

BMP COVENANT

HOUSE KEYS

ADMINISTRATIVE COVER SHEET
(Remove Upon Completion)

BLANK LINES: CHECKLIST

_____ **BMP Date, p. 1, paragraph 1**

_____ **Borrowers Names, p. 1, paragraph 1**

_____ **Developer Name and Date of Agreement Meeting, p. 1, paragraph 4**

_____ **BMP Property Address, p. 3, in paragraph "Residence"**

_____ **Borrowers Names, BMP Property Address, p. 10**

_____ **First Mortgage Lender Name and Address, p. 10**

_____ **Senior Lenders Name and Address, p. 10**

_____ **BMP Property Address and APN#, Legal Description page**

Prepared by: _____
HouseKeys

Date: _____

Reviewed by: _____
City of Santa Clara

Date: _____

COMPLIMENTARY RECORDING
REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

Recording Requested by Westminster Title Company
and When Recorded Mail To:
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attn: Housing & Community Services

SPACE ABOVE THIS LINE FOR RECORDER'S USE

BELOW MARKET PURCHASE PROGRAM
COVENANTS, RESTRICTIONS
AND OPTION TO PURCHASE

This agreement, entitled Covenants, Restrictions and Option to Purchase (the "City Covenants") is entered into as of this DATE _____, 20xx, by and between the City of Santa Clara (the "City") and _____ (the "Owner").

RECITALS

WHEREAS, the City has determined that it is desirable to encourage the purchase of homes by Moderate Income Households; and,

WHEREAS, the City has established a Below Market Purchase Program to assist Moderate Income Households; and

WHEREAS, concurrently with the execution of these City Covenants, Owner is purchasing the Residence for a purchase price that is affordable to Owner in accordance with a certain Affordable Housing Agreement (the "AHA") by and between the City and BUILDER NAME recorded _____. Without the benefits afforded by the City's BMP Program, the purchase price of the Residence would exceed the amount that is affordable to Owner; and,

WHEREAS, accordingly, in order to preserve the affordability of the Residence for Moderate Income Households, and in return for and in consideration of the opportunity for the Owner to purchase the Residence under the above-referenced circumstances and for other good and valuable consideration, the receipt and legal sufficiency of which the undersigned hereby acknowledges, the Owner, has agreed to execute these City Covenants; and,

WHEREAS, these City Covenants place certain use restrictions on the Residence, establish

resale controls with respect to the Residence, and reserve to the City an option to purchase or designate an Eligible Purchaser to purchase the Residence from the Owner in order to provide for the continued availability of the Residence to Moderate Income Households.

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

1. **Definitions.** The terms set forth in this section shall have the following meanings when used herein:

“Affordable Housing Cost” shall mean a monthly housing cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence.

“Affordable Sales Price” shall mean a sales price for a Residence that is derived from the Affordable Housing Cost, as determined by the City.

“Appreciation Amount” shall mean the difference between the Initial Market Value and the Unrestricted Resale Price less the Owner’s “capital improvements” as this term is defined in these City Covenants, and which is approved by the City.

“City Covenants” shall mean these Covenants, Restrictions and Option to Purchase executed by and between the City and the Owner, of even date herewith, as amended, modified or supplemented from time to time.

“City Lien” shall mean that certain subordinate mortgage lien, made to the Owner by the City and evidenced by the City Note.

“City Lien Documents” shall collectively mean the City Note, these City Covenants and the City Subordinate Deed of Trust.

“City Manager” shall mean the City Manager of the City of Santa Clara or his/her designee.

“City Note” shall mean the promissory note from the Owner to the City, as amended from time to time, evidencing the City Lien, as amended, modified or supplemented from time to time.

“City Subordinate Deed of Trust” shall mean the deed of trust recorded against the Residence from the Owner in favor of the City, as amended, modified or supplemented from time to time, securing the City Note and these City Covenants.

“CalHFA” shall mean the California Housing Finance Agency.

“Eligible Household” shall mean a prospective purchaser of the Residence who meets the then current requirements established by the City, including, but not limited to, having a household income that does not exceed 120% of the Area Median Income.

“Fair Market Value” shall be determined by an appraisal of the Residence as provided hereunder.

“First Mortgage Deed of Trust” shall mean the Deed of Trust on the Home from the Homebuyer in favor of the First Mortgage Lender, securing the First Mortgage Lender Note.

“First Mortgage Lender” shall mean Silicon Valley Bank, its successors and assigns.

“First Mortgage Loan” shall mean the first mortgage loan provided by the First Mortgage Lender to the Owner and secured by the First Mortgage Deed of Trust.

“Initial Market Value” shall mean the unrestricted Fair Market Value of the Residence as determined by the City as of the date of these City Covenants.

“Moderate Income Household” shall be a household with a gross income which does not exceed one hundred and twenty percent (120%) of the Median Income, adjusted for household size.

“Area Median Income” shall mean the median gross yearly income for households in Santa Clara County, California, as published periodically by the California Department of Housing and Community Development (“HCD”). In the event such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen months, the City shall provide the First Mortgage Lender with other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD.

“Notice of Intended Transfer” shall mean the notice required under Section 5 of these City Covenants that shall specify all the terms of the intended Transfer.

“Program” shall mean the City’s Below Market Purchase Program.

“Purchase Option” shall have the meaning ascribed thereto under Section 7 below.

“Resale Restriction Period” shall mean five years from the date of these City Covenants.

“Residence” shall mean the housing unit commonly known as PROPERTY ADDRESS, Santa Clara, CA, together with the land thereon, and any subparts thereof, which is more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures the City Note, which is incorporated herein by reference.

“Restricted Resale Price”- see Section 6.

“Senior Lender” or “Senior Lenders” shall mean any of the following entities and their successors and assigns, which are the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

“Senior Loan” or “Senior Loans” shall refer to loans made by Senior Lenders to the Owner.

“Senior Loan Deeds of Trust” shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

“Transfer” shall mean any sale, assignment, transfer, encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, a lien or an interest evidenced by a land contract by which possession of the Residence is transferred and Owner retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Owner is the sole beneficiary.

“Unrestricted Resale Price” shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Agreement.

2. **Owner Representations and Warranties.** The Owner represents and warrants that:

(a) The financial and other information provided by Owner to the City, its contractors and agents, and all lenders in order to qualify to purchase the Residence is true and correct as of the date first written above;

(b) The Owner intends and shall occupy the Residence as the Owner's principal place of residence, except as otherwise provided in Paragraph (c) of Section 3 below.

3. **Owner-Occupancy.**

(a) Owner shall occupy the Residence as his or her or their primary residence, and the Residence shall be used as the primary residence of Owner and Owner's household and for no other purpose. The Residence shall not be leased or rented by Owner to any person or entity.

(b) The City shall have the right to monitor whether the Residence is Owner-occupied by requesting that Owner provide the City, not more frequently than annually, with a written certification under penalty of perjury that the Residence is Owner-occupied, accompanied by supporting documentation reasonably satisfactory to the City.

(c) These Owner-occupancy restrictions may be waived, modified or terminated only upon the prior written approval of the City Manager.

4. **Maintenance of Property.** Owner agrees it shall maintain the interior and exterior of the Residence and any landscaping on the Residence in good condition and repair and in a manner consistent with the community standards which will uphold the value of the Residence, and in accordance with all applicable City codes. Failure to maintain the Residence in accordance with this Section 4, including, but not limited to, any violations of applicable building, plumbing, electric, fire, housing or other applicable City of Santa Clara Building Codes, shall be a default by the Owner under this Agreement.

5. **Notice of Intended Transfer.** In the event Owner vacates the Residence (e.g., to use the Residence as their primary residence) or Transfer any interest therein or any portion thereof, Owner shall give the City a Notice of Intended Transfer at least ninety (90) days prior to the intended date for vacating the Residence or executing the Transfer. Any Transfer in violation of this Section 5 or any other provision of these City Covenants is prohibited and shall be null and void.

In the case of a Transfer by sale, the Notice of Intended Transfer shall also be accompanied by a written certification by the Owner and the proposed purchaser, in a form that is reasonably acceptable to the City, that the Owner and the proposed purchaser have not paid, have no agreement to pay and will not pay, to the other such party, or to any other person, any money or other consideration in addition to the consideration described in the terms of the sale.

6. **Determination of Restricted Resale Price.** During the Resale Restriction Period, the maximum sales price that the Owner may receive from any source for any type of Transfer of the Residence (“Restricted Resale Price”) shall be the lowest of the following: (a) the Increased Base Price (defined below); (b) the Fair Market Value (defined below); or (c) the Affordable Sales Price (as defined in Section 1.).

(a) **Increased Base Price.** The “Increased Base Price” means the purchase price that Owner paid for the Residence, increased by the percentage change in the Area Median Income, as published by the U.S. Department of Housing and Urban Development, from the purchase date to the date of notification stated in Section 5, above. In the event that such income determination is no longer published, or has not been updated for a period of at least eighteen (18) months, the City may use or develop such other reasonable method as it may choose to determine the Area Median Income for Santa Clara County.

The Increased Base Price shall also be adjusted for the “Value of Capital Improvements”. The “Value of Capital Improvements” shall mean the value of substantial structural or permanent fixed improvements that cannot be removed without substantial damage to the Residence or substantial or total loss of value of said improvements. No such valuation shall be made except for improvements: (a) made or installed by or under the direction of the Owner; (b) with an initial cost of Two Thousand Dollars (\$2,000) or more; and (c) which can be documented by the Owner to the reasonable satisfaction of the City Manager. The value of such improvements to be taken

into account in calculation of the Increased Base Price shall be the appraised market value of the improvements when considered as additions or fixtures to the Residence (i.e., the amount by which said improvements enhance the market value of the Residence at the time of sale or valuation). The adjustment to the Increased Base Price for such improvements shall be limited to the increase in value, and shall be determined by the City Manager and the Owner, or in the event of a failure to agree, by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. The cost of the appraisal shall be borne by the Owner.

(b) Fair Market Value. The “Fair Market Value” of the Residence shall be determined by an independent residential appraiser selected by the Owner from a list of appraisers established by the City. To the extent possible, the appraisal shall be based on 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 borne by the Owner. In the event the Owner has made capital improvements to the Residence which have individually cost more than Two Thousand Dollars (\$2,000) and can be documented to the appraiser and which have increased the value of the Residence, or if damage or deferred maintenance have occurred while the Owner owned the Residence which have decreased the value of the Residence, the appraisal shall specifically determine the Value of Capital Improvements as set forth in Section 6.a. or the adjustment for damage and deferred maintenance and shall state what the fair market value of the Residence would be without such value or adjustments. Nothing in this Section shall preclude the Owner and the City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal pursuant to this Section.

7. **Purchase Option.**

(a) As a material part of the consideration for these City Covenants, Owner covenants and agrees for itself, its successors and its assigns and every successor in interest to the Residence that for the Resale Restriction Period of these City Covenants, Owner hereby grants to the City an exclusive option to purchase the Residence or designate an Eligible Household to purchase the Residence from Owner in the event of an uncured default under the First Mortgage Loan or the City Lien Documents (subject to the First Mortgage Lender and Senior Lender’s rights to cure under Section 12 herein), or upon receipt by the City of a Notice of Intended Transfer (the “Purchase Option”); provided, however, that the City shall be deemed to have waived such Purchase Option unless it gives notice to the Owner, the First Mortgage Lender and the Senior Lenders of its intention to exercise the Purchase Option within thirty (30) days, and to the extent possible, subsequently completes the purchase of the Residence within one hundred twenty (120) days from earliest of: (i) the expiration of the applicable cure period in the event of a default by the Owner under the City Lien Documents; or (ii) receipt by the City of a notice of default under the First Mortgage Loan, a Senior Loan, or a Notice of Intended Transfer.

(b) Within thirty (30) days following the exercise of the Purchase Option, the parties agree that the City shall open, or cause to be opened, an escrow with a title insurance company or such other escrow agent reasonably acceptable to the City (the “Escrow Agent”) and the parties agree to execute escrow instructions with Escrow Agent as may be required by Escrow Agent, or to implement or give effect to the terms and conditions of these City Covenants. The parties agree

to the following escrow terms and conditions:

(1) The escrow shall be for a period of one hundred twenty (120) days or sooner if mutually agreed by the parties;

(2) The City agrees that it will pay, or cause to be paid by an Eligible Household designated by the City, the Restricted Resale Price upon the close of escrow or as otherwise mutually agreed to by the parties. Notwithstanding the foregoing, prior to the close of escrow, the Owner hereby agrees that the Escrow Agent shall withhold that portion of the Restricted Resale Price necessary to pay off the outstanding principal balance and interest due under the First Mortgage Loan, the Senior Loans and any outstanding liens or encumbrances against the Residence other than as due under the City Lien Documents. Any remaining funds shall be disbursed by the Escrow Agent to Owner;

(3) The Owner agrees that it shall pay the premium for a standard C.L.T.A. policy of Owner's title insurance issued by the Escrow Agent or title insurance company reasonably acceptable to the City in the amount of the Restricted Resale Price, insuring title to the Residence in the City's (or Eligible Household's, as the case may be) name, subject only to those matters approved by the City in writing. In the event the City (or Eligible Household, as the case may be) requests an A.L.T.A. policy of Owner's insurance and/or any title endorsements, the additional costs associated with the issuance of an A.L.T.A. policy or the endorsements shall be paid by the City (or Eligible Household, as the case may be);

(4) In the event the City exercises its Purchase Option, the Owner and City agree that all costs and fees charged in connection with the closing and escrow shall be borne one-half (1/2) by the City (or Eligible Household, as the case may be) and one-half (1/2) by the Owner; provided, however, in the event the City exercises its Purchase Option upon default by the Owner under the City Lien, the First Mortgage Loan or a Senior Loan, the Owner agrees to pay all costs and fees charged in connection with the closing and escrow;

(5) The Owner agrees that it shall deposit in escrow for delivery to the City (or Eligible Household, as the case may be) a grant deed to the City (or Eligible Household, as the case may be) in such form as may be reasonably acceptable to the City Manager in his or her sole discretion);

(6) Taxes and assessments shall be prorated at the close of escrow with Owner paying all such taxes and assessments due and payable prior to the close of escrow and City (or Eligible Household, as the case may be) paying all such taxes and assessments due and payable following the close of escrow;

(7) Owner agrees that title shall be conveyed by Owner at the close of escrow to the City (or Eligible Household, as the case may be) free and clear of all mortgages, deeds of trust, liens and encumbrances. Owner agrees that any costs to remove or satisfy any mortgages, deeds of trusts, liens or encumbrances shall be the responsibility of Owner, at Owner's sole cost and expense; and

(8) Any other terms or conditions mutually agreed to by the parties.

(c) **Priority of Option.** The Option granted pursuant to these City Covenants shall be senior in priority to any lien or encumbrance, with the exception of the First Mortgage Loan, the Senior Loans and the documents securing such loans.

(d) In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of the exercise of, or the failure to exercise the Purchase Option.

8. **Appraisal; Fair Market Value.** Upon a Transfer of the Residence, the First Mortgage Lender shall conduct an appraisal of the Residence, subject to the City's right to have an independent appraisal conducted. The cost of the appraisal shall be borne by the Owner. Nothing in this Section shall preclude Owner and City from establishing the Fair Market Value of the Residence by mutual agreement in lieu of an appraisal.

9. **Transfer by Owner at an Unrestricted Resale Price.** If, after the expiration of the Resale Restriction Period, the Owner Transfers the Residence at an Unrestricted Resale Price, and such Transfer occurs prior to the twentieth (20th) anniversary of the date of this Agreement, the City shall be entitled to receive, and Owner shall pay to the City, an amount equal to the principal balance of the City Note. In addition to paying the entire outstanding balance of the City Note, Owner shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Agreement and the City Note until the twentieth (20th) anniversary. These obligations to pay the City shall be evidenced by a promissory note secured by a deed of trust recorded against the Residence.

10. **Restrictions on Transfer Proceeds.** The proceeds from any Transfer that ensues following the waiver or other failure by the City to exercise the Purchase Option under Section 7 above, after paying any and all superior liens and costs and fees relating to the transaction (such as any escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) the outstanding balance on the City Note; and (ii) any excess proceeds shall belong to the Owner.

11. **Default.** The occurrence of any of the following shall be deemed a default hereunder:

(a) Failure or delay by Owner to perform any covenant or agreement of the Owner under these City Covenants; or

(b) Failure or delay by Owner to perform any other covenant or agreement of the City Lien Documents or any other lien recorded against the Residence.

12. **Notice of Default; Cure Periods.**

(a) Regardless of whether any notice is given, in the event of a failure or delay amounting to a default by the Owner in the performance of any term or provision of these City Covenants or any other City Lien Document, the Owner must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence. In the event the Owner is unable or unwilling to implement the required cure, correction or remedy, the First Mortgage Lender and Senior Lenders shall have the right to cure, correct, or remedy any such default of the Owner, provided the First Mortgage Lender and Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not exercise the Purchase Option, commence foreclosure proceedings or accept a deed in lieu of foreclosure until it has given the First Mortgage Lender and Senior Lenders at least thirty (30) days' prior notice of the default in accordance with this Section 12.

(b) In the event of a non-monetary default by the Owner, the City shall give, or cause to be given, notice of default to the Owner, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in the exercise by the City of the Purchase Option pursuant to these City Covenants and such other remedies available to the City under the City Lien Documents or as provided by law; and (5) that Owner has the right to seek reinstatement and the right to bring a court action to assert the nonexistence of default or any other defense of the Owner to acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Owner, the First Mortgage Lender or the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Owner, the First Mortgage Lenders or the Senior Lenders (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Owner, the First Mortgage Lenders or the Senior Lenders such additional time as is reasonably necessary to cure the default.

(c) In the event of a monetary default, the Owner shall receive notice, and shall be accorded the appropriate period of time to effect a cure, in the manner and under the terms and conditions applicable to such default as provided under the City Lien Documents.

(d) Notwithstanding the cure periods established in this Section 12, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

(e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

13. **Notices.** Except as otherwise expressly provided in these City Covenants, in every case when, under the provisions of these City Covenants, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner: _____

PROPERTY ADDRESS

Santa Clara, CA 95051

To First Mortgage

Lender: LENDER NAME

LENDER ADDRESS

CITY, STATE, ZIP

To Senior Lenders: N/A

To City

The City of Santa Clara

1500 Warburton Avenue

Santa Clara, California 95050

Fax: (408) 248-3381

(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Binding on Successors and Assigns.** Notwithstanding any other provision of law, these City Covenants shall run with the land and shall be enforceable against the Owner and its successors in interest by the City. The requirements of these City Covenants shall remain in effect with respect to the Residence until the first to occur of the following:

(a) The end of twenty (20) years from the date hereof;

(b) The exercise by the City of the Purchase Option granted herein;

(c) A Transfer of the Residence and payment to the City of the full amount due on the City Note (including principal and the equity share or accrued interest);

(d) The acquisition of title to the Residence, by the First Mortgage Lender, a Senior Lender or other party, upon foreclosure of the First Mortgage Deed of Trust or a Senior Loan Deed of Trust;

(e) The acquisition of title to the Residence by the First Mortgage Lender or a Senior Lender or other party by a deed in lieu of foreclosure of the First Mortgage Deed of Trust or Senior Loan Deed of Trust, as applicable.

15. **Superiority of City Covenants/Subordination.** Upon close of escrow for the purchase of this Residence and the valid recordation of these Covenants, these Covenants shall supersede and replace the AHA, any other prior document restricting the unit, and all restrictions in such document are void and of no further effect.

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

Notwithstanding anything to the contrary contained herein, these City Covenants shall, at all times, be subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

16. **Refinance of First Lender Loan; Subordinate Loans**

(a) **City Consent Required.** The Owner covenants and agrees not to place any additional mortgage or deed of trust, including any line of credit, on the Home without obtaining prior written consent of the City. In the event the Owner desires to refinance the First Lender Loan, the Owner shall submit in writing to the City a Request to Refinance.

(b) **Refinance of First Lender Loan.** The City, at its sole discretion, may consent to a prepayment and refinance of the First Lender Loan and may agree to subordinate this Agreement and the City Deed of Trust to the refinanced First Lender Loan provided that the proposed refinance meets all of the requirements listed in the then-current version of the City's "Below Market Purchase Program Policies and Procedures.

17. **Right To Consent To Changes, Enforce.** No changes shall be made to these City Covenants without the prior written consent of the City. Only the City, the First Mortgage Lender, a Senior Lender, the Owner and their respective successors and assigns in and to the Residence shall have the right to consent and agree to changes in, or to eliminate in whole or in part, these City Covenants or to subject the Residence to additional covenants, easements, or other restrictions without the consent of any tenant, lessee, easement holder, licensee, trustee, beneficiary under a deed of trust (other than those securing the First Mortgage Loan, a Senior Loan or the City Lien)

or any other person or entity having an interest less than a fee in the Residence. These City Covenants, without regard to technical classification or designation, shall not benefit or be enforceable by any person, or firm, or corporation, public or private, except the City of Santa Clara and the Owner and their respective successors and assigns.

18. **Invalid Provisions.** If any one or more of the provisions contained in these City Covenants 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 these City Covenants, and these City Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

19. **Controlling Law; Venue.** The terms of these City Covenants shall be interpreted under the laws of the State of California. Any lawsuit brought to enforce these covenants shall be brought in the Superior Court for this County of Santa Clara, and/or the federal district courts Northern District of California, San Jose.

20. **Exhibits.** Any exhibits referred to in these City Covenants are incorporated in these City Covenants by such reference. Owner agrees that he or she has had adequate opportunity to discuss these covenants with a representative of their choosing, and fully understand and accept all obligations assumed by execution of this Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the Owner has executed these City Covenants as of the date first written above.

THE CITY OF SANTA CLARA, CA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

Office of the City Attorney
City of Santa Clara

Office of the City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

By: _____
Name: _____

By: _____
Name: _____

By: _____
Name: _____

"Owner"

EXHIBIT A

RESIDENCE DESCRIPTION

The Property referred to is situated in the State of California, County of Santa Clara and described as follows:

PARCEL ONE (Unit):

Unit ____ (“Unit”) as shown on the Condominium Plan recorded DATE,
Instrument No. _____ of Official Records.

Said Unit is located on Lot ____,
as shown on the Map of Tract _____ recorded DATE _____ in Book _____ at
Pages ____ through ____ of Official Records, County of Santa Clara, State of
California.

PARCEL TWO (Undivided Interest in Common Area):

An undivided one-sixth (1/6th) interest as tenant in common in and to Lot ____,
as shown on the Map.

EXCEPTING THEREFROM All Units, as shown on the
Condominium Plan.

FURTHER EXCEPTING THEREFROM, easements for the exclusive
use possession, and enjoyment of those areas shown on the Condominium Plan as
Deck and Patio, together with the right to subsequently grant and convey such
easements.

FURTHER EXCEPTING THEREFROM, all easements as provided for in the
Declaration, together with the right to subsequently grant and convey such
easements.

PARCEL THREE (Non-Exclusive Easements)

Non-exclusive easements for
use, enjoyment, ingress, egress and support in and to the Common Area shown
on the Condominium Plan and described in the Declaration, for the benefit of
Parcel One above.

PARCEL FOUR (Exclusive Use Common Area):

* An exclusive
easement for the use, possession, and enjoyment of Deck D2, as shown on the
Condominium Plan.

* An exclusive easement for the use, possession, and enjoyment of Patio P2, as shown on the Condominium Plan. These exclusive easements are appurtenant to the real property conveyed in Parcel One, above.

PROPERTY ADDRESS , SANTA CLARA, CA

APN: ____-____-____ (portion)

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.

On _____ before me,
_____ a Notary Public,

FOR NOTARY SEAL OR STAMP

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 _____

STATE OF CALIFORNIA } ss:

COUNTY OF _____

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 } ss:
COUNTY OF _____

On _____ before me,
_____ a 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.

FOR NOTARY SEAL OR STAMP

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 _____

STATE OF CALIFORNIA } ss:
COUNTY OF _____