

NO FEE DOCUMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Alameda County
Housing and Community Development Department
224 W. Winton Avenue, Room 108
Hayward, CA 94544
Attn: Housing Director

No fee for recording pursuant to
Government Code Section 27383
Officer

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**OCCUPANCY, SHARED APPRECIATION, AND REFINANCING RESTRICTION
AGREEMENT WITH OPTION TO PURCHASE ON DEFAULT**

“Owner”: _____

Property Address (the “Property”):

Original Purchase Price of the Property: _____

County Loan Amount (the “Loan”): _____

This Occupancy, Shared Appreciation, and Refinancing Restriction Agreement (the "Agreement") is dated as of _____, 20__, by and between the County of Alameda, a political subdivision of the State of California (the "County") and Owner.

RECITALS

A. Owner is purchasing the Property, which is more particularly described in Exhibit A attached hereto and incorporated by this reference. Owner is an eligible low or moderate income purchaser, who intends to live in the Property as an owner-occupant, and agrees to maintain the Property as Owner's principal residence.

B. The County is providing the Loan to Owner. The Loan is made available to the Owner through the County’s down payment assistance loan program, also known as the “AC

Boost Program”. The Loan is evidenced by that certain Promissory Note made by Owner for the benefit of the County and dated on even date herewith, in the amount of the Loan (the “Note”) and secured by a Deed of Trust and Security Agreement by Owner for the benefit of County, dated substantially concurrently herewith (the “Deed of Trust”). A copy of the Note and the Borrower Disclosure Statement, signed by Borrower are attached to this Agreement as Exhibits B and C.

C. As described in this Agreement and the Note, payments on the Loan are deferred, but “Shared Appreciation” based on the increased value of the Property is due upon transfer of the Property, if the Loan is prepaid, at the end of the term of the Loan, or in the event of default by Owner. If there is no increase in the value of your Property when the Loan is repaid, you will still owe the outstanding principal amount of your Loan, but Shared Appreciation will not be due at the time of repayment.

D. The County is requiring the Owner to enter into this Agreement in connection with the Loan. This Agreement evidences the Owner’s obligation to occupy and maintain the home. It also memorializes the Owner’s obligation to pay Shared Appreciation pursuant to the Note and places certain refinancing restrictions on the Property.

E. The Loan was made with Proposition A1 bond financing, which is valuable community funding intended to provide affordable homeownership opportunities in Alameda County. To protect and preserve this resource and as a condition to the Loan, it is necessary, proper, and in the public interest for the County to administer the occupancy, financing, and Shared Appreciation controls by means of this Agreement.

F. Owner is borrowing a first mortgage loan in the amount of _____ Dollars (the “First Lender Loan”) from _____ (the “First Lender”). The First Lender Loan is secured by a deed of trust recorded in the Official Records of Alameda County substantially concurrently herewith.

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

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

1. DEFINITIONS

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

- A. "Agreement" - First sentence on page 1
- B. "Appreciation Amount" - The amount calculated by subtracting the original purchase price of the Property, which is set forth on the first page of this Agreement from one of the following amounts, as applicable: (i) in the event of a

sale of the Property at Fair Market Value, the amount received by the Owner as the sales price of the Property, as certified by the Owner under penalty of perjury, or (ii) in the event of a Transfer other than sale of the Property at Fair Market Value, in the event of prepayment, or in the event of a default, the Fair Market Value of the Property; or (iii) in the event a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Property at a creditor's sale of the Property. Owner is responsible for all broker's fees and other closing costs. Such fees and closing costs are not deducted from the calculation of the Appreciation Amount.

- C. "CalHFA" is the California Housing Finance Agency
- D. "County" – First sentence on page 1
- E. "Declaration of Default" – Section 10.C
- F. "Deed of Trust" – Recital B
- G. "Default" – Section 10.A
- H. "Excess Rents" – Section 3.B
- I. "Fair Market Value" - Section 8.A
- J. "First Lender" - Recital F. Any successor to the First Lender must be approved in advance by the County pursuant to Section 9.A below before such successor will be considered a "First Lender" under this Agreement.
- K. "First Lender Deed of Trust" - Recital F
- L. "First Lender Loan" - Recital F
- M. "HUD" is the United States Department of Housing and Urban Development.
- N. "Loan" – the Loan from the County to Borrower as evidenced by the Note, in the amount set forth on the first page of this Agreement.
- O. "Note" – Recital B. A copy of the Note signed by Owner is attached as Exhibit B.
- P. "Permitted Transfer" – Section 5.B
- Q. "Property" – First page of this agreement and more particularly described in Exhibit A.
- R. "Owner" - Page 1
- S. "Permitted Encumbrance Amount" – Section 9.B
- T. "Purchaser" – Section 6.B.1

- U. "Shared Appreciation" – The interest, if any, due on the Loan, equal to the amount resulting from dividing the principal amount of the Loan by the original purchase price of the Property (as set forth on the first page of this Agreement) then multiplying that percentage by the Appreciation Amount.
- V. "Term" – Section 13
- W. "Transfer" - Section 5.A
- X. "VA" is the United States Veterans Administration.

The following exhibits are attached to this Agreement:

- Exhibit A: Legal Description of the Property
- Exhibit B: Copy of Executed Note
- Exhibit C: Copy of Executed Borrower's Disclosure Statement
- Exhibit D: Form of Owner Occupancy Certification

2. OWNER CERTIFICATIONS; OWNER OCCUPANCY REQUIREMENT

The Owner certifies that the financial and other information previously provided in order to qualify to purchase the Property is true and correct as of the date first written above. The Owner further certifies that the Owner has not held an ownership interest in a home during the three (3) year period immediately prior to the date of this Agreement. The Owner shall occupy the Property as the Owner's principal place of residence for the Term of this Agreement. The Owner shall be considered as occupying the Property as the Owner's principal place of residence if the Owner is living in the unit for at least ten (10) months out of each calendar year, maintains a valid homeowner's property tax exemption, and provides reasonably requested documentation to verify occupancy. On or before February 1 of each year, the Owner shall provide the County with an annual certification that the Owner is occupying the Property as his or her principal place of residence and that Owner is maintaining the insurance required under this Agreement, the Note and the Deed of Trust. The form of occupancy certification that the Owner will provide to the County is attached to this Agreement as Exhibit D.

3. RENTAL OR LEASING OF PROPERTY

A. Prohibition on Renting or Leasing the Property. The Owner shall not rent or lease all or any portion of the Property except with the prior express written consent of the County.

B. Payment of Excess Rents. Any lease of all or any portion of the Property in violation of this Agreement is prohibited. The Owner agrees that, in the event the Owner rents or leases all or any portion of the Property in violation of this Section 3, any rents paid to the Owner by the tenant or lessee in ("Excess Rents") shall be due and payable to the County immediately upon receipt thereof by the Owner. Such Excess Rents shall be considered a

recourse debt of the Owner to the County, which the County may collect by legal action against the Owner and/or by foreclosure under the Deed of Trust.

4. MAINTENANCE AND INSURANCE REQUIREMENTS

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

B. Taxes. The Owner shall promptly pay all property taxes due on the Property prior to any delinquency.

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

5. TRANSFER OF THE PROPERTY

A. Transfer. Any Transfer of the Property will be subject to the provisions of this Agreement. "Transfer" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, tenancy in common, a life estate, a leasehold interest (unless approved as provided in Section 3 of this Agreement), an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title, or a deed of trust. Any Transfer without satisfaction of the provisions of this Agreement is prohibited and shall constitute a Default.

B. Permitted Transfers. Notwithstanding Section 5.A, the following forms of Transfer shall be considered a "Permitted Transfer" and shall not constitute a Default, but all such transferees shall continue to be bound by this Agreement:

(1) To a spouse or domestic partner who become a co-owner of the Property and a co-obligor under the Note;

(2) Between spouses or domestic partners as part of a dissolution proceeding or divorce;

(3) To an inter vivos revocable trust in which Owner is the beneficiary;

(4) By operation of law on the death of a joint tenant;

(5) A transfer by devise or inheritance to an existing spouse, child who is low or moderate income as determined by the County in accordance with the AC Boost Program guidelines and policies, or domestic partner of Owner following death of Owner; or

(6) A County approved refinancing of the First Lender Loan in accordance with Section 9.C of this Agreement.

However, Owner shall provide written notice of all Permitted Transfers to the County under Section 5.C, all owners of the Property must occupy the Property as his or her principal place of residence, and all transferees shall affirmatively assume the obligations of Owner under this Agreement, the Note and the Deed of Trust or, at the option of the County enter into a new Occupancy, Shared Appreciation and Refinancing Restriction Agreement in a form that is substantially similar to this Agreement.

If a transfer occurs by devise or inheritance and (1) the heir does not qualify pursuant to Section 5.B(5) and (2) the heir has not repaid the Loan within ninety (90) days following such transfer, the Owner (and its succeeding heir) will be in breach of this Agreement, and the County may declare a Default and pursue the remedies set forth in Section 10 below.

C. Notice of Permitted Transfer. Owner shall provide notice to the County of any transfers described in Section 5.B of this Agreement within thirty (30) days of the date of transfer.

6. SALE OR TRANSFER BY OWNER

A. Transfer Price. Owner may Transfer or sell the Property for no less than the Fair Market Value (as defined below).

B. Notice to County and Required Documentation. At least thirty (30) days prior to the close of escrow for the Transfer of the Property, the Owner shall provide the County with the following documentation:

(1) The name and address of the person to whom Owner proposes to Transfer the Property (the "Purchaser");

(2) The final sales contract, escrow instructions, and all other documents setting forth all the terms of the sale of the Property, including at least (a) the sales price; (b) the price to be paid for the Owner's personal property or services, if any, and any credits, allowances or other consideration, if any; (c) the amount of any real estate commission to be paid, if any; and (d) estimated HUD-1 Settlement Statement;

(3) A copy of the MAI or other qualified appraisal of the Property, subject to the approval of the County;

(4) A written certification from the Owner and the Purchaser under penalty of perjury, in a form approved by the County, that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to the County, and that neither the Purchaser nor any other person has paid or will pay to the Owner money or any other consideration in addition to the consideration included in the sales contract and documents submitted to the County. The written certification shall also include a provision stating that, in the event false or misleading statements are made in any documents or the certification submitted to the County, the Owner and the Purchaser recognize that the County shall have the right to file an action at law or in equity as may be appropriate;

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

C. Final HUD-1 Settlement Statement. Upon the close of escrow, the Owner shall provide the County with a copy of the final HUD-1 Settlement Statement showing the purchase price paid for the Property and all other payments from escrow.

7. REPAYMENT OF NOTE

A. Repayment in Full. All outstanding principal and interest due under the Note, including the Shared Appreciation, shall be immediately due and payable to the County pursuant to the Note which requires repayment in full on:

(1) The date of the Transfer of the Property, other than a Permitted Transfer in accordance with Section 5.B and Section 5.C of this Agreement;

(2) Upon the County's declaration of a Default by the Owner under this Agreement, the Note, or the Deed of Trust;

(3) If the Owner fails to occupy the Property as the Owner's principal residence in accordance with Section 2 above;

(4) In the event of a refinance of the First Lender Loan that is not consented to by the County pursuant to Section 9;

(5) At the end of the Term of the Note.

Upon Borrower's payment of all amounts owed under the Note, the County and Borrower will release this Agreement from title.

B. Prepayment. As more particularly set forth in the Note, Owner may prepay all or part of the balance due under this Note; provided however, any prepayment, including a partial prepayment, must include Shared Appreciation due at the time of prepayment. The amount of Shared Appreciation due upon prepayment shall be determined at the time of any partial or full prepayment based on the Fair Market Value of the Property. In the event Owner prepays all or any portion of the Note, the amount of Shared Appreciation due upon prepayment shall be determined at the time of prepayment and allocated between Shared Appreciation and principal in the same proportion as the ratio of each to the total amount due. Following a prepayment, the percentage of Shared Appreciation due on the Loan shall be recalculated to reflect the pay down in principal owed under the Note. The recalculated Shared Appreciation shall equal the outstanding principal amount of the Note divided by the original purchase price of the Property. The prepayment and recalculated Shared Appreciation shall be documented by the parties through an addendum to this Agreement that is recorded against title to the Property.

8. DETERMINATION OF FAIR MARKET VALUE

A. The unrestricted market price of the Property without taking this Agreement into account shall be the "Fair Market Value" of the Property.

B. If it is necessary to determine the Fair Market Value of the Property, it shall be determined by a certified MAI or other qualified real estate appraiser approved in advance by the County. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. The cost of the appraisal shall be the Owner's responsibility, unless the appraisal is obtained from a Purchaser.

C. Nothing in this Section shall preclude the Owner and the County from establishing the Fair Market Value of the Property by mutual agreement in lieu of an appraisal.

9. REFINANCE OF FIRST LENDER LOAN; NEW SUBORDINATE LOANS

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

B. Permitted Encumbrance Amount. The "Permitted Encumbrance Amount", is defined as the then outstanding balance of the original First Lender Loan plus refinance and closing costs.

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

(1) The County has approved the proposed new first loan and related documents in accordance with Section 9.A.

(2) Following such refinance, the principal amount of all debt secured by the Property does not exceed the Permitted Encumbrance Amount (no "cash out");

(3) The new First Lender Loan is a fully amortized fixed rate loan, is fully documented, has a term not exceeding thirty (30) years, requires no balloon payments, and otherwise meets the guidelines and requirements of the AC Boost Program; and

(4) The lender making the new First Lender Loan is a bank, credit union, or savings and loan association approved in advance by the County.

First Lender Loans with negative amortization are not permitted under the AC Boost Program. Any first mortgage loan or first mortgage lender other than the First Lender Loan and First Lender identified in Recital F of this Agreement must be approved by the County, and comply with the terms and of this Agreement before such first mortgage loan or first mortgage lender will be considered a "First Lender" or "First Lender Loan" under this Agreement.

D. Subordinate Loans. New subordinate loans, including equity lines of credit, are not permitted except as expressly approved by the County in writing.

E. Request for Notice of Default. As a condition for subordination of the Deed of Trust or approval of a subordinate loan, a request for notice of default and notice of sale

regarding the refinanced First Lender Loan or subordinate loan shall be recorded in the Office of the Recorder of the County of Alameda for the benefit of the County.

F. Purpose of Restrictions. The requirements of this Section are necessary to ensure the continued affordability of the Property to Owner, to preserve County housing funds for low and moderate income households, and to minimize the risk of loss of the Property by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section shall constitute a Default under this Agreement.

10. DEFAULTS

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

- (1) The County determines that the Owner has made a misrepresentation to obtain the benefits of purchase of the Property or in connection with its obligations under this Agreement;
- (2) The Owner fails to owner occupy the Property, as required by Section 2 above;
- (3) The Owner rents or leases the Property, not in compliance with Section 3 above;
- (4) The Owner otherwise Transfers, or attempts to Transfer, the Property in violation of this Agreement;
- (5) The Owner fails to provide information to the County necessary to determine Owner's compliance with the requirements of this Agreement, subject to the cure periods set forth in Section 10.C.
- (6) Judicial foreclosure proceedings are commenced regarding the Property;
- (7) A notice of default is issued under any financing secured by the Property, or the County receives any other notice of default as provided in Civil Code Section 2924b, or the Owner is in default on any other financing secured by the Property.
- (8) A notice of default is issued under any covenant or other agreement recorded against the Property.
- (9) The Owner executes any deed in lieu of foreclosure transferring ownership of the Property;
- (10) A lien is recorded against the Property other than the lien of the First Lender Loan, the County Loan, or a loan approved by the County as provided in Section 9.D; or
- (11) The Owner otherwise fails to comply with the requirements of this Agreement, the Note, or the Deed of Trust, subject to the cure periods set forth in Section 10.C.

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

- (1) Declare all sums due under the Note immediately due and payable without further demand;
- (2) Invoke the power of sale under the Deed of Trust;
- (3) Exercise the Option to Purchase on Default described in Section 10.E.
- (4) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate; and
- (5) Declare a Default under the Note and Deed of Trust and pursue all County remedies under the Deed of Trust.

C. Notice and Cure.

(1) The County may give written notice to the Owner specifying the nature of any violation. If the violation is not corrected to the satisfaction of County within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, the County may declare a Default under this Agreement by written notice to Owner ("Declaration of Default"). However, if the Owner is in default under Sections 10.A (1) through (4) or (6) through (10), the County may send a Declaration of Default without providing an opportunity to cure and may exercise its remedies upon Default as provided in this Section.

(2) The County shall notify the First Lender in the manner set forth in Section 21 of this Agreement if the County has sent a Declaration of Default under this Agreement or declared a Default under the Note or the Deed of Trust.

D. Recordation of Requests for Notice. Requests for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Property may be recorded by the County in the Office of the Recorder of the County of Alameda for the benefit of the County.

E. Purchase Option Upon Default. Notwithstanding, and in addition to, the remedies provided the County in Section 10.B, the Owner hereby grants to the County or its assignee the option to purchase the Property effective upon the declaration of a default by the County pursuant to Section 10.A and B above, and subject to notice and cure rights set forth in Section 10.C.

(1) This option to purchase is referred to in this Agreement as the "County Option to Purchase Upon Default" and is given in consideration of the economic benefits received by the Owner resulting from Owner's participation in the AC Boost Down Payment Assistance Program.

(2) The County Purchase Option Upon Default may be exercised upon a default under this Agreement or upon default under any promissory note, deed of trust or any other lien, including a judgment lien, recorded against the Property. The County shall have thirty (30) days after a default is declared by the County to notify the Owner and the First Lender of its decision to exercise its option to purchase. Not later than ninety (90) days after the notice is given by the County to the Owner of the County's intent to exercise its option, the County or its designee shall purchase the Property for its Fair Market Value and title shall be delivered by the Owner to the County by grant deed, free and clear of any mortgage or other liens, unless approved in writing by the County. In the event of exercise of the County Purchase Option upon Default and purchase of the Property by the County or its assignee, the Owner shall permit a final walk-through of the Property by the County or its assignee in the final three (3) days prior to close of escrow on the Transfer. The County may assign its rights to purchase the Property under this Section 10.

11. INDEMNITY

Owner agrees to defend, indemnify, and hold the County and its officers, employees, agents, and/or board members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys' fees that the County may incur as a direct or indirect consequence of: (1) Owner's Default, performance, or failure to perform any obligations as and when required by this Agreement or the Deed of Trust; or (2) the failure at any time of any of Owner's representations to the County to be true and correct.

12. TERM OF AGREEMENT

All the provisions of this Agreement, including the benefits and burdens, run with the Property and this Agreement shall bind, and the benefit hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the County and its successors until such time as the Owner has paid to County all principal and interest due under the Note, including but not limited to the payment of all Shared Appreciation (the "Term").

13. SUPERIORITY OF AGREEMENT

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

14. SUBORDINATION

Notwithstanding any other provision herein, the provisions of this Agreement and the Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the Deed of Trust shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter;

provided, however, if the holder of such First Lender Deed of Trust acquires title to the Property pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the Deed of Trust shall automatically terminate upon such acquisition of title, only if (i) the County has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period (which requirement shall be satisfied by recordation of a notice of default under California Civil Code Section 2924) and (ii) the County shall not have cured the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender.

15. NONDISCRIMINATION

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

16. RIGHTS OF HUD, CALHFA AND VA

Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of HUD, CalHFA, or the VA under the First Lender Deed of Trust insured by HUD, held by CalHFA, or guaranteed by the VA and utilized to purchase the Property or recorded against the Property in compliance with Section 9 above. Notwithstanding any other provision in this Agreement to the contrary, all of the provisions of this Agreement shall terminate and have no further force and effect as to the Home or any transferee if the title is acquired by HUD, CalHFA, or the VA, or another party upon foreclosure of a deed of trust securing a loan insured by HUD, held by CalHFA, or guaranteed by the VA.

17. INVALID PROVISIONS

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18. CONTROLLING LAW

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

19. NO WAIVER

No delay or omission in the exercise of any right or remedy of the County upon any default by Owner shall impair such right or remedy or be construed as a waiver. The County's

failure to insist in any one or more instance upon the strict observance of the terms of this Agreement shall not be considered a waiver of the County's right thereafter to enforce the provisions of the Agreement. The County shall not waive its rights to enforce any provision of this Agreement unless it does so in writing, signed by an authorized agent of the respective party.

20. NOTICES

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

To the Owner:

At the address of the Property.

To the County:

Housing and Community Development Department
224 W. Winton Avenue, Room 108
Hayward, CA 94544
Attn: Housing Director

To the First Lender:

[To be inserted]

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

21. COVENANTS RUNNING WITH THE LAND

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

B. The Owner and the County hereby declare their understanding and intent that: (i) the covenants and restrictions contained in this Agreement shall be construed as covenants running with the land as provided in California Civil Code Section 1468 and not as conditions which might result in forfeiture of title by Owner; (ii) the burden of the covenants and

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

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

22. ENTRY BY THE COUNTY.

Owner grants to the County and its duly authorized representatives the right to enter the Property at reasonable times and in a reasonable manner for purposes of inspecting the Property to determine compliance with the Note, the Shared Appreciation Agreement, and the Deed of Trust.

23. OWNER'S ACKNOWLEDGEMENT OF SHARED APPRECIATION

Owner acknowledges and agrees that:

A. This Agreement places certain restrictions and limits the price for which Owner may sell the Property. Owner may not enjoy the same economic or other benefits from owning the Property that Owner would enjoy if this Agreement did not exist.

B. Absent the provisions of this Agreement, the Property could not be made available to eligible purchasers, such as the Owner, at an affordable price.

C. Owner understands all of the provisions of this Agreement. Owner agrees to the provisions of this Agreement with the understanding that this Agreement will remain in full force and effect as to the Property throughout the Term of this Agreement.

D. OWNER UNDERSTANDS THAT THE DETERMINATION OF THE FAIR MARKET VALUE OF THE PROPERTY CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER AND THAT THE OWNERS SHARE OF THE SALES PRICE MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR PROPERTY WHICH IS NOT ENCUMBERED BY THIS AGREEMENT.

Initialed by Owner(s)

24. Administrator.

The County may engage one or more third party entities to administer and facilitate this Agreement and the County Loan. The County will provide the Owner with written notice of any such administrator, or change thereto.

[Signatures Follow on Subsequent Page]

TEMPLATE

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

COUNTY:

COUNTY OF ALAMEDA, a political subdivision of the State of California

By: _____
Michelle Starratt
Director
Housing and Community Development Department

OWNER:

By: _____

Name: _____

By: _____

Name: _____

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

STATE OF CALIFORNIA)

COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Name: _____
Notary Public

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

STATE OF CALIFORNIA)

COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A

Legal Description of the Property

TEMPLATE

Exhibit B
Promissory Note

TEMPLATE

Exhibit C
Borrower's Disclosure Statement

TEMPLATE

Exhibit D

Form of Owner Occupancy Certification

To: County of Alameda ("County")

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

Address of Home: _____ ("Property")

Date: _____

By signature below, I/we _____ **[insert name or names of Owner]** hereby certify to the County under penalty of perjury that I/we occupy the home located at _____ **[insert address]** (the "Home") as my/our principal place of residence and that I/we have occupied the Home for _____ () **[insert number]** months of the calendar year _____ **[insert previous calendar year]**. I/we further certify that we are not and have not rented all or any portion of our home to another person or entity. Attached to this letter is a copy of _____ **[insert utility bill or driver's license]** showing my place of residence. Also attached to this certification is evidence of the property insurance for my Home required by Section 5 of the County's Deed of Trust and Security Agreement and Section 4 C of the Occupancy, Shared Appreciation, and Refinancing Restriction Agreement with Option to Purchase on Default between me/us and the County.

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

By: _____
Owner **[type name]**

By: _____
Owner **[type name]**

Due Date: February 1 of each calendar year.

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

Attach evidence of property insurance for the Home.

TEMPLATE