

Recording Requested by
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City of San Luis Obispo
Community Development Department
919 Palm Street
San Luis Obispo, CA 93401-3249

**Recorded for the Benefit of the
City of San Luis Obispo at No Fee Under
Section 27383 of the Government Code**

OCCUPANCY, USE, REFINANCING, AND SHARED EQUITY AGREEMENT

SHARED EQUITY PROGRAM

Owner: _____

Property Address: _____

Affordable Price: _____

Initial Appraised Value: _____

Below Market Benefit: _____

This Occupancy, Use, Refinancing, and Shared Equity Agreement (the "Agreement") is entered into by and between the City of San Luis Obispo, a charter city and municipal corporation (the "City"), and _____ (the "Owner").

RECITALS

A. To increase homeownership opportunities available and affordable to very low, low, moderate, and workforce-income households, the City established the Shared Equity Purchase Program within Chapter 17.138 of the San Luis Obispo Municipal Code, Inclusionary Housing (the "Shared Equity Program").

B. Owner intends to purchase the property located at _____ in the City of San Luis Obispo, County of San Luis Obispo, State of California, as more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"). The Shared Equity Program has enabled the Owner to purchase a home at a price which is affordable to **[very low, low, moderate, or workforce income]**

households (the "Affordable Price"). The Affordable Price is lower than the unrestricted Fair Market Value of the Property (the "Initial Appraised Value").

C. The difference between the Affordable Price and the Initial Appraised Value is the "Below Market Benefit." The Below Market Benefit is evidenced by a promissory note in the amount of the Below Market Benefit (the "City Note"). The City Note also evidences certain other payments and obligations of the Owner in consideration for the Below Market Benefit, including the obligation of Owner to pay the City as contingent interest a share of any appreciation in the Fair Market Value of the Property (the "Equity Share"). The City Note is secured by a Deed of Trust on the Property (the "City Deed of Trust").

D. To ensure compliance with the Shared Equity Program, the Owner is required by the City or the City's designee to execute this Agreement as a condition to Owner's purchase of the Property. The Owner has agreed to execute and comply with this Agreement in consideration of the Owner's purchase of the Property at the Affordable Price. This Agreement ensures that the terms of the City Note and City Deed of Trust are complied with and that certain other provisions of the Shared Equity Program are complied with.

E. Owner has obtained a first mortgage loan in the amount of _____ Dollars (\$_____) (the "First Mortgage Loan") from _____ (the "First Lender"). The First Mortgage Loan is secured by a deed of trust dated _____, 20__, executed by Owner in favor of First Lender, recorded in the Official Records of the County of San Luis Obispo concurrently with this Agreement (the "First Mortgage Deed of Trust"). Owner may only use the proceeds of the First Mortgage Loan to acquire a fee interest in the Property. This Agreement and the City Deed of Trust will be subordinate only to the lien of the First Mortgage Deed of Trust.

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

AGREEMENT

The Recitals are incorporated by reference and made part of this Agreement. The following exhibit is attached to this Agreement:

- (1) Exhibit A: Legal Description of the Property
- (2) Exhibit B: Notice of Intent to Transfer
- (3) Exhibit C: Owner's Acknowledgment

1. OWNER CERTIFICATIONS; OWNER OCCUPANCY REQUIREMENT; RENTAL OF PROPERTY NOT PERMITTED

A. The Owner certifies that the financial and other information previously provided to qualify to purchase the Property is true and correct as of the Effective Date.

B. The Owner shall occupy the Property as the Owner's sole principal place of residence.

C. The Owner shall not rent or lease the Property to another party. The Owner shall not allow the Property to remain vacant other than as necessary to repair the Property from time to time.

D. Any lease or rental of the Property in violation of this Agreement is prohibited and shall be conclusive evidence that the Owner is not occupying the Property as the Owner's principal place of residence. In the event the Owner leases or rents the Property to a third party in violation of this Section 1, any rents received by the Owner ("Excess Rents") shall be due and payable to the City immediately upon receipt by the Owner. Such Excess Rents shall be considered a recourse debt of the Owner to the City, which the City may collect by legal action against the Owner and/or by foreclosure under the Deed of Trust.

2. MAINTENANCE AND INSURANCE REQUIREMENTS; NO NUISANCE

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

B. The Owner shall not permit any condition to exist on the Property that is defined as a nuisance by the San Luis Obispo Municipal Code, nor shall the Owner permit the Property to be used for the commission of any misdemeanor or felony.

C. 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 City), naming the City as an additional insured. Additional insurance requirements are set forth in the Deed of Trust.

3. 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, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title. Any Transfer that does not satisfy the provisions of this Agreement is prohibited.

B. Permitted Transfer. Notwithstanding Section 3A, the following shall not be considered a Transfer for the purposes of this Agreement, but all such transferees shall

continue to be bound by the requirements of this Agreement: (i) a good faith transfer by an Owner to a spouse or Domestic Partner where the spouse or Domestic Partner becomes the co-owner of the Property; (ii) a transfer between spouses as part of a dissolution proceeding, or between Domestic Partners as part of the dissolution of a domestic partnership; (iii) a transfer by Owner into an inter vivos trust in which Owner is the beneficiary; (iv) a transfer by devise or inheritance to an existing spouse, child, or Domestic Partner of Owner following death of Owner; (v) a transfer by devise, inheritance, or operation of law on the death of a joint tenant; or (vi) refinance of the First Mortgage Loan in accordance with Section 10 of this Agreement. For purposes of this Section 3, "Domestic Partner" shall be as defined in Section 297 of the California Family Code or successor provision. An individual shall be considered a Domestic Partner of Owner upon presentation of the Declaration of Domestic Partnership filed with the California Secretary of State.

C. Notice of Permitted Transfer. Owner shall provide notice to the City of any permitted transfers described in Section 3B of this Agreement no later than fifteen (15) days before the transfer occurs, except where the transfer is by devise, inheritance, or operation of law after death of the Owner, in which event notice shall be provided within thirty (30) days of the date of transfer.

D. Grant of Option to Purchase; Assignment of Option by City. In consideration of the economic benefits received by the Owner resulting from purchase and ownership of the Property, Owner hereby grants and gives to the City an option to purchase the Property (the "Option") for the Maximum Resale Price upon the occurrence of any of the events specified in subsection G. The purpose of the Option is to ensure that the Property continues to provide affordable housing as intended by the City's Inclusionary Housing Ordinance and to avoid speculation or excess profits on the Property by the Owner, lenders, or others. The City may assign all rights granted by the Option to another public agency or a nonprofit corporation selected by the City (any of which is a "City Designated Buyer"). The City's assignment of its Option rights shall not extend any time limits with respect to the exercise of the Option or the purchase of the Property.

E. Option Transaction Fee. If the City exercises the Option and purchases the property, the Owner shall pay the City a transaction fee equal to two percent (2%) of the Maximum Resale Price (the "Transaction Fee"). If the City assigns its Option rights to a City Designated Buyer, the Transaction Fee shall be payable in equal shares by the Owner and the City Designated Buyer.

F. Limited Exercise of Option. The City acknowledges and agrees that the Option shall only be exercised by the City or a City Designated Buyer for the purpose of retaining the Property as an affordable housing unit (the "Below Market Rate Housing Unit") and that the Property may only be resold by the City or a City Designated Buyer as a Below Market Rate (BMR) housing unit in compliance with the City's Inclusionary Housing Ordinance and/or other BMR housing programs.

G. The City shall have the right to exercise its Option if either of the following events occurs (an "Option Event"):

(1) The City receives a Notice of Intent to Transfer as set forth in Section 4A;
or

(2) A Default occurs as defined in Section 11 of this Agreement.

If the City receives a Notice of Intent to Transfer as set forth in Section 4A, or if a Default occurs as defined in Section 11, the City may exercise its Option pursuant to the procedures in Section 6 of this Agreement.

4. TRANSFER OF PROPERTY BY OWNER

A. If the Owner intends to Transfer the Property other than as a Permitted Transfer, the Owner shall promptly give the City written notice of such intent (the "Notice of Intent to Transfer") in the form shown in the attached Exhibit B. The Notice of Intent to Transfer shall be sent to the City by certified mail, return receipt requested, at the address provided in Section 16 of this Agreement. The Notice of Intent to Transfer shall include the information necessary for the City to determine the Indexed Price of the Property, including the following information:

(1) the address of the Property;

(2) the date of purchase of the Property by the Owner;

(3) the date on which Owner intends to vacate the Property; and

(4) the name and phone number of the person to contact to schedule inspection of the Property by the City.

The Owner should not contract with a real estate broker to sell the Property until the Owner has received the City Response Notice pursuant to subsection C below, as the services of a broker will not be required if the City exercises its Option to purchase the Property.

B. Following delivery to the City of the Notice of Intent to Transfer, the Owner shall prepare the Property for sale, as follows:

(1) within thirty (30) days of delivery of the Notice of Intent to Transfer, the Owner shall obtain and deliver to the City a current written report of a licensed structural pest control operator's inspection of the Property;

(2) within thirty (30) days of the date of the Owner's Notice of Intent to Transfer, the Owner shall allow the City, or its designee, to inspect the Property to determine its physical condition, and, if requested by the City following such inspection, the Owner shall obtain and deliver to the City a home inspection report prepared by a licensed home inspector. The City or City Designated Buyer shall pay for the cost of inspection;

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

(4) in the event of the exercise of the Option by the City or the City Designated Buyer, the Owner shall permit a final walk-through of the Property by the City or City Designated Buyer in the final three (3) days prior to close of escrow on the Transfer.

C. City shall respond in writing (the "City Response Notice") by certified mail, return receipt requested, within thirty (30) days of City receipt of a complete Notice of Intent to Transfer that includes all information required under subsection A above, including City receipt of the pest control report required pursuant to subsection B above. The City Response Notice shall inform the Owner of the City's election to proceed under one of the following two alternatives:

(1) City Decision to Exercise Option. The City Response Notice may notify the Owner that the City elects to exercise the Option to purchase the Property or to assign its rights under the Option to a City Designated Buyer. The City Response Notice shall include the City's calculation of the (i) Maximum Resale Price to be paid by the City (or the City Designated Buyer) and (ii) the Transaction Fee to be paid by the Owner pursuant to Section 3E above. The City may choose to assign its rights under the Option to a City Designated Buyer at any time after the City exercises the Option but before the close of escrow.

(2) Owner Sale to a BMR Purchaser. The City Response Notice may notify the Owner that the City will not exercise the Option to purchase the Property or to assign its right, and that the Owner may proceed to sell the Property to a BMR Purchaser pursuant to Section 7 at a price not to exceed the Maximum Resale Price. In this event, the City Response Notice shall include: (i) the maximum qualifying income for a BMR Purchaser; (ii) the certifications required of a BMR Purchaser; and (iii) the Maximum Resale Price the Owner may receive for the Property.

(3) Owner Sale to a Proposed Purchaser. Alternatively, the City Response Notice may notify the Owner that the City will not exercise the Option to purchase the Property or to assign its right, and that the Owner may proceed to sell the Property to a Proposed Purchaser pursuant to Section 8.

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

5. DETERMINATION OF MAXIMUM RESALE PRICE

A. If the City exercises the Option, or if Owner sells to a BMR Purchaser, the "Maximum Resale Price" that the Owner shall receive from the City or City Designated Buyer shall be the LESSER of the Indexed Price or the Fair Market Value of the Property.

B. Indexed Price.

(1) The "Indexed Price" of the Property means the Affordable Price as set forth on page 1 of this Agreement, increased by the percentage of increase in the Area Median Income from the date of the original purchase of the Property by the Owner to the date of receipt by the City of the Notice of Intent to Transfer, and adjusted pursuant to subsection (2) below to reflect the value of capital improvements and the cost of Deferred Maintenance, if any. "Area Median Income" shall refer to the median yearly income, adjusted for a household size of 4 in San Luis Obispo County, as published by the California Department of Housing and Community Development ("HCD"). In the event such income determination is no longer published by HCD, or has not been updated for a period of at least eighteen (18) months, or if the method of calculation by HCD is substantially changed, the City may use any other reasonable method to determine the Area Median Income in San Luis Obispo County. As of the date of Owner's purchase of the Property, the Area Median Income for a household of 4 persons is \$_____.

(2) The Indexed Price shall include an upward adjustment of the costs of capital improvements by the Owner, reduced by the amount of any Deferred Maintenance. "Deferred Maintenance" includes the amount necessary to repair any violations of applicable building, plumbing, electric, fire or housing codes or any other provisions of the City of San Luis Obispo Building Code, as well as any other repairs needed to put the Property into a "sellable condition" (collectively "Deferred Maintenance"). Items necessary to put the Property into sellable condition shall be determined by the City, and may include cleaning, painting, and making needed structural, mechanical, electrical, plumbing, fixed appliance repairs, pest control repairs, and other deferred maintenance repairs. The amount of the downward adjustment for Deferred Maintenance shall be based on a pest control report, inspection report, or other reasonable estimate of repair costs. The downward adjustment for Deferred Maintenance shall be reduced by the cost of any repairs completed by the Owner by no later than two (2) weeks before the close of escrow.

C. Fair Market Value. In certain circumstances it may be necessary to determine the fair market value of the Property without taking account the resale restrictions imposed by this Agreement (the "Fair Market Value"). These circumstances include: (1) where the parties wish to determine if the Indexed Price exceeds the Fair Market Value; or (2) where the Owner Transfers the Property to a non-BMR Purchaser at an unrestricted price pursuant to Section 8, and the City desires to confirm that the sales price is at or near Fair Market Value. Fair Market Value shall be as determined by a certified MAI or other qualified real estate appraiser approved in advance by the City. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. The cost of the appraisal shall be paid by the Owner, unless the appraisal is obtained from a new purchaser. Nothing in this Section shall preclude the Owner and the City from establishing the Fair Market Value of the Property by mutual agreement, based on sales of comparable properties, in lieu of an appraisal.

6. EXERCISE OF CITY OPTION

A. Escrow. If the City Response Notice states that the City will exercise the Option, the City or the City Designated Buyer shall open an escrow account for the purchase of the Property. Close of escrow shall take place on the date which is the later to occur of the following: (a) ninety (90) days after the Owner Acknowledgment has been delivered by Owner to City, or (b) ten (10) days after Owner has done all acts and executed all documents required for close of escrow.

B. Deposit of Funds into Escrow. Prior to the close of escrow, the City or the City Designated Buyer shall ensure that funds are deposited to pay the Maximum Resale Price of the Property. All Advances previously paid by the City shall be repaid from escrow. "Advances" include any payment by the City of costs including, but not limited to, principal, interest, taxes, assessments, insurance premiums, homeowners' fees, and associated late fees, costs, interest, attorneys' fees, pest inspections, resale inspections, and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent. Closing costs and title insurance shall be paid by City or the City Designated Buyer and by the Owner pursuant to the custom and practice in the County of San Luis Obispo at the time of the opening of escrow, or as may be provided otherwise by mutual agreement. Owner agrees to do all acts and execute all documents necessary to enable the close of escrow and Transfer of the Property to the City or its City Designated Buyer.

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

7. SALE BY OWNER TO BMR PURCHASER IF CITY DOES NOT EXERCISE OPTION TO PURCHASE

A. In the event the City does not exercise the Option to purchase the Property, the Owner may proceed to sell the Property in compliance with the following:

(1) Marketing. The Owner may sell the Property to a BMR Purchaser, including listing the Property on the Multiple Listing Service, keeping the Property in an orderly condition, making the Property available to show to agents and prospective buyers, and providing prospective buyers with the requirements for BMR Purchasers, including income limits and the City's form of disclosure statement summarizing this Agreement, the City Note, and the City Deed of Trust. In order to maintain compliance with the City's Below Market Rate Housing Program and reporting requirements, the Owner shall utilize the services of the City's Below Market Rate (BMR) Administrator. The Administrator's services include but are not limited to marketing of available unit(s), eligibility screening, and selection of applicants through an opportunity drawing. Utilization of these services may subject Owner to additional fees.

(2) BMR Purchaser. A prospective buyer shall qualify as an "BMR Purchaser" by meeting all of the following requirements, as determined by the City or its designee:

i. Income Eligibility. The combined maximum income for all household members shall not exceed the income level designated by the City's Below Market Rate Housing Standards.

ii. Intent to Owner Occupy. The prospective buyer shall certify that they will occupy the Property as their principal place of residence throughout the Term. Co-signers are not required to occupy the Property.

iii. Willingness to Sign City Agreements. The prospective buyer shall agree to sign a resale restriction agreement similar in scope to this Agreement, promissory note and deed of trust restricting future resale of the Property and shall agree to cooperate fully with the City in promptly providing all information requested by the City to verify the prospective buyer's eligibility.

B. BMR Maximum Resale Price. The purchase price for the sale of the Property by the Owner to the BMR Purchaser shall not exceed the sales price identified in the City's Below Market Rate Housing Guidelines for the specific income threshold of the property. The closing costs paid by the BMR Purchaser shall not exceed reasonable customary buyer's closing costs in the County of San Luis Obispo.

C. Disclosure and Submittals. The Owner and the BMR Purchaser shall provide the following information and documents to the City or its designee.

(1) The name, address and telephone number of the BMR Purchaser.

(2) A signed financial statement of the BMR Purchaser in a form acceptable to the City and any other supporting documentation requested by the City, or its designee. The financial information shall be used by the City to determine the income eligibility of the BMR Purchaser.

(3) The proposed sales contract and all other related 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 by the BMR Purchaser for the Owner's personal property or services, if any; and (c) any credits, allowances or other consideration.

(4) A written certification, from the Owner and the BMR Purchaser under penalty of perjury in a form acceptable to the City, that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the BMR Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the BMR Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also provide that, in the event a Transfer is made in violation of the terms of this Agreement or false or

misleading statements are made in any documents or certification submitted to the City, the City shall have the right to exercise its Option or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the BMR Purchaser for the return of any monies paid or received in violation of this Agreement or for any of the Owner's and/or the BMR Purchaser's costs and legal expenses, shall be borne by the Owner and/or the BMR Purchaser, and they shall hold the City harmless and reimburse the City's expenses, legal fees and costs for any action that City reasonably takes in good faith to enforce the term of this Agreement.

(5) An executed City disclosure statement signed by the BMR Purchaser and a statement that the BMR Purchaser is willing to sign the City's resale agreement in a form similar to this Agreement, promissory note, and deed of trust. The recordation of the new deed of trust and buyer's resale agreement signed by the BMR Purchaser shall be a condition of the City's approval of the proposed sale.

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

D. Upon the close of escrow, the Owner shall provide the City with a copy of the HUD-1 Settlement Statement showing the purchase price paid for the Property and all other payments from escrow, certified copies of the recorded City Deed of Trust and Resale Agreement, a copy of the final sales contract, and any other documents that the City may reasonably request.

8. PAYMENT OF PRINCIPAL AND INTEREST UPON TRANSFER TO A NON-BMR PURCHASER OR DEFAULT

A. All outstanding principal and interest due under the City Note shall be immediately due and payable to the City upon the earliest of the following:

(1) The date of the Transfer of the Property to a non-BMR Purchaser;

(2) Upon the City declaration of a Default by the Owner under this Agreement, the City Note, or the Deed of Trust.

B. Interest.

(1) Upon Transfer to a Non-BMR Purchaser "Purchaser" or a Default, the Borrower shall pay the City contingent interest equal to the Shared Equity Percentage (as defined below) of the Net Proceeds of Appreciation ("Equity Share") which may also include an Equity Recapture Fee (ERF) if the Property is Transferred less than seven (7) years after purchase. The Shared Equity Percentage is calculated as a decimal percentage equaling the difference between the property's market value at purchase and the actual price paid by the homeowner at purchase, divided by the market value at purchase. The ERF is calculated as a percentage of the Net Proceeds of Appreciation, as defined below, the percentage being determined as set forth in the table below.

YEARS OWNED	EQUITY RECAPTURE FEE PERCENTAGE*
0-3	100%
4	75%
5	50%
6	25%
7 or more	0%
*Equity Recapture Fee Percentage combined with the Equity Share amount shall not exceed 100%.	

(2) The "Net Proceeds of Appreciation" are equal to the Resale Price for the Property, as defined below, minus (1) the property's market value at time of Transfer; and (2) brokerage commissions not exceeding six percent (6%) of the Resale Price and reasonable closing costs, as evidenced by a HUD-1 or similar settlement statement and other documents provided to the City and certified by the Borrower and Purchaser under penalty of perjury. The Net Proceeds of Appreciation cannot be less than zero.

(3) "Resale Price" means either: (a) the purchase price paid to Owner by the Purchaser upon a Transfer of the Property; (b) 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, or (c) if the purchase price paid to Owner is less than ninety-five percent (95%) of the Fair Market Value of the Property, as determined under Section 5C of this Agreement, the City in its sole and absolute discretion may determine the Resale Price to be the Fair Market Value of the Property, unless Owner provides sufficient information to the City to justify any reduction in the Resale Price. The City's determination shall be final and non-appealable.

C. Repayments.

(1) Payments. Borrower shall pay to City the Below Market Benefit, the Equity Share, and the Equity Recapture Fee, if any, (the "Repayment Amount") upon the earlier of the following: (1) on the date any Transfer to a Purchaser is made; or (2) in the event of a Default by the Borrower.

(2) The Repayment Amount shall be calculated as follows: If the Property is Transferred pursuant to this Section seven (7) years or more after the date of the City Note, the Repayment Amount is equal to the sum of the Below Market Benefit plus the Equity Share. If the Property is Transferred pursuant to this Section less than seven (7) years after the date of the City Note, the Repayment Amount is equal to the sum of the Below Market Benefit, the Equity Share, and the Equity Recapture fee, if any.

9. TERM OF AGREEMENT

A. Term. All the provisions of this Agreement, including the benefits and burdens, run with the Property and this Agreement shall bind, and the benefits shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the City and its successors, until the earlier of (i) forty-five (45) years from the Effective Date of this Agreement or (ii) the date of Transfer of the Property to a Purchaser and payment of all amounts due pursuant to the terms of the City Note (the "Term").

B. Release of Agreement. If this Agreement shall terminate in accordance with the Term, upon request by Owner, the City shall record in the Office of the Recorder of San Luis Obispo County a Release of this Agreement, which shall declare that the provisions of this Agreement are no longer applicable to the Property.

10. REFINANCE OF FIRST LENDER LOAN; SUBORDINATE LOANS

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

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

(1) Following such refinance, the principal amount of all debt secured by the Property, including the principal and interest on the City Note, will not exceed the greater of: (i) ninety percent (90%) of the Fair Market Value of the Property, or (ii) the remaining balance of the original First Mortgage Loan;

(2) The refinanced First Mortgage Loan is a fully amortized fixed rate loan, is fully documented, has a term not exceeding thirty (30) years, and requires no balloon payments;

(3) If the existing balance of the original First Mortgage Loan plus the principal and accrued interest on the City Note exceeds ninety percent (90%) of the Fair Market Value of the Property, then the refinanced First Mortgage Loan must reduce the Owner's principal and interest payments on the First Mortgage Loan;

(4) The proceeds of the refinanced First Mortgage Loan may only be used to pay off the First Mortgage Loan, to pay closing costs, and to pay for home improvements. Evidence of issued building permits and contractors' estimates for the home improvements must be submitted to the City prior to the subordination of this Agreement and the Deed of Trust;

(5) The total new housing cost to the Owner after the refinance must not exceed the Owner's ability to pay; and

(6) The Owner must not be in Default on this Agreement, the City Note, or the Deed of Trust.

C. Junior Loan and Equity Lines of Credit. Subordinate loans, including second or junior loans and equity lines of credit, are not permitted. Any subordinate loan encumbering the Property constitutes a Default, and all sums owed under the City Note shall be immediately due and payable to the City.

D. Request for Notice of Default. As a condition for subordination of this Agreement and the Deed of Trust, a request for notice of default regarding the refinanced First Mortgage Loan shall be recorded in the Office of the Recorder of the County of San Luis Obispo for the benefit of the City.

E. Purpose of Restrictions on Refinance and Junior Loans. The City and the Owner agree that the requirements of this Section 10 are necessary to ensure the continued affordability of the Property to Owner and to minimize the risk of loss of the Property by Owner through default and foreclosure of mortgage loans.

11. DEFAULTS

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

(1) The Owner fails to comply with any other requirements of this Agreement.

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

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

(4) The Owner Transfers, or attempts to Transfer, the Property in violation of this Agreement.

(5) The Owner fails to occupy the Property as Owner's principal place of residence in violation of Section 1 of this Agreement.

(6) The Owner rents or leases the Property in violation of Section 1 of this Agreement.

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

(8) A lien is recorded against the Property other than the lien of the First Lender Loan or a loan approved by the City pursuant to Section 10.

(9) Judicial foreclosure proceedings are commenced regarding the Property.

(10) The Owner executes any deed in lieu of foreclosure transferring ownership of the Property.

B. Notice and Cure. Upon Default, the City may give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of City within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as the City determines is necessary to correct the violation, the City may declare a Default under this Agreement. However, if the Owner is in default under any financing secured by the Property, the City may declare a Default upon receipt of any notice given to the City pursuant to Civil Code Section 2924b or through any other means and may exercise its rights as provided in subsection C of this Section 11.

C. Declaration of Default and Remedies. If Owner has not cured a Default within any applicable cure period, or if there is no applicable cure period, the City may declare a Default by written notice to Owner. Upon a declaration of Default by the City under this Agreement, the City may:

(1) Declare all sums due under the City Note immediately due and payable without further demand;

(2) Invoke the power of sale under the Deed of Trust;

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

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

D. Notification to the First Lender. The City shall notify the First Lender at the address provided by the First Lender to the City as described in Section 16 of this Agreement if the City has declared a Default under this Agreement or under the City Note or the Deed of Trust.

12. NOTICE OF DEFAULT AND FORECLOSURE; CITY RIGHT TO CURE

A. A request for notice of default and any notice of sale under any Deed of Trust or mortgage with power of sale encumbering the Property shall be recorded by the City in the Office of the Recorder of the County of San Luis Obispo for the benefit of the City.

B. In the event of default and foreclosure, the City shall have the same right as Owner to cure defaults and redeem the Property prior to the foreclosure sale. Nothing in this Section 12 shall be construed as creating any obligation of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying Deed of Trust or mortgage.

13. INSURANCE PROCEEDS

If the Property is damaged or destroyed, and the Owner elects not to rebuild or repair the Property, the Owner shall pay the City the portion of any insurance proceeds received by Owner for such destruction or damage which is equal to the Below Market Benefit and Equity Share on the City Note, in which event this Agreement shall terminate. For purposes of determining the Equity Share due in the event of damage or destruction of the Property, the Fair Market Value of the Property as determined by the insurer shall be used in place of the Resale Price.

14. SUBORDINATION

A. Notwithstanding any other provision of this Agreement, this Agreement will not diminish or affect the rights of the First Lender under the First Mortgage Deed of Trust or any subsequent First Mortgage Deeds of Trust recorded against the Property in compliance with Section 10 of this Agreement.

B. Notwithstanding any other provision of this Agreement, the provisions of this Agreement will be subordinate to the lien of the First Mortgage Deed of Trust and will not impair the rights of the First Lender, or First Lender's assignee or successor in interest, to exercise its remedies under the First Mortgage Deed of Trust in the event of default under the First Mortgage Deed of Trust by the Owner. Such remedies under the First Mortgage 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 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 Mortgage Deed of Trust acquires title to the Property pursuant to a deed or assignment in lieu of foreclosure and no notice of default was recorded against the Property by such holder, this Agreement will automatically terminate upon the First Lender's acquisition of title only if (i) the City has been given written notice of default under the First Mortgage Deed of Trust with a sixty (60)-day cure period and (ii) the City 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. COVENANTS RUNNING WITH THE LAND

A. Owner agrees to subject the Property to the covenants and restrictions set forth in this Agreement. Owner declares its express intent that the covenants and restrictions included in this Agreement 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 as set forth in Section 10. Each and every contract, deed, lease, or other instrument conveying or otherwise transferring any interest in the Property shall conclusively be held to have been executed, delivered, and accepted subject to this Agreement, regardless of whether the other party or parties to such contract have actual knowledge of this Agreement.

B. The Owner and the City declare their understanding and intent that: (i) the covenants and restrictions contained in this Agreement are covenants running with the land pursuant to California Civil Code Section 1468 and not conditions which might result in forfeiture of title by Owner; (ii) the burden of the covenants and restrictions included in this Agreement touch and concern the Property, in that the Owner's legal interest in the Property may be rendered less valuable because of the covenants and restrictions; and (iii) the benefit of the covenants and restrictions included in this Agreement touch and concern the Property by ensuring that the use of the Property is consistent with the Shared Equity Program.

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

16. STANDARD PROVISIONS

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

To the Owner:

To the First Mortgage Lender:

To the City:

City of San Luis Obispo
919 Palm Street
San Luis Obispo, CA 93401
Attention: Community Development Department

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section 16.

B. 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, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status 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.

C. 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 in this Agreement, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

D. Nonliability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and the City is solely that of an owner and an administrator of a City affordable housing program, and that the City does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Property or any other matter. The City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Property, and Owner agrees that neither Owner, or Owner's heirs, successors, or assigns shall ever claim, have or assert any right or action against the City for any loss, damage, or other matter arising out of or resulting from any condition of the Property and will hold the City harmless from any liability, loss or damage for these things.

E. Indemnity. Owner will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense and attorney's fees) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the Project, the Affordable Units, or Owner's performance or non-performance under this Agreement, including claims pursuant to California Labor Code Section 1720 et seq., and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent arising from the proven gross negligence or willful misconduct of the City. The provisions of this Section shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Section shall remain in full force and effect.

F. Severability of 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.

G. Joint and Several Obligations. This Agreement is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

H. Controlling Law and Venue. 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 San Luis Obispo County, California.

I. Action by the City. Whenever any approval, notice, consent, request, extension of time, declaration of Default, or other action by the City is required or permitted under this Agreement, such action may be taken by the Community Development Director without further approval by the City Council. Any such action shall be in writing.

J. No Waiver. No delay or omission in the exercise of any right or remedy of City upon any Default by Owner shall impair such right or remedy or be construed as a waiver. The City's failure to insist in any one or more instance upon the strict observance of the terms of this Agreement shall not be considered a waiver of the City's right thereafter to enforce the provisions of the Agreement. The City shall not waive its rights to enforce any provision of this Agreement unless it does so in writing, signed by an authorized agent of the City.

K. Entire Agreement. This Agreement, along with the City Note and the Deed of Trust, sets forth the entire understanding and agreement of the City and Owner and any amendment, alteration or interpretation of this Agreement must be in writing signed by both the City and Owner.

L. Deed of Trust. The obligations of the Owner contained in this Agreement are secured by the Deed of Trust.

M. Exhibits. All exhibits referred to in this Agreement are incorporated into this Agreement by reference.

17. ACKNOWLEDGEMENT OF RESTRICTIONS

Owner hereby acknowledges and agrees that:

A. Absent the assistance provided to the Owner in the form of the Below Market Benefit, the Owner would not have been able to acquire the Property.

B. Owner understands all of the provisions of this Agreement. In recognition of the acknowledgments and agreements stated in this Section 17, Owner accepts and agrees to the provisions of this Agreement with the understanding that this Agreement will remain in full force and effect throughout the Term of this Agreement.

C. OWNER UNDERSTANDS THAT THIS AGREEMENT PLACES CERTAIN RESTRICTIONS ON THE USE AND OCCUPANCY OF THE PROPERTY. OWNER UNDERSTANDS THAT THE DETERMINATION OF THE MAXIMUM RESALE PRICE OF THE HOME TO AN ELIGIBLE PURCHASER CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INCREASES IN MEDIAN INCOME 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 AGREEMENT OR SUBJECT TO THE INCLUSIONARY POLICY. THE MAXIMUM RESALE PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES THAT HAVE NO RESTRICTIONS. OWNER UNDERSTANDS THAT IF OWNER TRANSFERS THE PROPERTY OR VIOLATES THE TERMS OF THIS AGREEMENT, OWNER WILL BE REQUIRED TO REPAY ALL PRINCIPAL AND INTEREST DUE ON THE CITY NOTE, INCLUDING AN EQUITY SHARE, AND EQUITY RECAPTURE FEE, IF APPLICABLE. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES, THE PRIMARY OBJECTIVE OF THE CITY AND THIS AGREEMENT IS TO PROVIDE AFFORDABLE HOUSING TO ELIGIBLE HOUSEHOLDS.

[initialed by Owner(s)] _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date entered below, which shall be the "Effective Date" of this Agreement.

CITY: CITY OF SAN LUIS OBISPO, a municipal corporation

By: _____
Michael Codron
Community Development Director

Date: _____

By: _____
Christine Dietrick

[ADDRESS] Shared Equity Agreement

City Attorney

Date: _____

OWNER:

By: _____
Owner

By: _____
Owner

Date: _____

Date: _____

[All Signatures Must be Notarized]

[ADDRESS] Shared Equity Agreement

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.

Signature of Notary Public (SEAL)

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.

Signature of Notary Public (SEAL)

EXHIBIT A

Legal Description of the Property

REAL PROPERTY IN THE CITY OF SAN LUIS OBISPO, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

EXHIBIT B

Form of Notice of Intent to Transfer

To: City of San Luis Obispo

From:

Address of Property:

Date:

The Owner intends to transfer the Property listed above.

A. The following information is provided to the City pursuant to the Occupancy, Use, Refinancing, and Shared Equity Agreement:

1. Address of Property: _____

2. Date Owner purchased Property: _____

3. Purchase Price paid by Owner when Property was purchased: _____

4. Date Owner intends to vacate Property: _____

5. Date Property will be placed on market: _____

6. Name and phone number of person(s) for City to contact to schedule inspection:

Name: _____

Daytime Phone: _____

Evening Phone: _____

B. I have not yet listed the Property for sale. I agree to prepare the Property for sale as required by the Occupancy, Use, Refinancing, and Shared Equity Agreement by:

1. Obtaining a pest control report within thirty (30) days of the date of this notice,

2. Allowing the City or its designee to inspect the Property within thirty (30) days of this notice,

3. Maintaining utility connections and keeping the Property in good condition until the Property is transferred, and

4. Permitting a walk through by the City prior to close of escrow for the transfer.

I understand that a deduction will be made in the Maximum Resale Price unless I repair any Deferred Maintenance (including repairs required by the pest control report) at least two (2) weeks prior to close of escrow.

This Notice of Intent to Transfer is certified by Owner to be true and correct and is signed on _____ (date) under penalty of perjury.

Borrower: _____

Print Name: _____

Borrower: _____

Print Name: _____

EXHIBIT C

Form of Owner Acknowledgement of City Response Notice

Name: _____

Address of Property: _____

Date: _____

I, _____ hereby acknowledge that on _____ (date), I received the City Response Notice (as described in Section 4C of the Occupancy, Use, Refinancing, and Shared Equity Agreement).

Owner: _____

Print Name: _____

Owner: _____

Print Name: _____