

January 19, 2021

City of Benicia Planning Division
Received November 22, 2021

Title Company Name
555 Main Street
City, CA 94510
Attention: Escrow Officer

Delivered via email: escrow.officer@title.com

SUBJECT: Property Address: **123 Sample Street, Unit 2, Benicia , CA 94510**
 Buyer: **Mary Sample, John Sample, Ellen Sample and Jack Sample**
 Escrow Number: **0000000000**
 BMR Lien Number: **I000000000**

Dear Escrow Officer:

These instructions are delivered to you by the City of Benicia (the "City"), acting through its Mayor's Office of Housing and Community Development ("City of Benicia"), in connection with purchase of the above unit ("Property") by **Mary Sample, John Sample, Ellen Sample and Jack Sample** ("Buyer"). The Property is subject to the City's Inclusionary Housing Below Market Rate (BMR) Ownership Program (the "Program"), and as such may only be sold to Program-qualified buyers. The Buyer has been approved by the City as a qualified buyer, and will execute all required Program documents.

I. Closing Documents

In connection with this escrow, the City is depositing the following documents:

1. **Declaration of Restrictions for Inclusionary Housing Below Market Rate Units and Option to Purchase Agreement** (the "Declaration").
2. **Promissory Note** Secured by Deed of Trust, for the benefit of the City and dated as of the date it is executed by Buyer (the "City Note").
3. **Deed of Trust and Assignment of Rents** dated as of the date executed by Buyer as Trustor, for the benefit of the City to secure the City Note (the "City Deed of Trust").
4. **Acknowledgment of the Declaration, Notice of Special Restrictions, and Procedures Manual**, dated as of the date executed by Buyer (the "City Acknowledgment").
5. **BMR Affidavit** (Exhibit C to the City Acknowledgment).
6. **Conflict of Interest Affidavit** (Exhibit D to the City Acknowledgment).
7. **Request for Copy of Notice of Default** under Section 2924b Civil Code (the "Request for Notice").

II. Closing Procedures

In connection with this transaction, the City authorizes you to execute the following actions:

1. Please arrange for Buyer to come into your office to execute the documents listed below. Buyer must execute the documents as indicated on the forms and below (use blue ink pen for all signatures). Buyer's signature must be acknowledged by a Notary Public where indicated. No power of attorney is allowed, and the Buyer must be physically present to sign the documents. At signing, please provide to the Buyer a copy of each document signed by Buyer. Buyer must execute:
 - (a) the Declaration; Buyer's signature must be acknowledged by a Notary Public; **please date the Declaration as of the date it is executed by Buyer;**
 - (b) the City Note; Buyer's signature must be acknowledged by a Notary Public; **please date the City Note as of the date it is executed by Buyer;**
 - (c) the City Deed of Trust; Buyer's signature must be acknowledged by a Notary Public; **please date the City Deed of Trust as of the date it is executed by Buyer;**
 - (d) the City Acknowledgment; Buyer's signature must be acknowledged by a Notary Public; **please date the City Acknowledgment as of the date it is executed by Buyer;**
 - (e) BMR Affidavit (Exhibit C to the City Acknowledgment);
 - (f) Conflict of Interest Affidavit (Exhibit D to the City Acknowledgment);
 - (g) the Request for Notice; Buyer's signature must be acknowledged by a Notary Public.
2. Once Buyer has executed the documents and the documents are dated as provided above, please attach:
 - (a) A copy of the legal description of the Property as Exhibit A to the Declaration, the City Deed of Trust, and the City Acknowledgment.
 - (b) A copy of the signed City Note as Exhibit B to the City Deed of Trust.
 - (c) A copy of the Notice of Special Restrictions under the City Planning Code, recorded in the Official Records of the City of Benicia on **DATE** as Document **0000000- 00**, as Exhibit B to the City Acknowledgment.
 - (d) The original signed BMR Affidavit as Exhibit C to the City Acknowledgment.
 - (e) The original signed Conflict of Interest Affidavit as Exhibit D to the City Acknowledgment.
3. Under separate cover, you will receive from **Mortgage Lending Institution** (the "Senior Lender"), their separate escrow instructions, loan documents, and funds related to a purchase money mortgage in the amount of **\$000000** for the purchase of the Property, including a first Deed of Trust securing said Property between the Buyer as Trustor, and the Senior Lender as Beneficiary ("Senior Lender Deed of Trust"). The Senior Lender Deed of Trust will be recorded against the Property in the first lien position, before the City Deed of Trust, as provided below.
4. The City Deed of Trust will be recorded against the Property in the second lien position, as provided below.
5. You will submit a copy of the HO6 Certificate of Insurance naming the City as second mortgagee/loss payee on the Property Insurance Policy. The loss payee clause shall read as follows:

City of Benicia , its Successors and/or Assigns
Benicia, CA 94510

The City of Benicia BMR Lien Number referenced above must be properly reflected on the Property Insurance Policy.

6. You will collect a Post-Purchase Education Deposit in the amount of \$200 from the Buyer, and properly reflect this amount on the Settlement Statement. A description of this line item will read: **Post-Purchase Education Guidelines**. The deposit must be made in the form of escrow check or cashier's check, and payable to: BMR Homeownership, Benicia, CA 94510. Please reference the Buyer's Name and Property Address on the check.

At closing or immediately after closing, please mail the following to HomeownershipSF at the above address to the attention of the BMR Ownership Program:

- An escrow or cashier's check in the amount of \$200; and
 - A certified copy of the final settlement statement
7. You will confirm that property taxes and hazard insurance are impounded by the Senior Lender. Impounds for taxes and insurance must be reflected on the estimated master settlement statement, unless otherwise approved by City of Benicia.
 8. You acknowledge that all City documents are to be recorded at no charge pursuant to California Government Code Section 27383. If the Recorder of the City of Benicia charges a recording fee, you are to pay the recording fee and charge the Buyer. The City will not be responsible for any escrow or recording fees associated with the completion of these closing documents.
 9. You have prepared an estimated combined settlement statement for Buyer and the City.
 10. Indicate your receipt and acceptance of these instructions by signing the enclosed copy.
 11. **Return ALL of the following documents to City of Benicia for review and approval before any document is recorded.**

Return **hard copies** of the following executed documents to City of Benicia: (a) **Original** Declaration (for the City to execute and notarize), and; (b) **Original** City Note

Return **electronic copies** of the following executed documents as **one PDF file** to City of Benicia:

- (a) Your acceptance of the City's Escrow Instructions;
 - (b) Copy of Declaration;
 - (c) Copy of City Note;
 - (d) Copy of City Deed of Trust;
 - (e) Copy of City Acknowledgment;
 - (f) Copy of Request for Notice;
 - (g) Copy of the Grant Deed;
 - (h) Copy of Senior Lender Closing Instructions, Note and Deed of Trust;
 - (i) Copy of any other mortgage closing instructions, notes and deeds of trust (if applicable);
 - (j) Copy of the estimated combined (Buyer and Seller) settlement statement;
 - (k) Copy of the Hazard Insurance Policy naming the City as loss payee as provided above; and
 - (l) Copy of funds to close (i.e., escrow receipt and copy of wire transmittal or Cashier's check).
12. You are authorized to record the Grant Deed, Declaration, City Deed of Trust and City Acknowledgment in the Official Records of the Benicia County only when the following conditions have been fulfilled:
 - (a) You are in a position to issue a ALTA Lender's Policy of Title Insurance (the "City's Lender's Policy") with ALTA endorsement Form 1 coverage insuring the validity and priority of the City Deed

of trust in the full principal amount of the loan secured thereby subject only to current non-delinquent real estate taxes and exceptions **00000000** listed in the Preliminary Report dated ----- and issued by your company for Order No. 00000000 Deed of trust securing the first mortgage by the Buyer. An ALTA Lender's Policy of Title Insurance will be required for each individual loan.

- (b) You are in a position to issue a CLTA Owner's Policy (or ALTA at Buyer's discretion) insuring the Buyer's interest in the title to the property conveyed to the Buyer by the Seller.
- (c) You are in a position to record a grant deed transferring the Property to Buyer (the "Grant Deed"), to record the Senior Deed of Trust in compliance with any instructions of the Senior Lender, and to record the Declaration, City Deed of Trust, and City Acknowledgment in strict compliance with these instructions.
- (d) City and Buyer have approved in writing the combined settlement statement.
- (e) You are prepared to deliver all documents and do all things as directed in paragraph 13 below.
- (f) You receive a written approval to proceed with recording from a City of Benicia staff member.

13. You will record documents in the order indicated below:

- (a) Grant Deed;
- (b) Declaration;
- (c) Senior Lender Deed of Trust;
- (d) City Deed of Trust;
- (e) City Acknowledgement; and
- (f) Request for Notice

14. When the documents listed above have been recorded in accordance with these instructions:

- (a) On the same day that the above documents are recorded, deliver funds to Buyer, the City, and any other entities in accordance with the approved settlement statements, and disburse the Post-Purchase Education Deposit as provided in paragraph 5, above.
- (b) Within five (5) business days after the above documents are recorded, deliver the following electronically to City of Benicia at [City of Benicia](#)
 - i. a conformed copy of the Grant Deed, the Declaration, the Senior Lender Deed of Trust, the City Deed of Trust, the City Acknowledgment, and the Request for Notice, each evidencing recordation;
 - ii. the City's Lender's Policy;
 - iii. One (1) copy of each of the other documents deposited with you, with recording information, if applicable; and
 - iv. the final combined settlement statement.

III. General Instructions

- 1. The Title Company must assure itself that all conditions referred to above have been fulfilled and must strictly adhere to the procedures listed above in closing escrow.
- 2. The City reserves the right to revoke or amend these instructions and recall documents at any time prior to recordation and disbursement of funds.
- 3. Allow 3 business days for City of Benicia staff to review the executed City documents, estimated settlement statement and signed senior loan documents before expecting City of Benicia approval to record. Include this timeline into your process.
- 4. **No escrow closing or recording can commence without written approval by City of Benicia.**

5. If escrow does not close within 30 days from the date of these instructions, please return all documentation and funds to the City of Benicia , Mayor's Office of Housing and Community Development – BMR Ownership Program, City of Benicia, Benicia , CA 94510.

Please sign below to indicate your understanding of this transaction. In the event you are unable to comply with these instructions as requested, or if there are to be any changes with respect to the transactions contemplated hereby, please contact City of Benicia at 415-000-0000 before proceeding.

Thank you for your cooperation.

Sincerely,

MARY SAMPLE

BMR Lending Specialist
Community Development

Accepted and Agreed to this _____ day of _____, 20____

BY: _____

Ms. Escrow Officer, Title Company Name

Free Recording Requested Pursuant to
Government Code Section 27383

RECORDING REQUESTED BY AND

When recorded, mail to:

Mayor's Office of Housing and
Community Development of the
City of Benicia
1 South Van Ness Avenue, 5th Floor
Benicia , California 94510 Attn:
Inclusionary Program
BMR Lien# 000000000

Property: 123 Sample Street, Unit 2
APN: 5555-100

--Space Above This Line for Recorder's Use--

**DECLARATION OF RESTRICTIONS FOR INCLUSIONARY HOUSING BELOW
MARKET RATE UNITS AND OPTION TO PURCHASE AGREEMENT**

Section 1. Parties.

THIS DECLARATION OF RESTRICTIONS FOR INCLUSIONARY HOUSING BELOW MARKET RATE UNITS AND OPTION TO PURCHASE AGREEMENT ("Declaration") is made as of _____, 20____, (the "Effective Date") by and between **Mary Sample, John Sample, Ellen Sample and Jack Sample** ("Owner") and the City of Benicia , a municipal corporation, acting through the Mayor's Office of Housing and Community Development ("City"). Owner is acquiring a fee interest in that certain real property in the City with a street address of **123 Sample Street, Unit 2, Benicia , CA 94510**, and more particularly described in Exhibit A attached to this Declaration ("Property"). Capitalized terms used in this Declaration have the meanings given to them in Section 3 below.

Section 2. Recitals.

The following recitals of fact are a material part of this Declaration:

(a) The City developed the Inclusionary Housing Below Market Rate Ownership Program (the "Program") to provide homeownership opportunities to individuals and families of low, middle and moderate income by offering homes for sale at prices which are below those otherwise prevailing in the market;

(b) The Property is subject to certain restrictions pursuant to a "Notice of Special Restrictions Under the City Planning Code" ("NSR") recorded in the Official Records of the Solano County.

(c) The City's intent is to preserve the affordability of the Property by restricting the resale price and maintaining the Property Restrictions for the term set forth herein;

(d) The Property constitutes a valuable community resource of the City;

(e) It is necessary, proper and in the public interest for the City to protect and preserve this resource by administering occupancy and resale controls by means of this Declaration.

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the Program, Owner and the City agree as follows:

Section 3. Definitions.

As used in this Declaration, the capitalized terms set forth below shall have the following meanings. For all capitalized terms not defined below, the definitions in Planning Code Section 401 and the Procedures Manual shall apply.

(a) "Area Median Income" is the unadjusted median income levels derived from the HUD on an annual basis for the Benicia area, adjusted solely for household size, but not high housing cost area.

(b) "Base Price" for Owner is defined in Section 4.

(c) "Capital Improvements" is defined in Section 10.1.

(d) "City" is defined in Section 1.

(e) "City Acknowledgment" means the form provided by the City upon execution of this Declaration, acknowledging Owner's acceptance of the terms and conditions of the Program.

(f) "City Deed of Trust" is defined as a BMR Deed of Trust in the Procedures Manual.

(g) "City Note" is defined as a BMR Note in the Procedures Manual.

(h) "Closing Costs" means the reasonable and customary costs incurred by Owner in transferring the Property.

(i) "Damage" means deficiencies in the Property occurring during Owner's ownership of the Property, including without limitation: (1) violations of applicable building, plumbing, electric, fire or housing codes; (2) Defects in electrical system, wiring, heating and air conditioning, insulation, plumbing and functional condition of finishes; (3) appearance of toxic substances (such as asbestos, lead and mold); (4) needed repair to appliances furnished to Owner upon purchase of the Property; (5) holes and other defects (except for holes from picture hangers) in walls, ceilings, floors, doors, windows, screens, carpets, drapes, countertops and similar appurtenances; and (6) repairs needed, as determined by City, to put the Property into saleable condition, including without limitation cleaning and painting.

(j) "Declaration" is defined in Section 1.

(k) "Domestic Partner" is defined in the Procedures Manual.

(l) "Effective Date" is defined in Section 1.

(m) "Events of Default" are defined in Section 11.1.

(n) "Fair Market Value" is the appraised fair market value of the Property as determined without regard to the sales price and use restrictions imposed on the Property through the Property Restrictions.

(o) "Household" is defined in the Procedures Manual.

(p) "Household Size" means the number of persons for whom the Property will be a Primary Residence.

- (q) "HUD" means the United States Department of Housing and Urban Development.
- (r) "Grant Deed" is defined in Section 8.1(b).
- (s) "Gross Income" is defined in the Procedures Manual.
- (t) "Life of the Project" is defined in the Procedures Manual.
- (u) "City of Benicia" means the City of Benicia Mayor's Office of Housing and Community Development.
- (v) "Multiple Listing Service or MLS" means a service to real estate agents service providing available real estate listings.
- (w) "Notice" is defined in Section 13.4.
- (x) "Notice of Intent to Sell" is defined in Section 7.2.
- (y) "Notice of Special Restrictions" is defined in Section 2(b).
- (z) "Owner" is defined in Section 1, and upon Owner's death includes the personal representative administering the Owner's estate.
- (aa) "Owner's Proceeds" means the amount due to Owner upon Transfer of the Property to a Qualifying Purchaser or upon exercise of the City's Purchase Option, according to the terms of this Declaration.
- (bb) "Planning Code" is defined in the Procedures Manual.
- (cc) "Planning Commission" is defined in the Procedures Manual.
- (dd) "Planning Approval" is Planning Commission Motion or Building Permit Application Number in Section 2(b).
- (ee) "Preference and Lottery Manual" is defined in Section 7.2.
- (ff) "Primary Residence" is defined in the Procedures Manual.
- (gg) "Procedures Manual" means the City of Benicia Inclusionary Affordable Housing Program Monitoring and Procedures Manual effective October 11, 2018, as updated and amended from time to time.
- (hh) "Program" is defined in Section 2(a).
- (ii) "Property" is defined in Section 1.
- (jj) "Property Restrictions" means the documents that govern the restrictions on the Property, including but not limited to any Planning Approval, this Declaration, the Notice of Special Restrictions, the Procedures Manual, and, if applicable, Planning Code Section 415.
- (kk) "Purchase Option" is defined in Section 9.1.
- (ll) "Purchase Option Assignee" is defined in Section 9.4.

- (mm) "Qualifying Purchaser" is a household that has been determined by City of Benicia to meet the eligibility requirements for a particular BMR unit.
- (nn) "Realtor" means a realtor licensed by the California Bureau of Real Estate, and certified by City of Benicia if required.
- (oo) "Repair Costs" means the cost to repair Damage to the Property.
- (pp) "Resale Price" for Owner is defined in Section 6.3.
- (qq) "Senior Lender": means any Lender to which the City has agreed to subordinate its interests in the Property.
- (rr) "Senior Lien" means any deed of trust for the purchase of securing a loan from the Senior Lender to finance or refinance the purchase of the Property.
- (ss) "Transfer" is defined in the Procedures Manual.
- (tt) "Unauthorized Transfer" is defined in Section 11.1(a).

Section 4. Owner's Base Price.

The Owner's Base Price for the Property is \$000000 (the "Base Price"). This Base Price reflects the price paid by Owner to acquire the Property.

Section 5. Related Documents.

5.1 City Note and City Deed of Trust. Concurrently with this Declaration, Owner will execute a City Note and a City Deed of Trust to be recorded against the Property.

Section 6. Affordable Restrictions.

6.1 Owner's Acknowledgment. Owner hereby acknowledges that the Property is subject to the Property Restrictions.

6.2 Occupancy Restrictions. Owner shall own and occupy the Property as Owner's Primary Residence, and Owner shall not lease the Property, or any portion thereof, without the City's prior written consent. In accordance with Section 13.3 below, Owner shall submit to the City a certification that Owner has occupied the Property as Owner's Primary Residence for at least ten (10) months in the preceding year.

6.3 Resale Price and Resale Procedures. Owner shall Transfer the Property only in accordance with the terms and procedures set forth in the Procedures Manual. Except for Transfers pursuant to Sections 7.6 and 7.7(a) below, Owner shall Transfer the Property at a sales price of no greater than the following amount (the "Resale Price"):

(a) The Base Price adjusted only by the percentage change in the unadjusted HUD Area Median Income (up or down) from the year of purchase to the year of the Property resale pricing (the "Change in AMI Formula"); plus

(b) The cost of capital improvements completed in compliance with the Procedures Manual, up to a cap of 10% of the Resale Price; plus

(c) The cost of special assessments paid by Owner and documented in compliance with the Procedures Manual, at the depreciation rate of 7% per year; plus

(d) The cost of using a real estate agent and Multiple Listing Service, up to 5% of the sum of subsections (a), (b) and (c) above, but only if Owner complied with the marketing and resale requirements set forth in the Procedures Manual.

6.4 Term. Pursuant to Property Restrictions, this Declaration shall remain in effect for the Life of the Project. Notwithstanding the foregoing, this Declaration shall terminate upon: (i) a Transfer of the Property in compliance with the terms of this Declaration, and (ii) execution and recordation of a declaration with the same form and substance as this Declaration by the Qualifying Purchaser purchasing the Property.

6.5 Procedures Manual. Owner shall comply with the all of terms and guidelines set forth in the Procedures Manual applicable to Program ownership units, as amended from time to time.

6.6 Owner Representations and Warranties. In applying to purchase the Property, Owner submitted certain documentation to certify Owner's household annual Gross Income. Owner represents and warrants to the City that any financial and other information Owner previously provided to City for the City to determine Owner's Qualification to purchase the Property was true and correct at the time it was given and remains true and correct as of the date of this Declaration.

Section 7. Transfer Procedures.

7.1 In General. Owner may Transfer the Property only to a Qualifying Purchaser. In connection with a proposed Transfer, Owner must comply with the marketing and procedural requirements in accordance with the Procedures Manual. Except as provided in Sections 7.6 and 7.7(a), and Transfers by foreclosure or a Senior Lender's acceptance of a deed in lieu of foreclosure, all Transfers must take place through an escrow account with a mutually acceptable title company. No Transfer will be permitted unless the title company complies with all escrow instructions provided by the City.

7.2 Notice of Intent to Sell. Except as provided in Sections 7.6, 7.7(a), and 7.7(b), if Owner desires to Transfer the Property, Owner shall deliver written notice to City ("Notice of Intent to Sell") as set forth in the Procedures Manual, and City shall calculate the Resale Price and notify Owner of the same.

7.3 Lottery and Preferences. As set forth in the City of Benicia Housing Preferences and Lottery Procedures Manual, available at <https://sfmohcd.org/lottery-preference-programs>, as revised from time to time (the "Preference and Lottery Manual"), City of Benicia will conduct a lottery to select a Qualifying Purchaser for Transfer of the Property at the Resale Price. The Preference and Lottery Manual contains detailed procedures for application tracking, lottery preference qualifications, application review guidelines and appeals.

7.4 Marketing at Resale. The Property must be marketed according to MOHCD's standard marketing and procedural requirements as set forth in the Procedures Manual. All potential purchasers who are on the general interest list, as well as the general public, will be notified by City of Benicia of the Property available for resale and invited to participate in the lottery. Marketing of the resale of the Property must be in compliance with all applicable federal, state and local laws related to Fair Housing. Owners and their agents may be asked to certify that the Property has not been marketed in a discriminatory manner.

7.5 Inspection. The City or its agent may make reasonable entries upon and inspections of the Property. The City shall give Owner notice at the time of or prior to an inspection specifying reasonable cause for the inspection. At the time of resale, Owner shall, at Owner's cost, order a home inspection report, performed by a certified and independent third party home inspector. The inspection should include but not limited to electrical, wiring, plumbing, roofing, insulation and structural features. The inspection report shall be no more than ninety (90) days old from Owner's submission of the Notice of Intent to Sell to City of Benicia.

In the event any Damage is noted, the City shall deliver written notice to Owner specifying the Damage and requesting the Damage be corrected as a condition of resale. Owner shall follow the MOHCD's Property Inspection and Repairs Policy as it exists at the time of the proposed resale. The City or its assigned agent shall have the right to inspect the Property under the terms of this Section 7.5 after the repairs are complete. If the City determines in the City's sole discretion that Damage still remains, Owner shall repair the remaining Damage up to MOHCD's satisfaction. All repairs and the re-inspection shall be completed prior to marketing the Property, unless extended by mutual written agreement of both the City and Owner.

7.6 Transfer to Spouse or Domestic Partner. If an Owner marries or becomes a Domestic Partner after purchasing the Property, the spouse or Domestic Partner may become a co-Owner no sooner than 12 months after the original purchase. An Owner intending to add a spouse or Domestic Partner as a co-Owner must present his or her marriage certificate or Domestic Partnership registration to the City for review, and the proposed co-Owner will execute an addendum to this Declaration and any other City documents related to the Property by which the co-Owner will assume the same rights and responsibilities with respect to those documents as the Owner. If Owners enter into a dissolution of marriage or Domestic Partnership after purchasing the Property, an Owner may be removed from the title of the Property upon Owners' mutual agreement but subject to the City's prior written consent. Owners must present a court-ordered dissolution of marriage or any other documents reasonably required by the City to verify such information.

7.7 Transfer Upon Owner's Death.

(a) Upon Owner's death, the Property may be transferred to any co-Owner previously approved by the City without further City approval, but such co-Owner shall notify City within sixty (60) days of the Transfer and the City may require such co-Owner to execute an addendum to this Declaration and any other City documents related to the Property by which the co-Owner shall assume the same rights and responsibilities with respect to those documents as the Owner.

(b) Upon the death of Owner and all City approved co-Owners, the Property may be transferred by inheritance, will, or any other function of law to the Owner's child, spouse or domestic partner provided that such person is a Qualifying Purchaser. Within one (1) year of the death of Owner, the proposed transferee shall submit an application form provided by City of Benicia and any other information reasonably requested by the City to verify that the proposed transferee meets the requirements for a Qualifying Purchaser. If the City determines that the proposed transferee is a Qualifying Purchaser, the Property may be transferred to the proposed transferee (except to the extent necessary to pay off any existing lien secured by the Property). The proposed transferee shall execute a new Declaration and any other City documents related to the Property by which the proposed transferee shall assume the same rights and responsibilities with respect to those documents as the Owner. If the City determines that the proposed transferee is not a Qualifying Purchaser, the Property shall be transferred pursuant to Sections 7.1 – 7.5, inclusive.

Notwithstanding Sections 7.6 and 7.7, Owner must comply with Transfer requirements and procedures as set forth in the Procedures Manual.

Section 8. Closing.

8.1 Conditions to Closing. Except as provided in Sections 7.6, 7.7(a), and Transfers by foreclosure or the Senior Lender's acceptance of a deed in lieu of foreclosure, all Transfers shall take place through an escrow with a mutually acceptable escrow company. It shall be a condition to closing, other than a Transfer to a co-Owner pursuant to Sections 7.6, and 7.7(a), that the escrow agent involved in the closing has received the following:

(a) Written confirmation from the City of the Resale Price and either (i) the identity of the Qualifying Purchaser or (ii) notification that the City is exercising the Purchase Option;

(b) A standard title company form grant deed, executed by Owner (or the City as attorney in fact for Owner) and acknowledged by a notary public granting the Property to the Qualifying Purchaser ("Grant Deed"), which shall be recorded in the City's Official Records;

(c) A declaration with the same form and substance as this Declaration executed and acknowledged by the Qualifying Purchaser and the City, which shall be recorded in the City's Official Records;

(d) A promissory note secured by a deed of trust, executed by the Qualifying Purchaser on the City's standard forms, which deed of trust shall be recorded in the City's Official Records; and

(e) A City Acknowledgment of the Declaration, Notice of Special Restrictions, and City of Benicia Inclusionary Affordable Housing Program Monitoring and Procedures Manual.

8.2 Closing Procedures for Sale to Qualifying Purchaser. At closing, Owner shall convey the Property to the Qualifying Purchaser by Grant Deed. Owner shall cause a mutually acceptable title company to issue to the Qualifying Purchaser a CLTA standard coverage owner's form of title insurance policy in the amount of the Resale Price insuring title to the Property vested in the Qualifying Purchaser, subject only to standard printed exceptions set forth in the title insurance policy to be issued by the Title Company, the City's Deed of Trust and exclusions, liens for current taxes and assessments not yet due or payable, the new declaration and such other matters as were permitted exceptions to title as of date of sale to Owner or are accepted by the Qualifying Purchaser in writing. All closing costs and title insurance premiums shall be paid pursuant to the custom in the City.

8.3 Owner's Proceeds. The value of the Owner's Proceeds from a Transfer of the Property shall be calculated as follows. Owner's Proceeds equal:

- (a) The Resale Price, as determined in accordance with Section 6.3 of this Declaration;
- (b) Less the amount necessary to release the Senior lien and any other liens secured by the Property;
- (c) Less Closing Costs; and
- (d) Less any Repair Costs due to the City pursuant to Section 7.5.

Section 9. City's Purchase Option.

9.1 Grant of Option. Owner hereby grants to City an option to purchase the Property upon the occurrence of an Event of Default under Section 11.1 ("Purchase Option"). The Purchase Option shall not apply to Transfers pursuant to Sections 7.6, 7.7(a), or 7.7(b).

9.2 Option Terms. The Purchase Option sales price shall be the lesser of the Fair Market Value or the maximum resale price allowed under the Procedures Manual, each as determined at the time of the event that triggered the Purchase Option. In the event that the Purchase Option is exercised, the Property shall be conveyed to the City (or its assignee) free and clear of all liens and encumbrances other than those expressly permitted by the City. Owner shall have sixty (60) days from the date the City exercises the Purchase Option to convey the Property to the City (or its assignee), unless City agrees to a longer time period in its reasonable discretion.

9.3 Exercise of Option.
City may exercise the Purchase Option as follows:

(a) If the Purchase Option is triggered as a result of an Event of Default under Sections 11.1(a) - (d) and (f), then the City may exercise the Purchase Option within ninety (90) days after the City gives written notice of default to Owner.

(b) If the Purchase Option is triggered as a result of Owner's default under the Senior Lien as under Section 11.1(e), then the City may exercise the Purchase Option by giving written notice to Owner and Senior Lender at any time prior to five (5) business days before the date of a foreclosure sale, as the same may be postponed from time to time, under the Senior Lien pursuant to California Civil Code § 2924f.

9.4 Assignment of Purchase Option. Before or after exercise of the Purchase Option, the City may assign the Purchase Option to a governmental agency, non-profit organization, or a Qualifying Purchaser ("Purchase Option Assignee"), who shall be subject to this Declaration.

9.5 Grant of Power of Attorney. Owner hereby grants to the City an irrevocable power of attorney coupled with an interest to act on Owner's behalf to execute and deliver any and all documents relating to the Purchase Option.

9.6 Non-Liability of City. The City shall not be held liable by reason of its exercise or non-exercise of the Purchase Option.

Section 10. Capital Improvements; Maintenance.

10.1 Capital Improvements. Owner's right to make capital improvements to the Property and to recoup the cost of such improvements is governed by the Procedures Manual.

10.2 Maintenance. Owner shall not destroy or damage the Property, allow the Property to deteriorate, or otherwise commit waste on the Property. Owner shall maintain the Property in compliance with all applicable laws, ordinances, and regulations and in a good and clean condition and all appliances and fixtures shall be in good working order. Any damage by abnormal or excessive wear and tear or because of neglect, abuse or insufficient maintenance by Owner, must be repaired pursuant to Section 7.5.

Section 11. Default and Remedies.

11.1 Events of Default. The occurrence of any one of the following events or circumstances shall constitute an "Event of Default" by Owner under this Declaration.

(a) Owner has actually transferred or attempted to transfer the Property in violation of the covenants and restrictions contained in this Declaration ("Unauthorized Transfer").

(b) The City has determined in the City's sole discretion that the Property is not Owner's Primary Residence, and/or Owner fails to comply with annual occupancy monitoring requirements, and Owner fails to cure such default within thirty (30) days after Owner's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Owner will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City in its reasonable discretion, provided that Owner commences to cure the default within the 30-day period and diligently pursues the cure to completion.

(c) Owner fails to pay real estate taxes, assessments or homeowner's association dues, when due or Owner fails to maintain insurance in such amounts as required under this Declaration; or Owner places any mortgages, encumbrances or liens upon the Property in violation of this Declaration; and such event or condition shall not have been cured within thirty (30) days following the date of written notice to cure by the City to Owner.

(d) Owner fails to perform any other agreements or obligations on Owner's part to be performed under this Declaration, and such failure continues for thirty (30) days following the date of written

notice to cure by the City to Owner, or in the case of a default not susceptible of cure within thirty (30) days, Owner fails to promptly commence such cure within thirty (30) days and thereafter fails to diligently prosecute such cure to completion.

(e) Owner causes or permits a default under the Senior Lien and fails to cure the same in accordance with the cure provisions in the Senior Lien.

(f) Owner is in default of a term of the City Note and/or the Deed of Trust.

11.2 Remedies. Upon the occurrence of an Event of Default by Owner, City may exercise any or all of the remedies set forth below:

(a) City shall have the right to exercise the Purchase Option;

(b) City shall have the right to institute an action for specific performance of the terms of this Declaration, for an injunction prohibiting a proposed Transfer in violation of this Declaration, or for a declaration that a Transfer is void;

(c) City shall have the right to institute an action for foreclosure on its Deed of Trust and/or to accept a deed in lieu of foreclosure; and

(d) City shall have the right to exercise all other remedies permitted by law or at equity.

Section 12. Lender Provisions.

12.1 Other Financing. Subject to the City's prior written approval, Owner may encumber title to the Property for the sole purpose of securing purchase money financing, provided that such financing complies with the financing requirements set forth in the Procedures Manual. In the event that the City approves a Senior Lien, the City may subordinate the Deed of Trust to the Senior Lien provided that such lien complies with the MOHCD's Subordination Policy as it exists at the time of the proposed subordination. Refinancing will only be permitted in accordance with the Procedures Manual. The City may, in its sole discretion, elect to subordinate the Deed of Trust to other financing secured by the Property, but only if the following conditions are met: (i) such financing complies with the MOHCD's Subordination Policy as it exists at the time of the proposed subordination; and (ii) the conditions set forth in Section 5 of the Deed of Trust are satisfied. Owner shall not cause or permit any other mortgages, encumbrances or liens upon the Property except as permitted pursuant to the Procedures Manual. Owner shall submit to the City on an annual basis a certification that Owner has not refinanced the Property in violation of this Section 12.1.

12.2 Subordination. Owner shall execute and record this Declaration prior to the recordation of the City-approved Senior Lien. In no event shall this Declaration be subordinate to any lien on the Property, including but not limited to the Senior Lien.

12.3 Default and Foreclosure. In the event that Owner is in default or at risk of foreclosure under the Senior Lien, Owner must notify the City of the default within thirty (30) days of the default. In addition, Owner shall provide a copy of any notice of default under the Senior Lien to the City within three (3) business days of Owner's receipt of such notice. In the event of any default under the Senior Lien, the City, in addition to any other rights and remedies it may have under this Declaration, at law or in equity, shall have the right to:

(a) Cure such default pursuant to Section 12.4;

(b) Exercise its Purchase Option pursuant to Section 9.3(b); or

(c) Foreclose its Deed of Trust on the Property.

13.5 Remedies Cumulative. Subject to applicable law, the City's rights and remedies, whether provided by law, in equity or by this Declaration, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise of any other or further rights or remedies for the same or any other default or breach. No waiver with respect to the performance of any of Owner's obligations shall be effective except to the extent the particular obligation is expressly waived, and it shall not be a waiver with respect to any other rights or remedies of any other of Owner's obligations.

13.6 Attorneys' Fees for Enforcement. If any action or legal proceeding is instituted by Owner or the City arising out of this Declaration, the prevailing party therein shall recover reasonable attorneys' fees and costs in connection with such action or proceeding. For purposes of this Agreement, reasonable fees of any in-house counsel for the City shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the City's in-house counsel's services were rendered who practice in law firms located within the City.

13.7 Integration. This Declaration, the City Note, and the City Deed of Trust (collectively, the "City Documents") constitute an integration of the entire understanding and agreement of the Owner and the City with respect to the subject matter hereof and thereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically and expressly incorporated in the City Documents, shall not be binding on any of the parties, and Owner and the City each acknowledge that they have not relied, in entering into this Declaration, on any representation, warranty, promise or condition, not specifically and expressly set forth in the City Documents. All prior discussions and writings have been, and are, merged and integrated into, and are superseded by, the City Documents. Notwithstanding the foregoing, pursuant to the NSR, the Owner and the Property shall at all times be subject to all applicable terms and conditions set forth in the Procedures Manual.

13.8 Severability. In the event that any provision of this Declaration is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

13.9 Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the successors and assigns of the City. The City may assign or transfer its rights under this Declaration upon thirty (30) days written notice to Owner. It is expressly agreed by Owner that Owner may assign his or her rights to this Declaration only by Transfer pursuant to Section 7 or by the City's exercise of the Purchase Option pursuant to Section 9.

13.10 Headings. The headings within this Declaration are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Declaration.

13.11 Time for Performance. Time is of the essence in the performance of the terms of this Declaration. All dates for performance (or cure) shall expire at 5:00 p.m. on the performance or cure date. Any performance date that falls on a Saturday, Sunday or City holiday is automatically extended to the next City working day.

13.12 Amendments. Any modification or waiver of any provision of this Declaration or any amendment thereto must be in writing and signed by a person or persons having authority to do so, on behalf of both the City and Owner.

13.13 Controlling Agreement. Owner covenants that Owner has not executed and will not execute any other agreement with provisions contradictory to or in opposition to the provisions of this Declaration. Owner understands and agrees that this Declaration shall control the rights and obligations between Owner and the City.

13.14 Governing Law. This Declaration shall be governed by, and construed and enforced in accordance with, the internal laws of the state of California.

13.15 Recordation. Owner shall cause this Declaration to be recorded in the City's Official Records.

IN WITNESS WHEREOF, Owner and the City have executed this Declaration as of the date written above.

OWNER:

Mary Sample

John Sample

Ellen Sample

Jack Sample

Acknowledged:

Mayor's Office of Housing and Community Development
of the City of Benicia , a public body, corporate and politic

By: _____
Maria Benjamin
Deputy Director - Homeownership and Below Market Rate Programs

ALL SIGNATURES MUST BE NOTARIZED.

----- Attach All Purpose California Notary Acknowledgment -----

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

THE FOLLOWING LAND SITUATED IN THE CITY OF Benicia , COUNTY OF BENICIA , STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

SAMPLE

DO NOT DESTROY THIS NOTE: WHEN PAID, THIS NOTE AND DEED OF TRUST SECURING THE SAME MUST BE SURRENDERED TO CITY FOR CANCELLATION BEFORE RECONVEYANCE WILL BE MADE.

Secured Promissory Note

(Secured by Deed of Trust)

Inclusionary Housing Below Market Rate Ownership Program

Loan Number: 000000 **Date:** _____
Principal Amount: \$00000 **Interest Rate:** 0%
Maker(s) Name: Mary Sample, John Sample, Ellen Sample and Jack Sample
Property Address: 123 Sample Street, Unit 2, Benicia , CA 94510

- Maker's Promise to Pay. FOR VALUE RECEIVED, the undersigned, **Mary Sample, John Sample, Ellen Sample and Jack Sample**, an individual ("Maker" or "Borrower") hereby promises to pay to the City of Benicia , a municipal corporation, acting by and through the Mayor's Office of Housing and Community Development ("Holder" or "Lender"), the principal amount of U.S. **Four Hundred Fifty Thousand Dollars (\$450,000)** (the "Principal Amount") plus the "Appreciation" in the value of the Property, as set forth in Section 6 below and as provided in this Secured Promissory Note (this "Note"). The interest rate on the principal amount is 0%, except as provided in Section 10.
- Below Market Rate Ownership Program Requirements. Maker will comply with the following documents (collectively, the "**Property Restrictions**"):
 - Planning Code _____;
 - A "Notice of Special Restrictions Under the City Planning Code" ("NSR") recorded in the Official Records of the Benicia County on **June 26, 2015** as **Document 2015-H5551212-00**;
 - Declaration of Restrictions and Option to Purchase Agreement made by Maker in favor of the City, dated the same date as this Note and to be recorded in the Official Records of the Benicia County concurrently herewith (the "Declaration").
 - City of Benicia Inclusionary Housing Monitoring and Procedures Manual, effective October 11, 2018, as it may be updated and amended from time to time (the "Procedures Manual").

Maker represents that the combined household income of Maker does not exceed **100%** of the area median income for the San Francisco Metropolitan Statistical Area, derived from the U.S. Department of Housing and Urban Development as of the date of this Note, adjusted solely by household size, but not high housing cost area.
- Calculation of Principal Amount. Maker purchased a unit located at **123 Sample Street, Unit 2, Benicia, CA 94510** (the "Property"), which included one parking space, designated as **# P-1** (the "Parking Space"). The purchase price of the Property, including the Parking Space, has been established pursuant to the Property Restrictions as **Two Hundred Fifty Thousand Dollars (\$000000)**(the "Restricted Purchase Price"). The appraised Fair Market Value of the Property without regard to the Property Restrictions is **\$700,000** (the "Unrestricted Price"). The Principal Amount is equal to the Unrestricted Price less the Restricted Purchase Price of the Property.
- Security. Maker's obligations under this Note are secured by a Deed of Trust and Assignment of Rents executed by Maker, as Trustor, for the benefit of Holder, as Beneficiary (the "Deed of Trust"), which

Deed of Trust shall be recorded in the Official Records of Benicia County, California, as a lien on the Property, subject only to those exceptions to title approved in writing by Holder.

5. Repayment and Place of Payments.

a. The Principal Amount of this Note, together with the Appreciation as defined in Section 6 below, shall be due and payable in full upon an acceleration by Lender of this Note in the event of a default hereunder or under the City Deed of Trust.

b. All payments must be made in currency of the United States of America then lawful for payment of public and private debts. All payments must be made payable to the "City of Benicia" at the Mayor's Office of Housing and Community Development, 1 South Van Ness Avenue, 5th Floor, Benicia, CA 94510 or at such other place as the City may from time to time designate.

6. Appreciation. The Appreciation is calculated as the amount equal to the difference between (i) Unrestricted Price, and (ii) the appraised fair market value of the Property at the time of resale without regard to the Property Restrictions.

7. Forgiveness. Upon a sale of the Property for a resale price that is established pursuant to the Property Restrictions above, the entire Principal Amount and the Appreciation, together with all accrued and unpaid interest thereon, if any, shall be forgiven, this Note shall be canceled and returned to Maker and the Deed of Trust shall be reconveyed only upon the satisfaction of all of the following conditions:

a. During the period that Maker owns the Property, Maker shall have complied in all respects with the terms of the Property Restrictions.

b. Any sale, rental or sublease of the Property must be in compliance with the terms of the Property Restrictions, including but not limited to the requirement that, upon any resale of the Property, the City may require prospective purchaser to execute and deliver to the Holder a Declaration, Note and Deed of Trust in substantially the form of this Declaration, Note and Deed of Trust with respect to purchase of Property executed by maker concurrently herewith; except that the principal amount of such Note shall reflect the difference between the resale price and fair market value of the Property at the time of such resale.

c. If the conditions in this Section 7 are not satisfied, the entire Principal Amount, the Appreciation and accrued interest on this Note shall be due and payable as a condition to such sale.

d. The resale price and resale transaction of the Property must include the parking space at no additional charge.

8. Loan Charges. If any law that applies to this loan and which sets maximum loan charges is finally interpreted so that any amounts collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from Maker which exceeded permitted limits will be refunded to Maker. The Lender may choose to make this refund by making a direct payment to Maker or by another method determined by Lender.

9. Occupancy, Preservation, Maintenance and Protection of the Property; Maker's Loan Application.

a. Maker shall occupy, establish, and use the Property as Maker's Primary Residence commencing within sixty (60) days from execution of this Note. Except as otherwise expressly permitted by the Declaration, Maker shall continue to occupy the Property as his or her Primary Residence. Maker shall not destroy, damage or impair the Property, allow the Property to deteriorate, or otherwise commit waste on the Property. Maker shall be in default under this Note if any forfeiture action or

proceeding, whether civil or criminal, is begun that in Lender's reasonable judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Note. Maker may cure such a default and reinstate Maker's obligations, by causing the action or proceeding to be dismissed with a ruling that, in Lender's reasonable determination, precludes forfeiture of the Maker's interest in the Property or other material impairment of the lien created by this Note or Lender's security interest.

- b. Maker shall also be in default under this Note if Maker, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the Loan evidenced by the Note, including, but not limited to, representations concerning (1) Maker's intent to occupy the Property as a Primary Residence; (2) Maker's income and liquid assets; and (3) Maker's eligibility as a first time homebuyer under the Program Requirements; (4) Maker's completion of the approved Homebuyer Education Course and (5) Maker's household size and composition.
- c. Maker acknowledges that this Property is subject to certain use and occupancy restrictions which are evidenced by the Declaration, generally limiting the Property's use to low, middle and moderate-income housing as further described in the Procedures Manual. The Procedures Manual also requires Maker to occupy and use the Property as Maker's Primary Residence and prohibits the Maker from renting the Property at any time, except with under limited circumstances set forth in the Procedures Manual. Any violation of the use and occupancy restrictions by Maker shall be deemed a default hereunder.

10. Default; Remedies; Default Interest.

- a. Default. Any of the following will constitute an "Event of Default" under this Note:
 - (i) If Maker fails to pay the Principal Amount plus the Appreciation on the Maturity Date, Maker will be in default under this Note, or
 - (ii) If Maker fails to comply with their obligations under the Property Restrictions, or
 - (iii) the occurrence of any other default under this Note or default under an instrument securing the obligations of Maker under this Note.
- b. Notice of Default. Upon a default by Maker, Lender shall provide written notice of such default to Maker. Maker shall have thirty (30) days from the effective date of such notice to cure the default.
- c. Default Interest Rate. Upon the occurrence of an Event of Default, interest will be deemed to have accrued on the outstanding Principal Amount at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date of the Event of Default through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under this Note are paid to Holder. Maker acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Holder if Maker defaults. Maker further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any other document or instrument related to Lender's loan to Maker or Maker's ownership of the Property.
- d. Remedies. Upon the occurrence of any Event of Default, without notice to or demand upon Maker, which are expressly waived by Maker (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Maker and any notices or demands specified

in the Declaration, this Note or other instrument), Holder may exercise all rights and remedies available under this Note, the Declaration or otherwise available to Holder at law or in equity. Maker acknowledges and agrees that Holder's remedies include the right to accelerate the Maturity Date by declaring the outstanding Principal Amount, together with the Appreciation, accrued and unpaid interest on the Principal Amount at the Default Rate and unpaid fees and costs incurred, shall be immediately due and payable without the necessity of any further notice or demand, in which case, the Maturity Date will be superseded and replaced by the date established by Holder.

- e. No Waiver by Lender. The Lender's failure to exercise any remedies upon a default shall not be a waiver of the Lender's right to exercise such remedies.

11. Notices. All notices required by this Note shall be made in writing, and shall be deemed communicated by personal delivery or by United States mail, postage prepaid (unless applicable law requires use of another method), as of the earlier of actual receipt or three days from mailing, addressed as follows:

To Lender: Director
 Community Development
 City of Benicia
 Benicia , CA 94510

To Maker: At the Property Address in Section 3

or such other address as either Lender or Maker may designate, from time to time, by written notice sent to the other party in like manner.

12. Waivers.

- a. The Maker and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Lender to demand payment of amounts due. "Notice of dishonor" means the right to require the Lender to give notice to other persons that amounts due have not been paid.
- b. Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.
- c. No extension of time for payment of this Note or any installment hereof made by agreement by Holder with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.
- d. The obligations of Maker under this Note shall be absolute and Maker waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

13. Subordination. After the date of this Note, any subordination of this Note to financing secured by a deed of trust on the Property shall be approved by the Lender in its sole discretion. This Note, the Deed of Trust and Maker's obligations hereunder shall be revived according to their original terms if, following any foreclosure or transfer in lieu of foreclosure, the owner of record before the foreclosure or transfer or assignment, or any entity that includes the former owner or those with whom the former has or had family or business ties, obtains an ownership interest in the Property.

14. Miscellaneous Provisions.

- a. If more than one-person signs this Note, each person is jointly and severally liable for the obligations under this Note. This means that each such person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed, and Lender may require any one person to pay all amounts owed under this Note. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Lender may enforce its rights under this Note against each person individually or against all of us together.
 - b. If any legal action is commenced to enforce any of the terms of this Note, the Deed of Trust, or rights arising from any party's actions in connection with this Note, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Note, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of Benicia in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.
 - c. This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
 - d. This Note shall be governed by and construed in accordance with the laws of the State of California.
 - e. Time is of the essence for the performance of all obligations of Maker hereunder.
15. Termination. This Note, the Deed of Trust, the Declaration and Maker's obligations hereunder shall be revived according to their original terms if, following any foreclosure or transfer in lieu of foreclosure, the owner of record before the foreclosure or transfer or assignment, or any entity that includes the former owner or those with whom the former has or had family or business ties, obtains an ownership interest in the Property.

MAKER(S):

Mary Sample

John Sample

Ellen Sample

Jack Sample

(ALL SIGNATURES MUST BE NOTARIZED)

Free Recording Requested Pursuant to
Government Code Section 27383

RECORDING REQUESTED BY AND

When recorded, mail to:

Community Development
City of Benicia
Benicia , California 94510 Attn:
Inclusionary Program
BMR Lien#0000000
Property: 123 Sample Street, Unit 2
APN: 5555-100

--Space Above This Line for Recorder's Use--

DEED OF TRUST AND ASSIGNMENT OF RENTS

Inclusionary Housing Below Market Rate Ownership Program

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is made as of _____, 20____, by **Mary Sample, John Sample, Ellen Sample and Jack Sample** ("Trustor" or "Owner") to **Title Company Name** ("Trustee"), for the benefit of the City of Benicia , a municipal corporation, acting through the Mayor's Office of Housing and Community Development, whose address is 1 South Van Ness Avenue, 5th Floor, Benicia , CA 94510 ("Lender" or "City").

Owner owes Lender the principal sum of **Four Hundred Fifty Thousand Dollars (\$450,000)**, representing the difference between the appraised fair market value of the Property without regard to the Restriction less the restricted purchase price of the Property. This debt (the "City Lien") is evidenced by Owner's note ("Note") dated the same date as this Deed of Trust and executed by Owner. Capitalized terms used in this Deed of Trust and not defined have the meanings set forth in the Note. The Note provides for payment of the principal amount of the Note, together with the Appreciation in the value of the Property (as provided in the Note) on the Maturity Date.

In addition to the City Lien, Owner obtained a secured loan of **\$200,000** (the "First Deed of Trust Loan") from **Mortgage Lending Institution** (the "Senior Lien Holder"), which loan is secured by a first deed of trust lien on the Property (the "First Deed of Trust"). The First Deed of Trust shall be referred to herein as the "Senior Lien."

1. **Grant in Trust.** For valuable consideration, Owner irrevocably grants and transfers and assigns to Trustee, in trust, with power of sale, subject to the rights of the Senior Lien Holder under the First Deed of Trust, the real property located in Benicia County, California, which has the address **123 Sample Street, Unit 2, Benicia , CA 94510** and is further described in Exhibit A attached hereto and made a part thereof;

TOGETHER WITH all the improvements now or hereafter erected on the real property; all easements, appurtenances, and fixtures now or hereafter a part of the real property; all replacements of and additions to the real property; and all rents, issues and profits from the real property, subject to Owner's right to collect and retain the same as they become due and payable so long as there is no existing default under this Deed of Trust or the Note. All of the foregoing is referred to in this Deed of Trust as the "Property."

2. **Title.** Owner covenants that Owner holds fee title to the Property and has the right to grant and convey the Property and, except for the First Deed of Trust and other encumbrances of record acceptable to the Senior Lien Holder and Lender (the "Permitted Exceptions"), the Property is unencumbered. Owner

warrants and will defend generally the title to the Property against all claims and demands, subject to the Permitted Exceptions.

3. Obligations Secured. This Deed of Trust is given for the purpose of securing the following (collectively, the "Secured Obligations"):

a. Owner's performance of all of its present and future obligations under the following documents (collectively, the "**Owner Documents**"): Declaration of Restrictions and Option to Purchase Agreement entered into between Owner and Lender, dated the same date as the Deed of Trust and recorded concurrently with this Deed of Trust (as it may be amended from time to time, the "**Declaration**"), and the Note.

b. Owner's performance of each agreement incorporated by reference contained in, or entered into in connection with, the Owner Documents, and Owner's performance of its obligations under this Deed of Trust and any additional agreements of Owner incorporated by reference or contained in this Deed of Trust.

c. Payment of the indebtedness evidenced by the Note (and all renewals, extensions and modifications of the Note) in the amount described in the Note, all interest, Appreciation, fees and costs due under the Note, and any additional sums Owner may borrow or receive from Lender, when evidenced by an agreement or instrument reciting it is secured by this Deed of Trust.

4. Protection of Lender's Rights in the Property. To protect the security of this Deed of Trust, Owner agrees as follows:

a. By its execution and delivery of this Deed of Trust and the Note, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in the Official Records of the City of Benicia on October 23, 1961 at Book A-332, Page 905, hereby are adopted, incorporated herein and made a part hereof as fully as though set forth herein at length. Owner further agrees to observe and perform such provisions, and that the references to property, obligations, and parties in such provisions shall be construed to refer to the property, obligations, and parties specified in this Deed of Trust.

b. Owner shall perform the Secured Obligations in accordance with their respective terms.

c. If there is an event of default by the Owner under this Deed of Trust or any of the Owner Documents, or if the Property or any part thereof, or any interest therein is sold, conveyed, alienated or refinanced by the Owner, or by the operation of law or otherwise, in violation of any of the Owner Documents, all obligations secured by this Deed of Trust, at Lender's sole option and without demand or notice, shall immediately become due and payable.

d. If Owner fails to perform the covenants and agreements contained in this Deed of Trust, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien that has priority over this Deed of Trust (including sums secured by the First Deed of Trust), appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this Section 4, Lender is not required to do so.

e. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Owner secured by this Deed of Trust. Unless Owner and Lender agree to other terms of payment, these amounts shall become a part of the Principal Amount of the Loan due to Lender under the Note.

5. Subordination. After the date of this Deed of Trust, any subordination of this Deed of Trust to financing secured by a deed of trust on the Property shall be approved by the Lender in its sole discretion.

6. Prior Deeds of Trust; Charges; Lien.

a. Owner shall perform all of the Owner's obligations under the First Deed of Trust and other deeds of trust, including Owner's covenants to make payments when due. Owner shall pay on time and directly to the person owed payment all taxes, assessments, charges, fines and impositions attributable to the Property. Owner shall promptly furnish to Lender all notices of amounts to be paid under this Section. If Owner makes these payments directly, Owner shall promptly furnish to Lender receipts evidencing the payments.

b. Except for the Senior Lien, Owner shall promptly discharge any other lien that may encumber title to the Property unless Owner: (a) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings that, in Lender's sole discretion, operate to prevent the enforcement of the lien; or (b) obtains from the holder of the lien an agreement satisfactory to Lender in its sole discretion subordinating the lien to this Deed of Trust. Except for the Senior Lien, if Lender determines that any part of the Property is subject to a lien that may encumber title to the Property without Lender's prior written consent, Lender may give Owner a notice identifying the lien. Owner will discharge such lien or take one or more of the actions set forth above within thirty (30) days after Lender's notice.

7. Hazard or Property Insurance.

a. Owner shall keep the improvements now existing or hereafter erected on the real property insured on an all-risk form, excluding earthquake and flood, for one hundred percent (100%) of the replacement value, with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss. The insurance carrier providing the insurance shall be chosen by Owner subject to Lender's approval which shall not be unreasonably withheld. If Owner fails to maintain coverage described above, Lender may, at Lender's option, and at Owner's cost which shall be added to the Principal Amount and secured by this Deed of Trust, obtain coverage to protect Lender's rights in the Property in accordance with Section 4.

b. All insurance policies and renewals, including the issuer of the policies, shall be acceptable to Lender and shall include a standard mortgagee clause. All requirements of this Deed of Trust pertaining to insurance shall be deemed satisfied if the Owner complies with the insurance requirements under the First Deed of Trust. All original policies of insurance required pursuant to the First Deed of Trust may be held by the Senior Lien Holder; provided, however, Lender and its successor and/or assigns shall be named as a loss payee as its interest may appear and shall be named as an additional insured. If Lender requires, Owner shall promptly give to Lender copies of all receipts of paid premiums and renewal notices. In the event of loss, Owner shall give prompt notice to the insurance carrier, the Senior Lien Holder and Lender. Lender may make proof of loss if not made promptly by the Senior Lien Holder or the Owner.

c. Unless Lender and Owner otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not impaired as determined by Lender in its sole discretion. If the restoration or repair is not economically feasible or Lender's security would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Owner. If Owner abandons the Property, or does not answer within 30 days from the date of a written notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Deed of Trust, whether or not then due. The 30 day period will begin when the notice from Lender that the insurance carrier has offered to settle a claim is given.

d. Unless Lender and Owner otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payments referred to in the Note or change the amount of the payments. If under Section 23 below the Property is acquired by Lender, Owner's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

e. Notwithstanding the above, Lender's rights to collect and apply the insurance proceeds under this Deed of Trust shall be subject and subordinate to the rights of the Senior Lien Holder to collect and apply such proceeds in accordance with the First Deed of Trust.

8. Occupancy, Preservation, Maintenance and Protection of the Property; Owner's Loan Application; Leaseholds.

a. Owner shall occupy, establish, and use the Property as Owner's primary residence within sixty days after the execution of this Deed of Trust. Except as otherwise expressly permitted by the Procedures Manual, Owner shall continue to occupy the Property as his or her Primary Residence. Owner shall not destroy, damage or impair the Property, allow the Property to deteriorate, or otherwise commit waste on the Property. Owner shall be in default under this Deed of Trust if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's reasonable judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Deed of Trust. Owner may cure such a default and reinstate the Owner's obligations, as provided in Section 23, by causing the action or proceeding to be dismissed with a ruling that, in Lender's reasonable determination, precludes forfeiture of the Owner's interest in the Property or other material impairment of the lien created by this Deed of Trust or Lender's security interest.

b. Owner shall also be in default under this Deed of Trust if Owner, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the Loan evidenced by the Note, including, but not limited to, representations concerning (1) Owner's intent to occupy the Property as a primary residence; (2) Owner's income and liquid assets; (3) Owner's eligibility as a first time homebuyer under the requirements of the Property Restrictions; (4) Owner's completion of an approved Homebuyer Education Course, and (5) Owner's household size and composition.

c. The Owner acknowledges that this Property is subject to certain use and occupancy restrictions (which may be further evidenced by a separate agreement recorded in the land records where the Property is located), limiting the Property's use to "low, middle and moderate-income" first-time homebuyers as described in the Inclusionary Affordable Below Market Rate Ownership Program Regulations. The use and occupancy restrictions prohibit the Owner from renting the Property. The violation of any use and occupancy restrictions may, if not prohibited by federal law, entitle Lender to the remedies provided in Section 23 below.

9. Assignment of Rents.

If an Event of Default has occurred and is continuing related to any lease of the Property in violation of the Property Restrictions, Borrower hereby irrevocably grants, transfers, and assigns to Beneficiary all of its right, title, and interest in and to any rents as additional security for the Secured Obligations, and Lender has the right, power, and authority to collect any and all such rents. Borrower hereby appoints Beneficiary its attorney-in-fact to perform any and all acts under this Section, if and at the times when Beneficiary in its sole discretion may so choose. Lender's right to any rents does not depend on whether or not Lender takes possession of the Property. In Lender's sole discretion, it may choose to collect any rents either with or without taking possession of the Property. If an Event of Default occurs while Lender is in possession of all or part of the Property and is collecting rents as permitted under this Deed of Trust, Lender, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Under no circumstances shall Lender have any duty to produce Rents from the Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Property, Lender is not and shall not be deemed to be a "mortgagee in possession" for any purpose; responsible for performing any of the obligations of the lessor under any lease; responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property; or liable in any manner for the

Property or the use, occupancy, enjoyment or operation of all or any part of it. Upon the occurrence and during the continuance of an Event of Default, Lender, at its option, may exercise its rights under this Section or otherwise provided under applicable law (including, but not limited to, under Section 2938 of the California Civil Code).

10. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Owner notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

11. Condemnation.

a. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of the First Deed of Trust.

b. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Owner. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the taking, unless Owner and Lender otherwise agree in writing, Lender shall receive payment of the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Owner, and the amount secured by this Deed of Trust shall be reduced by the amount paid to Lender. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Owner and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

c. If the Property is abandoned by Owner, or if, after notice by Lender to Owner that the condemner offers to make an award or settle a claim for damages, Owner fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due.

d. Unless Lender and Owner otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of payments under the Note or change the amount of such payments.

12. Owner Not Released; Forbearance By Lender Not a Waiver. Any extension of the time for payment or modification or amortization of the sums secured by this Deed of Trust granted by Lender to Owner or Owner's successors in interest shall not operate to release the liability of the Owner or Owner's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Owner or Owner's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability. In the event more than one individual or entity executes this note as an Owner, then each Owner's covenants and agreements shall be joint and several.

14. Loan Charges. If the Loan secured by this Deed of Trust is subject to a law that sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be

reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Owner that exceeded permitted limits will be refunded to Owner. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Owner.

15 Notices. All notices required by this Deed of Trust shall be made in writing, and shall be deemed communicated by personal delivery or by United States mail, postage prepaid (unless applicable law requires use of another method), as of the earlier of actual receipt or three days from mailing, addressed as follows:

To Lender: Community Development
 City of Benicia
 Benicia, CA 94510

To Owner: At the Property Address in Section 1

To the Senior Lien Holder: **Mortgage Lending Institution**
 555 Sample Street
 Benicia , CA 94510

or such other address as any of Lender, Owner or Senior Lien Holder may designate, from time to time, by written notice sent to the others in like manner.

16. Governing Law; Severability. This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision. To this end the provisions of this Deed of Trust and the Note are declared to be severable.

17. Owner's Copy. Owner shall be given one copy of the Note and a copy of this Deed of Trust, conformed to show the recording information.

18 Transfer of the Property or a Beneficial Interest in Owner.

a. Except for a conveyance to the trustee under the First Deed of Trust, and except as otherwise permitted under the Note, if all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Owner is sold or transferred and Owner is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, Lender shall not exercise this option if federal law as of the date of this Deed of Trust prohibits exercise.

b. If Lender exercises its option under Subsection (a), Lender shall give Owner and the Senior Lien Holder prior written notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Owner must pay all sums secured by this Deed of Trust. If Owner fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Owner.

c. Notwithstanding Lender's right to invoke any remedies under this Deed of Trust, as provided in Section 4 above, Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lien Holder at least 60 days' prior written notice.

d. The Owner and Lender agree that whenever the Note or this Deed of Trust gives Lender the right to approve or consent with respect to any matter affecting the Property (or the construction of any improvements thereon) or otherwise (including the exercise of any "due on sale" clause), and a right of

approval or consent with regard to the same matter is also granted to the Senior Lien Holder pursuant to the First Deed of Trust, the Senior Lien Holder's approval or consent or failure to approve or consent, as the case may be, shall be binding on the Owner and Lender.

19. Owner's Right to Reinstate. If Owner meets certain conditions specified below, Owner shall have the right to have enforcement of this Deed of Trust discontinued at any time before the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust; or (b) entry of a judgment enforcing this Deed of Trust. Those conditions are that Owner: (a) pays Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default; (c) pays all expenses incurred by Lender in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's rights in the Property and Owner's obligation to pay the sums secured by this Deed of Trust shall continue unchanged. Upon reinstatement by Owner, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 23 below.

20. Sale of Note; Change of Loan Servicer. The Note or a partial interest in the Note (together with this Deed of Trust) may be sold one or more times without prior notice to Owner. A sale may result in a change in the entity (known as the "Loan Servicer") that collects payments due under the Note and this Deed of Trust. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Owner will be given written notice of the change in accordance with Section 15 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

21. Hazardous Substances.

a. Owner shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below) on or in the Property. Owner shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law (as defined below). The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

b. Owner shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Owner has actual knowledge. If Owner learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Owner shall promptly take all necessary remedial actions in accordance with Environmental Law. Before taking any such remedial action, however, the Owner shall notify Lender and the Senior Lien Holder that such remedial action is necessary and shall obtain the Senior Lien Holder's prior written consent for such remedial action.

As used in this Section 21, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Section 21, "Environmental Law" means federal, state or local laws that relate to health, safety or environmental protection.

22. Owner's Default.

a. Failure to Pay as Required. If Owner fails to pay any amount due hereunder or under the Note when due, Owner will be in default under this Deed of Trust.

b. Non-Monetary Default. If Owner fails to perform any of the terms, covenants or obligations under this Deed of Trust or the Note, or if any representation or warranty made by Owner under this Deed of Trust or the Note proves to have been incorrect in any material respect when made, Owner shall be in default under this Deed of Trust.

c. Cross-Default. If Owner is in default with respect to any other obligation for the Property, including but not limited to the Property Restrictions, the First Deed of Trust Loan, and the City Lien, and the default remains uncured following the expiration of any applicable cure periods, Owner will be in default under this Deed of Trust.

23. Acceleration; Remedies.

a. Lender shall give notice to Owner and the Senior Lien Holder prior to acceleration following Owner's breach of any covenant or agreement in this Deed of Trust. The notice shall specify: (i) the default; (ii) the action required to cure the default; (iii) a date, not less than 30 days from the date the notice is given to Owner (and with respect to the Senior Lien Holder, 60 days from the date the notice is given to the Senior Lien Holder), by which the default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Owner of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Owner to acceleration and sale.

b. If the default is not cured by the Owner on or before the date specified in the notice, and the Senior Lien Holder has not exercised its right to cure the default, then Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Notwithstanding Lender's right to invoke any remedies hereunder, as provided in Section 4 above, Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lien Holder at least 60 days' prior written notice. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 23, including, but not limited to, reasonable attorneys' fees.

c. If Lender invokes the power of sale, Lender or Trustee shall mail copies of a notice of sale in the manner prescribed by applicable law to Owner, the Senior Lien Holder and to the other persons prescribed by applicable law. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Trustee, without demand on Owner, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property to any later time on the same date by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

d. Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (i) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (ii) to all sums secured by this Deed of Trust; and (iii) any excess to the person or persons legally entitled to it.

24. Obligations Cancelled. Upon a Transfer of the Property in accordance with the Declaration, Owner's obligations hereunder shall be cancelled, and the lien of this Deed of Trust shall be reconveyed. Notwithstanding anything to the contrary in this Deed of Trust, upon foreclosure on the Property by a senior third party lender or other transfer of the Property in lieu of foreclosure or upon an assignment to HUD of a mortgage which was made to secure Owner's purchase of the Property, the lien of this Deed of Trust shall be extinguished and the Note shall be cancelled if (a) the Property continues to be restricted as affordable housing under the NSR and/or Declaration of Restrictions, and (b) the foreclosure or other transfer

recognizes any contractual or legal rights of the City and the Owner to take actions that would avoid the lien of the Deed of Trust to be extinguished. However, the Note, this Deed of Trust, the Declaration and Owner's obligations hereunder shall be revived according to their original terms if, following any foreclosure or transfer in lieu of foreclosure, the owner of record before the foreclosure or transfer or assignment, or any entity that includes the former owner or those with whom the former has or had family or business ties, obtains an ownership interest in the Property.

25. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

26. Request for Notice. The undersigned Owner requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at the address of the Property specified above.

BY SIGNING BELOW, the Owner accepts and agrees to the terms and covenants contained in this Deed of Trust.

OWNER(S):

Mary Sample

John Sample

Ellen Sample

Jack Sample

(ALL SIGNATURES MUST BE NOTARIZED)

**ATTACH EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY**

THE FOLLOWING LAND SITUATED IN THE CITY OF Benicia , COUNTY OF SOLANO , STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

SAMPLE

EXHIBIT B

ATTACH PHOTOCOPY OF BORROWER EXECUTED PROMISSORY NOTE

SAMPLE

Free Recording Requested Pursuant to
Government Code Section 27383

RECORDING REQUESTED BY AND

When recorded, mail to:

Community Development of the
City of Benicia
Benicia , California 94510 Attn:
Inclusionary Program
BMR Lien# 00000000

Property: 123 Sample Street, Unit 2
APN: 5555-100

--Space Above This Line for Recorder's Use--

**ACKNOWLEDGMENT OF THE DECLARATION, NOTICE OF SPECIAL
RESTRICTIONS AND PROCEDURES MANUAL**

Mary Sample, John Sample, Ellen Sample and Jack Sample ("Buyer") intend to purchase **123 Sample Street, Unit 2, Benicia , CA 94510** (the "BMR Unit") of that certain real property situated in the City of Benicia , State of California, and more particularly described in Exhibit A attached hereto and made a part thereof (the "Property").

Buyer acknowledges receipt of the Notice of Special Restrictions under the City Planning Code ("NSR") recorded in the Official Records of Benicia County against said property on **June 26, 2015** as Document **#2015-H5551212-00**.

The NSR includes Benicia **Planning Commission Motion 5551212** (the "Motion") adopted **January 01, 2015**. A copy of the NSR is attached hereto as Exhibit B.

Buyer acknowledges receipt of the Declaration of Restrictions for Inclusionary Housing Below market Rate Units and Option to Purchase Agreement, and any applicable rider (the "Declaration"), which will be recorded in the Official Records of Benicia County against the Property concurrently herewith.

Buyer acknowledges receipt of the City of Benicia Inclusionary Affordable Housing Program Monitoring and Procedures Manual (the "Procedures Manual"), effective October 11, 2018. Buyer acknowledges the Procedures Manual may be updated or amended from time to time.

Buyer acknowledges and agrees that the BMR Unit shall remain subject the terms and conditions of the NSR, the Declaration and the Procedures Manual. In the event of any inconsistency among the NSR, the Declaration and the Procedures Manual, the NSR shall prevail over the Procedures Manual, and the terms and conditions of the Declaration shall prevail over any general requirements in the Procedures Manual. BMR Affidavit is attached hereto as Exhibit C. Conflict of Interest Affidavit is attached hereto as Exhibit D.

Dated: _____, 20__

BUYER(S):

Mary Sample

John Sample

Sample Sample

JackSample

(ALL SIGNATURES MUST BE NOTARIZED)

**ATTACH EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY**

THE FOLLOWING LAND SITUATED IN THE CITY OF BENICIA, COUNTY OF SOLANO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

SAMPLE

EXHIBIT B

**ATTACH COPY OF RECORDED NOTICE OF SPECIAL RESTRICTIONS TO ACKNOWLEDGMENT OF
SPECIAL USE RESTRICTIONS AND PROCEDURES MANUAL**

Notice of Special Restrictions under the City Planning Code ("NSR") recorded in the Official Records of Benicia County against said property on **June 26, 2015** as Document **#2015-H5551212-00**.

SAMPLE

EXHIBIT C
ATTACH BUYER EXECUTED BMR AFFIDAVIT
BMR AFFIDAVIT

I, the undersigned, am purchasing the property at 123 Sample Street, Unit 2, Benicia , CA 94510. I understand that this property is restricted by the Mayor's Office of Housing and Community Development (City of Benicia) of the City of Benicia for the purpose of assisting low, middle and moderate-income first-time homebuyers. I affirm the following:

1. I am a first time homebuyer in that I have not held title to any residential property in the past 3 years.
2. The number of people who will occupy the property is 4.
3. I will occupy the property within 60 days of closing and remain in the property as my primary residence.
4. I will maintain my property in compliance with all applicable laws, ordinances and regulations and in a good and clean condition, and maintain HO-6 condominium insurance or a homeowner's insurance policy listed the City of Benicia or its successor as loss payee during the term of my ownership.
5. I understand that I cannot change or amend the title to my property without permission from the MOHCD or its successor.
6. I understand that any first parking space purchased with my property must be resold with my property upon resale as a part of the maximum below-market-rate price that is set by the City of Benicia or its successor and that any parking space purchased after the closing of my property and financed separately from the financing of my property cannot be added to the resale price when I sell my unit.
7. Upon resale, I understand that my property will be repriced based on the change in Area Median Income from the date on which I purchased my property to the date on which I will sell my property.
8. I understand that only approved and eligible capital improvements made 10 years or more after the initial sale of the property may be added on to the resale price of my property.
9. I understand that I cannot rent my property in part or whole without written approval from the City of Benicia or its successor and that I must remain in compliance with the guidelines set forth in the City of Benicia Inclusionary Affordable Housing Program Monitoring and Procedures Manual, as it may be amended from time to time.
10. I understand that I will be required to submit occupancy certification on an annual or biannual basis to ensure compliance with the occupancy and use restrictions of my unit and that I may be required to provide whatever other information and documents are deemed necessary by the City of Benicia or its successor to substantiate the Certification.
11. I understand that I may not obtain any loans/liens encumbered against my property without written approval from the City of Benicia or its successor.

Date: _____, 20____

BUYER(S):

Mary Sample

John Sample

Ellen Sample

Jack Sample

EXHIBIT D
ATTACH BUYER EXECUTED CONFLICT OF INTEREST AFFIDAVIT

CONFLICT OF INTEREST AFFIDAVIT

I, the undersigned, am purchasing the property at **123 Sample Street, Unit 2, Benicia , CA 94510**. I understand that the City of Benicia restricts this property for the purpose of assisting low, middle and moderate-income first-time homebuyers.

As a condition of purchase, I certify that no member of the household who will be residing in the property is an employee, director, or officer of any of the following, or a family member of any employee, director, or officer of any of the following:

- The project sponsor or its agents, including the sales agent;
- The project architect or its agents;
- The project attorney or its agents;
- The prime contractor or its agents.

The undersigned each executes this Affidavit, subject to penalties of perjury, and certifies that the foregoing is true and correct in all respects.

Dated: _____, 20____

BUYER(S):

Mary Sample

John Sample

Ellen Sample

Jack Sample

Free Recording Requested Pursuant to
Government Code Section 27383

RECORDING REQUESTED BY AND

When recorded, mail to:
Community Development of the
City of Benicia
Benicia , California 94510 Attn:
BMR Program
BMR Lien# 0000

Property: 123 Sample Street, Unit 2
APN: 5555-100

--Space Above This Line for Recorder's Use--

REQUEST FOR COPY OF NOTICE OF DEFAULT

IN ACCORDANCE WITH SECTION 2924B, CIVIL CODE OF THE STATE OF CALIFORNIA, REQUEST IS HEREBY MADE THAT A COPY OF ANY NOTICE OF DEFAULT AND A COPY OF ANY NOTICE OF SALE UNDER THE DEED OF TRUST RECORDED CONCURRENTLY HEREWITH, IN THE OFFICIAL RECORDS OF Benicia , CALIFORNIA, EXECUTED BY Mary Sample, John Sample, Ellen Sample and Jack Sample AS TRUSTOR, TO Title Company Name AS TRUSTEE, IN WHICH Mortgage Lending Institution IS NAMED AS BENEFICIARY,

MAIL TO: Community Development
City of Benicia
Benicia CA 94510

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Dated: _____, 20____

BUYER(S):

Mary Sample

John Sample

Ellen Sample

Jack Sample

(THIS DOCUMENT MUST BE NOTARIZED)