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City of San Leandro

City of San Leandro
835 E. 14th Street
San Leandro, California 94577
Attn: Community Development Director

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE
§§6103, 27383

APN 075-0209-058-00

3058752



2012414706

12/12/2012 10:23 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 0.00



33 PGS

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

PERFORMANCE DEED OF TRUST (Option to Cure and Purchase Agreement)

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE CITY OF SAN LEANDRO (THE "CITY") FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN ELIGIBLE HOUSEHOLD AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN AFFORDABLE HOUSING COST.

This PERFORMANCE DEED OF TRUST ("Deed of Trust") is entered into as of 12/1/2012, between Xiu Lan Yang ("Trustor") whose address is 580 Alvarado Street, San Leandro, CA 94577, in favor of Chicago Title Company ("Trustee"), for the benefit of the CITY OF SAN LEANDRO ("Beneficiary") whose address is 835 E. 14th Street, San Leandro, CA 94577.

RECITALS

WHEREAS, Beneficiary and Trustor have entered into a Resale Restriction Agreement dated 12/1/2012 and attached hereto as Exhibit A (the "Resale Restrictions"), pursuant to which Beneficiary promised, among other things, to only sell to a low- or moderate-income purchaser qualified pursuant to the City's Inclusionary Housing Program ("Eligible Household") at a price not to exceed the adjusted resale price capped at an affordable housing cost.

AGREEMENT

NOW, THEREFORE, to secure the full and timely performance by Trustor of the Secured Obligation, it is agreed as follows:

1. Placement into Trust.

a. Trustor, in consideration of the obligations referred to below and the trust hereby created, irrevocably grants, transfers, conveys, and assigns to trustee, in trust, with power of sale, Trustor's fee interest in and to that real property located in the County of Alameda, State of California, more specifically described in Exhibit B attached hereto and incorporated herein by this reference (the "Property").

b. All right, title, and interest (including any claim or demand in law or equity) which Trustor now has or may hereafter acquire in or to such property; all easements and rights of way appurtenant to such property; all crops growing or to be grown on such property; all water and water rights (whether or not appurtenant to such property) and shares of stock pertaining to such water or water rights, ownership of which affects such property; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon such property and all royalties and profits from any such rights or shares of stock.

2. Maintenance of the Property. Trustor will: (a) keep the Property in good condition; (b) not permit any mechanic's or materialmen's lien to arise against the Property; (c) comply with all laws having a material effect on the Property; and (d) not commit or permit waste on or to the Property.

3. Taxes and Other Sums Due. Trustor will promptly pay, satisfy and discharge when due: (a) prior to delinquency, all general or special taxes and assessments, water and sewer district charges, rents and premiums affecting the Property; and (b) all encumbrances, charges and liens on the Property, with interest thereon, which are prior or superior to the lien of this Deed of Trust. Upon request by Beneficiary, Trustor will promptly furnish Beneficiary with all notices of sums due for any amounts specified in subparagraph (a) hereof, and upon payment of any such sum by Trustor, Trustor will promptly furnish Beneficiary with written evidence of such payment. Should Trustor fail to promptly make any payment required hereunder, Beneficiary may (but is not obligated to), at Beneficiary's sole expense, make such payment. Trustor will notify Beneficiary immediately upon receipt of Trustor of notice of any increase in the assessed value of the Property and agrees that Beneficiary, in the name of Trustor, may (but is not obligated to), at Beneficiary's expense, contest by appropriate proceedings such increase in assessment.

4. Leases of the Property by Trustor. Except as permitted under the Resale Restrictions, Trustor shall not enter into a lease for all or any portion of the Property.

5. Defense of Deed of Trust; Litigation. Trustor will give Beneficiary immediate written notice of any action or proceeding (including, without limitation, any judicial or non-judicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Property or this Deed of Trust. Trustor shall commence, appear in, prosecute, defend, compromise and settle, and incur necessary costs and expenses, including reasonable attorneys' fees, in so doing, any action or proceeding, whether judicial or non-judicial, deemed necessary in Beneficiary's reasonable judgment to preserve or protect the Property or this Deed of Trust. Trustor will pay all costs and expenses of Beneficiary and Trustee, including costs of evidence of title of title and reasonable attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear or for which legal counsel is sought, whether by virtue of being made a party defendant or otherwise, and whether or not the interest of Beneficiary or Trustee in the Property is directly questioned in such action or proceeding, including, without limitation, any action for the condemnation or partition of all or any portion of the Property and any action brought by Beneficiary to foreclose this Deed of Trust or to enforce any of its terms or provisions.

6. Failure of Trustor to Comply with Deed of Trust. Should Trustor fail to do any act required by this Deed of Trust, or should there be any action or proceeding (including, without limitation, any judicial or non-judicial proceeding to foreclose the line of a junior or senior mortgage or deed of

trust) affecting or purporting to affect the Property or this Deed of Trust, Beneficiary or Trustee may (but is not obligated to):

a. Make any such payment or do any such act in such manner and to such extent as either deems necessary to preserve or protect the Property or this Deed of Trust, Beneficiary and Trustee being authorized to enter upon the Property for any such purpose; and

a. In exercising any such power, pay necessary expenses, employ attorneys and pay reasonable attorneys' fees incurred in connection therewith, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder.

7. Default. Each of the following shall constitute a "**Default**" under this Deed of Trust:

a. The filing by Trustor of any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors; or

b. In the event that after the date hereof Trustor sells, contracts to sell, gives an option to purchase, conveys, transfers or alienates the Property, or suffers its title to, or any interest in the Property to be divested, whether voluntarily or involuntarily; or

c. Trustor defaults under the terms and conditions of the Resale Restrictions.

8. Remedies on Default. In the event any Default hereunder which remains uncured following notice from Beneficiary and any cure period for each Default set forth herein, Beneficiary, at Beneficiary's option, and to the extent permitted by applicable law, may, by delivering to Trustee a written declaration of default and demand for sale, executed by Beneficiary and reciting facts demonstrating that such default by Trustor, together with a written notice of default, cure any defaults or purchase the Property pursuant to the terms of the Resale Restrictions. Beneficiary shall also deposit with Trustee the Resale Restrictions (including any amendments thereto), this Deed of Trust and such other documents necessary or appropriate. Upon receipt by Trustee of such affidavit or declaration of default and such notice of default and election to sell, Trustee shall accept as true and conclusive all facts and statements contained in such affidavit or declaration of default and shall cause such notice of default and election to sell to be recorded as required by applicable law. Upon the expiration of such period as may then be required as applicable law following recordation of such notice of default, and after notice of sale has been given in the manner and for the period required by applicable law, Trustee, without demand on Trustor, shall sell the entire Property at the time and place fixed in such notice of sale, to Beneficiary, subject to the minimum bid requirement, for cash in lawful money of the United States, payable at the time of sale. Such sale shall be subject to all of the terms and conditions of the Resale Restrictions. Trustee may postpone the sale of all or any portion of the Property by public announcement made at the initial time and place of sale, and from time to time thereafter by public announcement made at the time and place of sale fixed by the preceding postponement. Trustee shall deliver to Beneficiary at such sale its deed conveying the Property, but without any covenant or warranty, express or implied. The recital in such deed of any matter of fact shall be conclusive proof of the truthfulness thereof. After deducting all costs, fees, and expenses of Trustee under this section, including costs of procuring evidence of title and Trustee's and Trustee's attorneys' fees incurred in

connection with such sale. Trustee shall deliver all proceeds up to the purchase price to Trustor and any excess to Beneficiary.

9. Survival of Purchase Option Upon Transfer.

a. In General. The City's right to exercise its purchase option pursuant to Section 3 of the Resale Restrictions shall survive any transfer of the Property by Owner. The purchase option may be exercised against the Property whether owned, possessed or occupied by (i) an Eligible Household, (ii) any successor, transferee, assignee, heir, executor, or administrator of an Eligible Household, including a debtor-in-possession, debtor or trustee pursuant to Title 11 of the United States Code, or (iii) any person owning, possessing or occupying the Property who does not meet the eligibility criteria established by the City under the Program (collectively all referred to and defined herein as "**Owner**"). Notwithstanding the foregoing, the purchase option shall not survive (1) the sale and transfer of the Property under a judicial or non-judicial foreclosure or a deed-in-lieu of foreclosure pursuant to a mortgage or deed of trust recorded against the Property in the Office of the Recorder of the County of Alameda on or prior to the date of this Agreement, provided that the City has received timely notice of such purchase option event and has failed to either reinstate said mortgage or deed of trust or complete the purchase of the Property pursuant to its purchase option prior to the date of the foreclosure sale, or (2) the recording of an instrument conveying Owner's interest in the Property to the City, or its assignee, provided the conveyance is in accordance with the terms of this Agreement.

b. HUD Insured or CalHFA Held Mortgage. If Owner has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development or held by the California Housing Finance Agency, and provided that the City has received timely notice of such purchase option event (which notice could include a notice of default recorded pursuant to California Civil Code Section 2924 or successor provisions), then this Option shall automatically terminate if title to the Property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the insured mortgage is assigned to the Secretary.

10. Subordination. This Deed of Trust shall be subordinate to the liens of the senior deeds of trust to be recorded against the Property, and any deed of trust held by the California Housing Finance Agency.

11. Obligation to Inform Beneficiary of Default. Trustor will notify Beneficiary in writing, at or prior to the time of the occurrence of any Default event described in Section 7 hereof, of such event and will promptly furnish Beneficiary with any and all information concerning such event which Beneficiary may request.

12. Remedies Cumulative. Each remedy provided by this Deed of Trust is separate and distinct and is cumulative to all other rights and remedies provided hereby or by applicable law, and each may be exercised concurrently, independently or successively, in any order whatsoever.

13. Trustee. The Trustee shall be deemed to have accepted the terms of this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee shall not be obligated to notify any party hereto of any pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee is a party, unless

such sale relates to or reasonably might affect the Property or this Deed of Trust, or unless such action or proceeding has been instituted by Trustee against the Property, Trustor or Beneficiary.

14. Reconveyance. Upon written request of Beneficiary reciting that the right to cure or purchase will not be exercised by Beneficiary, surrender of this Deed of Trust to Trustee for cancellation, and payment by Beneficiary of any reconveyance fees customarily charged by Trustee, Trustee shall reconvey, without warranty, the Property as directed by Beneficiary and Trustor in a joint writing. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof.

15. Substitution of Trustee. Beneficiary, at Beneficiary's option, may from time to time, by written instrument approved in writing by Trustor, substitute a successor to Trustee named herein or acting hereunder, which instrument, when executed and acknowledged by Beneficiary and Trustor and recorded in the office of the Recorder of the county in which the Property is located, shall constitute conclusive proof of the proper substitution of which successor Trustee, who shall, without conveyance from the predecessor Trustee, succeed to all right, title, estate, powers and duties of such predecessor Trustee, including without limitation, the power to reconvey the Property. To be effective, such instrument must contain the name of the original Trustor, Trustee, and Beneficiary hereunder, the book and page at which, and the county in which, this Deed of Trust is recorded and the name and address of the substitute Trustee and be signed by Trustor. If any notice of default has been recorded hereunder, this power of substitution cannot be exercised until all costs, fees and expenses of the then acting Trustee have been paid. Upon such payment, the then acting Trustee shall endorse receipt thereof upon the instrument of substitution. The procedure herein provided for substitution of Trustees shall be exclusive of other provisions for substitution provided by applicable law.

16. No Waiver by Beneficiary. No waiver by Beneficiary of any right or remedy provided by the Declaration of Restrictions, this Deed of Trust or applicable law shall be effective unless such waiver is in writing and subscribed by Beneficiary. Waiver by Beneficiary of any right or remedy granted to Beneficiary under the Declaration of Restrictions or any provision thereof, this Deed of Trust or applicable law as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. The assertion by Beneficiary of any right or remedy provided by this Deed of Trust shall not constitute a waiver of Beneficiary's right to require prompt performance of the Secured Obligation and Trustor's obligations under this Deed of Trust.

17. Consents and Approvals to be in Writing. Whenever the consent or approval of Beneficiary or Trustor is specified as a condition of any provision of this Deed of Trust, such consent or approval by Beneficiary or Trustor, as applicable, shall not be effective unless such consent or approval is in writing, subscribed by Beneficiary or Trustor, as applicable. Such consent shall not be unreasonably withheld, delayed, or conditioned.

18. Notices. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that

the notice has been received); (b) upon receipt when sent by facsimile to the number set forth below (provided, however, that notices given by facsimile shall not be effective unless the sending party delivers the notice also by one other method permitted under this Section); (c) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending party receives a confirmation of actual delivery from the courier).

The addresses to the parties to receive notices are as follows:

TO BENEFICIARY: City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: Tom Liao, Acting Community Development Director

TO TRUSTOR: Xiu Lan Yang
580 Alvarado Street, San Leandro, CA 94577

TO TRUSTEE: Chicago Title Company c/o ServiceLink
250 Commerce 2nd Flr. Irvine, m CA 92602

19. Request for Notice of Default. The undersigned Trustor requests that a copy of any Notice of Default and any Notice of Sale hereunder be mailed to it at the address specified herein.

20. Governing Law. This instrument shall be governed by and construed in accordance with the laws of the State of California.

21. Severability. If any paragraph, clause or provision of the Resale Restrictions or this Deed of Trust is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so construed or interpreted and shall not affect the remaining paragraphs, clauses or provisions of the Resale Restrictions or this Deed of Trust.

22. Relationship. Nothing contained herein or in the Declaration of Restrictions shall be deemed to create or construed to create a partnership, joint venture or any relationship other than that of a Trustor and Beneficiary. Trustor and Beneficiary expressly disclaim any intent to create a partnership or joint venture pursuant to this Deed of Trust or the Declaration of Restrictions.

23. Attorney Fees. If any party to this Deed of Trust shall bring any action for any relief against any other party, declaratory or otherwise, arising out of this Deed of Trust, the losing party shall pay to the prevailing party a reasonable sum for attorney fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing

shall pay to the prevailing party a reasonable sum for attorney fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recover of attorney fees and costs incurred in enforcing such judgment. For the purpose of this Section, attorney fees shall include, without limitation, fees incurred in the following: (a) post-judgment motions; (b) contempt proceedings; (c) garnishment, levy and debtor and third party examinations; (d) discovery; and (e) bankruptcy litigation.

24. General Provisions.

(a) This Deed of Trust applies to, inures to the benefit of, and binds the respective heirs, legatees, devisees, administrators, executors, successors and assigns of each of the parties hereto.

(b) As used herein, the word "person" shall mean and include natural persons, corporations, partnerships, unincorporated associations, joint ventures and any other form of legal entity.

(c) As used herein, the word "Property" shall mean and include the Property and any part thereof.

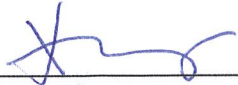
(d) As used herein and unless the context otherwise provides, the words "herein," "hereunder," and "hereof" shall mean and include this Deed of Trust as a whole, rather than any particular provision hereof.

(e) In exercising any right or remedy, or taking any action provided herein, Beneficiary may act through its employees, agents or independent contractors, as authorized by Beneficiary.

(f) Wherever the context so requires herein, the masculine gender includes the feminine and neutral, the singular number includes the plural, and vice versa.

(g) Captions and paragraph headings used herein are for convenience only, are not a part of this Deed of Trust and shall not be used in construing it.

By: Chris Zapata
Its: City Manager
Date:



Name: Xiu Lan Yang
Date:

ALL SIGNATURES MUST BE NOTARIZED

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss
COUNTY OF ALAMEDA)

On December 05, 2012 ~~2007~~, before me, the undersigned, a Notary Public, in and for Alameda County, State of California, appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

(see Attached
California Acknowledgment)

Notary Public

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss
COUNTY OF ALAMEDA)

On _____ 2007, before me, the undersigned, a Notary Public, in and for Alameda County, State of California, appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Notary Public

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Alameda

On December 05, 2012 before me, Loretta A. Lee-Senjikenny, Notary Public,
(Here insert name and title of the officer)

personally appeared XIU LAN YANG,

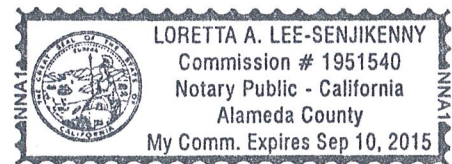
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

Loretta A. Lee-Senjikenny
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

PERFORMANCE DEED OF
(Title or description of attached document)

TRUST
(Title or description of attached document continued)

Number of Pages _____ Document Date _____

APN: 075-0209-058-00
(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

IN WITNESS WHEREOF, the parties hereto have entered into this Deed of Trust as of the date first written above.

CITY OF SAN LEANDRO, a municipal corporation


By: _____
Its: Chris Zapata
City Manager
Date:

Signed in counterpart
Name: Xiu Lan Yang
Date:

ALL SIGNATURES MUST BE NOTARIZED

ACKNOWLEDGMENT

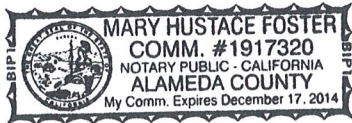
STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

On December 6, 2012, before me, MARY HUSTACE FOSTER, Notary Public, personally appeared CHRIS ZAPATA, 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.



Mary Hustace Foster
Notary Public

ACKNOWLEDGMENT

STATE OF CALIFORNIA

)

COUNTY OF ALAMEDA

)

)

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.

Notary Public

EXHIBIT A

Form of
RESALE AGREEMENT AND OPTION TO PURCHASE

Form Only

Exhibit A to Performance Deed of Trust

Recording Requested by
and when Recorded, return to:
City of San Leandro
Mail Tax Statements to:
City of San Leandro

City of San Leandro
835 E. 14th Street
San Leandro, California 94577
Attn: City Manager

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE
§§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

RESALE AGREEMENT AND OPTION TO PURCHASE

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE CITY OF SAN LEANDRO (THE "CITY") FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN "ELIGIBLE HOUSEHOLD" AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN "AFFORDABLE HOUSING COST."

This RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE (hereinafter "**Agreement**") is entered into as of this _____, 2005, by and between the CITY OF SAN LEANDRO (hereinafter "**City**") and _____ (hereinafter "**Owner**").

RECITALS

WHEREAS, Government Code Sections 65580 *et seq.* require the City to encourage the development and availability of affordable housing, and the City's Housing Element Goal 53 requires the inclusion of affordable housing in new housing developments both inside and outside the redevelopment project areas; and

WHEREAS, Pursuant to Health and Safety Code Section 33413(b)(2)(A)(i), specified percentages of all new and substantially rehabilitated dwelling units developed in redevelopment project areas in the City shall be available at affordable housing cost to persons and families of low or moderate income and to very-low income households, and such requirements shall be set forth in recorded covenants running with the land, enforceable by the City of San Leandro, a public body corporate and politic (the "**City**"). This Agreement is intended to implement this requirement of law, and to cause the Property, if applicable, to be eligible for housing production credit pursuant to Section 33413(b)(2)(A)(i); and

WHEREAS, the City has adopted an Inclusionary Zoning Ordinance pursuant to which the City conducts a program for the sale and rental of some housing units at a price below market rate ("**Program**"),

pursuant to which developers of residential housing developments agree to set aside a certain number of units for very low-, low-, and moderate-income persons and families, as defined herein; and

WHEREAS, Owner is an eligible low-income purchaser under the Program, intends to live in the Property as an owner occupant, and agrees to maintain the Property as Owner's principal residence; and

WHEREAS, In order to maintain and preserve the Property as affordable housing, it is necessary to restrict the use and resale of the Property through imposition of the occupancy and resale restrictions set forth herein. These restrictions are intended to prevent initial and subsequent purchasers from using the Property for purposes incompatible with the Program and realizing unwarranted gains from sales of the Property at unrestricted prices. The terms and conditions of this Agreement are intended to provide the necessary occupancy and resale restrictions to ensure that the Property is used, maintained, and preserved as housing affordable to eligible moderate-income purchasers; and

WHEREAS, The Property constitutes a valuable community resource by providing decent, safe, and sanitary housing to persons and families of moderate income who otherwise would be unable to afford such housing. To protect and preserve this resource it is necessary, proper, and in the public interest for the City to administer the occupancy and resale controls by means of this Agreement.

AGREEMENT

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

1. Below-Market Unit. The real property, which is the subject of this Agreement, is more fully described in Exhibit A attached hereto and incorporated by this reference. Said real property ("**Property**") is hereby designated as a Below-Market Rate (BMR) unit and shall be subject to the terms and conditions herein set forth. This Agreement runs with the Property and is binding on the parties hereto and their successors and assigns and on all purchasers of the Property for that period of time the BMR unit is in place and being used either wholly or partially for residential purposes.

2. Program Requirements.

a. Affordability Restrictions. Owner, by and for itself and any successors in interest, hereby covenants and agrees that the Property shall be sold only to Eligible Households at a price not to exceed the Adjusted Resale Price, as defined in Section 12, and that during the term of this Agreement all of the requirements and restrictions of this Agreement shall apply.

b. Eligible Household. There shall be no sale or other transfer of the Property without Certification by the City that the transferee is an eligible household and that the Property is being transferred at a price not to exceed the adjusted resale price, which is capped at an "**Affordable Housing Cost**." Any sale or other transfer of the Property in violation of this covenant shall be void.

c. Principal Residence Requirement. Each Transferee of the Property shall occupy the Property as his/her/their principal residence for the duration of his/her/their ownership. Without limiting the generality of the foregoing, any absence from the Property by Owner for a period of ninety (90) or more

days shall be deemed an abandonment of the Property as the principal residence of Owner in violation of the conditions of this Section. Upon request by the City made from time to time, the Owner of the Property shall submit an affidavit to the City certifying that the Property is the Owner's principal residence and provide such documents and other evidence as may be requested to verify Owner's compliance with this requirement. Abandonment of the Property shall constitute an Option Event (as defined in Section 5 below) and shall entitle the City to exercise its Option to purchase the Property.

3. Grant of Option to Purchase. Owner hereby grants to the City an option ("**Option**") to purchase all of Owner's right, title and interest in and to the Property upon the occurrence of an Option Event (defined in Section 5 below), subject to the terms and conditions contained herein.

4. Assignment of the Option. The City may assign the Option to another government entity, a non-profit affordable housing provider or a person or family of moderate income who qualifies as an Eligible Household. The City's assignment of the Option shall not extend any time limits contained herein with respect to the exercise period of the Option or the period within which the Property must be purchased.

5. Events Giving Rise to Right to Exercise Option. The City shall have the right to exercise its Option upon the occurrence of any of the following events (each, an "**Option Event**"):

- a. Receipt of a Notice of intent to Transfer (defined in Section 6 below);
- b. Any actual, attempted or pending sale, conveyance, transfer, lease or other attempted disposition of the Property or of any estate or interest therein, except as provided in Section 16 below;
- c. Any actual, attempted or pending encumbrance of the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien, except as provided in Section 17 below;
- d. Recordation of a notice of default and/or notice of sale pursuant to California Civil Code section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;
- e. Commencement of a judicial foreclosure proceeding regarding the Property;
- f. Execution by Owner of any deed in lieu of foreclosure transferring ownership of the Property;
- g. Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner; or
- h. Any violation by Owner of any provision of this Agreement including, without limitation, the conditions set forth in Section 2 above.

6. Method of Exercising the Option.

a. Notice of Intent to Transfer. If Owner desires to sell, convey, transfer, lease, encumber or otherwise dispose of the Property or of any estate or interest therein, Owner shall notify City in writing to that effect (the "**Notice of Intent to Transfer**"). The Notice of Intent to Transfer shall state the street address of the Property, Owner's full name or names, the address and telephone number at which Owner shall be contacted if not at the Property; and shall be delivered personally or deposited in the United States mail, postage prepaid, certified-return receipt requested, addressed to the City of at 835 E. 14th Street, San Leandro, CA, 94577 Attn: City Manager. The Notice of Intent to Transfer shall be in substantially the form attached hereto as Exhibit B. In the case of a proposed sale of the Property to a prospective purchaser, the Owner shall submit to the City, together with the Notice of Intent to Transfer, a copy of the prospective purchaser's income certification, a list of all assets owned by the prospective purchaser, and other financial information reasonably requested by City, in a form approved by the City, along with the income certification to be provided to any lender making a loan to the prospective purchaser. The City may require documentation evidencing and supporting the income and other financial information contained in the certifications.

b. Notice of Exercise. Upon the occurrence of any Option Event, the City may exercise its Option by delivering notice ("**Notice of Exercise**") to Owner of its intent to exercise such Option pursuant to the terms of this Agreement. The Notice of Exercise may be in the form attached hereto and incorporated herein as Exhibit C or in such other form as the City may from time to time adopt. The Notice of Exercise shall be delivered by deposit in the United States mail, postage prepaid, first-class, addressed to Owner at the Property, or at such other address as may be indicated on the Notice of Intent to Transfer, and delivery shall be deemed effective five (5) calendar days following the date of deposit. If the Option Event relates to the potential foreclosure of a mortgage under Sections 5(d), (e) or (f), then the City shall also deliver the Notice of Exercise to the mortgagee or beneficiary under such mortgage, at such mortgagee's or beneficiary's address of record in the Office of the Recorder of Alameda County.

c. Notice of Consent to Transfer. If the City does not exercise the Option, it may give its consent to the occurrence of the Option Event ("**Consent to Transfer**"). If the Option Event involves a proposed sale of the Property to a prospective purchaser, the City's consent shall be conditioned upon (i) the proposed purchaser's qualification as an Eligible Household; (ii) the sale of the Property at a price not to exceed the Adjusted Resale Price; (iii) the proposed purchaser's execution of a Disclosure Statement in the form attached hereto as Exhibit D or such other form or forms as may be promulgated by the City; and (iv) the proposed purchaser's assumption of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to City, or execution of an agreement substantially similar to this Agreement, within thirty (30) days after the Consent to Transfer has been delivered to Owner. If the prospective purchaser (1) fails to qualify as an Eligible Household, (2) fails to execute and deliver the Disclosure Statement to the City, or (3) fails to execute and deliver to the City an assumption agreement or an agreement substantially similar to this Agreement within such thirty (30) day period, then the Consent to Transfer shall expire and the City may, at its option, either notify Owner of the disqualification, thereby entitling Owner to locate another purchaser who qualifies as an Eligible Household, or exercise the Option, as if no Consent to Transfer had been delivered.

d. Time Period for Notice. The City shall deliver a Consent to Transfer, if applicable, not later than thirty (30) days after the date that it receives notification of an Option Event. The City shall

deliver a Notice of Exercise, if applicable, on or before the date which is the later to occur of the following: (i) thirty (30) days after the date that the City receives notification of an Option Event or (ii) fifteen (15) days after a Consent to Transfer has expired. For purposes of computing commencement of the delivery periods, the City shall be deemed to have notification of an Option Event on the date that it actually receives written Notice of Intent to Transfer, notice of default, summons and complaint or other pleading, or other writing specially stating that an Option Event has occurred. The City shall have no obligation to deliver a Notice of Exercise or Consent to Transfer, and the applicable time period for exercise of the Option shall not commence to run, unless and until the City has received notification of an Option Event in the manner specified in this subsection. If there is a stay or injunction imposed by court order precluding the City from delivering its Consent to Transfer or Notice of Exercise within the applicable time period, then the running of such period shall cease until such time as the stay is lifted or the injunction is dissolved and the City has been given written notice thereof, at which time the period for delivery of a Consent to Transfer or Notice of Exercise shall again begin to run.

e. Notice of Abandonment. If the City fails to deliver a Notice of Exercise or Consent to Transfer within the above-stated time periods, then the Option shall terminate and have no further force and effect. Thereafter, upon request by Owner, the City shall cause to be filed for recordation in the Office of the Recorder of Alameda County, a notice of abandonment, which shall declare that the provisions of the Option are no longer applicable to the Property. If the City fails to record a notice of abandonment, the sole remedy of Owner shall be to obtain a judicial order instructing prompt recordation of such a notice.

f. Liquidated Damages. In the event the City chooses not to exercise its Option and no qualified Owner is found willing and able to purchase the Property, the City shall retain or recover from Owner the surplus, if any, as its property without any deduction, offset or recoupment whatsoever. If the Owner should sell the Property at market rate to an Owner who shall receive title free and clear of the provisions of this Agreement, then the damages suffered by the City by reason thereof would be uncertain. Such damages would involve the replacement costs for another affordable unit, and the expenses of continuing the ownership and control of the Property by the City; postponement of tax revenues therefrom to the community; and the failure of the City to effect its purposes and objectives within a reasonable time, resulting in additional immeasurable damage and loss to the City and the community. It is impractical and extremely difficult to fix the amount of such damages to the City, but the Parties are of the opinion, upon the basis of all information available to them, that such damages would exceed the amount of any projected surplus as the total of all liquidated damages and not as a penalty. In the event that this section should be held as void for any reason by a court of law, the City shall be entitled to seek the full extent of damages otherwise provided by law.

The Owner and the City specifically acknowledge this liquidated damages provision by their signatures here:

City: _____

Owner: _____

7. Right to Reinstatement. If the Option Event is the recordation of a notice of default, then the City shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or

successor section) solely for purposes of reinstatement of any mortgage on the Property that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the City shall be entitled to pay all amounts of principal, interest, taxes, assessments, homeowners' association fees, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. If the City exercises the Option, then any and all amounts paid by the City pursuant to this Section shall be treated as Adjustments to the Base Resale Price for the Property, as defined in Section 12, below.

8. Inspection of Property. After receiving a Notice of Intent to transfer or delivering a Notice of Exercise, the City shall be entitled to inspect the Property one or more times prior to the close of escrow to determine the amount of any Adjustments to the Base Resale Price. Before inspecting the Property, the City shall give Owner not less than forty-eight (48) hours written notice of the date, time and expected duration of the inspection. The inspection shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding court holidays, unless the parties mutually agree in writing to another date and time. Owner shall make the Property available for inspection on the date and at the time specified in the City's request for inspection.

9. Escrow. Promptly after delivering a Notice of Exercise, the City shall open an escrow account for its purchase of the Property. Close of escrow shall take place on such date which is the later to occur of the following, (a) sixty (60) days after a Notice of Exercise has been delivered, or (b) ten (10) days after Owner has performed all acts and executed all documents required for close of escrow. Prior to the close of escrow, the City shall deposit the Adjusted Resale Price as defined in Section 12 below and all escrow fees and closing costs to be paid by City. Closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Alameda at the time of the opening of escrow, or as may otherwise be provided by mutual agreement. Owner agrees to perform all acts and execute all documents reasonably necessary to effectuate the close of escrow and transfer of the Property to the City.

10. Proceeds of Escrow; Removal of Exceptions to Title. Prior to close of escrow, Owner shall cause the removal of all exceptions to title to the Property that were recorded after the date of this Agreement. All amounts required to be deposited into escrow by the City shall be applied first to the payment of any and all liens and encumbrances recorded against the Property in order of lien priority, and thereafter to the payment of escrow fees and closing costs. Any amounts remaining after the amounts deposited into escrow by the City have been so applied, if any, shall be paid to Owner upon the close of escrow. If the amounts deposited into escrow by the City are insufficient to satisfy all liens and encumbrances recorded against the Property, the Owner shall deposit into escrow such additional sums as may be required to remove said liens and encumbrances. In the event that the City agrees to proceed with close of escrow prior to the date that Owner has caused all exceptions to title recorded after the date of this Agreement to be removed, then Owner shall indemnify, defend and hold City harmless from any and all costs expenses or liabilities (including attorneys' fees) incurred or suffered by City that relate to such exceptions and their removal as exceptions to title to the Property.

11. Base Resale Price. Prior to adjustment pursuant to Section 12 the base resale price ("**Base Resale Price**") of the Property shall be the lowest of:

a. Appraisal Method.

City or its designee shall have an appraisal made by a neutral professional appraiser of its choice to establish the market value. The Owner may also have an appraisal made by a neutral professional appraiser of Owner's choice to establish the market value. If agreement cannot be reached, the average of the two appraisals shall be deemed to be the market price. This requirement for an appraisal may be waived by the City if, in the exercise of its judgment, the appraised value will be substantially higher than the price determined in subsection 11(b) below.

b. Base Price Method.

The purchase price paid by Owner plus the amount of any prepayment fees paid by the Owner-Seller at the time said Owner purchased the Premises ("**base price**"), plus the lesser of either (i) the rate of increase of Area Median Income during the seller's ownership; or (ii) any increase in the housing component of the San Francisco-Oakland metropolitan area Consumer Price Index as published periodically by the United States Department of Housing and Urban Development (hereinafter the "**Index**"). For that purpose, the Index prevailing on the date of the purchase by the Selling Owner of said Premises shall be compared with the latest Index available on the date of receipt by City of notice of intent to sell. The percentage increase in the index, if any, shall be computed and the base price shall be increased by that percentage. Owner understands and agrees that Owner shall sell the Property at the deed restricted price or at a lower price if market conditions dictate that the Property must be sold at a lower price than the deed restricted price.

In no event shall City become in any way liable to Owner, nor become obliged in any manner, by reason of the assignment of City's right to purchase, nor shall City be in any way obligated or liable to Owner for any failure of City's assignee to consummate a purchase of the premises or to comply with the terms of any purchase and sale agreement.

12. Adjustments to Base Resale Price. Subject to the Affordable Housing Cost restriction described in subsection (d) below, the Base Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("**Adjustment**"):

a. Capital Improvements. An increase for capital improvements made to the Property by Owner, but only if the amount of said improvements had been previously accepted in writing by the City after original written documentation of the cost was provided to the City for verification. The amount of the Adjustment shall equal the original cost of any such capital improvements depreciated on a straight-line basis based upon the estimated useful life of the improvement stated in the City's prior written acceptance of said improvement.

b. Damages. A decrease by the amount necessary to repair damages to the Property, if any, and to place the Property into saleable condition as reasonably determined by the City, including, without limitation, amounts attributed to cleaning; painting; replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures.

c. Advances by the City. A decrease in an amount equal to the sum of all costs advanced by the City for the payment of mortgages, taxes, assessments, insurance premiums, homeowner's association fees and/or associated late fees, costs, penalties, interest, attorneys' fees, pest inspections, resale inspections, fixing violations of applicable building, plumbing, electric, fire, or other codes, and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent.

d. Adjusted Resale Price Not to Exceed Affordable Housing Cost. The Base Resale Price as adjusted, is hereinafter referred to as the "**Adjusted Resale Price.**" Notwithstanding any other provision hereof to the contrary, in no event shall the Adjusted Resale Price exceed the Affordable Housing Cost.

13. Priority and Effectiveness of the Option.

a. Recordation. This Agreement shall be recorded in the Office of the Recorder of the County of Alameda prior to any sale, conveyance, transfer or other disposition of the Property, or of any estate or interest therein, by Owner. The Option shall have priority over any subsequent sale, conveyance, transfer, lease, or other disposition or encumbrance of the Property, or of any estate or interest therein, and in the event of exercise of the Option by City, the City shall take the Property subject only to senior liens and encumbrances. Except as otherwise provided in Section 14(a), the exercise of the Option by the City at any time and from time to time shall not extinguish the Option or cause a merger of the Option into any estate or other interest in the Property, and the Option shall continue to exist and be effective with respect to the Property against any and all subsequent owners in accordance with the terms and conditions hereof.

b. Request for Notice of Default. The City shall file a Request for Notice of Default for recordation in the Office of the Recorder of the County of Alameda promptly upon execution of this Agreement.

14. Survival of Option Upon Transfer.

a. In General. The City's right to exercise the Option shall survive any transfer of the Property by Owner. The Option may be exercised against the Property whether owned, possessed or occupied by (i) an eligible moderate income purchaser, (ii) any successor, transferee, assignee, heir, executor, or administrator of an eligible moderate income purchaser, including a debtor-in-possession, debtor or trustee pursuant to Title 11 of the United States Code, or (iii) any person owning, possessing or occupying the Property who does not meet the eligibility criteria established by the City under the Program (collectively all referred to and defined herein as "**Owner**"). Notwithstanding the foregoing, the Option shall not survive (1) the sale and transfer of the Property to a third party purchaser pursuant to a judicial or non-judicial foreclosure or a deed-in-lieu of foreclosure under a power of sale contained in a mortgage or deed of trust recorded against the Property in the Office of the Recorder of the County of Alameda on or prior to the date of this Agreement, provided that the City has received timely notice of such Option event and has failed to either reinstate said mortgage or deed of trust or exercise its Option, or (2) the recording of an instrument conveying Owner's interest in the Property to the City, or its assignee, provided the conveyance is in accordance with the terms of this Agreement.

b. HUD Insured Mortgage. If Owner has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development, and a notice of default has been recorded pursuant to California Civil Code Section 2924 (or successor provisions), then this Option shall automatically terminate if title to the Property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the insured mortgage is assigned to the Secretary.

15. Voidable Transfers. As long as the Option has not been abandoned pursuant to Section 6(e), any actual or attempted sale, conveyance, transfer or other disposition of the Property, or of any estate or interest therein, in violation of the terms and conditions of this Agreement, shall be voidable at the election of the City.

16. Permitted Transfers. The following transfers ("**Permitted Transfers**") of title to the Property, or of any estate or interest therein, shall not be subject to the City's prior approval, shall not trigger the exercise of the Option, and shall not be considered Option Events: (a) a good-faith transfer by gift, devise or inheritance to Owner's spouse or issue; (b) a taking of title by a surviving joint tenant; (c) a court-ordered transfer of title to a spouse as part of a divorce or dissolution proceeding; (d) a transfer by Owner into an inter vivos trust in which the Owner is a beneficiary and the Owner continues to occupy the property as his/her primary residence; (e) an acquisition of title, or of any interest therein, in conjunction with marriage; or (f) any good faith transfer to an Eligible Household. Notwithstanding any Permitted Transfers, the Option shall remain effective with respect to the Property.

17. Permitted Encumbrances and Refinances. This Option shall not become exercisable as the result of Owner's encumbering the Property for the purpose of securing financing to purchase the Property pursuant to the Program, or to refinance existing indebtedness incurred to purchase the Property pursuant to the Program. The maximum amount (the "**Permitted Encumbrance Amount**") of any refinancing permitted by this section shall not exceed an amount equal to ninety percent (90%) of the Base Resale Price calculated as provided in Section 11, as modified by this section. The Permitted Encumbrance Amount shall be the Base Resale Price calculated as if the City has received notification of an Option Event on the earlier of (a) the date on which the deed of trust or mortgage securing the refinancing indebtedness is filed for record in the Office of the recorder of the County of Alameda, or (b) the date the City receives Notice of Intent to Transfer pursuant to Section 6(a) above.

18. Obligation of Owner After Option Abandonment. If the City records a notice of abandonment of the Option, then the Property may be sold by Owner to a third party without restriction as to price; however, upon such sale, Owner shall pay to City an amount ("**City's Share**") equal to eighty-five percent (85%) of the difference between (a) the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and (b) the Adjusted Resale Price. The City's Share shall be paid to the City upon close of escrow on the sale of the Property, or upon execution of a contract of sale, whichever shall first occur. Owner shall not receive any proceeds from the sale unless and until the City has been paid the full amount of the City's Share.

19. Limits on Liability. In no event shall the City become liable or obligated in any manner to Owner by reason of the assignment of this Agreement or the Option, nor shall City be in any way liable or obligated to Owner for any failure of the City's assignee to consummate a purchase of the Property or to comply with the terms of this Agreement or the Option, or any escrow instructions or agreement for the purchase of the Property.

Form Only

Exhibit A to Performance Deed of Trust

20. Insurance Proceeds and Condemnation Award. In the event the Property is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the Property, or, in the event of condemnation, if the proceeds thereof are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Section 10 had the City exercised its Option on the date of the destruction of condemnation valuation date shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the City.

21. Effective Date. The rights and obligations of the City and Owner set forth in this Agreement shall be effective upon the date (the "**Recording Date**") this Agreement is filed for record in the Office of the Recorder of Alameda County.

22. Term of Option. The restrictions contained herein shall continue for a period of thirty (30) years from the Recording Date.

23. Notices. Except as otherwise specified in this Agreement, all notices required to be sent pursuant to this Agreement shall be made by personal delivery or by deposit in the United States mail, first-class, postage prepaid, and shall be deemed to have been delivered and received on the date of personal delivery or five (5) days after deposit in the mail, if sent to the following address:

City: City of San Leandro
835 E. 14th Street
San Leandro, California 94577
Attn: Tom Liao, Acting Community Development Director
Tel: 510 577-6003
Fax: 510 577-6007

Owner: _____
[ADDRESS]
San Leandro, California [ZIP CODE]

24. Attorneys' Fees. If either party initiates legal proceedings to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and costs in additions to any other recovery to which it is entitled under this Agreement.

25. Specific Performance. Owner acknowledges that any breach in the performance of its obligations under this Agreement shall cause irreparable harm to the City. Owner agrees that the City is entitled to equitable relief in the form of specific performance upon its exercise of the Option, and that an award of damages shall not be adequate to compensate the City for Owner's failure to perform according to the terms of this Agreement.

SIGNATURES ON NEXT PAGE

Form Only

Exhibit A to Performance Deed of Trust

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the dates set forth below.

OWNER(S):

By: FORM ONLY – DO NOT SIGN
[NAME]

On: _____

CITY OF SAN LEANDRO:

By: FORM ONLY – DO NOT SIGN
[NAME, TITLE]

Its: _____

On: _____

ATTEST:

By: FORM ONLY – DO NOT SIGN
[NAME], Secretary

APPROVED AS TO FORM:

By: FORM ONLY – DO NOT SIGN
[NAME], City Attorney

Form Only

Exhibit A to Performance Deed of Trust

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On _____, before me, _____, a Notary Public in and for said county and state, personally appeared _____ personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On _____, before me, _____, a Notary Public in and for said county and state, personally appeared _____ personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (Seal)

Form Only

**Exhibit A
to Performance Deed of Trust**

**CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)**

This is to certify that the interest in real property conveyed by the Resale Restriction Agreement and Option to Purchase dated _____ from _____ to the City of San Leandro, a California municipal corporation, is hereby accepted by the undersigned office or agent on behalf of the City of San Leandro pursuant to authority conferred by the Resolution No. 2005-143 dated October 17, 2005; and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: **form only do not sign**
Vivian Chiu

Its: Deputy City Clerk

ATTEST:

form only do not sign
Marian Handa, City Clerk

Form Only

Exhibit A to Performance Deed of Trust

EXHIBIT A

Legal Description

[To be inserted]

FORM ONLY

Exhibit A
to Performance Deed of Trust

EXHIBIT B

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

To: City of San Leandro
835 E. 14th Street
San Leandro, California 94577
Attn: City Manager

Date: _____

Re: Notice of Intent to Transfer

The undersigned Owner(s) _____, hereby give(s) notice of his/her/their intent to transfer the property located at _____, San Leandro, California (the "**Property**"). Owner may be contacted at the Property or at the following address:

Owner's daytime telephone number is () _____

The proposed transfer of the Property is to the following person(s):

Name: _____

Address: _____

Telephone: () _____

The proposed transfer is (check one):

Sale

Lease

Other

Specify:

Owner(s) signature(s):

Form Only

Exhibit A
to Performance Deed of Trust

EXHIBIT C

Date: _____

To: _____ (Owner or Transferree)

_____ (Address)

Re: Notice of Exercise

The City of San Leandro ("**City**") hereby gives notice that it is exercising its option to purchase the real property located at _____, San Leandro, California. The option has been granted to the City pursuant to the Resale Restriction Agreement and Option to Purchase between Owner and the City dated _____ and recorded on _____ as Instrument No. _____ (The City has assigned its option to purchase the real property to _____.) An escrow for the purchase will be opened with the [TITLE COMPANY].

CITY OF SAN LEANDRO

By: _____

Its: _____

Form Only

Exhibit A
to Performance Deed of Trust

Exhibit D

Disclosure Statement

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE CITY OF SAN LEANDRO (THE "CITY") FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN "ELIGIBLE HOUSEHOLD" AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN "AFFORDABLE HOUSING COST."

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE.

THESE RESTRICTIONS WILL BE IN EFFECT UNTIL December 1, 2057. **ANY SALE OF THE PROPERTY IN VIOLATION OF THE RESTRICTIONS SHALL BE VOIDABLE AT THE ELECTION OF THE CITY.**

TO DETERMINE WHO AN ELIGIBLE HOUSEHOLD IS, AND WHAT THE ADJUSTED RESALE PRICE AND AFFORDABLE HOUSING COST ARE, YOU SHOULD CONTACT THE CITY OF SAN LEANDRO.

YOU SHOULD ALSO READ THE RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT RECORDED AGAINST THE PROPERTY. YOU MAY OBTAIN A COPY FROM THE CITY OF SAN LEANDRO OR FROM THE ESCROW COMPANY.

I HAVE READ THE FOREGOING AND I UNDERSTAND WHAT IT MEANS:

form only do not sign
Owner

form only do not sign
Owner

1541040.1

EXHIBIT B
LEGAL DESCRIPTION



Exhibit "B"

Legal Description

ALL THAT CERTAIN PARCEL OF LAND SITUATED IN THE COUNTY OF ALAMEDA AND STATE OF CALIFORNIA BEING KNOWN AND DESIGNATED AS FOLLOWS:

PARCEL ONE:

LOT 52, TRACT 7175, FILED MARCH 22, 2001, MAP BOOK 257, PAGES 28-31, ALAMEDA COUNTY RECORDS.

RESERVING THEREFROM AN EASEMENT FOR VEHICLE AND PEDESTRIAN INGRESS AND EGRESS, TO BE APPURTENANT TO LOT 53 OF SAID TRACT 7175, OVER, UNDER AND ACROSS THAT PORTION OF SAID LOT SHOWN ON SAID MAP AS "PDE".

PARCEL TWO:

AN EASEMENT FOR VEHICLE AND PEDESTRIAN INGRESS AND EGRESS, TO BE APPURTENANT TO PARCEL ONE ABOVE, OVER, UNDER AND ACROSS THAT PORTION OF LOT 53 OF SAID TRACT 7175 SHOWN ON SAID MAP AS "PDE".

Tax ID: 075-0209-058-00