor for the benefit of First Lender to secure repayment of the First Lender Loan.

“First Lender Loan” means the purchase money mortgage in the amount of [REDACTED] Dollars (\$) provided or to be provided by First Lender to Owner in connection with Owner’s acquisition of the Property.

“Initial Market Value” means the Fair Market Value of the Property at the time of Owner’s acquisition of the Property. The Parties agree that the Initial Market Value of the Property is [REDACTED] Dollars (\$).

“Initial Purchase Price” means [REDACTED] Dollars (\$) which is the below market-rate purchase price that Owner paid or will pay to acquire the Property. In accordance with the Density Bonus Ordinance and the Density Bonus Statute, the Initial Purchase Price was set at a price resulting in Affordable Ownership Cost (as defined in the Density Bonus Statute).

“Initial Subsidy” means the amount equal to the Initial Market Value minus the Initial Purchase Price, plus the amount of any down payment assistance or mortgage assistance provided to Owner by the City. The Parties agree that the Initial Subsidy is equal to [REDACTED] Dollars (\$), provided that if the Resale Market Value is lower than the Initial Market Value, then this agreed dollar number shall be recalculated using the Resale Market Value in place of the Initial Market Value

“Low-Income Household” means a household whose gross household income as determined pursuant to applicable law does not exceed eighty percent (80%) of Area Median Income.

“Moderate-Income Household” means a household whose gross household income as determined pursuant to applicable law does not exceed one-hundred and twenty percent (120%) of the Area Median Income.

“Official Records” means the Official Records of the Santa Clara County Recorder.

“Owner’s Notice of Intent to Transfer” means the notice to be delivered to the City pursuant to Section 8 when the Owner intends to Transfer the Property.

“Prohibited Transfer” is defined in Section 7.

“Program Fee Schedule” means the fee schedule included in the Program Guidelines Market that lists fees payable to City on resale, refinancing, and Transfer of the Property.

“Program Guidelines” means the City’s guidelines for administration of its Affordable Housing Program as such guidelines may be amended and approved from time to time by the City Council. Among other provisions, the Program Guidelines set forth the City’s schedule of fees and approved list of lenders, appraisers, escrow officers, loan officers, and home inspectors.

“Property” is defined in Recital A.

“Proposed Purchaser” means an individual or household who Owner believes will qualify as an Eligible Household, and shall be referred to the City or its designee for an eligibility determination.

“Purchase Option” means the option to purchase granted by the Owner, as optionor, to the City, as optionee, pursuant to Section 6.1 of this Agreement.

“Resale Market Value” means highest price on the date of resale that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, taking into consideration the resale and refinancing restrictions on the Property identified in this Agreement.

“Shared Appreciation Note” is defined in Section 2.

“Transfer” is defined in Section 7.

“Very Low-Income Household” means a household whose gross household income as determined pursuant to the Density Bonus Ordinance, does not exceed fifty percent (50%) of Area Median Income.

1.3 Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference.

- Exhibit A: Legal Description of the Property
- Exhibit B: Form of Owner Occupancy Certification
- Exhibit C: Form of Owner's Notice of Intent to Transfer
- Exhibit D: Form of Transferee’s Acknowledgement of Resale Restriction Agreement
- Exhibit E: Form of Request for Approval of Capital Improvements
- Exhibit F: Form of Owner Request for Subordination to Refinance First Lender Loan
- Exhibit G: Form of Shared Appreciation Note
- Exhibit H: Form of City Deed of Trust

2. The Property. The Property that is the subject of this Agreement has a street address of [REDACTED] Street, Campbell, California 95008, and its legal description is set forth in Exhibit A attached hereto. Owner is the owner of, or intends to purchase the Property. In

connection with Owner's acquisition of the Property, Owner shall execute and deliver to City an Shared Appreciation Note substantially in the form attached hereto as Exhibit G ("**Shared Appreciation Note**") and a Deed of Trust substantially in the form attached hereto as Exhibit H ("**City Deed of Trust**") which shall be recorded in the Official Records substantially concurrently with the recordation of this Agreement.

3. Owner Certifications, Representations and Warranties; Cooperation. Owner represents, warrants, and certifies to the City that (a) the financial and other information provided by Owner for the purpose of qualifying to purchase the Property was true, correct and complete at the time it was given and remains true and correct as of the date of this Agreement, and (b) Owner will occupy the Property as Owner's principal residence. Owner understands that any material misstatement or misrepresentation shall be a material breach of this Agreement and shall be grounds for declaring a default enabling the City to exercise the Purchase Option or pursue other remedies. Owner agrees that it shall comply with this Agreement and the Program Guidelines, and shall fully cooperate with the City and the Administrator in promptly providing all information reasonably requested by City or Administrator to verify and monitor compliance with this Agreement, including without limitation, the owner-occupancy requirements set forth in Section 4.1, and the restrictions applicable to resale, transfer, and refinancing of the Property.

4. Owner Occupancy, Maintenance, and Insurance Requirements.

4.1 Owner Occupancy. Owner certifies and warrants that Owner will occupy, use, and maintain the Property as the Owner's principal place of residence. Owner shall be considered as occupying the Property if the Owner is living in the unit for at least ten (10) months out of each calendar year unless the City has approved the rental of the Property pursuant to Section 5 below. On or before February 1 of each year, Owner shall provide a written certification to the City, in the form shown in Exhibit B, together with supporting documentation acceptable to City (including utility bills, mortgage statements, proof of insurance, and evidence that the Property qualifies for the homeowner's exemption from property taxes, as described in Exhibit B) that Owner is occupying the Property as Owner's principal place of residence and that Owner is not renting the Property to another party. It is the responsibility of Owner to submit the annual written certification and supporting documentation to the City to show that the Owner is in compliance with this Section 4.1, and the failure to do so is a default under this Agreement. The requirements of this Section shall be administered in accordance with the Program Guidelines.

4.2 Maintenance. Owner shall maintain the Property including the landscaping in good repair, in a neat, clean and orderly condition, and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal and other governmental agencies and bodies having jurisdiction and all of their respective departments, bureaus, and officials. Owner will not commit waste or permit deterioration of the Property, and shall make all repairs and replacements necessary to keep the Property in good condition and repair.

4.3 Insurance. Owner shall maintain a standard all risk property insurance policy equal to the replacement value of the Property (confirmed annually using City's designated

valuation method), naming the City as an additional insured. The Owner shall provide the City with evidence of required insurance coverage upon City's request. The insurance policy must be issued by a company authorized to issue insurance in the State of California, and with a rating issued by A.M. Best's or other major rating agency such as Moody's, Standard & Poor's, or Fitch that conforms with the requirements set forth in the Program Guidelines.

5. Prohibition on Renting or Leasing.

5.1 Prohibition on Renting or Leasing. Owner shall not rent or lease the Property to another party unless the City has provided written approval and such rental or lease is in compliance with this Section 5. In addition, Owner shall not rent or enter into any contract to allow the use of all or any portion of the Property as a short term rental, such as through any "shared economy" online forums or services such as Craigslist, VRBO, Airbnb or any similar program or company.

5.2 Conditions for Lease or Rental of Property. Owner may request the City's approval to rent or lease the Property, which approval shall not be unreasonably denied, if all of the following conditions are met: (i) Owner demonstrates to the City's reasonable satisfaction that Owner will incur substantial hardship if Owner is not permitted to rent or lease the Property to a third party; (ii) Owner delivers to City a copy of the proposed rental agreement or lease, (iii) the term of the rental or lease is not greater than twelve (12) months and cannot be extended without City approval; (iv) the proposed tenant qualifies as an Eligible Household, as determined by the City; (v) the rent for the Property does not exceed Affordable Rent, and (vi) the lease or rental agreement requires the tenant to maintain the Property and surrounding property in good condition and prohibits subleasing.

5.3 Affordable Rent; Lease Agreement; Excess Rents. If City approves the rental or lease of the Property, the Affordable Rent shall be stated in the written notice of such approval. Following City's approval, the Owner shall deliver to City a fully-executed copy of the rental agreement or lease. Any rental or lease of the Property in violation of this Agreement is prohibited, shall constitute a Prohibited Transfer under Section 7 herein, and shall be a default under this Agreement. The Owner further agrees that, in the event the Owner rents or leases the Property in violation of this Section 5, any rents paid to or for the benefit of Owner in excess of the Affordable Rent ("**Excess Rental Proceeds**") shall be due and payable to the City immediately upon Owner's receipt thereof. Owner's obligation to pay Excess Rental Proceeds to the City shall be evidenced by the Shared Appreciation Note and secured by the City Deed of Trust. City's acceptance of Excess Rental Proceeds shall not constitute City's waiver of Owner's obligation to comply with the requirements of this Section 5, nor a waiver of City's rights to pursue remedies for Owner's default under this Agreement. The City shall use the Excess Rental Proceeds for City affordable housing programs.

6. Purchase Option.

6.1 Grant of Option; Exercise Rights. The Owner hereby grants to the City an option to purchase the Property ("**Purchase Option**") on the terms and in the manner set forth in this

Agreement. The City shall have the right to exercise the Purchase Option upon the occurrence of any of the following events:

- (a) Receipt from the Owner of the Owner's Notice of Intent to Transfer pursuant to Section 8 below;
- (b) a notice of default or notice of sale is recorded against the Property by any lienholder;
- (c) a Prohibited Transfer occurs and continues in effect beyond any applicable cure period;
- (d) Owner fails to occupy the Property as Owner's principal residence in violation of the terms of this Agreement; or
- (e) The occurrence of any Event of Default listed in Section 12.1 below.

6.2 Terms. The City's right to exercise the Purchase Option shall survive any Transfer of the Property by the Owner, and as long as the Purchase Option exists, any actual or attempted Prohibited Transfer shall be voidable at the election of the City. City's exercise of the Purchase Option shall be governed by the terms of this Agreement. In no event shall City become in any way liable to Owner, nor become obligated in any manner, by reason of the assignment of its right to purchase, nor shall City be in any way obligated or liable to Owner for any failure of City's assignee to consummate a purchase of the Property or to comply with the terms of any purchase and sale agreement.

(a) Option Price. If City exercises the Purchase Option, the City shall pay cash to the Owner in an amount (the "**Purchase Price**") equal to the Resale Market Value of the Property as determined in accordance with Section 6.2(c) below; *less* the sum of (i) the value of any liens or encumbrances that the City assumes or takes subject to; (ii) any amounts owed to the City by Owner and its successors or transferee pursuant to this Agreement, the Shared Appreciation Note, or the City Deed of Trust, including without limitation, the Initial Subsidy and City's Share of Appreciation, or otherwise; (iii) all taxes, assessments and utility charges payable with respect to the Property for the period prior to the date the City acquires title to the Property; (iv) the amount of any payments necessary to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of the Owner, its successors or transferees; and (v) any damages to which the City is entitled under this Agreement by reason of Owner's default.

(b) Owner's Delivery of Property Information; City Exercise of Option; Closing. To exercise the Purchase Option, the City shall give Owner written notice ("**Exercise Notice**") in accordance with Section 23.3 within sixty (60) days following City's receipt of Owner's Notice of Intent to Transfer. Provided that Owner has provided all documents set forth in Section 8 within forty-five (45) days following Owner's delivery of Owner's Notice of Intent to Transfer, closing for conveyance of the Property

shall take place not later than 90 days following City's delivery of the Exercise Notice through an escrow with a title company of City's choosing. The closing date may be delayed if Owner has not delivered all documents required under Section 8. City and its agents shall have the right to inspect the Property and the improvements during the period commencing upon receipt of Owner's Notice of Intent. On the closing date for conveyance of the Property to City, Owner shall convey the Property to City by grant deed subject only to such title exceptions as City may reasonably approve. Owner shall be responsible for removal of all monetary liens and encumbrances affecting the Property unless both City and the applicable lien holder consent to City's assumption thereof. Closing costs shall be paid by the seller. Taxes and assessments shall be prorated as of the closing date. Taxes must be paid current as of the closing date and all liens must be satisfied and removed from title unless City expressly agrees otherwise in writing. Closing shall be contingent upon City's receipt of a commitment for issuance of an owner's policy of title insurance in form approved by City. City or its assignee will pay the cost of the title policy. If City elects not to exercise the Purchase Option, City shall provide written notice thereof ("**City's Response Notice**") to Owner as soon as City makes such determination, but not later than sixty (60) days following City's receipt of Owner's Notice of Intent to Transfer.

(c) Determination of Resale Market Value. The determination of Resale Market Value will be made as provided in this Section 6.2(c) in accordance with the definition in section 1.2.

(i) Negotiated Agreement. City and Owner will diligently attempt in good faith to agree on the Resale Market Value on or before the date (the "**Outside Agreement Date**") that is thirty (30) days following City's delivery of the Exercise Notice.

(ii) Appraisal. If City and Owner fail to reach agreement on or before the Outside Agreement Date, the Resale Market Value of the Property shall be appraised in its as-is condition as an affordable housing project subject to the affordability and other restrictions set forth in this Agreement. Such appraisal shall be made by a licensed appraiser who is a member of the Master Appraiser Institute and who has experience in appraising affordable housing projects in the greater San Francisco Bay Area. The appraiser shall be selected by the City, subject to the reasonable consent of the Owner. The cost of the appraisal shall be paid for by the Owner. If the parties are unable to agree upon an appraiser, the Resale Market Value shall be determined by an MAI appraiser with the same qualifications as set forth in this paragraph and agreed upon by an MAI appraiser selected by the City and an MAI appraiser selected by the Owner, and the cost of such appraisal shall be paid for by the Owner.

(d) Assignment; Rights of Mortgagees. The City shall have the right to assign the Purchase Option to any other governmental entity, nonprofit organization, Eligible Household, or other third party. The City or its assignee may further assign the Purchase Option to an Eligible Household or other third party. City's exercise of the Purchase Option shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments.

7. Restrictions on Resale and Transfer of the Property Any Transfer of the Property will be subject to the provisions of this Agreement including, without limitation, the Purchase Option described in Section 6 above. No Prohibited Transfer of the Property as defined in subsection (a) is permitted.

(a) Transfers. "Transfer" means any voluntary or involuntary sale, assignment or transfer of ownership or any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, tenancy in common, a life estate or other limited estate, a leasehold interest (unless approved pursuant to Section 5 of this Agreement), an interest evidenced by a land contract by which possession of the Property is transferred, and the granting of a security interest pursuant to a mortgage or deed of trust. Any Transfer without satisfaction of the provisions of this Agreement is prohibited and shall constitute a default under this Agreement for which the City may exercise the Purchase Option and/or other remedies.

(b) Prohibited Transfers. **"Prohibited Transfer"** means any Transfer made in violation of the conditions of this Agreement, including without limitation, any refinancing or encumbrance of the Property in violation of Section 17, and any rental, sale or other transfer of the Property in violation of the terms of this Agreement, as well as any Transfer during the Affordability Restriction Period for greater than the Affordable Ownership Cost for [lower-income households] [moderate-income households] or to buyers who do not qualify as Eligible Households.

(c) Permitted Transfers. Subject to compliance with the requirements of this Section, the following Transfers are not considered Prohibited Transfers: (i) transfer of title upon an Owner's death to a surviving joint tenant, tenant by entireties, Domestic Partner, or a surviving spouse of community property, (ii) transfer of title to a spouse as part of divorce or dissolution proceedings, (iii) transfer of title or an interest in the Property to a spouse in conjunction with marriage; and (iv) a transfer by an Owner into an *inter vivos* trust in which Owner is the beneficiary, trustor, and trustee, (x) or such other transfer approved by the City as complying with terms and purposes of this Agreement; provided, however, in each case: (y) the covenants set forth in this Agreement (including without limitation, the requirement that the Property must be owner-occupied and not rented or leased without City consent pursuant to Section 5) shall continue to apply and shall run with the title to the Property following any such Transfer; and (z) an instrument must be executed, acknowledged and recorded substantially in the form attached hereto as Exhibit D in which the transferee acknowledges the transferee's assumption of Owner's obligations under this Agreement, the Shared Appreciation Note, and the City Deed of Trust, and which contains the following covenant completed with applicable recording information: "This Property is subject to an Affordable Housing Resale and Refinancing Restriction Agreement with Equity Sharing and Option to Purchase dated as of [REDACTED], 20[REDACTED], and recorded in the Official Records on [REDACTED] 20[REDACTED] as Instrument No. [REDACTED], and transferee, on behalf of transferee and transferee's successors and assigns, covenants and agrees to be bound by and comply with the requirements of the Agreement, including without limitation all restrictions on leasing, transfer and encumbrance of the Property, and to include in any further Transfer of the Property the covenant required by Section 7(c) of the Agreement." A transferee who satisfies the conditions of this Section 7(c) shall be deemed to

be the Owner hereunder and shall be obligated to satisfy all obligations of Owner under this Agreement, the Shared Appreciation Note, and the City Deed of Trust. Prior to making any of the Transfers outlined in clauses (ii), (iii), or (iv) of this Section 7(c), the Owner shall provide to the City the Owner's Notice of Intent to Transfer pursuant to Section 8 below. Owner agrees, and shall cause the transferee to, execute and deliver in recordable form all such instruments that City may reasonably require to evidence compliance with this Section.

(d) Transfer by Inheritance. In the event a Transfer occurs by devise or inheritance due to the death of the Owner and it is not a Transfer listed in clause (i) of Section 7(c) above, the administrator of the Owner's estate or the person inheriting the Property shall provide written notice to the City of the Owner's death within thirty (30) days of the date of death (the "**Inheritance Notice**"). The Inheritance Notice shall provide the City with the name and contact information of the person inheriting the Property (the "**Inheriting Owner**") and household income information for the Inheriting Owner, so that the City may determine whether the Inheriting Owner is an Eligible Household. If the Inheriting Owner qualifies as an Eligible Household, as determined by the City, he or she may assume the Owner's interest and obligations under this Agreement, and an instrument shall be executed between the Inheriting Owner and the City and recorded against the Property, pursuant to which the Inheriting Owner shall agree to assume the obligations of the Owner under this Agreement. If the Inheriting Owner fails to qualify as an Eligible Household and/or fails to assume the Owner's obligations under this Agreement, including without limitation, the requirement that the Property must be owner-occupied and not rented or leased without City approval pursuant to Section 5), the Inheriting Owner shall provide the Owner's Notice of Intent to Transfer to the City pursuant to Section 8 and proceed to Transfer the Property pursuant to the requirements set forth in this Agreement. Failure of an Inheriting Owner to follow the procedures and notices described in this Section 7(d) shall constitute a default under this Agreement, entitling the City to exercise any of the remedies set forth in Section 12.2 below.

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.

8. Notice of Intent to Transfer. If Owner intends to Transfer the Property, 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 Property and prior to advertising the Property for Sale or the listing of the Property on the Multiple Listing Service. The requirements set forth in this Section 8 and the subsections thereof apply to all sales of the Property, including sales pursuant to City's exercise or assignment of the Option and sales to other parties if City does not elect to exercise or assign the Option.

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 23.3 of this Agreement. The Owner's Notice of Intent to Transfer shall include the information necessary for the City to determine the Appreciation Amount, including the following information:

- (1) The address of the Property;
- (2) The date of purchase of the Property by the Owner;
- (3) The Initial Purchase Price paid by the Owner at the time of Owner's acquisition of the Property;
- (4) A copy of the HUD-1 Settlement Statement or equivalent document from the close of escrow for Owner's purchase of the Property;
- (5) If Owner has made Eligible Capital Improvements to the Property that Owner wishes to include in the calculation of the Appreciation Amount and City's Share of Appreciation, a description of the improvements, the date the improvements were made, a copy of the City letter granting prior approval of the improvements, evidence of cost of the improvements, and an appraisal of the value added to the Property by the Eligible Capital Improvements;
- (6) The date on which Owner intends to vacate Property;
- (7) The date Property will be placed on the market; and
- (8) The name and phone number of the person to contact to schedule inspection of the Property by the City.

8.1 Additional Requirements. The Owner shall not contract with a real estate broker to sell the Property until the Owner has received the City Response Notice pursuant to Section 6.2(b) above, as the services of a broker will not be required if the City exercises the Purchase Option. Owner acknowledges that Owner will be obligated to pay City's Transfer Review Fee as set forth in the Program Guidelines, and such fee shall be due and payable at the time Owner submits the Notice of Intent to Transfer.

8.2 Preparation of the Property for Sale. Following delivery to the City of the Owner's Notice of Intent to Transfer, Owner shall prepare the Property 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 Property by a licensed structural pest control operator;

(2) Within forty-five (45) days from the date of delivery of the Owner's Notice of Intent to Transfer, and in all events prior to close of escrow on the Transfer, the Owner shall cause all damage noted in the pest report including damage caused by infestation or infection by wood-destroying pests to be repaired;

(3) Commencing upon delivery of the Owner's Notice of Intent to Transfer to City, Owner shall allow the City, or its designee or assignee, to inspect the Property to determine its physical condition, and, if requested by the City, following such inspection, the Owner shall obtain and deliver to the City or its assignee, a Property inspection report prepared by a licensed Property inspector;

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

(5) If City exercises the Purchase Option, Owner shall permit a final walk-through of the Property by the City, or the City's assignee or designee, in the final three (3) days prior to close of escrow for the sale.

8.3 Summary of Timeline for Transfer. The following table summarizes the timeline for Transfer of the Property under Section 6.2 (City's exercise of Option) and under Section 9 (City does not exercise Option):

Action	Timing	Outside Date
Owner delivers Notice of Intent to Transfer with the information listed in Section 8 and Exhibit C.		Day 1
Owner delivers structural pest report.	Not later than 30 days following delivery of Notice of Intent to Transfer.	Day 30
Owner delivers appraisal, inspections, documentation regarding capital improvements.	Not later than 45 days following delivery of Notice of Intent to Transfer	Day 45
City delivers Notice of Exercise of Option (or notice that City will not exercise).	Not later than 60 days following Owner's delivery of Notice of Intent to Transfer accompanied by all information required under Section 8 and Exhibit C.	Day 60

Owner causes all required repairs to be completed.	Within the earlier of 60 days following delivery of Notice of Intent to Transfer, and five days prior to close of escrow.	Day 60
If City does not exercise Option, Owner delivers all information and documents required by Section 9 that have not been previously delivered.	Not later than 30 days prior to close of escrow.	Day 90
City determines if transfer complies with this Agreement and calculates City's Share of Appreciation.	Within 30 days of delivery to City of all information required by Section 9.	Day 120
Close of Escrow	Within 90 days following City's delivery of Exercise Notice or as agreed upon with purchaser if City does not exercise Option but not sooner than 30 days after delivery of all documents required by Section 9.	Day 150

9. Sale of Property if City Does Not Exercise Option.

9.1 If City notifies Owner that City will not exercise the Purchase Option, or the period within which City may exercise the Purchase Option pursuant to Section 6.1 (b) above expires without City's delivery of an Exercise Notice, Owner shall provide the City with the following documentation associated with the sale of the Property:

(1) The name and address of the 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, as indicated in the approved Program Guidelines, as modified from time to time. This may include but shall not be limited to State and Federal Income Tax Returns from the Proposed Purchaser for the previous 3 years, 30 days of pay history, 60 days of assets, and proof of identification for household members.

(3) The final sales contract and all other related documents which shall set forth all the terms of the sale of the Property, 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 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 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 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 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 Property or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the 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 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.

(5) A copy of the MAI or other qualified appraisal for the Property.

(6) 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.

9.2 Within thirty (30) days from the City's receipt of the complete information set forth in section 9.1 and any additional information requested by the City as necessary to determine (a) the eligibility of the Proposed Purchaser, (b) the allowed resale price, and (c) the City's Share of Appreciation, the City or its designated agent will notify the Owner whether the transfer complies with the terms of this Agreement and provide a determination of the City's Share of Appreciation. No transfer shall be permissible unless and until the City or its designated agent determines that the proposed transfer complies with the terms of this Agreement, and that provision has been made for the City's Share of Appreciation is to be paid out of the escrow for the transfer.

9.3 The City's Share of Appreciation shall be paid to the City on or before the close of escrow for the transfer of the Property.

10. Repayment of Initial Subsidy and Payment of Shared Appreciation to City Upon Resale, Prohibited Transfer, or Foreclosure. Upon Owner's sale of the Property pursuant to Section 9, above, or upon the occurrence of a Prohibited Transfer or foreclosure of any lien secured by the Property, Owner shall pay to City the amount of the Initial Subsidy plus the City's Share of Appreciation. This amount shall be a debt of the Owner to the City, evidenced by this Agreement and the Shared Appreciation Note, and secured by the City Deed of Trust. The Owner acknowledges that the City shall have no obligation to terminate or reconvey this Agreement or the City Deed of Trust until the Initial Subsidy and the City's Share of Appreciation are paid to the City in full. The City shall use such funds for City affordable housing programs.

11. Capital Improvements. **"Eligible Capital Improvements"** means improvements that meet all of the following criteria: (a) they are made or installed by the Owner following issuance of all required permits and in conformity with applicable building codes at the time of installation; (b) they are approved in writing in advance by the City or its designee; (c) they are not a replacement of existing improvements needed as part of routine maintenance of the Property, and (d) their initial costs exceed one percent (1%) of the Initial Purchase Price. A form

for use in requesting City approval of a proposed capital improvement is attached to this Agreement as Exhibit E. The value of the Eligible Capital Improvements shall be limited to appraised increases in value to the Property as a result of the improvements as documented in an Authorized ECI Appraisal. The cost of the appraisal shall be paid by Owner, unless the appraisal is obtained from a new purchaser. The appraisal shall include an evaluation of the value of any substantial structural or permanent fixed improvements which the Owner has made to the Property after purchase of the Property, including any depreciation in value of the capital improvements since the time of installation. Owner acknowledges that Owner will be obligated to pay City's Capital Improvement Review Fee as set forth in the Program Guidelines, and such fee shall be due and payable at the time Owner submits the Request for Approval of Capital Improvements.

12. Defaults and Remedies

12.1 Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default by the Owner under this Agreement:

(1) The City determines that the Owner has made a misrepresentation to obtain the benefits of purchasing the Property or in connection with its obligations under this Agreement;

(2) The Owner fails to occupy the Property as Owner's principal residence, as required pursuant to Section 4.1 above and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;

(3) The Owner rents or leases the Property, in violation of Section 4.1 above and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;

(4) The Owner fails to provide information to the City necessary to determine Owner's compliance with the requirements of this Agreement, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;

(5) The Owner fails to pay property taxes or maintain the proper insurance coverage for the Property;

(6) The Owner fails to maintain the Property pursuant to adopted City codes and standards, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;

(7) The Owner places a mortgage or encumbrance on the Property in violation of Section 17;

(8) The occurrence of any actual, attempted, or pending Prohibited Transfer of the Property or any estate or interest therein;

(9) Recordation of a notice of default and/or notice of sale pursuant to California Civil Code Section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;

(10) Commencement of a judicial or nonjudicial foreclosure proceeding regarding the Property;

(11) Execution by Owner of a deed in lieu of foreclosure transferring ownership of the Property;

(12) Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner;

(13) Any other default or breach of any covenant, warranty, promise or representation under this Agreement, and such default or breach continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice.

(14) A default arises under the Shared Appreciation Note or the City Deed of Trust and continues beyond the expiration of any applicable cure period.

12.2 Remedies. Upon the occurrence of an Event of Default hereunder, 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 the Initial Subsidy, the City's Share of Appreciation, Excess Rental Proceeds if applicable, and all other sums due pursuant to this Agreement, the Shared Appreciation Note and the City Deed of Trust immediately due and payable without further demand;
- (2) Exercise the Purchase Option;
- (3) Apply to a court of competent jurisdiction for an order for specific performance of this Agreement, for an injunction prohibiting a proposed Transfer in violation of this Agreement, for a declaration that a Transfer in violation of this Agreement is void, for the acceleration of all amounts due under this Agreement, or for any such other relief at law or in equity as may be appropriate;
- (4) Pursue remedies under the City Deed of Trust, including foreclosure; and

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

12.3 Remedies Cumulative. Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement. Any failure or delay by City in asserting any of its rights or remedies, as to any Event of Default shall not operate as a waiver of any default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

12.4 Lender's Right to Cure. City shall deliver a copy of any notice of default delivered to Owner hereunder to the First Lender, and First Lender shall have the right to cure any such default within the same period afforded to Owner extended by a period of 60 days in the case of non-monetary defaults.

12.5 City Right to Reinstate Mortgages. In the event of default and foreclosure under mortgage secured by the Property, the City shall have the same right as the Owner to cure defaults and redeem the Property 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 Property 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. In such event, City shall have the right to exercise the Purchase Option and all amounts paid by City to reinstate the mortgage shall be deducted from the purchase price payable to Owner.

13. Non-Liability of the City; Indemnity

13.1 Non-Liability. In no event shall the City become liable or obligated to the Owner or to any successor to the Owner by reason of the City's Purchase Option, nor shall the City become obligated or liable to the Owner or to any successor to the Owner for any failure to exercise the Purchase Option. 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 Property 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 Property, and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Property and will hold the City harmless from any liability, loss or damage for these things. Nothing

contained herein shall be deemed to create or be construed to create a partnership, joint venture or any relationship other than that of an owner and an administrator of a municipal affordable housing program.

13.2 Indemnity. Owner agrees to defend, indemnify, and hold the City and its elected and appointed officers, officials, employees, and agents harmless from and against all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys' fees that the City may incur as a direct or indirect consequence of: (a) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the City Deed of Trust; (b) the failure at any time of any of Owner's representations to the City to be true and correct; or (c) Owner's purchase or ownership of the Property, except to the extent arising proximately from the sole gross negligence or willful misconduct of the indemnified parties. The provisions of this Section shall survive the sale or other Transfer of the Property and the termination of this Agreement.

14. Restrictions on Insurance and Foreclosure Proceeds.

14.1 Restriction on Insurance Proceeds. If the Property is damaged or destroyed and the Owner elects not to rebuild or repair the Property, the Owner shall pay to the City the portion of any insurance proceeds received by the Owner for such destruction or damage that is in excess of the amount Owner would have been entitled to receive had the Property been sold or transferred under Section 9, above at the Property's fair market value had Owner elected to rebuild or repair the Property, up to the amount equal to sum of the Initial Subsidy plus the City's Share of Appreciation.

14.2 Restrictions on Foreclosure Proceeds. If a creditor or other party acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the City shall be entitled to receive the portion of any proceeds received by the Owner that is in excess of the amount Owner would have been entitled to receive had the Property been sold or transferred under Section 9, above, at the Property's fair market value, up to the amount equal to sum of the Initial Subsidy plus the City's Share of Appreciation. Owner shall pay, or shall instruct the holder of such proceeds to pay, such sums to the City (in addition to any other amounts due the City from the Owner pursuant to this Agreement).

15. Term of Agreement; Reconveyance. This Agreement shall remain in effect until all sums payable to City hereunder, including repayment of the Initial Subsidy and the City's Share of Appreciation, and any Excess Rental Proceeds have been fully paid. Upon payment of all such sums, City shall record a termination of this Agreement and a release and reconveyance of the City Deed of Trust, and shall return the Shared Appreciation Note to Owner marked "paid."

16. Recordation; Subordination. This Agreement shall be recorded in the Official Records. Owner hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of City which City may grant or deny in the exercise in its sole discretion, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded

against the Project in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 16, and to provide such evidence thereof as City may reasonably request.

The City will not withhold consent to reasonable requests to subordination of the City Deed of Trust to the First Lender Deed of Trust, provided that City is given notices and an opportunity to cure defaults thereunder. In connection with any subordination of the City Deed of Trust, City shall record a Request for Notice of Default and Notice of Sale regarding the First Lender Loan and any refinancing thereof.

17. Refinancing; Restrictions on Financing Secured by Property. The Owner shall not permit any mortgage, deed of trust, or other security instrument to be recorded against the Property other than the First Lender Loan and any refinancing thereof that is permitted in accordance with this Section. Owner acknowledges that violation of the provisions of this Section 17 shall constitute a default under this Agreement.

17.1 City consent required. No refinancing of the mortgage debt on the Property or further encumbrance of the Property shall be permitted unless expressly approved by the City in writing, in the exercise of City's sole discretion, pursuant to the provisions of this Section 17. The Owner shall not cause or permit any voluntary or involuntary refinancing, encumbrance, or other hypothecation of the Property, including without limitation, any encumbrance of the Property by a mortgage or deed of trust that is recorded after this Agreement without first giving written notice to the City by delivering a written Request to Refinance in the form attached hereto as Exhibit F, and obtaining the City's written consent. The Request to Refinance shall provide the name and address of the lender, and the proposed terms of the encumbrance, refinancing, or hypothecation. Within sixty (60) days following receipt of notice of a Request to Refinance, the City may, in its sole discretion, either (i) provide written notice of consent to the Refinance, which consent shall be consistent with the City's goal of creating, preserving, maintaining, the affordability of the Property, or (ii) provide written notice of denial of the Request to Refinance. Owner acknowledges that Owner will be obligated to pay City's Refinance Review Fee as set forth in the Program Guidelines, and such fee shall be due and payable at the time Owner submits the Request to Refinance.

17.2 Limitations. The Owner may refinance the existing mortgage debt only to reduce the Owner's interest rate and monthly payments of principal and interest, or to obtain funds for the purpose of financing Eligible Capital Improvements. The City's consent to the refinancing of existing mortgage debt shall be subject to the following conditions:

(a) the refinancing shall not cause the sum of the Owner's mortgage payments (principal and interest), property taxes, property insurance, mortgage insurance, utilities, and homeowners' association dues (if applicable) to exceeding the Owner's ability to pay;

(b) the total of all debt secured by a lien on the Property shall not exceed the greater of (i) ninety percent (90%) of the appraised fair market value of the Property, and (ii) the remaining principal balance of the original First Lender Loan;

(c) the new loan is a fully amortizing fixed rate loan and requires no balloon payments; and

(d) the refinanced First Lender Loan reduces the Owner's principal and interest payments.

17.3 Financing of Eligible Capital Improvements. Proceeds of refinancing permitted for the installation of Eligible Capital Improvements shall be deposited into an escrow account and shall only be disbursed to pay the costs of purchasing and installing the Eligible Capital Improvements. The Owner may request that the City approve an alternative disbursement mechanism reasonably calculated to provide assurance to the City that the refinancing funds are actually used to finance the Eligible Capital Improvements.

17.4 Restriction on Additional Encumbrances; 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 Property to Owner and to minimize the risk of loss of the Property by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section shall constitute a Default under this Agreement.

18. 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, gender identity, marital status, ancestry, national origin, or any other basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code in the sale, transfer, use, occupancy, tenure or enjoyment of the Property, 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 Property.

19. Binding on Successors; Covenants Running with the Land. Owner hereby subjects the Property 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 Property throughout the term of this Agreement. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Property 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.

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 Property in that the Owner's legal interest in the Property 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 Property by Eligible Purchasers, the intended beneficiaries of such covenants and restrictions.

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.

20. Rights of Beneficiaries Under Deeds of Trusts. Notwithstanding any other provisions in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of the United States Department of Urban Development ("HUD"), the Federal National Mortgage Association ("FNMA"), the Veterans Administration ("VA"), or the California Housing Finance Agency ("CalHFA") under the First Lender Deed of Trust recorded against the Property.

21. Resolution of Disputes. The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement in the following manner:

(i) If a dispute arises, the Parties will meet or teleconference in an attempt to resolve the dispute within fourteen (14) days following the date either Party delivers written notice of the dispute to the other Party. Prior to such meeting or teleconference, the Party bringing the dispute will submit to the other Party a written description, including any factual support, of the disputed matter. After receiving this written description, the other Party will provide a written response prior to the date of the meeting or teleconference.

(ii) If the Parties are unable to resolve the dispute at the meeting or teleconference or within 30 days thereafter, and either Party is not willing to continue negotiations, the Parties agree to submit the dispute to nonbinding mediation.

(iii) If the Parties are not able to agree on a mediator, either Party may request the American Arbitration Association or other acceptable mediation service to nominate a mediator. The Parties will share the cost of the mediator equally.

(iv) In the event mediation is unsuccessful, either Party may pursue other available remedies including filing an action in Santa Clara County Superior Court.

22. Owner's Acknowledgement of Restrictions. Owner hereby specifically acknowledges and agrees that:

(a) The limitations on transfer, leasing, financing and refinancing of the Property, and other provisions contained in this Agreement and the Program Guidelines, restrict the full benefits of owning the Property. Owner may not enjoy the same economic or other benefits from owning the Property that Owner would enjoy if this Agreement did not exist.

(b) Absent the provisions of this Agreement, the Property could not be made

available to Eligible Households, including Owner, at an affordable housing cost.

(c) Owner understands all of the provisions of this Agreement and the Program Guidelines. In recognition of the acknowledgements and agreements stated in this Section 22, Owner accepts and agrees to the provisions of this Agreement with the understanding that this Agreement will remain in full force and effect as to the Property throughout the term of this Agreement.

(Owners' Initials)

(Owners' Initials)

23. Miscellaneous

23.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties and recorded in the Official Records.

23.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

23.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) overnight or express delivery service, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

Owner:

At the Property Address.

City:

City of Campbell
70 No. First Street
Campbell, CA 95008-1436
Attention: Community Development Department

First Lender:

23.4 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

23.5 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

23.6 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. References to particular sections of this Agreement shall mean a reference to all subsections thereof. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Campbell shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

23.7 Time is of the Essence. Time is of the essence in the performance of this Agreement.

23.8 Severability. If any provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, then such provision shall be deemed severable from the remaining provisions contained in this Agreement, and the remaining provisions of this Agreement shall not be affected or impaired thereby.

23.9 Governing Law; Venue. This Agreement shall be interpreted under the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California.

23.10 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

23.11 Entire Agreement; Exhibits. This Agreement, together with the Shared Appreciation Note and the City Deed of Trust contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through H, attached hereto are incorporated herein by this reference.

23.12 Further Assurances. The parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement

23.13 Joint and Several Obligations. The obligations of each party comprising Owner shall be joint and several.

23.14 No Third-Party Beneficiaries. This Agreement shall not benefit or be enforceable by any person or entity other than the City and the Owner and their respective successors and assigns. There are no third-party beneficiaries to this Agreement.

23.15 Survival. Owner's obligations pursuant to Section 13.2, and all other provisions that expressly so state shall survive the expiration or termination of this Agreement.

23.16 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Resale and Refinancing Restriction Agreement with Equity Sharing and Option to Purchase as of the date first written above.

OWNER:

Name: _____

Name: _____

Signature: _____

Signature: _____

CITY:

City of Campbell, a municipal corporation

By: _____

Print Name: _____

Title: _____

Approved as to form:

_____, City Attorney

ALL SIGNATURES EXCEPT CITY ATTORNEY MUST BE NOTARIZED

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

[insert legal description.]

Exhibit B

FORM OF OWNER OCCUPANCY CERTIFICATION

Exhibit C

FORM OF OWNER'S NOTICE OF INTENT TO TRANSFER

Exhibit D

**FORM OF TRANSFEREE'S ACKNOWLEDGEMENT OF RESALE RESTRICTION
AGREEMENT**

Exhibit E

FORM OF REQUEST FOR APPROVAL OF CAPITAL IMPROVEMENTS

Exhibit F

**FORM OF OWNER REQUEST FOR SUBORDINATION TO REFINANCE
FIRST LENDER LOAN**

Exhibit G

FORM OF SHARED APPRECIATION NOTE

Exhibit H

FORM OF CITY DEED OF TRUST