

**AGREEMENT FOR SALE OF SURPLUS
CITY-OWNED REAL PROPERTY TO LINDA YAMAUCHI**

THIS AGREEMENT for Sale of Surplus City-Owned Real Property (hereinafter "AGREEMENT") is made and entered into by and between the **CITY OF SAN JOSE**, a California municipal corporation (hereinafter "CITY") and **LINDA YAMAUCHI**, an individual (hereinafter "BUYER") and shall be made effective on the date it has been fully executed by BUYER and CITY (hereinafter "Effective Date"). For purposes of this AGREEMENT, BUYER and CITY are sometimes individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, CITY is the owner of that certain real property located in the City of San José, County of Santa Clara, State of California, more particularly described in **EXHIBIT "A"** and depicted in **EXHIBIT "B"** (hereinafter "PROPERTY") attached hereto and incorporated herein; and

WHEREAS, on June 16, 2009, the City Council adopted Resolution No. 74994 declaring the PROPERTY surplus to the needs of the CITY and authorizing the City Manager to proceed with disposition of the PROPERTY ; and

WHEREAS, CITY offered the sale of the PROPERTY through a competitive process in accordance with Section 4.20.040 of the San Jose Municipal Code and it has been determined that BUYER is the highest bidder, therefore, CITY desires to sell the PROPERTY to BUYER on the terms and conditions set forth in this AGREEMENT; and

WHEREAS, pursuant to City Council Policy No. 7-13, the CITY requires the recordation of an affordable housing covenant on the sale of certain surplus property; and

WHEREAS, pursuant to City Council Policy No. 7-13, the PROPERTY is subject to the affordable housing requirements based on Government Code Section 54222-54233;

NOW, THEREFORE, in consideration of their mutual promises, terms, covenants and conditions hereinafter set forth, as well as the sums to be paid by BUYER to CITY, and for good and valuable consideration, the receipt and sufficiency of all which are hereby acknowledged, the BUYER and CITY agree as follows:

1. Property to be Conveyed.

Subject to the provisions of this AGREEMENT, CITY shall transfer and convey to BUYER by quitclaim deed in substantially the same form as **Exhibit "C"** ("Quitclaim Deed"), and BUYER shall purchase and take from CITY, all of CITY's right, title, interest and obligations in and to the PROPERTY.

2. Purchase Price.

BUYER shall pay to CITY, in consideration of CITY's conveyance to BUYER of said PROPERTY, the sum of **ELEVEN THOUSAND FOUR HUNDRED FORTY-FIVE DOLLARS AND FORTY-FOUR CENTS (\$11,445.44)**. Said sum shall hereinafter be referred to as the "Purchase Price".

3. Opening Escrow; Tender and Acceptance of Payment.

An escrow has been opened, by BUYER, with First American Title Company, 1737 North First Street #500, San Jose, CA 95112 (the "Escrow Holder"). Upon full execution of this AGREEMENT, BUYER shall deposit the Purchase Price in cash or other immediately available funds shall be deposited with the Escrow Holder no later than three (3) business days prior to the "Closing Date", as defined below. By its execution of this AGREEMENT, CITY accepts the Purchase Price as full compensation for the PROPERTY.

The parties shall not be bound by this AGREEMENT until the City Manager has executed this AGREEMENT ("City Approval"). Prior to such approval, BUYER's delivery of this AGREEMENT to CITY shall constitute an offer to purchase on the terms and conditions set forth herein, revocable at the sole discretion of BUYER upon written notice to CITY.

4. Additional Fees and Charges.

BUYER shall be responsible for the full payment of all title insurance, escrow, recording fees, documentary transfer taxes, broker commissions and other fees and charges associated with this transaction. BUYER shall indemnify, defend, and hold CITY harmless from and against, and CITY shall have no liability or responsibility for any such fees, costs, taxes, or expenses.

5. Due Diligence Period.

BUYER acknowledges that BUYER has had the opportunity to investigate the PROPERTY, including without limitation conducting any and all investigations necessary to inform BUYER about the condition of the PROPERTY and its sufficiency for BUYER's intended use.

6. Delivery and Recording of Deed and Real Property Taxes.

The Escrow Holder will close the escrow and record the Quitclaim Deed on such date (the "Closing Date") as is directed by CITY in its escrow instructions, which Closing Date shall be within thirty (30) days after City Approval, unless the CITY and BUYER agree in writing that the Closing Date be on a later date, which later date shall in no event be later than three (3) months from the Effective Date.

No later than five (5) days prior to the Closing Date, CITY shall deliver, to the office of the Escrow Holder, the Quitclaim Deed in the form set forth in **Exhibit "C"** executed and fully notarized by CITY. CITY and BUYER shall deliver any such additional documents and instruments as Escrow Holder may reasonably require in order to close

escrow. The CITY and BUYER shall provide Escrow Holder with their separate instructions for closing escrow consistent with the terms of this AGREEMENT.

Real property taxes and assessments, if any, shall be payable by BUYER for the period from and after the date of recordation of the Quitclaim Deed executed by CITY. CITY and BUYER shall deliver any such additional documents and instruments as Escrow Holder may reasonably require in order to close escrow.

7. BUYER's Sole Remedies for Failure to Convey.

In the event, the close of escrow and the consummation of the transaction contemplated by this AGREEMENT do not occur by reason of default of the CITY, including without limitation if the CITY's Quitclaim Deed shall, for any reason, be insufficient to convey fee title to the PROPERTY on or before the Closing Date (as shall be evidenced by Escrow Holder's willingness to issue an ALTA Standard Coverage Owner's policy of title insurance insuring such title in the name of BUYER in the amount of the Purchase Price), BUYER as its sole remedies will be entitled to (i) terminate this AGREEMENT or (ii) proceed to close of escrow, in which case the BUYER will have waived any CITY default. If the BUYER elects to proceed to close and the CITY does not take the actions required under this AGREEMENT in order for closing to occur, the BUYER reserves the right to seek specific performance. BUYER shall have no other right of action against CITY and shall not be entitled to recover any damages from CITY. BUYER's agreement to proceed to closing of escrow shall constitute BUYER's waiver of its right to terminate this AGREEMENT pursuant to this Section 7 or other right of action against CITY in regards to failure to convey fee title or other condition of title. AS A MATERIAL INDUCEMENT TO, AND AS MATERIAL CONSIDERATION FOR CITY'S ENTERING INTO THIS AGREEMENT WITH BUYER, BUYER WAIVES ANY RIGHT TO (A) SEEK OR OBTAIN RESCISSION OF THE SALE; AND (B) TO RECOVER ANY PUNITIVE OR CONSEQUENTIAL DAMAGES AND ANY OTHER DAMAGES OR MONETARY COMPENSATION.

8. Condition of Title.

CITY's right, title and interest in and to the PROPERTY shall be delivered by CITY hereunder subject to all exceptions, encumbrances, liens and restrictions of record and not of record, as of the Closing Date. For the avoidance of doubt, it is agreed that BUYER shall rely solely upon Escrow Holder's ALTA Standard Coverage Owner's policy of title insurance, if any, for protection with respect to matters affecting title to the PROPERTY, and that CITY shall have no obligations with respect to matters affecting title to the PROPERTY (including, without limitation, providing owner affidavits or other assurances to Escrow Holder). Notwithstanding anything to the contrary in this Agreement, BUYER consents and acknowledges that on or before the Close of Escrow Date and as a condition to CITY delivering the Quitclaim Deed to BUYER, CITY shall subject the Property to a restriction consistent with those described in California Government Code Section 54233, which provides that if 10 or more residential units are developed on the Property, BUYER (or its successor in interest) shall provide not less than 15 percent of the total number of units developed on the Property at affordable housing costs, as defined in Section 50052.5 of the California Health and Safety Code (the "HSC"), or affordable rent, as defined in Section 50053 of the HSC, to lower income households, as defined in Section 50079 of the HSC for a period of at least 55 years.

9. AS-IS Property Condition/BUYER's Due Diligence.

a) BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSE OF ESCROW, CITY SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS," EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. BUYER ACCEPTS AND AGREES TO BEAR ALL RISKS REGARDING ALL ATTRIBUTES AND CONDITIONS, LATENT OR OTHERWISE, OF THE PROPERTY, EXCEPT AS PROVIDED IN THIS AGREEMENT. FURTHER, AND WITHOUT LIMITING THE FOREGOING, BUYER ACKNOWLEDGES AND AGREES THAT BUYER WILL HAVE REVIEWED ALL APPLICABLE LAWS, ORDINANCES, RULES, AND GOVERNMENTAL REGULATIONS (INCLUDING, BUT NOT LIMITED TO, THOSE RELATED TO BUILDING, ZONING AND LAND USE) PERTAINING TO THE PROPERTY AND BUYER

WILL HAVE HAD AN OPPORTUNITY TO INSPECT THE PROPERTY. BY INITIALING BELOW, BUYER ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THIS SECTION AND THAT IT HAS HAD THE OPPORTUNITY TO OBTAIN COUNSEL AND ASK QUESTIONS AS TO ITS MEANING AND SIGNIFICANCE.

BUYER'S Initials: by

b) BUYER acknowledges, confirms, and agrees: (i) BUYER has relied on BUYER's own investigation of the condition of the PROPERTY, which it has had the opportunity to conduct to its satisfaction prior to the Effective Date and (ii) it shall take the PROPERTY in the condition that it is in at the Close of Escrow Date.

c) To the extent that CITY has provided to BUYER information or reports regarding the PROPERTY, CITY makes no representation or warranty, express or implied, as to the truth, accuracy or completeness of any materials, data, financial information, or other information in CITY's files or delivered or disclosed by CITY (or CITY's representatives or agents) to BUYER. BUYER acknowledges and agrees all such items are provided to BUYER as a convenience only and, except for the representations and warranties set forth in this AGREEMENT, that any reliance on or use of such materials, data or information by BUYER shall be at the sole risk of BUYER. Neither CITY, nor the person or entity which prepared any report or reports delivered by CITY to BUYER shall have any liability to BUYER for any inaccuracy or omission from any such report. BUYER acknowledges and agrees that the obligations of CITY in connection with the purchase of the PROPERTY shall be governed by this AGREEMENT irrespective of the contents of any such disclosures or the timing or delivery thereof.

d) Except as expressly set forth in this AGREEMENT, it is understood and agreed that CITY and CITY's agents, employees or attorneys have not at any time made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, with respect to the PROPERTY or the legal or physical condition thereof, including, but not limited to, warranties, representations or guaranties as to (1) matters of title, (2) zoning or building entitlements

to which the PROPERTY or any portion thereof may be subject, now or in the future, (3) usages of adjoining property, (4) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical condition of the PROPERTY or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the PROPERTY or any part thereof, (5) environmental matters relating to the PROPERTY or any portion thereof, including, without limitation, the presence of Hazardous Substances (as defined below) in, on, under or in the vicinity of the PROPERTY, (6) the condition or use of the PROPERTY or compliance of the PROPERTY with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (7) the size of, or square feet contained in, the PROPERTY or its dimensions, or (8) any other matter or thing with respect to the PROPERTY.

10. Indemnification and Hold Harmless.

BUYER agrees to protect, defend, indemnify and hold harmless, CITY, its officers, employees, or agents, from and against all claims, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (collectively, "Claims") of any kind whatsoever paid, incurred, suffered or asserted on or after the close of escrow directly or indirectly arising from or attributable to the Property Condition or any use of the PROPERTY (including BUYER's use of the PROPERTY before the Effective Date), including without limitation any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance on, under or about the PROPERTY, regardless of whether undertaken due to governmental action. The foregoing hold harmless and indemnification provision and following release provision shall apply to the fullest extent permitted by law, including where such Claim is the result of the act or omission of CITY, its officers, agents or employees. Without limiting the generality of this indemnity and hold harmless provision in any way, this provision is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 in order

to indemnify, defend, protect and hold harmless CITY, its officers, agents or employees for any liability pursuant to such sections. CITY and BUYER agree that for purposes of this AGREEMENT, the term "Hazardous Substance" shall have the definition set forth in **EXHIBIT "D"**, which is attached to this AGREEMENT and incorporated by reference. BUYER, for itself, its legal representatives and assigns, releases CITY, its officers, agents or employees from any and all Claims that it had, now has, or claims to have, or that any person claiming through them may have, or claim to have, arising out of any use of the PROPERTY, or Property Condition (including, without limitation, uses of or conditions on the PROPERTY undertaken or caused by BUYER's prior to the Effective Date).

Notwithstanding anything to the contrary in this AGREEMENT, upon the Effective Date and at all times thereafter, BUYER shall protect, defend, indemnify and hold harmless, CITY, its officers, employees, or agents, from and against all Claims of any kind whatsoever paid, incurred, suffered or asserted before, on or after the Effective Date. The foregoing hold harmless and indemnification provision and following release provision shall apply to the fullest extent permitted by law, including where such Claim is the result of the act or omission of CITY, its officers, agents or employees.

11. General Release.

BUYER, for itself and its agents, affiliates, successors and assigns, hereby agrees that BUYER releases and forever discharges CITY, its agents, affiliates, successors and assigns from any and all Claims, including, without limitation, rights, claims and demands at law or in equity, whether known or unknown at the time of this AGREEMENT, which BUYER had, has or may have in the future, arising out of the physical, environmental, economic or legal condition of the PROPERTY, including, without limitation, any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et. seq.) or any similar federal, state or local statute, rule or ordinance relating to liability of property owners for environmental matters. For the foregoing purposes, BUYER hereby specifically waives the provisions of Section 1542 of the California Civil Code and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

“A general release does not extend to a claim, which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Having been so apprised, to the fullest extent permitted by law, BUYER, elects to assume all risk for claims heretofore or hereafter, known or unknown, arising from the subject of this release, and BUYER knowingly and voluntarily expressly releases the CITY, its officers, agents or employees from all Claims, unknown or unsuspected, arising out of any use of the PROPERTY, or the Property Condition. The provisions of Sections 7, 8, 9, 10 and 11 shall survive the close of escrow or earlier termination of this AGREEMENT.

12. Binding on Successors.

This AGREEMENT inures to the benefit of and is binding on the Parties hereto, their respective heirs, personal representatives, successors and assigns.

13. Merger; Entire Agreement.

This AGREEMENT supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between CITY and BUYER relating to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party, or by or to any employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby. The terms of this AGREEMENT shall not be modified or amended except by an instrument in writing executed by each of the Parties.

14. Acknowledgement.

BUYER acknowledges that it has received the separate notice required by California Civil Code Section 1057.6 (regarding title insurance).

15. Notices.

Any notice which is required to be given hereunder, or which either Party may desire to give to the other, shall be in writing and may be personally delivered or given by mailing the same by registered or certified mail, postage prepaid, addressed as follows:

To the BUYER: Linda Yamauchi
1635 Rebel Way
San Jose, CA 95118
lindayamauchi@gmail.com

or to such other place as BUYER may designate by written notice.

To the CITY: Office of Economic Development
Real Estate Services
City of San José
200 E. Santa Clara Street, 12th Floor
San Jose, CA 95113
Attn. Administrative Officer

With a Copy to: Office of the City Attorney
City of San José
200 E. Santa Clara Street, 16th Floor
San José, CA 95113
Attn. Real Estate Attorney

or to such other place as CITY may designate by written notice.

16. Parties Costs.

Each party hereto shall bear the costs of its own attorneys and consultants in connection with the negotiation and preparation of this AGREEMENT and the consummation of the transaction contemplated in this AGREEMENT.

17. Miscellaneous.

a. Whenever the singular number is used in this AGREEMENT and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

b. If there be more than one entity designated in or signatory to this AGREEMENT on behalf of BUYER, the obligations hereunder imposed upon BUYER shall be joint and several; and the term BUYER as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

c. Time is and shall be of the essence of each term and provision of this AGREEMENT.

d. Each and every term, condition, covenant and provision of this AGREEMENT is and shall be deemed to be a material part of the consideration for CITY's entry into this AGREEMENT, and any breach hereof by BUYER shall be deemed to be a material breach. Each term and provision of this AGREEMENT performable by BUYER shall be construed to be both a covenant and a condition.

e. This AGREEMENT shall be deemed to have been made in, and be construed in accordance with the laws of, the State of California. Venue for any proceeding to enforce the provisions of this AGREEMENT shall be in the County of Santa Clara.

f. The headings of the several paragraphs and sections of this AGREEMENT are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this AGREEMENT and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

g. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either BUYER or CITY in its respective rights and obligations contained in the valid covenants, conditions and provisions of this AGREEMENT.

h. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this AGREEMENT as if set forth fully herein. The exhibits to this AGREEMENT are as follows:

Exhibit A – Legal Description

Exhibit B – Plat Map of Property

Exhibit C – Form of Quitclaim Deed

Exhibit D – Hazardous Substances

Exhibit E – Affordable Housing Covenant

i. This AGREEMENT shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either Party.

j. As used in this AGREEMENT, the term “Business Day” means any day that is not a Saturday, Sunday or legal holiday for national banks and government offices in San José, California; as used herein, the term “Calendar Day” or simply “day” or “days” means any day of the year without regard to weekends or legal holidays.

k. In computing the time period (whether measured in Business Days or Calendar Days) within which a right may be exercised or an act is to be performed after some preceding event or delivery (such as a notice), such period shall begin on the first day following the last day of such preceding event or delivery, except if the first day is not

a Business Day, in which case the first day of such period shall be deemed to be the next Business Day. If the last day of such period is not a Business Day, the period shall be extended to the next Business Day. The last day of any period shall be deemed to end at 5:00 p.m. California time.

l. BUYER may not assign its rights or interest in this AGREEMENT to any party without the express written consent of CITY, which consent may be given or withheld in CITY's sole and absolute discretion; provided however, this AGREEMENT may be assigned, without the consent of the CITY, to any party that obtains fee title to all the parcels directly adjacent to the PROPERTY such that such assignee meets the requirements of Section 4.20.070 of the San José Municipal Code. Prior to any assignment of this AGREEMENT, the form of assignment and assumption agreement shall be approved by the City Attorney's office.

m. This AGREEMENT may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This AGREEMENT may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single AGREEMENT. The failure of any party hereto to execute this AGREEMENT, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

n. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party prior to the Closing Date, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing Date any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

o. The provisions of this AGREEMENT and of the documents to be executed and delivered to close escrow are and will be for the benefit of CITY and BUYER only and are not for the benefit of any third party, and accordingly, no third party shall have

the right to enforce the provisions of this AGREEMENT or of the documents to be executed and delivered to close escrow.

p. The City Manager, or his designee, is authorized to execute, on behalf of the City of San José, deeds and all other documents as may be necessary to effectuate this AGREEMENT and the transfer of property rights herein.

WITNESS THE EXECUTION HEREOF on the date of execution by CITY as written below:

APPROVED AS TO FORM:



Kevin Fisher
Chief Deputy City Attorney

"CITY"

CITY OF SAN JOSE,
a California municipal corporation

By: _____

Leland Wilcox
Chief of Staff,
Office of the City Manager

Date of Execution: _____

"BUYER"

LINDA YAMAUCHI

By: Linda Yamauchi

Date of Execution: 3/12/19

EXHIBIT A
LEGAL DESCRIPTION

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of that parcel of land as described in the Deed recorded on March 24, 1978 in Book D549 at Page 506, Official Records of Santa Clara County, being described as follows:

PARCEL A:

COMMENCING at the northeasterly corner of "Tract No. 3440" which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on June 26, 1963 in Book 163 of Maps at Page 16, thence from said Point of Commencement North 89° 23' 08" East along the easterly prolongation of the northerly line of said Tract No. 3440 for a distance of 45.64 feet to a point in a line which is parallel with and distant 40.00 feet from the northeasterly line of said Tract No. 3440, said point being the **TRUE POINT OF BEGINNING**.

Thence continuing along said northerly line North 89° 23' 08" East for a distance of 45.64 feet, to a point in a line which is parallel with and distant 80.00 feet from the northeasterly line of said Tract No. 3440;

Thence South 29° 23' 30" East along said parallel line for a distance of 230.11 feet;

Thence South 60° 14' 40" West, 15.01 feet;

Thence along a tangent curve to the left having a radius of 310.00 feet, through a central angle of 4° 37' 33", for an arc distance of 25.03 feet;

Thence North 29° 23' 30" West along said parallel line for a distance of 253.34 feet to the True Point of Beginning.

PUBLIC RIGHT OF WAY EASEMENT:

Reserving therefrom an easement for the installation and maintenance of public right of way, including but not limited to the facilities, appurtenances and improvements related thereto, such as: pavement, storm drainage and sanitary sewer systems, street lights and traffic signals systems and electrical appurtenances, street trees, curb, gutter, sidewalk, and public utilities such as potable and non-potable water, electrical power, gas, telephone, and cable television, and all appurtenances thereto and for any and all public uses, in, over, under, through and across the real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of the property described in the Deed recorded on March 24, 1978 in Book D549 at Page 506, Official Records of Santa Clara County, said property being more particularly described as follows:

Beginning at the most southerly corner of Lot 1 as shown on the Map of Tract No. 8804 recorded on January 12, 1998 in Book 673 of Maps at Page 15, Records of Santa Clara County, said point being on the northeasterly line of said Deed, said point also being 30.00 feet northwesterly, measured at a right angle, from the center line of Rebel Way as shown on said Tract No. 8804;

Thence along said northeasterly line of said Deed, South 29° 23' 30", East, 20.00 feet to the most easterly corner of said Deed;

Thence along the southeasterly line of said Deed the following three courses:

- South 60° 14' 40" West, 15.01 feet to the beginning of a tangent curve to the left, concave southeasterly, having a radius of 310.00 feet;
- Along said curve through a central angle of 4° 37' 33" for an arc length of 25.03 feet;
- Thence leaving said southeasterly line of said Deed, North 29° 23' 30" West, 20.07 feet;

Thence concentric and parallel with said center line of Rebel Way the following two courses:

- Along a non-tangent curve to the right, concave southeasterly, having a radius of 330.00 feet, a radial line to said curve bears South 34° 04' 42" East, through a central angle of 4° 20' 40" for an arc length of 25.02 feet;
- Thence North 60° 14' 40" East, 15.01 feet to the Point of Beginning.

STORM DRAIN EASEMENT:

Also reserving therefrom an easement for the installation and maintenance of storm drainage purposes in, over, under, through and across the real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of the property described in the Deed recorded on March 24, 1978 in Book D649 at Page 506, Official Records of Santa Clara County, said property being more particularly described below. The storm drainage easement is to be kept open and free from buildings and structures of any kind except irrigation systems and appurtenances thereto, lawful fences and all lawful unsupported roof overhangs.

Beginning at the most southerly corner of Lot 1 as shown on the Map of Tract No. 8804 recorded on January 12, 1996 in Book 673 of Maps at Page 15, Records of Santa Clara County, said point being on the northeasterly line of said Deed, said point also being 30.00 feet northwesterly, measured at a right angle, from the center line of Rebel Way as shown on said Tract No. 8804;

Thence concentric and parallel with said center line of Rebel Way the following two courses:

- South 60° 14' 40" West, 15.01 feet to the beginning of a tangent curve to the left, concave southeasterly, having a radius of 330.00 feet;
- Along said curve through a central angle of 03° 12' 46" for an arc length of 18.50 feet;

Thence parallel with and distant 33.50 feet from said northeasterly line of said Deed, North 29° 23' 30" West, 229.23 feet to the northerly line of said Deed, being the southerly line of State Route 85 as shown on said Tract No. 8804;

Thence along said northerly line of said Deed, North 89° 23' 08" East, 38.22 feet to the most northerly corner of said Deed;

Thence along said northeasterly line of said Deed South 29° 23' 30" East, 210.11 feet to the Point of Beginning.

The described property contains approximately Gross Area of 9,658 square feet (0.22 acres) more or less, and a Net Area of 8,857 square feet (0.20 acres), more or less. Including approximately 801 square feet (0.018 acres) of Public Right-of-Way Easement and approximately 7,354 square feet (0.17 acres) of Storm Drain Easement.

Plat labeled "A-1" to accompany this description and made a part hereof.

This description, and plat attached, has been compiled from record data and not a field survey.

The Basis of Bearings for this description is the Bearing North 60° 14' 40" East, 76.21 feet between found monuments, shown as the Basis of Bearings on the map of Tract No. 8804 filed for record on January 12, 1996 in Book 673 of Maps at Page 14, Records of Santa Clara County.

Attached hereto and by reference a part hereof is a plat labeled "A-1" " PLAT TO ACCOMPANY DESCRIPTION OF REAL PROPERTY" depicting the subject property.

The above description of real property was prepared by me, or under my supervision, in conformance with the requirements of Section 8726 (g, k, l, m) of the Business and Professions Code of the State of California.



Steve G. Choy, PLS 6672



EXHIBIT B PLAT MAP OF PROPERTY

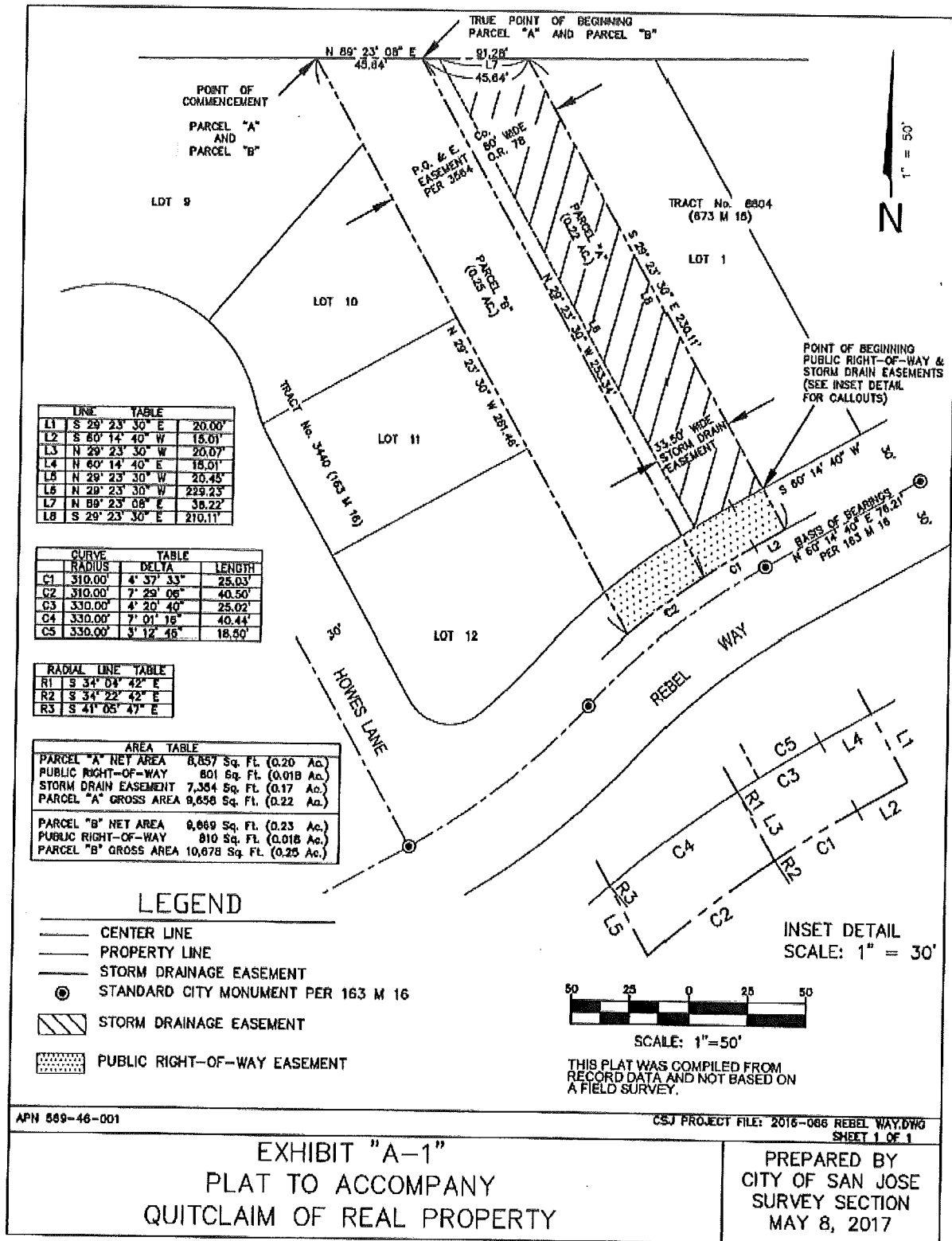


EXHIBIT C
QUITCLAIM DEED

RECORDING REQUESTED BY
City of San Jose

WHEN RECORDED MAIL TO:

Linda Yamauchi
1635 Rebel Way
San Jose, CA 95118

With a copy to:
City of San Jose
OED Real Estate Services
200 E. Santa Clara Street, T-12
San Jose, CA 95113

Attn: Administrative Officer

space above for recorder's use only)

MAIL TAX STATEMENTS TO:

Linda Yamauchi
1635 Rebel Way
San Jose, CA 95118

Document transfer tax is _____
Computed on full value of property conveyed
City Transfer tax is _____

Signature of declarant

QUITCLAIM DEED

The **CITY OF SAN JOSE**, a municipal corporation of the State of California, hereby REMISES, RELEASES AND FOREVER QUITCLAIMS to **LINDA YAMAUCHI**, any and all right, title or interest in the real property located in the City of San Jose, County of Santa Clara, State of California, described and depicted in the attached Exhibits A and B ("Property"), incorporated by reference to this document.

IN WITNESS WHEREOF, the CITY OF SAN JOSE has caused this instrument to be executed as of this _____ day of _____, 20_____.

CITY OF SAN JOSE,
a municipal corporation of the State
of California

APPROVED AS TO FORM:

Kevin Fisher
Chief Deputy City Attorney

By: _____
Name: Leland Wilcox
Title: Chief of Staff, Office of the City
Manager

EXHIBIT A to Quit Claim

LEGAL DESCRIPTION

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of that parcel of land as described in the Deed recorded on March 24, 1978 in Book D549 at Page 506, Official Records of Santa Clara County, being described as follows:

PARCEL A:

COMMENCING at the northeasterly corner of "Tract No. 3440" which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on June 26, 1963 in Book 163 of Maps at Page 16, thence from said Point of Commencement North 89° 23' 08" East along the easterly prolongation of the northerly line of said Tract No. 3440 for a distance of 45.64 feet to a point in a line which is parallel with and distant 40.00 feet from the northeasterly line of said Tract No. 3440, said point being the **TRUE POINT OF BEGINNING**.

Thence continuing along said northerly line North 89° 23' 08" East for a distance of 45.64 feet, to a point in a line which is parallel with and distant 80.00 feet from the northeasterly line of said Tract No. 3440;

Thence South 29° 23' 30" East along said parallel line for a distance of 230.11 feet;

Thence South 60° 14' 40" West, 15.01 feet;

Thence along a tangent curve to the left having a radius of 310.00 feet, through a central angle of 4° 37' 33", for an arc distance of 25.03 feet;

Thence North 29° 23' 30" West along said parallel line for a distance of 253.34 feet to the True Point of Beginning.

PUBLIC RIGHT OF WAY EASEMENT:

Reserving therefrom an easement for the installation and maintenance of public right of way, including but not limited to the facilities, appurtenances and improvements related thereto, such as: pavement, storm drainage and sanitary sewer systems, street lights and traffic signals systems and electrical appurtenances, street trees, curb, gutter, sidewalk, and public utilities such as potable and non-potable water, electrical power, gas, telephone, and cable television, and all appurtenances thereto and for any and all public uses, in, over, under, through and across the real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of the property described in the Deed recorded on March 24, 1978 in Book D549 at Page 506, Official Records of Santa Clara County, said property being more particularly described as follows:

Beginning at the most southerly corner of Lot 1 as shown on the Map of Tract No. 8804 recorded on January 12, 1996 in Book 873 of Maps at Page 15, Records of Santa Clara County, said point being on the northeasterly line of said Deed, said point also being 30.00 feet northwesterly, measured at a right angle, from the center line of Rebel Way as shown on said Tract No. 8804;

Thence along said northeasterly line of said Deed, South 29° 23' 30", East, 20.00 feet to the most easterly corner of said Deed;

Thence along the southeasterly line of said Deed the following three courses:

- South 60° 14' 40" West, 15.01 feet to the beginning of a tangent curve to the left, concave southeasterly, having a radius of 310.00 feet;
- Along said curve through a central angle of 4° 37' 33" for an arc length of 25.03 feet;
- Thence leaving said southeasterly line of said Deed, North 29° 23' 30" West, 20.07 feet;

Thence concentric and parallel with said center line of Rebel Way the following two courses:

- Along a non-tangent curve to the right, concave southeasterly, having a radius of 330.00 feet, a radial line to said curve bears South 34° 04' 42" East, through a central angle of 4° 20' 40" for an arc length of 25.02 feet;
- Thence North 60° 14' 40" East, 15.01 feet to the Point of Beginning.

STORM DRAIN EASEMENT:

Also reserving therefrom an easement for the installation and maintenance of storm drainage purposes in, over, under, through and across the real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of the property described in the Deed recorded on March 24, 1978 in Book D549 at Page 506, Official Records of Santa Clara County, said property being more particularly described below. The storm drainage easement is to be kept open and free from buildings and structures of any kind except irrigation systems and appurtenances thereto, lawful fences and all lawful unsupported roof overhangs.

Beginning at the most southerly corner of Lot 1 as shown on the Map of Tract No. 8804 recorded on January 12, 1996 in Book 673 of Maps at Page 15, Records of Santa Clara County, said point being on the northeasterly line of said Deed, said point also being 30.00 feet northwesterly, measured at a right angle, from the center line of Rebel Way as shown on said Tract No. 8804;

Thence concentric and parallel with said center line of Rebel Way the following two courses:

- South 60° 14' 40" West, 15.01 feet to the beginning of a tangent curve to the left, concave southeasterly, having a radius of 330.00 feet;
- Along said curve through a central angle of 03° 12' 46" for an arc length of 18.50 feet;

Thence parallel with and distant 33.50 feet from said northeasterly line of said Deed, North 29° 23' 30" West, 229.23 feet to the northerly line of said Deed, being the southerly line of State Route 85 as shown on said Tract No. 8804;

Thence along said northerly line of said Deed, North 89° 23' 08" East, 38.22 feet to the most northerly corner of said Deed;

Thence along said northeasterly line of said Deed South 29° 23' 30" East, 210.11 feet to the Point of Beginning.

The described property contains approximately Gross Area of 9,658 square feet (0.22 acres) more or less, and a Net Area of 8,857 square feet (0.20 acres), more or less. Including approximately 801 square feet (0.018 acres) of Public Right-of-Way Easement and approximately 7,354 square feet (0.17 acres) of Storm Drain Easement.

Plat labeled "A-1" to accompany this description and made a part hereof.

This description, and plat attached, has been compiled from record data and not a field survey.

The Basis of Bearings for this description is the Bearing North 60° 14' 40" East, 76.21 feet between found monuments, shown as the Basis of Bearings on the map of Tract No. 8804 filed for record on January 12, 1996 in Book 673 of Maps at Page 14, Records of Santa Clara County.

Attached hereto and by reference a part hereof is a plat labeled "A-1" " PLAT TO ACCOMPANY DESCRIPTION OF REAL PROPERTY" depicting the subject property.

The above description of real property was prepared by me, or under my supervision, in conformance with the requirements of Section 8726 (g, k, l, m) of the Business and Professions Code of the State of California.



Steve G. Choy, PLS 6672



EXHIBIT B to Quit Claim

PLAT MAP OF PROPERTY

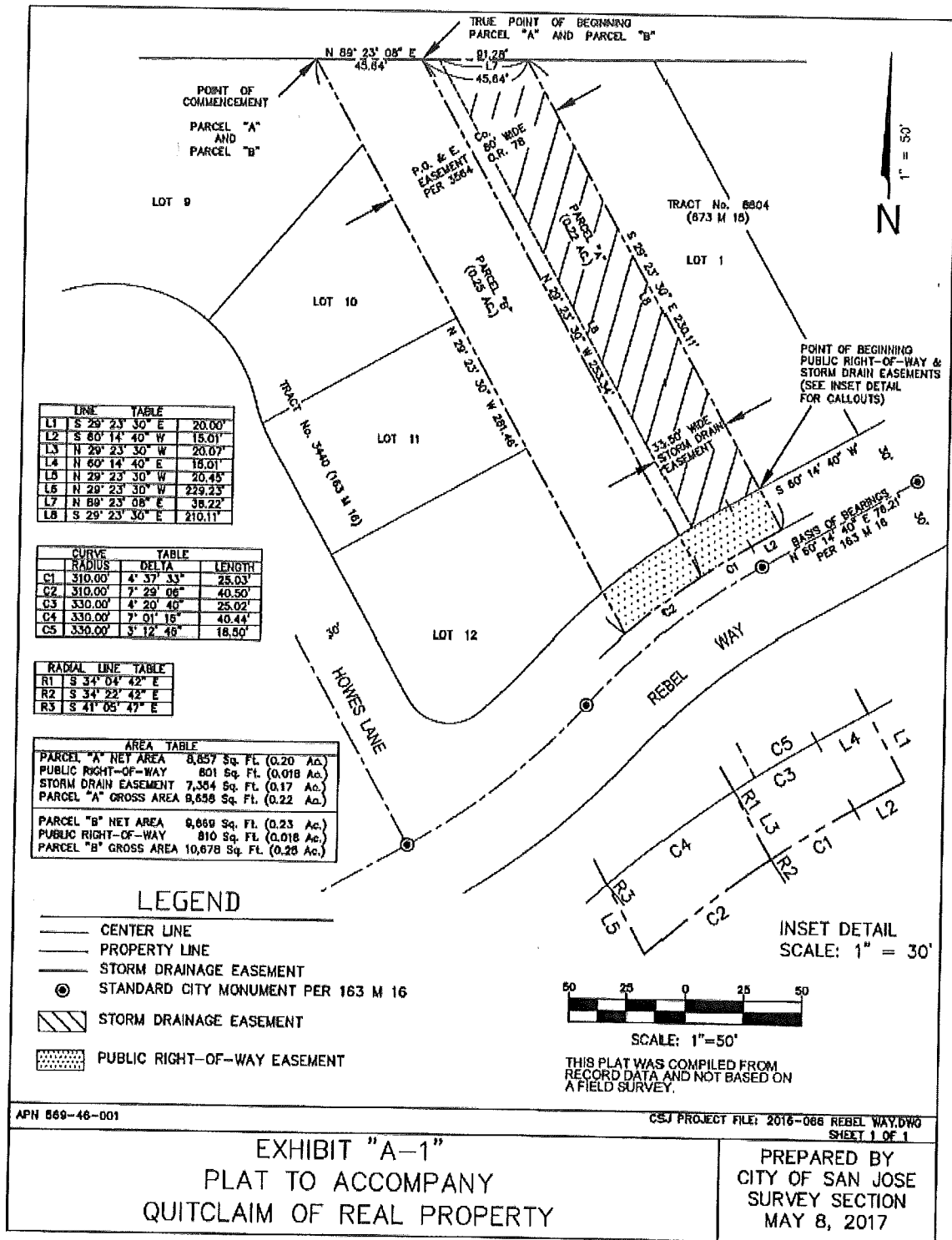


EXHIBIT D
Hazardous Substances

For the purpose of this AGREEMENT, “**HAZARDOUS SUBSTANCES**” shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this AGREEMENT, “**ENVIRONMENTAL LAWS**” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Substances, including without limitation, all federal or state superlien or environmental clean-up.

EXHIBIT E

AFFORDABILITY COVENANT

When Recorded Return to:
City of San José – Housing Department
200 E. Santa Clara Street, 12th Floor
San José, California 95113-1905
Attention: Asset Management Team
Re: Rebel Way (APN 569-46-001)

TO BE RECORDED WITHOUT FEE PER GOVERNMENT CODE SECTIONS 6103 AND 27383

AFFORDABILITY COVENANT IMPLEMENTING CITY COUNCIL RESOLUTION NO. 77725 (PROCEDURE FOR THE DISPOSITION OF SURPLUS CITY-OWNED PROPERTY)

This Affordability Covenant (“Covenant”) implements City Council Resolution No. 77725 (Updated Procedure for the Disposition of Surplus City-Owned Property to Reflect the General Terms of Assembly Bill 2135) and is made by _____ (“Buyer”) on this _____ day of _____, 201_, for the benefit of the **CITY OF SAN JOSÉ**, a California municipal corporation (“City”), with respect to the following facts:

A. On or about September 27, 2014, the Governor of the State of California signed into law AB 2135, which became effective January 1, 2015. AB 2135 modified the procedures concerning the sale of surplus properties by a local agency by amending Government Code Section 54220 *et seq.* As a charter city, City is not required to comply with AB 2135. Nonetheless, on April 26, 2016, the San José City Council adopted Council Resolution No. 77725 updating the procedure for the disposition of surplus city-owned property, as set forth in Chapter 4.20 of the San José Municipal Code, a procedure which reflects the general terms of AB 2135 (the “Policy”).

B. The Policy imposes new restrictions on surplus property, including the requirement that certain residential projects built on surplus property provide a certain level of units at affordable costs for rental or for-sale, even if no “Preferred Entities” (e.g., affordable housing developers) have expressed interest in purchasing the surplus property. The Policy reads, in relevant part:

M. Property is developable—If the property is sold on the open market, the Surplus Sale policy requires that if it is ever used for the development of ten (10) or more residential uses, then the entity (or its successor-in-interest) must provide not less than fifteen percent (15%) of the total number of units developed on the parcel(s) at affordable prices for rental, for-sale, or long

term lease (35 years or more) of the property. An affordable housing restriction documenting the total number of restricted units and the affordable prices must be recorded against the surplus land at the time of sale. The restriction is to run with the land for fifty-five (55) years, and be enforceable against any owner (or its successor-in-interest) who violates the covenant or restriction.

C. City offered for sale that certain real property located in the City of San José, County of Santa Clara, State of California, known as "Plumas Drive" more particularly described in **EXHIBIT A** and depicted in **EXHIBIT B** (hereinafter "Property") attached hereto and incorporated herein, through a competitive process in accordance with Section 4.20.040 of the San José Municipal Code. City staff had determined that Buyer is the highest bidder. On _____, the San José City Council adopted a resolution finding that Property was surplus to City's needs, authorizing the sale of the Property to Buyer, and, accordingly, authorizing the City Manager to negotiate and execute a purchase and sale agreement based upon the terms outlined in the memorandum to City Council dated _____, the deed and all other documents necessary to complete the transaction, including execution of this Covenant.

D. The Policy requires an affordable housing restriction to be recorded against the surplus property at the time of sale in the event any such real property is ever subsequently used for residential purposes. Accordingly, as City has required as a condition of Buyer's purchase of the Property, Buyer has agreed to enter into this Covenant, which specifies the terms and conditions of the Buyer's obligation to satisfy Paragraph M of the Policy.

NOW, THEREFORE, BUYER hereby declares and covenants:

1. Covenants Running With the Land.

a. Affordability Covenant. If the Property is ever developed (in whole, in part, or is in any way made part of a larger development) for a project that contains 10 or more residential units, the covenants and restrictions, as set forth below, shall apply and the Buyer (and its successors and assigns) must ensure that no less than fifteen percent (15%) of those residential units shall be sold at an Affordable Housing Cost to Moderate Income Households, or if such units are to be rented (or otherwise made available) at an Affordable Cost to Lower Income Households, as defined herein ("Affordable Units"), in either event (sold or rented) for a term of 55 years, which shall commence on the later of the date of recordation of the Notice of Completion for the Affordable Units, or the date on which the first Affordable Unit is occupied. Whether an Affordable Unit is sold or rented at an Affordable Cost shall be determined by City in its sole discretion.

i. For-Sale Affordable Units. If the Property is ever developed as provided in subsection (a) above, the Affordable Units required to be provided, if sold, must be priced at an Affordable Housing Cost to Moderate Income Households, as set

forth below, and the Buyer (and its successors and assigns) must comply with the covenants and restrictions contained in **Exhibit C**.

ii. **For-Rent Affordable Units.** If the Property is ever developed as provided in subsection (a) above, the Affordable Units required to be provided, if rented, must be priced at an Affordable Rent to Lower Income Households, as set forth below, and the Buyer (and its successor and assigns) must comply with the covenants and restrictions contained in **Exhibit D**.

b. **Notification of Sale or Transfer.** No later than five (5) days before the closing of the sale or transfer of the Property, Buyer (and its successor and assign) shall provide notice to City of such sale or transfer. Such notification shall be in writing and shall set forth the name and address of the new owner and the date of sale. Such notices be shall sent to the Office of the City Manager, at 200 East Santa Clara Street, 18th Floor Tower, San José, California 95113, Attention: Director of Economic Development.

c. **Covenants Running With the Land.** Buyer hereby subjects the Property and any Affordable Units constructed on the Property to the covenants and restrictions set forth in Exhibits C and D, except as provided in any subordination agreement or other written agreement executed by City. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Property or improvements constructed on the Property or any portion thereof or interest therein (a "Contract") shall conclusively be held to have been executed, delivered and accepted subject to this Covenant regardless of whether the terms of this Covenant are set forth in such Contract and regardless of whether the other party or parties to such Contract have actual knowledge of this Covenant.

d. **Declarations.** Buyer hereby declares that: (i) the covenants and restrictions contained herein 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 Buyer; (ii) the burden of the covenants and restrictions set forth in this Covenant touch and concern the Property and the Property is rendered less valuable thereby; and (iii) the benefit of the covenants and restrictions set forth in this Covenant touch and concern the land by enhancing and increasing the enjoyment and use of any Affordable Units by eligible households, the intended beneficiaries of such covenants and restrictions.

e. **Covenants Binding.** All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon Buyer and its successors in interest for the benefit of the eligible households, 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 Buyer is an owner of any land or interest therein to which such covenant and restrictions relate.

2. **Lienor's Remedies.** The provisions of this Covenant do not limit the right of any obligee to exercise any of its remedies for the enforcement of any pledge or lien

upon the Property; provided, however, that in the event of any foreclosure, under any mortgage, deed of trust or other lien or encumbrance, or a sale pursuant to any power of sale included in any such mortgage or deed of trust, or in the case of a deed in lieu of foreclosure, the purchaser (or other transferee) and their successors in interest and assigns and the Property shall be, and shall continue to be, subject to all of the covenants and restrictions set forth in this Covenant, subject to the terms of any subordination agreement or other written agreement executed by City.

3. **Amendments.** The City shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or restrictions contained in this Covenant without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property. This Covenant shall not be amended except upon the recordation of an amendment duly executed and acknowledged by City.

4. **Recitals and Exhibits.** The above recitals and the attached Exhibits A-D are hereby incorporated and made a part hereof.

5. **Covenant to be Attached.** Buyer shall attach a copy of any covenant or restriction required by paragraph 1 above to any purchase and sale contract or lease with respect to any Affordable Unit.

6. **Successors, Assigns.** The provisions contained in this Covenant shall bind the Buyer and each successor and assign, and shall inure to the benefit of the City, which shall have the right to enforce this Covenant or any of the terms contained herein and which may perform any of the obligations contained herein to be performed by the City.

7. **Severability.** If any provision of this Covenant, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Covenant and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

IN WITNESS WHEREOF, BUYER has executed this Covenant as of the date first written above.

BUYER

By: _____

Its: _____

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

State of _____

County of _____

On _____ before me, _____, Notary Public, personally
DATE NAME OF NOTARY
appeared _____
NAME(S) OF SIGNER(S)

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

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

WITNESS my hand and official seal

SIGNATURE OF NOTARY

EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT B

DEPICTION OF PROPERTY

EXHIBIT C

AFFORDABILITY COVENANT

(FOR-SALE AFFORDABLE UNITS)

**AFFORDABILITY COVENANT
IMPLEMENTING CITY COUNCIL RESOLUTION NO. 77725
(PROCEDURE FOR THE DISPOSITION OF SURPLUS CITY-OWNED PROPERTY)**

The following covenants and restrictions contained in this Affordability Covenant (For-Sale Affordable Units) ("Affordability Covenant") apply to "For-Sale Affordable Units," as noted in Paragraph 1(a)(i) of the Affordability Covenant Implementing City Council Resolution No. 77725 (Procedure for the Disposition of Surplus City-Owned Property) ("Covenant") above.

1. **Definitions.**

(a) For Persons or Families of Moderate Income, "Affordable Housing Cost" shall mean Housing Cost calculated in accordance with Section 50052.5 of the Health and Safety Code, except that it shall be based on 100% of the Area Median Income ("AMI"), as shown in the table contained in 25 Cal. Code Reg. 6932 for Santa Clara County, ("AMI"), adjusted for family size appropriate to the unit. "Housing Cost" shall be calculated in accordance with the provisions of California Code of Regulation, Title 25, Section 6920, as amended from time to time, which as of the date hereof include all of the following costs associated with that Affordable Unit:

- (i) Principal and interest on a mortgage loan including any rehabilitation loans, and any loan insurance fees associated therewith.
- (ii) Property taxes and assessments.
- (iii) Fire and casualty insurance covering replacement value of property improvements.
- (iv) Property maintenance and repair.
- (v) A reasonable allowance for utilities (excluding telephone service).
- (vi) Any homeowner association fees.

(vii) Ground rent, if the unit is situated on rented land.

(viii) Monthly housing cost of a purchaser shall be an average of estimated costs for the next twelve (12) months.

(b) "Affordable Unit" shall mean the residential units on the Property sold at an Affordable Housing Cost.

(c) "City" shall mean the City of San José.

(d) "Eligible Person or Family" for units sold at an Affordable Housing Cost shall mean a person or family with an income level at or below Moderate Income Households as adjusted for actual family size in accordance with the procedures set forth below, as shown in the table contained in 25 Cal. Code Reg. 6932, as amended from time to time.

(e) "Event of Default" shall mean those events described in Section 9.

(f) "Fair Market Value" shall mean 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 obligated to sell, and a buyer, being ready, willing and able to buy but under no particular or urgent necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the Affordable Unit is reasonably adaptable and available but as though this Affordability Covenant did not exist.

(g) "Notice of Intent to Transfer" shall mean a notice delivered by Buyer to the City pursuant to Section 5.

(h) "Owner" shall mean Buyer and any successor in interest of Buyer in all or any part of the Affordable Unit, including the initial purchaser from Buyer.

(i) "Persons or Families of Moderate Income" shall have the same definition as set forth in Section 50093 of the Health and Safety Code.

(j) "Proposed Transferee" shall mean an Eligible Person or Family to whom an Owner desires and proposes to Transfer the Affordable Unit.

(k) "Sales Price" shall mean all sums paid by a purchaser to a seller for, or in conjunction with, the acquisition of an Affordable Unit, including but not limited to the purchase price designated in any purchase agreement, consideration for personal property and all other costs and fees paid by the purchaser to or for the benefit of the seller.

(l) "Section" shall refer to sections in the California Health and Safety Code, as amended from time to time, unless otherwise noted.

(m) "Term" shall be fifty-five (55) years, which shall commence on the later of the date of recordation of the Notice of Completion for the Affordable Units, or the date on which the first Affordable Unit is occupied.

(n) "Transfer" shall mean any sale, assignment, conveyance or transfer, voluntary or involuntary, of any interest in the Affordable Unit. Without limiting the generality of the foregoing, Transfer shall include (i) a transfer by devise, inheritance or intestacy to a party who does not meet the definition of Eligible Person or Family, (ii) a lease or occupancy agreement of all or any portion of an Affordable Unit, (iii) creation of a life estate, (iv) creation of a joint tenancy interest, (v) execution of a land sale contract by which possession of an Affordable Unit is transferred to another party and title remains in the transferor, (vi) a gift of all or any portion of an Affordable Unit, or (vii) any voluntary conveyance of an Affordable Unit. Transfer shall not include (1) a transfer of the project in bulk (as compared to a transfer of individual condominium units to individual condominium unit buyers), (2) transfer by devise, inheritance or intestacy to a spouse, a transfer to a spouse pursuant to the right of survivorship under a joint tenancy, or (3) a transfer to a spouse in a dissolution proceeding, however any subsequent Transfer shall be subject to this Affordability Covenant.

(o) "Transferee" shall mean any natural person or entity that obtains ownership or possessory rights in the Affordable Unit pursuant to a Transfer.

2. Acknowledgement of Affordability Restrictions. Owner hereby acknowledges and agrees that:

(a) Owner understands all of the provisions of this Affordability Covenant.

(b) For the Term hereof, Owner hereby subjects the Affordable Units to certain restrictions, and limits the price for which Owner may sell the Affordable Units and the persons to whom Owner may sell the Affordable Units. The resale price limitations, and other provisions contained in this Affordability Covenant, restrict the full benefits of owning the Affordable Units. Owner may not enjoy the same economic or other benefits from selling the Affordable Units that Owner would enjoy if this Affordability Covenant did not exist.

(c) Owner accepts and agrees to the provisions of this Affordability Covenant with the understanding that this Affordability Covenant will remain in full force and effect as to the Affordable Units following any Transfer of any Affordable Unit throughout the Term.

(d) Owner acknowledges and agrees that the Proposed Transferees of the Affordable Units will be purchasing the Affordable Units at a discount which is equal

to the difference between (i) the Fair Market Value of the Affordable Unit at the close of escrow for the sale to such Proposed Transferee less (ii) the actual Sales Price of the Affordable Unit to such Proposed Transferee ("City Loan"). The City Loan shall be repaid to the City by Owner upon an Event of Default hereunder or upon any Transfer which requires the payment of an equity share as described in Section 6 below. Upon any Transfer by the Owner of an Affordable Unit, Owner shall notify the City in writing of the amount of the City Loan in connection with any such Transfer, and a deed of trust in a form acceptable to the City shall be recorded by the proposed transferee against the Affordable Unit to secure repayment of the City Loan.

3. Restrictions on Transfer of Any Affordable Unit. OWNER UNDERSTANDS THAT THE DETERMINATION OF THE SALES PRICE OF THE AFFORDABLE UNIT CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER TAKING INTO CONSIDERATION INTEREST RATES, PROPERTY TAXES AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED AND THAT THE SALES PRICE PERMITTED HEREUNDER MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS AFFORDABILITY COVENANT. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALES PRICE OF THE AFFORDABLE UNIT THE PRIMARY OBJECTIVE OF THE CITY AND THIS AFFORDABILITY COVENANT IS TO PROVIDE HOUSING TO ELIGIBLE PERSONS OR FAMILIES AT AFFORDABLE HOUSING COST. THE SALES PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES WHICH HAVE NO RESTRICTIONS.

4. Transfer of an Affordable Unit. Owner may transfer an Affordable Unit only in strict accordance with the provisions of this Affordability Covenant. Specifically, except as set forth in Section 6 herein, Owner may Transfer an Affordable Unit (i) only to an Eligible Person or Family and (ii) only if the Transfer has been approved in writing by the City in accordance with the provisions of Section 5, except when Section 7 applies. In order to comply with this Section, Owner must calculate the Affordable Housing Cost for the Proposed Transferee of the Affordable Unit in accordance with the definition set forth in Section 1(a) of this Affordability Covenant. After calculating the Affordable Housing Cost for the Proposed Transferee, the Owner must ensure that the sum of the Sales Price and all costs listed in the definition of Housing Cost set forth in Section 1(a) of this Affordability Covenant do not exceed that Affordable Housing Cost. The calculation of the Sales Price under this Section is illustrated by example in EXHIBIT A attached hereto, unless such example is modified or amended by mutual agreement between Buyer and the City.

5. Process to Obtain Approval of Transfer of An Affordable Unit. In the event Owner desires to Transfer an Affordable Unit, prior to the Transfer, the Owner shall notify the City by delivering a "Notice of Intent to Transfer" in the form attached hereto as Form 1. When the Owner identifies a Proposed Transferee to whom Owner wishes to Transfer the Affordable Unit, the following process shall be followed:

(a) Notice to City: Owner shall send to the San José Department of Housing (or its successor), at 200 East Santa Clara Street, 12th Floor Tower, San José, California 95113 and to the San José Department of Public Works Real Estate Division at 200 East Santa Clara Street, 5th Floor Tower, San José, California 95113 the form attached hereto as Form 2 fully completed and executed by Owner and the Proposed Transferee (the "Approval Request").

(b) Qualification of Proposed Transferee: The Proposed Transferee shall provide the City with sufficient information in form required by the City for the City to determine if the Proposed Transferee meets the following requirements:

(i) The Proposed Transferee shall certify its intent to occupy the Affordable Unit as the Proposed Transferee's principal residence.

(ii) The Proposed Transferee shall be an Eligible Person or Family.

(c) Qualification of Transaction: For the Transfer to qualify as an approved Transfer the transaction shall meet the following requirements:

(i) The Sales Price shall not exceed the lesser of:

(A) The Fair Market Value of the Affordable Unit, or

(B) The maximum price at which the Housing Cost to be paid by the Proposed Transferee would not exceed Affordable Housing Cost. The calculation of the Sales Price under this subsection (B) is illustrated by example in **EXHIBIT A** attached hereto, unless such example is modified or amended by mutual agreement between Buyer and City. However, in adjusting for family size to determine the maximum income level on which to base the calculation of Affordable Housing Cost, the family size of the Proposed Transferee shall be: (i) for 2-bedroom units, 3 persons (ii) for 3-bedroom units, 4 persons (iii) for 4 bedroom units, 5 persons and (iv) 5-bedroom units, 6 persons. The City shall have the sole discretion whether to grant any the request to make an adjustment to the above-referenced family size.

(ii) The price paid to Owner by the Proposed Transferee for Owner's personal property shall not exceed the Fair Market Value of such property. No other consideration of any nature whatsoever shall be delivered by the Proposed Transferee to Owner unless fully disclosed to and approved by the City.

(d) Certificates from Parties: The Owner and Proposed Transferee each shall certify in writing, in Form 2 delivered to the City, that the Transfer shall be closed in accordance with and only with the terms of the sales contract and other documents submitted to and approved by the City and that all consideration delivered by the Proposed Transferee to Owner has been fully disclosed to the City. The written certificate shall also include a provision that in the event a Transfer is made in violation of the terms

of this Affordability Covenant or false or misleading statements are made in any documents or certificate submitted to the City for its approval of the Transfer, City or Buyer shall have the right to file an action at law or in equity to make the parties terminate and/or rescind the sale contract and/or declare the sale void notwithstanding the fact that the Transfer may have closed and become final as between Owner/seller and his/her transferee. In any such event, any costs, liabilities or obligations incurred by the Owner/seller and his/her transferee for the return of any monies paid or received in violation of this Affordability Covenant or for any costs and legal expenses, shall be borne by the Owner/seller and/or his/her transferee and the Owner/Seller shall hold the City and/or Buyer and its designees harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Affordability Covenant.

(e) Written Consent of City Required Before Transfer. An Affordable Unit, and any interest therein, shall not be Transferred except with the express written consent of the City, which consent shall be given only if the Transfer is consistent with the City's goal of creating, preserving, maintaining and protecting housing in San José for Eligible Persons and Families and shall be in accordance with the provisions of Section 4 of this Affordability Covenant. This provision shall not prohibit the encumbering of title for the sole purpose of securing financing; however, in the event of foreclosure or transfer by deed in lieu of foreclosure the provisions of Section 11 of this Affordability Covenant shall apply with regard to proceeds and this Affordability Covenant shall continue to apply to the Affordable Unit subject to foreclosure in accordance with Section 17, except as otherwise required by Fannie Mae or other similar mortgage insurer or secondary purchaser.

(f) Delivery of Documents. Upon the close of the proposed Transfer, the Owner and Transferee shall provide the City with a certified copy of the recorded Assumption Agreement, (a copy of which is attached hereto as Form 3) a copy of the final sales contract, settlement statement, escrow instructions, and any other document which City or Buyer may reasonably request.

(g) Assistance by City. In the event that the Owner desires to locate a Proposed Transferee, the City shall be available, at the Owner's request, to assist the Owner during the process outlined in subsections (a)-(f) above. Specifically and without limitation, the City shall assist the Owner in identifying a Proposed Transferee, determining whether the Proposed Transferee is an Eligible Family and in calculating the Affordable Housing Cost and the Sales Price for the Proposed Transferee. The City shall have the right to designate a third party to provide such assistance to the Owner. If such a third party is designated by the City, that third party shall have the right to charge a reasonable fee for the assistance provided to the Owner. Owner shall have the right to approve such a designated third party, which approval shall not be unreasonably withheld.

6. Equity Share. In the event there does not exist an Event of Default, and Owner, who is not Buyer, wishes to Transfer the Affordable Unit to a Person or Family

who is not an Eligible Person or Family, then Owner can Transfer the Affordable Unit only if, in addition to repayment of the City Loan, a share of the equity from the Affordable Unit is paid to the City in the same percentage as the percentage of the City's Loan to the Fair Market Value of the Affordable Unit at the time of the City Loan (the "Equity Share"). Equity subject to sharing shall be calculated by subtracting the Fair Market Value of the Affordable Unit at the time of the Owner's acquisition of the Affordable Unit from the sales price for a sale to a Person or Family who is not an Eligible Person or Family (less Borrower's Closing Costs and "capital improvements" as such terms are defined herein). When the total amount due to the City under this Affordability Covenant, including the Equity Share, is paid, the City shall remove or cause to be removed this Affordability Covenant as a lien on the Affordable Unit, and this Affordability Covenant will cease to be a covenant running with the land.

7. Transfer by Devise, Inheritance or Intestacy. Notwithstanding anything to the contrary in this Affordability Covenant, in the event a Transfer is by devise, inheritance or intestacy this Section 7 shall govern the Transfer. Within thirty (30) days of the Transfer, the Transferee shall deliver written notice to the City that the Transfer has occurred. If such Transferee is not an Eligible Person or Family, this Transferee shall market the Affordable Unit for rental to an Eligible Person or Family and shall rent the Affordable Unit to an Eligible Person or Family until the Transferee desires to Transfer the Affordable Unit. In all events, the provisions of all Sections of this Affordability Covenant shall govern any subsequent transfer of any Affordable Unit.

8. Covenants of Owner. Owner, who is not Buyer or any subsequent assignee or transferee who acquires the project in bulk (as compared to an Owner who acquires an individual condominium unit), of each Affordable Unit by acceptance of a deed to the Affordable Unit covenants and agrees that, at all time during the Term of this Affordability Covenant, its Affordable Unit:

(a) Owner Occupancy. Will be continuously occupied by Owner, except as provided in Section 7 above.

(b) No Rental. Except as provided in Section 7 above, and as otherwise agreed to by the City in advance, shall not be rented, subleased, or subject to any other business arrangement whereby consideration shall be paid by any occupant of an Affordable Unit to the Owner of the Affordable Unit; provided, if the Unit is occupied by a Family of Moderate Income, the family members, whose income was considered in determining the eligibility of that family, may make monetary contributions toward the Housing Costs of the Affordable Unit.

9. Default. As to the Affordable Units, the occurrence of any of the following events shall constitute an Event of Default under this Affordability Covenant:

(a) Breach of Covenant. Breach of any covenant of Owner contained in this Affordability Covenant and the failure of the Owner to cure such breach within fifteen (15) days after receipt of written notice of such violation; provided, in the event of a second

similar violation within a twenty-four (24) month period, Owner shall have only ten (10) days within which to cure any such subsequent violation.

(b) Transfer. Any Transfer in violation of the provisions of this Affordability Covenant.

(c) Notice. Failure of Owner to give notice required in Section 5 above.

(d) Breach of Section 7. If and when applicable, a breach of Section 7 hereof.

(e) Further Encumbrance. The recordation of any deed of trust (a "Further Encumbrance") securing a note having an original principal sum which, when added to the sum of the principal amount(s) of any notes secured by any deeds of trust against the Affordable Unit as of the date of recordation of the Further Encumbrance, exceeds the appraised value of the Affordable Unit.

(f) Default on Encumbrance. Recordation of a Notice of Default under the provisions of the California Civil Code by any lender having a security interest in an Affordable Unit.

(g) Failure to Maintain. The failure of Owner to maintain an Affordable Unit in good condition and repair throughout the Term.

(h) Other Breach. Any other breach by Owner of any provision of this Affordability Covenant, determined by the City in its reasonable discretion.

Notwithstanding the above, for the purpose of this Affordability Covenant, a default by any Owner of an Affordable Unit shall not constitute a default of any other Owner of an Affordable Unit and may not constitute a default of Buyer.

10. Remedies. Upon the occurrence of an Event of Default, the City shall have the following remedies:

(a) Specific Performance. The City shall have the right to bring an action for specific performance of this Affordability Covenant to require the Owner to comply with the terms and provisions of this Affordability Covenant. Buyer acknowledges that it is the intention of Owner/Buyer and the City that these provisions be specifically enforceable to maintain the supply of affordable housing for Eligible Persons and Families.

(b) Application to Court. The City may apply to a court of competent jurisdiction for an injunction prohibiting a proposed Transfer in violation of this Affordability Covenant, for a declaration that a Transfer is void or for any other such relief as may be appropriate.

(c) Right to Excess Proceeds. In the event the Event of Default is a Transfer in violation of Section 3 above then, in addition to any other remedy which the City may have, the City shall be entitled to receive a sum ("Excess Proceeds") equal to the amount the City would have received if the Transferee had complied with the terms of this Affordability Covenant. Any Excess Proceeds shall be due and payable by the Owner to the City at escrow closing, or transfer of possession if there is no escrow closing prior to transfer of possession with regard to the noncomplying Transfer. The payment of the Excess Proceeds to the City shall not terminate this Affordability Covenant, which shall continue through the Term hereof.

(d) All Remedies Available and Cumulative. Upon the occurrence of an Event of Default, the City shall have the right to exercise all the rights and remedies, and to maintain any action at law or suits in equity or other real property proceedings, to enforce the provisions of this Affordability Covenant and to cure any Event of Default or violation hereof. No delay in enforcing the provisions hereof as to any Event of Default or violation shall impair, damage or waive the right of the City to enforce the provisions of this Affordability Covenant in the future or any continuing or new breach or violation of any of the covenants or restrictions contained in this Affordability Covenant. All rights and remedies, including without limitation those set forth in subsections herein, of any party legally entitled to enforce this Affordability Covenant shall be cumulative and the exercise of any such right or remedy shall not impair or prejudice and shall not be a waiver of the right to exercise any other such right and remedy.

11. Restrictions on Condemnation, Insurance and Foreclosure Proceeds. In the event (i) of a judicial foreclosure, a trustee's deed upon a nonjudicial foreclosure, a deed in lieu of foreclosure or any other involuntary Transfer to the holder of a secured interest in an Affordable Unit, (collectively "Foreclosure"), (ii) an Affordable Unit is destroyed and insurance proceeds are to be distributed to Owner instead of being used to rebuild the Affordable Unit, (iii) of a condemnation or Transfer in lieu of condemnation, if the proceeds thereof are to be distributed to the Owner, or (iv) if the Affordable Unit is a condominium or townhouse unit, upon liquidation of the homeowner's association and distribution of the assets of the association to the members thereof, including Owner, to the extent that the proceeds of any event described above exceed the proceeds that otherwise would be payable to Owner in the event of a Transfer of the Affordable Unit in compliance with the terms of this Affordability Covenant, all such proceeds, in excess of those due to the Owner, shall be paid to the City when available to Owner.

12. No Discrimination. Owner covenants and agrees that with regard to each Affordable Unit there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the 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 Government Code or on the basis of actual or perceived gender identity, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Affordable Unit, nor shall the Owner or any person claiming under or through Owner, establish or permit any such practice or practices of discrimination or segregation with

reference to the selection, location, number, use or occupancy of purchasers and owners of any Affordable Unit.

13. Non-Discrimination Clauses. All deeds made relative to an Affordable Unit shall contain or be subject to substantially the following non-discrimination and non-segregation clauses:

(a) Deeds. In Deeds/Leases: "The Grantee/Lessee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the 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 Government Code or on the basis of actual or perceived gender identity, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Grantee/Lessee or any person claiming under or through Grant/Lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

The failure of any deed to contain this provision shall not affect the validity of the deed or lease.

14. Covenants Running with the Land. Buyer hereby subjects any Affordable Units subsequently developed on the Property to the covenants and restrictions set forth in this Affordability Covenant. Buyer 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 Affordable Units, as the case may be, throughout the Term. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring an Affordable Unit or any interest therein, as the case may be, (a "Contract") shall conclusively be held to have been executed, delivered and accepted subject to this Affordability Covenant regardless of whether the other party or parties to such Contract have actual knowledge of this Affordability Covenant.

Buyer and City hereby declare their understanding and intent that: (i) the covenants and restrictions contained in this Affordability Covenant 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 Affordability Covenant touch and concern the Affordable Units in that the Buyer's legal interest in the Affordable Unit and all improvements thereon may be rendered less valuable thereby; and (iii) the benefit of the covenants and restrictions set forth in this Affordability Covenant touch and concern the land by enhancing and increasing the enjoyment and use of the Affordable Units by Eligible Persons or Families, 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 Buyer and each Owner for the benefit of City and Eligible Persons and Families 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 City is an owner of any land or interest therein to which such covenants and restrictions relate.

15. Covenant to be Attached. Owner shall attach a copy of this Affordability Covenant to any purchase and sale contract (or lease, pursuant to Section 7 above) with respect to any Affordable Unit.

16. Successors, Assigns. The provisions contained in this Affordability Covenant shall bind Buyer and each Owner, and shall inure to the benefit of the City, which shall have the right to enforce this Affordability Covenant or any of the terms contained herein and which may perform any of the obligations contained herein to be performed by the City.

17. Lienor's Remedies. The provisions of this Affordability Covenant do not limit the right of any holder of an obligation which is secured by an Affordable Unit, as the case may be, to exercise any of its remedies for the enforcement of any pledge or lien; provided, however, except as may be required by Fannie Mae or other similar mortgage insurer or secondary purchaser, that in the event of any foreclosure, the purchaser (or other transferee) and their successors in interest and assigns and the Affordable Unit, shall continue to be subject to this Affordability Covenant.

18. Amendments. The City and its successors and assigns, and the Owner, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the provisions contained in this Affordability Covenant without the consent of any easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Affordable Unit. This Affordability Covenant shall not be amended or modified except upon the written consent of City and Buyer and its successor or designee, and upon the recordation of an amendment hereto duly executed and acknowledged by the City and by Owner

19. Severability. If any provision of this Affordability Covenant, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Affordability Covenant and such provisions as applied to other persons, places, and circumstance shall remain in full force and effect.

20. Governing Law. This Affordability Covenant shall be governed by and construed in accordance with the law of the State of California, without regard to any choice of law principles.

21. Counterparts. This Affordability Covenant may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

22. Rescission. Any rescission, partial or otherwise, of this Affordability Covenant to remove this Affordability Covenant of record against any or all of the Property may be executed by the City and shall be effective upon execution.

23. Distribution of For-Sale Units. The Affordable Units shall be distributed throughout the Project and not grouped or clustered or otherwise separated from other non-Affordable Units during the entire term of this Affordability Covenant. Affordable Units shall be of comparable quality with similar amenities available to other non-Affordable Units in the Project excluding any upgrades paid separately for by the buyer of any unit. Owners of the Affordable Units shall have equal access and enjoyment to all common facilities of the project. No less than 60 days prior to initial marketing, Buyer shall submit for the City's approval an Affordable Unit Mix, which shows the spatial layout of Affordable Units and provides a percentage of unit types (i.e., combination of the number of bedrooms and bathrooms) for the Affordable Units that is commensurate to project's overall mix of unit types. The City-approved Affordable Unit Mix shall be documented in an Exhibit to the recorded Affordability Covenant.

EXHIBIT A

MODERATE INCOME STANDARD:

CALCULATION OF MAXIMUM SALES PRICE

The following calculation is provided for illustration purposes only; the City of San José is solely responsible for providing Affordable Housing Cost and Allowable Sales Price determinations.

Illustration of the calculation of the maximum Sales Price for a Person or Family of Moderate Income* to be paid by a **Purchaser** of the Affordable Unit, pursuant to the provisions of Health and Safety Code section 50052.5, subject to the definition of Affordable Housing Cost, as defined in the Affordability Covenant. The calculation in this Exhibit is based on the following definition of household size: the defined household size is equal to one person greater than the number of bedrooms in the unit.

Assumptions for calculating the maximum Sales Price:

1. Unit Size = _____
2. Family Size = _____
3. Interest Rate** = _____
4. Property taxes and assessments (per month) = _____
(based on actual tax rate with value based on the Market Price of unit)
5. Actual insurance premiums (per month) = _____
(if not included in homeowner's association dues)
6. Property maintenance and repair (per month)*** = _____
(if not included in homeowner's association dues)
7. Project's budgeted Homeowner's Association Dues = _____
8. Utility allowance (per month)**** = _____
9. Mortgage Insurance Premium, if any = _____

Pursuant to Health & Safety Code §50052.5, Affordable Housing Cost shall not be less than 28% of the Gross Income of the household nor exceed 35% of 110% Area Median. However, the calculation of Affordable Housing Cost shall be subject to how that term is defined in the Affordability Covenant.

* Pursuant to 25 Cal. Code of Regulations §6932, the current maximum income level for a Person or Family of Moderate Income at 120% of the area median income published by Santa Clara County with a family size of 4 for example is \$127,560.00, effective April 2015. The State of California periodically changes maximum income amounts, by household size, pursuant to said Code of regulations. The amount is likely to change in the future; and if so, the most current maximum income level issued by the State will be used for calculating the program's maximum income level at that time.

** The interest rate shall be based on a 5% down, 30-year, fully amortizing fixed-rate mortgage that is widely available in the current owner-occupied mortgage market.

*** Amount is obtained from schedule of allowances provided by City.

**** Amount is obtained from the Housing Authority of the County of Santa Clara's most recent schedule of utility allowances that are appropriate for the specific development's characteristics.

ILLUSTRATIVE CALCULATION OF MAXIMUM SALES PRICE
MODERATE INCOME LEVEL:

The following calculation is provided for illustration purposes only; the City of San José is solely responsible for providing Affordable Housing Cost and Allowable Sales Price determinations.

I. Calculate monthly Affordable Housing Cost:

106,300.00	[100% of Area Median Income adjusted for family size (4 person household / 3 bedroom unit; 100% AMI = \$106,300)]
<u> X .35 </u> \$37,205.00	[Affordable Housing Cost cannot exceed 35% times 100% of Area Median Income]
<u>divided by 12</u>	[To calculate the maximum <u>monthly</u> Affordable Housing Cost]
\$3,100.42	[As this hypothetical illustrates, no Family of Moderate Income with a family size of 4 shall spend more than \$3,100.00 per month, as of the date hereof, on the sum of the items which make up the Affordable Housing Cost.]

II. Calculation of maximum amount to be spent on principal and interest of all mortgage loans and loan insurance fees, if any, plus other homeowner costs:

- A. \$ 3,100 [Maximum monthly Affordable Housing Cost] less:
- B. [-]_____ **[Property taxes and assessments (per month)]**
- C. [-]_____ [Insurance premiums (per month)]
- D. [-]_____ [Utility allowance (per month)]
- E. [-]_____ [Mortgage Insurance Premiums (per month)]
- F. [-]_____ [Property maintenance and repair (per month)]
- G. [-]_____ **[Homeowner's Association dues (per month)] equals:**
- H. _____ Maximum Monthly Mortgage Payment

III. Calculation of Sales Price: The Sales Price is calculated by adding the Maximum Mortgage Amount to the down payment. The Maximum Mortgage Amount will be based

on a fixed rate, 5% down, 30-year, fully amortizing, widely available owner-occupied loan, and the above calculated Maximum Monthly Mortgage Payment allowable. The calculation is as follows:

1. At a _____% interest rate, and a loan term of 30 years, the Maximum Monthly Mortgage Payment (H.) of \$_____ will allow a Maximum Mortgage Amount of \$_____.
2. The Maximum Mortgage Amount of \$_____ divided by .95 equals a Sales Price of \$_____. For purposes of calculating the Sales Price, the down payment shall be deemed to be 5%.

(Note: The above steps require the use of a financial calculator.)

FORM 1

NOTICE OF INTENT TO TRANSFER

From: _____ ("Owner")

_____ ("Owner") (collectively, "Owner")

To: City of San José, Housing Department, Asset Management Team

Re: _____ (street
address)

San José, California 95_____, (the "Property")

Owner desires to [sell, convey, transfer by inheritance or devise, lease, gift, otherwise convey] (circle appropriate words) the Property. Owner understands that he/she must inform the City's Housing Department no less than 60 days prior to an impending sale, and pay the City the required Equity Share at the time of sale.

Owner desires to [check one]:

_____ attempt to locate an Eligible Person to purchase
the Property at Affordable Housing Cost
or

_____ attempt to locate a non-Eligible Person to purchase the
Property and pay any required Equity Share to the City

If the Owner wants to find the Eligible Person, the Owner has ninety (90) days to find the Eligible Person and notify the City in writing (see Approval Request).

If the City has a program to help locate an Eligible Person, does the Owner want the City to help look for an Eligible Person to buy the Property?

_____ Yes
_____ No

Signature of Owner

Day time phone number of Owner

Signature of Owner

Day time phone number of Owner

Date: _____

FORM 2

APPROVAL REQUEST

_____, 20__

San José Department of Housing

Attention: Housing Director

Re: Request for Approval of Proposed Transferee

To Whom It May Concern:

The undersigned is/are the owner of real property in San José, located at _____
(the "Property"), of which certain units were financed by the City of San José ("City") with 20%-Funds.

The Owner now desires to transfer the Property, or the Affordable Unit, as the case might be, and by this letter is requesting the City to approve the proposed transferee.

1. The Proposed Transferee is/are:

Names: (1) _____

(2) _____

(3) _____

Current Address: (1) _____

(2) _____

(3) _____

Telephone No.: (1) _____ (home/work)

(2) _____ (home/work)

(3) _____ (home/work)

2. The terms of the Proposed Transfer are:

(a) Sales price of \$_____. This sales price is based on the lesser of

Choose one:

Either (i) Fair Market Value of:

\$_____

Or (ii) the maximum price at which the Housing Cost of the Proposed Transferee would not exceed Affordable Housing Cost. The calculation of the Sales Price under this subsection is illustrated in Exhibit B attached to the Use Restriction but is determined solely by the City of San José:

\$_____

Price of any personal property being sold by the owner to the Proposed Transferee (if none, so state):

\$_____

(b) Price to be paid by the Proposed Transferee for any services of Owner if none, so state):

\$_____

(c) All other amounts of money or other consideration, if any, concerning the Property or any other matter to be paid by the Proposed Transferee to the Owner (if none, so state):

\$_____

(d) Sources of payment of Sales Price:

Cash down payment \$_____

First (1st) loan \$_____

Second (2nd) loan \$_____

Other (describe): _____ \$_____

Total, Sales Price:

\$_____

(e) The financing, obtained by the Proposed Transferee to purchase the Property is as follows:

First (1st) Loan:

Loan amount: \$ _____

Monthly payments: \$ _____

Interest rate _____ %

If variable interest, describe adjustment
mechanism: _____

Due date: _____

Balloon payment amount: \$ _____

Points and fees: \$ _____

Lender _____ (name):

Lender's _____ address:

Second (2nd) Loan:

Loan amount: \$ _____

Monthly payments: \$ _____

Interest rate _____ %

If variable interest, describe adjustment mechanism: _____

Due date: _____

Balloon payment amount: \$ _____

Points and fees: \$ _____

Lender (name): _____

Lender's address: _____

Other Loans: (describe, if none, so state): _____

(f) The monthly Housing Cost to be paid by the Proposed Transferee:

First (1st) loan monthly payment \$ _____

Second (2nd) loan monthly payment \$ _____

Other loans, total monthly payment(s) \$ _____

Taxes (1/12 of yearly taxes): \$ _____

Utilities \$ _____

Maintenance (estimated monthly): \$ _____

Insurance (1/12 of yearly premium): \$ _____

Homeowner's dues (monthly): \$ _____

Total

\$ _____

3. The Proposed Transferee represents and warrants the following:

(a) The Property will be the principal residence of the proposed transferee, and the proposed transferee understands he/she is not allowed to rent the Property.

(b) The combined maximum annual income for all household members of the Proposed Transferee is: (1) \$ _____; (2) \$ _____; (3) \$ _____.

(c) The proposed transferee will deliver to the City a signed financial statement on a form acceptable to City.

4. The Proposed Transferee household consists of the following persons who will reside in the Property:

Adults (18 and over) - [name of each]

Minors (under 18) - [name of each]:

_____	_____
_____	_____
_____	_____

5. The Proposed Transferee must submit to the City, on a form available from the City, an income certification so the City may determine if the proposed transferee is an Eligible Person.

6. A true and correct copy of the agreement between the owner and the Proposed Transferee is attached hereto.

7. The Owner and Proposed Transferee each hereby certify that the Transfer shall be closed in accordance with and only with the terms of the sales contract and other documents submitted to and approved by the City and that all consideration delivered by the Proposed Transferee to Owner has been fully disclosed to the City.

8. The Owner and Proposed Transferee each hereby also certify that in the event a Transfer is made in violation of the terms of this Affordability Covenant or false or misleading statements are made in any documents or certificate submitted to the City for its approval of the Transfer, the City or Developer shall have the right to file an action at law or in equity to make the parties terminate and/or rescind the sale contract and/or declare the sale void notwithstanding the fact that the Transfer may have closed and become final as between Owner/Seller and his/her transferee. In any such event, any costs, liabilities or obligations incurred by the Owner/Seller and his/her transferee for the return of any monies paid or received in violation of this Affordability Covenant or for any costs and legal expenses, shall be borne by the Owner/Seller and/or his/her transferee and the Owner/Seller shall hold the city and/or Developer and its designees harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Affordability Covenant.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Owner:

signature

name [print]

telephone

Date: _____

Proposed Transferee(s):

signature

name [print]

telephone

Date: _____

signature

name [print]

street address

City, State, Zip Code

signature

name [print]

street address

City, State, Zip Code

Form 3

WHEN RECORDED RETURN TO:

ASSUMPTION AGREEMENT

This Assumption Agreement is entered into by:

The City of San José ("City") and

_____ ("Seller")

_____ ("Buyer")

Date of Agreement: _____

FACTS

- A. Seller is the owner of property commonly known as _____, San José, California (the "Property").
- B. The Property is subject to recorded Affordability Restrictions which restricts the purchase price that can be charged for the Property and the persons to whom the Property can be sold (the "Affordability Covenant").
- C. Buyer desires to purchase the Property. Buyer understands that the Affordability Covenant will limit the purchase price they can receive when they sell the Property and will limit the people to whom they can sell the Property.
- D. Buyer is able to purchase the Property because the purchase price of the Property is less than other similar property without restrictions. For this reason Buyer desires to purchase the Property.
- E. In order to purchase the Property, Buyer must assume all obligations of Seller under the Affordability Covenant and must agree to be bound by all the provisions in the Affordability Covenant.

NOW, THEREFORE, Buyer agrees as follows:

1. Acknowledgment of Limitation on Future Sales Price. BUYER UNDERSTANDS THAT WHEN BUYER DESIRES TO SELL OR TRANSFER THE PROPERTY THAT THE SALES PRICE CAN BE DETERMINED ONLY AT THE TIME OF THE PROPOSED TRANSFER TAKING INTO CONSIDERATION INTEREST RATES, PROPERTY TAXES AND OTHER FACTS THAT CANNOT BE PREDICTED ACCURATELY AND THAT THE SALES PRICE MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR PROPERTY THAT IS NOT ENCUMBERED WITH THE RESTRICTION. BUYER ALSO ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALE PRICE THE PRIMARY OBJECTIVE OF THE CITY AND THE RESTRICTION IS TO PROVIDE HOUSING TO ELIGIBLE PERSONS OR FAMILIES AT AFFORDABLE HOUSING COST. THE SALES PRICE, WHEN BUYER DECIDES TO SELL THE PROPERTY, ALMOST CERTAINLY WILL BE LESS THAN OTHER SIMILAR PROPERTIES WHICH HAVE NO RESTRICTION.

2. Understand Covenant. Buyer represents that they have read the Affordability Covenant and fully understand the Affordability Covenant.

3. Owner Occupancy. Buyer agrees that they will occupy the Property as their primary residence and that they will comply with all provisions of the Affordability Covenant relating to occupancy of the Property.

4. Assumption of Obligations Under Covenant. As a material consideration to the City in approving Buyer, Buyer hereby assumes all obligations of Seller, as they relate to the Property, under the Affordability Covenant. Buyer agrees to be bound by all duties and obligations of Seller in the Affordability Covenant and agrees to comply with all provisions thereof for the term of the Affordability Covenant. Buyer agrees, as set forth above, in order to take advantage of the purchase price for which the Property is offered.

IN WITNESS WHEREOF, the parties have executed this Assumption Agreement to be effective on the date of recordation of a deed conveying the Property to Buyer.

Date: Buyer

Date: Buyer

Based on information provided by Seller and Buyer and on Buyer's execution hereof, the City of San José hereby approves Buyer to purchase the Property.

City of San José
Housing Department

Date: _____ **By:** _____

Its: _____

EXHIBIT D

AFFORDABILITY COVENANT

(FOR-RENT AFFORDABLE UNITS)

**AFFORDABILITY COVENANT
IMPLEMENTING CITY COUNCIL RESOLUTION NO. 77725
(PROCEDURE FOR THE DISPOSITION OF SURPLUS CITY-OWNED PROPERTY)**

The following covenants and restrictions contained in this Affordability Covenant ("Covenant") apply to "For-Rent Affordable Units," as noted in Paragraph 1(a)(ii) above.

1. Affordability Restrictions.

(a) Covenant for Affordable Housing Cost. For a period commencing upon the later of the recordation of the Notice of Completion for the Affordable Units or the occupation of the first Affordable Unit, **15% of the constructed units** shall be rented or otherwise made available ongoing at or below an Affordable Housing Cost to **Low Income Households** ("Affordable Unit(s)"). A person or family shall be determined to be eligible (an "Eligible Household") to rent an Affordable Unit (i) if the Affordable Unit is made available to such person or family at Affordable Housing Cost based on the maximum income level for a Low Income Household as applicable for that Affordable Unit, as adjusted for family size in accordance with the procedures set forth below, as shown in the table contained in 25 Cal. Code Reg. 6932, as amended from time to time, and (ii) such person or family is Low Income Household as required for that Affordable Unit. In adjusting for family size to determine the maximum income level on which to base the calculation of Affordable Housing Cost, the number of bedrooms in each Affordable Unit: studio - one person, one bedroom - two persons, two bedrooms - three persons, three bedrooms - four persons, and four bedrooms - five persons or as otherwise consistent with Health and Safety Code Sections 50052.5 and 50053. **EXHIBIT A** attached hereto and incorporated herein by this reference contains illustrations of the calculation of Affordable Housing Cost for a rental unit for Low Income Households. Buyer shall prohibit any person or family who has not been determined to be Eligible at the time of taking possession of an Affordable Unit from renting or occupying any Affordable Unit and shall cause any such person or family to vacate any Affordable Unit so rented or occupied.

(b) Recertification of Income; Continued Availability at Restricted Level. On an annual basis, Buyer shall submit a report (the "Annual Report") recertifying income and providing year-end rent rolls for the Affordable Units to the City in the City's requested format unless otherwise agreed to in advance by the City prior to May 1st beginning the first year after the building containing dwelling unit receives a certificate of

occupancy, which contains, with respect to each Affordable Unit, the rental rate and income and family size of the occupant. The Annual Report shall be based on information supplied by the tenant or occupant of each Affordable Unit in a certified statement on a form provided or previously approved by the City.

(c) Redesignation of Affordable Units. If, at the time of recertification of an Eligible Household's income exceeds the upper limit for Persons and Families of Low Income as calculated for the specific Affordable Units then, at such time as Buyer becomes aware of such occurrence, the Buyer may increase the rent to market rates payable by such tenant, provided that within thirty (30) days of such rent increase, Buyer designates that unit within the project as an Affordable Unit and rents such unit to an Eligible Household.

(d) Definition of Vacate. For the purposes of this Covenant, "vacate" shall include, without limitation, departure from an Affordable Unit at the termination (whether at the end of a term or upon default) of the lease pursuant to which the Affordable Unit was occupied ("Lease"), abandonment of the Affordable Unit, sublease or assignment of an Affordable Unit (whether or not such sublease or assignment complied with the terms and conditions of the Lease).

2. Definitions. The definitions of Area Median Income, Lower (or Low) Income Household shall have the definitions given these terms in Health and Safety Code Sections 50052.5, 50053, 50079.5, 50105, 50106 and 50093, as amended from time to time. For the purpose of this Agreement, "Affordable Housing Costs" shall mean "affordable rent" as defined in Health and Safety Code Section 50053, as amended from time to time.

3. Default and Remedies.

(a) Covenants Running With The Land. The Buyer hereby subjects the Property and the Units to the covenants and restrictions set forth in this Covenant. Buyer 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 the Buyer's successors in interest; provided, however, that on the termination of this Covenant, said covenants and restrictions shall expire. Except as provided in any subordination agreement or other written agreement executed by City, each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Property or improvements constructed on the Property or any portion thereof or interest therein (a "Contract") shall conclusively be held to have been executed, delivered and accepted subject to this Covenant regardless of whether the terms of this Covenant are set forth in such Contract and regardless of whether the other party or parties to such Contract have actual knowledge of this Covenant.

Buyer and the City hereby declare their understanding and intent that:

(i) the covenants and restrictions contained in this Covenant 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 Buyer; and

(ii) the burden of the covenants and restrictions set forth in this Covenant touch and concern the Property in that the Buyer's legal interest in the Property and all improvements thereon is rendered less valuable thereby; and

(iii) the benefit of the covenants and restrictions set forth in this Covenant touch and concern the land by enhancing and increasing the enjoyment and use of the Property and Units by Extremely Low, Very Low, and Low Income Households, 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 Buyer and its successors in interest for the benefit of the City, Buyer, Extremely Low Income Households, Very Low Income Households, and Low Income Households, 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 or Buyer is an owner of any land or interest therein to which such covenant and restrictions relate.

(b) Non-Complying Units. In addition to and without limitation of any other rights and remedies set forth in this Covenant or otherwise available to any party legally entitled to enforce this Covenant, in the event of any Default (as defined in Section 3(d) below), after thirty (30) day notice by City to Buyer, City shall have the right to lease and Buyer shall lease to City on demand or City for a rental of \$1.00 per Affordable Unit per year any and all of the "Non-Complying Units" (as defined below) at such time as the Non-Complying Affordable Unit(s) is vacated. "Non-Complying Units" shall mean an Affordable Unit, which is occupied and/or leased in violation of Section 1 of this Covenant. Determination of such a violation may be based on information provided in the Annual Report or determined by City in its reasonable discretion based on information otherwise available to it. Notwithstanding any term or condition of the lease under which the City leases a Non-Complying Affordable Unit pursuant to this subsection 3(b), Buyer hereby consents to and grants City the right to assign such lease or sublet such Affordable Unit(s) to Very Low Income Households, as appropriate, at Affordable Housing Cost or to any non-profit housing provider (a "Provider") in the community for \$1.00 per year on the condition that such Provider subleases such Affordable Unit(s) or assigns such lease(s) to Extremely Low Income Households, Very Low Income Households, and Low Income Households at Affordable Housing Cost. If the City assigns or sublets to any Provider, notwithstanding any term or condition of the lease between the Borrower and the City, the Buyer hereby consents to and grants such Provider the right to assign such lease or sublet such Affordable Unit to any Eligible Person at an Affordable Housing Cost. If the City leases any Affordable Unit(s) or a Provider subleases any Affordable Unit(s) or is the assignee of any lease(s) from the City, the City, or Provider, as the case may be, to the

extent necessary to ensure compliance with Section 1 hereof, shall sublease such Affordable Unit(s) or assign such lease(s) to any Eligible Person at Affordable Housing Cost. Any rent paid under such a sublease or assignment shall be paid to the Buyer after the City or Provider, as the case may be, has been reimbursed for any expenses incurred by it in connection with exercising the rights and remedies set forth in this subsection 3(b); provided, that if the Buyer is in default under any loan documents in connection with the financing of the Property or any improvements thereon, such rent shall be paid to the party legally entitled thereto.

(c) Excess Rent. In the event that and to the extent that the Buyer receives rents or other payments from the operation of the Units or other improvements constructed on the Property in excess of what is permitted to charge and receive pursuant to this Covenant, after thirty (30) day notice by City to Buyer, Buyer agrees and covenants to pay to the City the full amount of such excess immediately on demand by the City. Buyer and the City agree and intend that the payment of such excess, absent other remedies described in this Covenant to ensure for the term hereof that rents or other payments do not exceed those Buyer is permitted to charge and receive pursuant to this Covenant, shall not alone be an adequate remedy to accomplish the purposes of this Covenant.

(d) All Remedies Available and Cumulative. In the event of any breach of any of the covenants or restrictions set forth herein (a "Default"), the City or members of the community (as defined in the Health and Safety Code) shall have the right to exercise all the rights and remedies, and to maintain any action at law or suits in equity or other real property proceedings, including without limitation, specific performance, to enforce the covenants and restrictions and the curing of any breach or violation thereof. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the City to enforce the provisions hereof in the future for any continuing or new breach or violation of any of the covenants or restrictions contained in this Covenant. All rights and remedies, including without limitation those set forth in paragraphs 3(a) through (c) above, of any party legally entitled to enforce this Covenant shall be cumulative and the exercise of any such right or remedy shall not impair or prejudice and shall not be a waiver of the right to exercise any other such rights and remedies.

4. Reporting. In addition to the Annual Report, Buyer shall provide all information reasonably requested by the City with respect to the number of Units in the Property and the income levels of the persons or families renting or otherwise occupying the Units.

5. Covenant to be Attached. Buyer shall attach a copy of this Covenant to any lease or purchase and sale contract with respect to any Affordable Unit.

6. Successors, Assigns. The provisions contained in this Covenant shall bind Buyer, its successors in interest and assigns and shall inure to the benefit of the City and members of the community.

7. **Lienor's Remedies.** The provisions of this Covenant do not limit the right of any obligee to exercise any of its remedies for the enforcement of any pledge or lien upon the Property; provided, however, that in the event of any foreclosure, under any mortgage, deed of trust or other lien or encumbrance, or a sale pursuant to any power of sale included in any such mortgage or deed of trust, or in the case of a deed in lieu of foreclosure, the purchaser (or other transferee) and their successors in interest and assigns and the Property shall be, and shall continue to be, subject to all of the covenants and restrictions set forth in this Covenant, subject to the terms of any subordination agreement or other written agreement executed by City.

8. **Amendments.** The City and their successors and assigns, on the one hand, and the Buyer and its successors in interest and assigns, on the other, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or restrictions contained in this Covenant without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property. This Covenant shall not be amended, modified or terminated except upon the written consent of the City and upon the recordation of an amendment hereto duly executed and acknowledged by Buyer.

9. **Severability.** If any provision of this Covenant, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Covenant and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

10. **No Discrimination.** Buyer covenants and agrees for itself, its heirs, successors, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. The foregoing covenants shall run with the land.

11. **Notices.** All notices, demands, and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given and received when delivered by hand or, if mailed, three (3) business days after deposit in the mail, postage prepaid, certified or registered mail, return receipt requested, and addressed to City at:

City of San José

Housing Department
200 East Santa Clara Street, 12th Floor Tower
San José, California 95113-1905
Attn: Asset Management

12. **Governing Law.** This Covenant shall be governed by and construed in accordance with the law of the State of California.

13. **Distribution of Rental Units.** The Affordable Units required under this Covenant shall be distributed, to the extent possible, throughout the project and not grouped or clustered or otherwise separated from other non-Affordable Units during the entire term of this Covenant. Affordable Units may float within the project and the Buyer shall indicate in its Annual Report, which units are the Affordable Units. Buyer shall require that the Affordable Units be of comparable quality with similar amenities available to other non-Affordable Units in the project. Renters of the Affordable Units shall have equal access and enjoyment to all common facilities of the project. No less than 60 days prior to initial marketing, Buyer shall submit for the City's approval an Affordable Unit Mix, which shall provide a percentage of unit types (i.e., combination of the number of bedrooms and bathrooms) for the Affordable Units that is commensurate to the project's overall mix of unit types.

14. **Right to Inspect.** The City shall have the right, upon reasonable notice to Buyer or the property manager for the project, to inspect the Affordable Units and non-Affordable Units to determine compliance with the terms of this Covenant.

15. **Notice of Vacancies.** Buyer agrees that all impending vacancies for Affordable Units will be posted within ten (10) days of notice to Buyer of such impending vacancy on www.scchousingsearch.org or such other website as may be requested by City. Additionally, Buyer will post any opening of closed waitlists for the Project, opening of new waitlists, or closing of open waitlists must be posted at least ten (10) days prior to the opening or closing of the waitlist.

16. **Notice of Change of Owner or Property Manager.** Buyer shall notify the City Housing Department within thirty (30) days after a transfer or change in ownership of the project or after a change in the property manager for the project, and shall provide updated contact information.

EXHIBIT A

The following hypothetical illustrates the calculation of Affordable Housing Cost for Low Income Households who are renting a two-bedroom unit with an assumed family size of 3 persons in Santa Clara County.

Assumptions.

1. Affordable Unit to be made available to Low Income Households with incomes not exceeding 80% AMI. Person or Family need not have the maximum income for a Person or Family in the income category (adjusted for family size).
2. Family Size = 3 Persons (for purposes of this example)
3. Electricity charges are separately metered and directly billed to the tenants by PG&E. A reasonable allowance for such charges based on the Utility Allowance Schedule published by the County of Santa Clara Housing Authority at www.hacsc.org ("Allowance") is deducted.

As of April 2016, per 25 CCR Section 6932, the maximum income level for a Low Income Household (80% of AMI) with a family size of 3 in Santa Clara County is \$76,400.00.

Pursuant to 25 CCR Section 6918 rent for the purposes of this Exhibit ("Rent") includes, among other things, payment for use or occupancy of a housing unit and charges or fees charged or passed through by the landlord other than security deposits. The Utility Allowance for an Affordable Unit is based on a tenant paying for gas and/or electricity for cooking, apartment space heat and lights (if additional utilities are paid for by tenant, then the Utility Allowance should be adjusted accordingly). Pursuant to Section 50053 of the Health and Safety Code, the Rent paid by a Low Income Household shall not exceed 30% of 80% of the area median income adjusted for family size.

CALCULATION OF RENT CHARGEABLE:

\$76,400.00	[80% of the area median income adjusted for family size (3 persons)]
X .30	[Annual rent cannot exceed 30% of 80% of area median income]
\$22,920.00	
÷ 12	[maximum <u>annual</u> rent divided by 12 to calculate the maximum <u>monthly</u> Rent]
\$ 1,910.00	
-\$ 51.00	[less an assumed monthly utility allowance for the specific unit; here, a gas heater and electric 2-bedroom apartment.]
\$ 1,859.00	[equals Maximum Rent after reasonable allowance for utilities]

As this hypothetical illustrates, as of December 2013, no Low Income Household at 80% AMI with a family size of 3 that pays its own electric and gas bill should be charged or pay Rent in excess of \$1,910.00 per month less the approved utility allowance, for a maximum tenant-paid rent of \$1,859.00; this amount may be adjusted as the CCR Sections above are amended or the utility allowance amount is adjusted.