



## SPECIAL MEETING AGENDA

**Date:** 1/7/2025  
**Time:** 6:30 p.m.  
**Location:** [Zoom.us/join](https://zoom.us/join) – ID# 865 4847 4804 and  
Arrillaga Recreation Center, Oak Room  
700 Alma St., Menlo Park, CA 94025

Members of the public can listen to the meeting and participate using the following methods.

### How to participate in the meeting

- Access the meeting, in-person, at the Arrillaga Recreation Center, Oak Room
- Access the meeting real-time online at:  
[Zoom.us/join](https://zoom.us/join) – Meeting ID# 865 4847 4804
- Access the meeting real-time via telephone at:  
(669) 900-6833  
Meeting ID# 865 4847 4804  
Press \*9 to raise hand to speak

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### Regular Session

#### A. Call To Order

#### B. Roll Call

#### C. Regular Business

- C1. Approve the Housing Commission meeting minutes for December 4, 2024 ([Attachment](#))
- C2. Review and make a recommendation on proposed modifications to the Below Market Rate Housing Guidelines and the Below Market Rate Housing Agreement with Habitat for Humanity Greater San Francisco for the proposed housing development located at 335 Pierce Road ([Staff Report #25-001-HC](#))

#### D. Reports and Announcements

- D1. Commissioner updates
- D2. Future agenda items
- D3. Staff updates and announcements

#### E. Adjournment

At every Regular Meeting of the Commission, in addition to the Public Comment period where the public shall have the right to address the Commission on any matters of public interest not listed on the agenda, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during the Commission's consideration of the item.

At every Special Meeting of the Commission, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during consideration of the item.

For appeal hearings, appellant and applicant shall each have 10 minutes for presentations.

If you challenge any of the items listed on this agenda in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Menlo Park at, or prior to, the public hearing.

Any writing that is distributed to a majority of the Commission by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available by request by emailing the city clerk at [jaherren@menlopark.gov](mailto:jaherren@menlopark.gov). Persons with disabilities, who require auxiliary aids or services in attending or participating in Commission meetings, may call the City Clerk's Office at 650-330-6620.

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**REGULAR MEETING MINUTES – DRAFT**

**Date:** 12/4/2024  
**Time:** 6:30 p.m.  
**Location:** Teleconference and  
Arrillaga Recreation Center, Elm Room  
700 Alma St., Menlo Park, CA 94025

**A. Call To Order**

Chair Merriman called the meeting to order at 6:35 p.m.

**B. Roll Call**

Present: Leitch, Merriman, Switzer, Trempont  
Absent: Beeli, Portillo, Onap  
Staff: Housing Manager Tim Wong, Management Analyst Arianna Milton

**C. Public Comment**

None.

**D. Regular Business**

D1. Approve the Housing Commission meeting minutes for November 6, 2024 (Attachment)

**ACTION:** Motion and second (Leitch/ Switzer), to approve the Housing Commission meeting minutes for November 6, 2024, passed 4-0 (Beeli, Portillo and Onap absent).

D2. Approve the Housing Commission meeting calendar for 2025 (Staff Report #24-015-HC) (Attachment)

Management Analyst Arianna Milton introduced the item.

The Commission received clarification on scheduling for January 2025.

**ACTION:** Motion and second (Leitch/ Switzer), to approve the Housing Commission meeting calendar for 2025 and to add a special meeting on Tuesday, January 7, 2025, passed 4-0 (Beeli, Portillo and Onap absent).

**E. Reports and Announcements**

E1. Commissioner updates

The Housing Commission shared a reminder of San Mateo County's funding opportunities and the Home Key Plus program.

E2. Future agenda items

Housing Manager Tim Wong reported that the Below Market Rate (BMR) agreement for 335 Pierce will be an agenda item for the Housing Commission in January.

E3. Staff updates and announcements

Housing Manager Tim Wong gave updates on the Parkline project proposal, downtown parking lots, Builder’s Remedy project on 80 Willow Rd and recent anti-displacement community events.

**F. Adjournment**

Chair Merriman adjourned the meeting at 7:12 p.m.

Management Analyst I Arianna Milton



**STAFF REPORT**

**Housing Commission**

**Meeting Date:**

**1/7/2025**

**Staff Report Number:**

**25-001-HC**

**Regular Business:**

**Review and make a recommendation on proposed modifications to the Below Market Rate Housing Guidelines and the Below Market Rate Housing Agreement with Habitat for Humanity Greater San Francisco for the proposed housing development located at 335 Pierce Road**

**Recommendation**

Staff recommends that the Housing Commission review and make a recommendation to the City Council to approve the proposed modifications to the Below Market Rate (BMR) Housing Guidelines (Attachment A) as requested by Habitat for Humanity Greater San Francisco (Habitat) for the proposed housing development project located at 335 Pierce Road and incorporated into the BMR Agreement and that the Housing Commission review and make a recommendation to the Planning Commission to approve the Below Market Rate (BMR) Housing Agreement (Attachment B) with Habitat for the proposed project.

**Policy Issues**

The Housing Commission makes recommendations on modifications to the BMR Housing Guidelines to the City Council as the final approving body as well as recommendations on BMR agreements to the final approving body, which is typically the Planning Commission. The Housing Commission should consider whether the proposed BMR Guidelines modifications would be in compliance with the intent of the BMR Housing Program (Menlo Park Municipal Code 16.96, referred to as the BMR Ordinance) and with the BMR Guidelines that implement the BMR Ordinance. Section 12 of the BMR Guidelines allows the City Council to review and approve reasonably equivalent alternatives to the BMR Guidelines. The Housing Commission will also need to consider the BMR Agreement and make a recommendation to the Planning Commission.

**Background**

In November 2021, the City Council directed staff to use \$3.6 million in BMR funds for MidPen Housing Corporation (MidPen) to develop 12 for-sale affordable townhomes at 335 Pierce Road. However, MidPen did not move forward with the project. In February 2024, Habitat submitted to the City an over-the-counter Notice of Funding Availability (NOFA) proposal requesting use of the previously set aside \$3.6 million in BMR housing funds for a new project at the site. Habitat would use the funds to acquire from MidPen the property at 335 Pierce Road and fund some pre-development costs with the intention of developing affordable for-sale, ownership dwelling units on the site.

On April 3, 2024, the Housing Commission recommended that the City Council approve the commitment of \$3.6 million in BMR funds for the Habitat proposal. On April 16, 2024, the City Council approved the commitment of the funds to Habitat to purchase the property at 335 Pierce Road and to pay for some pre-development costs to develop a minimum of eight for-sale, affordable townhome units targeting low-income (80% area median income) households, and directed staff to return with a funding agreement. The April 16,

2024 City Council staff report is included in Attachment C.

Since the April City Council meeting, Habitat has identified several differences between the City’s BMR Guidelines and Habitat’s home ownership model and practices. Therefore, as part of their proposal, Habitat is requesting approval of certain modifications from the BMR Guidelines, which are reflected in the proposed BMR Agreement and will be incorporated by City Council resolution at a later date pending City Council action. These BMR Guidelines modifications would be reviewed concurrently with Habitat’s funding agreement tentatively scheduled for the January 28, 2025 City Council meeting, while the BMR Agreement would be reviewed by the Planning Commission with the full project entitlement package at a later date. Approval of these modifications would give Habitat assurance that key features of its program would be implemented if the development project is approved. Each modification has been reviewed and analyzed in the Analysis section of this report. It is important to note that per the BMR Agreement, 10% or a minimum of one unit would be subject to the BMR Guidelines and therefore these modification requests apply to that portion of the project only. The Housing Commission should review and make a recommendation on the requested modifications for the City Council to consider.

Development timeline

Table 1 below shows the approximate timeline for the development of the project, which has been adjusted since the spring. These dates will also be included as performance metrics in the City funding agreement with Habitat.

Table 1: Approximate development milestones	
Milestone	Anticipated date
Transfer of title	March 2025
Entitlement application submittal	April 2025
City consideration of land use application	October 2025
Building permit application submittal	January 2026
Building permit issuance	July 2026
Commence construction	October 2026
Complete construction	May 2028

City housing goals and priorities

The Habitat funding proposal satisfies several City housing goals and priorities identified in the 2023-2031 Housing Element, including:

- The property was identified in the Housing Element as Housing Opportunity Site #60
- Policy H5.7: Opportunities for Homeownership
- Program H1.E: Work with Non-Profits on Housing
- Policy H4.2: Housing to Address Local Housing Needs
- Policy H4.3: Variety of Housing Choices
- Policy H4.9: Long-term Housing Affordability Controls
- Policy H4.12: Emphasis on Affordable Housing

## Analysis

To accommodate Habitat's affordable homeownership model, Habitat is requesting several modifications to the BMR Guidelines (Attachment D) so that they can develop and sell the dwelling unit(s) pursuant to their business model.

### Requested modifications to the City's BMR Guidelines

Section 12 of the BMR Guidelines allows reasonably equivalent alternative BMR requirements to be approved by the City Council with findings that the alternatives are commensurate with the applicable requirements and consistent with the goals of the BMR Guidelines. At the September 26, 2023 City Council meeting, similar modifications were reviewed and accepted for Habitat's affordable housing project as part of the development at 123 Independence Drive. However, for the 335 Pierce Road project, Habitat is requesting additional modifications. Those additional modifications requested for this project will be denoted by an asterisk.

- **BMR Guidelines Section 5.3 and BMR Guidelines Section 5.4\*:** These sections state that the BMR sales price must be set before temporary certificate of occupancy or final building inspection, whichever is applicable, and provide instructions on setting the maximum sales price and other transaction costs.

Habitat's program differs from the BMR Guidelines as the home is sold at fair market value price (FMV) established by a third-party appraisal and the affordable sales price of the home is based on the income level of the particular homebuyer. In Habitat's model, that affordable sales price is set for each qualified household at no more than 30% of the household's income which then establishes the "Affordable First Mortgage". The difference between the FMV and the Affordable First Mortgage is covered by grants and other financial assistance. While the City's BMR Guidelines also cap the household payments to 30% of the income, but the maximum BMR sales price is calculated differently based on a number of factors, including the designated affordability level of the unit based on Area Median Income, assumed household size, current interest rates, 3% down payment, and any other associated costs such as an HOA fee. Though structured differently, the Habitat model effectively achieves the goal of the BMR Guidelines to ensure that the first mortgage is affordable to the particular homebuyer.

The first mortgage provided by Habitat is typically 0% down and 0% interest and no other deposit from the homebuyer is required. This differs from the BMR Guidelines approach to maximum sales price, including but not limited to Sections 9.1.3, 9.1.4, 9.1.6, 9.1.7 and 9.2.2. Staff finds that these modifications are reasonable and allow qualifying households to maintain their housing payment at 30% of their income.

- **BMR Guidelines section 5.5:** This section requires that affordable units have a purchase option in favor of the City.

In its role as a lender to each homebuyer, Habitat requires a senior purchase option including the recordation of 99-year affordability deed restriction at each sale of each BMR unit. This agreement is typically a tri-party agreement between the buyers, Habitat, and the local municipality that is providing funds for the project. The City will hold a second position purchase option. During Habitat's 30-year history, Habitat has repurchased every home that has been offered back for sale by a Habitat homebuyer. After repurchasing and repairing the home, a new qualified homebuyer will be selected for homeownership.

Staff is supportive of this proposed modification because the affordable units will continue to be part of the City's affordable housing stock if purchased by Habitat. Additionally, the deed restriction required by

Habitat of 99 years is greater than the 55 years required in the BMR Guidelines, further assuring long-term affordability.

- **BMR Guidelines section 7.1:** This section requires that all members of the applicant household be first time homebuyers.

To ensure the project can accommodate multigenerational families, Habitat requests the City allow only those occupants actually on title to the unit to be first time homebuyers, which are typically the primary adults in the home. Multigenerational households may include seniors living with adult children or adult children in need of temporary and/or part-time residence, some which may have owned in the past. Restricting only title holders be first-time homeowners allows the opportunity for a more inclusive, diverse, and multigenerational household.

Staff supports and finds that this requested modification would result in the same outcome as prescribed by Section 7.1 of the City's BMR Guidelines.

- **BMR Guidelines section 7.1.1:** This section includes an exception to the first-time homebuyer requirement for households that already own BMR units. This specific and detailed exception allows current BMR owners who are still eligible for the BMR program to apply for BMR ownership opportunities if, for example, they wish to purchase a smaller or larger home based on family needs.

Habitat requests to waive this exception as it is inconsistent with the Habitat Board approved policy as the programs mission is to provide first-time ownership opportunities to individuals who have otherwise not had that chance.

Staff finds that this requested modification would allow a greater number of eligible households that do not currently own property to have the opportunity to participate in the process and be able to purchase a home. Allowing this modification would focus the City's efforts in providing affordable housing to those who are in need.

Habitat is only requesting a modification to this particular exception in Section 7.1.1. All other exceptions are to remain in Section 7.1.1.

- **BMR Guidelines section 7.2:** This section states that only households that have completed the education requirement will be invited to apply when units become available and provides detailed requirements about the education provider and content of such programs.

Habitat requires homeownership education during the "sweat equity" phase of its homebuyer process, and Homebuyer readiness is a core component of its mission. For this reason, Habitat must identify households for its units before the units are available. Habitat encourages interested applicants to attend a 90-minute information session prior to applying. Accommodations for the elderly, people with limited physical mobility and allowing friends and family to contribute to sweat equity hours benefits the wider community.

Staff believes this education model accomplishes BMR Guideline section 7.2, to ensure homeowner preparation for ownership. The main alteration relates to timing to accommodate the sweat equity model. Habitat's unique model allows homeowners to participate in the construction of the units and through the process learn about maintenance and care for the units, which is beyond the City requirement. Staff is supportive of this proposed modification. Staff finds that allowing this modification would make the future property owners become more familiar with the construction and maintenance of



the unit they are purchasing which could potentially allow them to maintain the unit by themselves rather than having to depend on outside assistance.

- **BMR Guidelines section 7.4:** This section provides a list of assets and how they count towards income limits for the purchasers of affordable units.

The Habitat asset test requires liquid assets over \$60k to be assessed at 10% of their value and added to annual income. This approach factors in larger substantial savings as part of the household annual income, which helps to ensure lower income households are served and sets reasonable conditions that allow as many potential homebuyers as possible to qualify. This allows households with lower incomes to count a small percent of other assets to show that they qualify for an affordable home. This differs from how the City calculates assets within the BMR Guidelines. The City follows the California Department of Housing and Community Development's (HCD) methodology which uses a lower asset threshold (\$5,000) and a lower percentage of value (the current passbook savings rate, typically around 2%). The City's BMR Guidelines also require that an applicant's assets not exceed the maximum sales price while Habitat does not have such a requirement.

Staff finds that while this is different from the city's approach, Habitat's method meets the purpose and intent in serving low income households. Staff is therefore supportive of the requested change to the BMR Guidelines.

- **BMR Guidelines section 8.3\*:** This section discusses applicant financing rules. The City's BMR Guidelines require a 3% down payment and an interest rate consistent with the market.

Habitat issues the households an affordable first mortgage which is typically 0% down and a 0% interest rate. For each qualified household/buyer, Habitat determines an affordable housing cost – this affordable housing payment is set at no more than 30% of the household's income and includes mortgage payments, insurance, taxes, HOA dues, and an allowance for utilities. No down payment is requested and loan terms can be between 30-40 years.

Staff finds that allowing this modification creates flexibility in finding qualified applicants, reduces upfront costs to homeowners, and allows 100% of the monthly payment to grow homeowner equity. The City's BMR Guidelines require a 30-year mortgage with a 3% down payment and an interest rate consistent with Freddie Mac's most recently published Primary Mortgage Market Survey. Staff is supportive of this requested modification.

- **BMR Guidelines section 9.1.11\*:** This section discusses the procedures for how qualified applications are ranked.

Since this is an ownership unit, Habitat will use the City's BMR Purchase Legacy List per the BMR Guidelines. If no qualified applicants come from the BMR Purchase Legacy List, Habitat, as the City's designee, may conduct a lottery, subject to approval of the City.

- **BMR Guidelines section 9.1.13\*:** This section discusses how to proceed if no applications are received from qualified applicants.

Under the BMR Guidelines, if no qualified applications are received within 45 days, the Maximum Sales Price will be recalculated and be re-marketed at the lowest Maximum Sales Price per the City's BMR Guidelines. Under the Habitat model, the sales price that is set at FMV cannot be amended as a way to encourage additional applications. However, based on the demonstrated demand for affordable

homeownership units, there is typically a large number of applicants to participate in the homeowner selection process. If available applicants are low, additional outreach can be done to expand the marketing area, or refine the process to promote the income qualified homes to a wider audience.

Habitat has identified other ways to increase the pool of potential qualifying applicants. Staff supports this modification to accommodate Habitat's model.

- **BMR Guidelines section 9.2.3\*:** This section discusses an administrative fee to be paid to the City's designee as part of the sales process.

Per the City's BMR Guidelines, any BMR sale includes a fee to the administrator. Since the sales process is conducted entirely by Habitat including the administration of the program and establishment of the mortgage, no administration fee is therefore required for sales.

Staff finds this modification request to be reasonable as Habitat will be acting as the City's designee.

- **BMR Guidelines section 10.2:** This section discusses refinancing options.

Habitat does not allow homeowners to refinance homes or assume second loans. Refinancing is not part of the Habitat process because the property value is shared between the homeowner, who receives their principle at the time of a resale, and Habitat who uses any realized capital appreciation to build more affordable homes. Allowing second mortgages also jeopardizes affordability and increases foreclosure risks, potentially subjecting low-income homeowners to potentially over-encumber their property.

Staff is generally supportive of the proposed modification as staff finds that it is necessary to allow Habitat to implement its mortgage program and provide 0% loans to the buyers, allowing them to purchase property without being impacted by changing market conditions.

- **BMR Guidelines section 11:** This section sets forth a detailed process for the resale of affordable units, including how the sales price will be set and that the City will retain the realtor for the sale.

Habitat requests to use its standard process for calculating the resale price of the home during a repurchase sale. Habitat sets the resale price at the time of sale and the price is set in a similar method to the initial sales price. Habitat construction staff rehabilitates the repurchased home at the same time as a second affordable homebuyer is identified. Habitat repeats the steps normally performed during an application cycle to find a qualified buyer, including marketing and outreach, identification of qualified applicants, determining eligibility and ultimately selecting a qualified household.

Habitat's model accomplishes the goal of BMR Guidelines Section 11, which is to ensure that homes remain affordable upon resale and are sold to qualified low-income households with an affordable mortgage.

Staff is supportive of the proposed modification as the proposed changes help in implementation of Habitat's unique model where Habitat is able to provide 0% interest loans and 0% down payment opportunities to the prospective buyers of the property making purchasing a home feasible even in uncertain market conditions.

- **Habitat as the City's Designee and Program Provider for Education, Marketing, Applicant Selection, and Title**

Habitat requests to act as the designee and program provider (BMR Guidelines section 9.1.8, 9.1.11, 9.1.13 and 9.1.15) for orientation, educational meetings, marketing, applicant selection, title requirements, education, marketing, selection strategies, and sales. Marketing strategies will be created in collaboration with City staff and shared with the City at least 30 days prior to marketing.

Staff is generally supportive of this request since Habitat is an industry expert and a non-profit organization that has many years been providing affordable housing at 0% interest mortgage rates, 0% down payment, and cost of homeownership capped at 30% of the household income.

To facilitate Habitat's program, staff is supportive of these requested modifications to the BMR Guidelines to incorporate in the BMR agreement for this project. The Housing Commission's recommendation on the proposed modifications will be brought the City Council for approval along with the funding agreement, tentatively scheduled for the January 28, 2025 meeting.

### BMR Agreement

When an applicant proposes a project of five or more residential units, they are required to comply with the City's BMR Ordinance, which incorporates the BMR Guidelines by reference. In accordance with BMR Ordinance, projects with fewer than 20 residential units are required to offer a minimum of 10% of the units at a below market rate. Although Habitat is proposing a 100% affordable development, it still must comply with the City's BMR Ordinance. As Habitat has proposed a development with a minimum of eight units, 10% of the units must be affordable and adhere to the BMR Guidelines. Habitat has agreed to provide a minimum of one unit to comply with the BMR Ordinance or 10% of the units, whichever is greater. The recommended modifications to the BMR Guidelines are incorporated into the BMR Agreement and incorporated by City Council resolution at a later date pending City Council action.

Typically BMR agreements are heard in conjunction with a submitted development application. Habitat has not submitted a formal development application yet. However, the Housing Commission is reviewing the BMR Agreement along with the proposed modifications so it will not need to be reviewed at a later date with the full application. The Housing Commission's recommendation on the BMR Agreement will be brought to the Planning Commission with the full project entitlement package at a later meeting. The attached BMR Agreement is in substantial form, and some project details, such as the final number of units, will be updated when the project submission reviewed by the Planning Commission.

### **Impact on City Resources**

There are no anticipated impacts to City resources as a result of the proposed modifications to the BMR Guidelines. Final approval of the applicant's previously supported commitment of \$3.6 million NOFA request would reduce the BMR housing fund. There are sufficient funds in the BMR fund to support this project.

### **Environmental Review**

Approval of the BMR agreement is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment. The BMR agreement would regulate the household income levels and rents of future occupants, but it does not authorize any development, demolition, or other activity that may have a direct or indirect impact on the environment. In addition, the BMR agreement incorporates programmatic modifications to the City's BMR Program that deal with administrative functions unrelated to physical development. Therefore, no further action is required to comply with CEQA at this time.

### **Public Notice**

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

### **Attachments**

- A. Hyperlink: [City of Menlo Park Below Market Rate Housing Guidelines](#)
- B. Habitat for Humanity Greater San Francisco Draft Below Market Rate Housing Agreement
- C. Hyperlink: [City Council staff report 24-064-CC](#)
- D. Habitat for Humanity Greater San Francisco BMR Guidelines Modifications Request

Report prepared by:  
Adam Patterson, Management Analyst II

Report reviewed by:  
Tim Wong, Housing Manager

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Menlo Park  
Attn: City Clerk  
701 Laurel Street  
Menlo Park, CA 94025

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**BELOW MARKET RATE HOUSING AGREEMENT**

**AND**

**DECLARATION OF RESTRICTIVE COVENANTS**

**(335 Pierce Road, Menlo Park)**

**THIS BELOW MARKET RATE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“Agreement”)** is entered into as of \_\_\_\_\_, 2024, by and between the City of Menlo Park, a California municipal corporation (“**City**”), and Habitat for Humanity of Greater San Francisco, Inc., a California non-profit public benefit corporation (“**Owner**”). City and Owner shall collectively be referred to herein as “**Parties**” and individually as a “**Party**.”

**RECITALS**

A. Owner is the owner of that certain real property located at 335 Pierce Road (APN \_\_\_\_\_), in the City of Menlo Park, California (“**Property**”), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference. The Property is within the Belle Haven neighborhood.

B. Owner intends to construct a residential development on the Property, which involves the demolition of an existing four-plex building and the construction of at least eight (8) new residential units (“**Project**”).

C. City has approved a grant to Owner for the acquisition of the Property and expenses related to the development of the Project. As a condition of the City grant, the homes in the Project will all be below market rate residential units (each, a “**BMR Unit**”) to be owned and occupied by households earning no more than 80% of Area Median Income (“**AMI**”) for San Mateo County (“**County**”) in accordance with the City's BMR Ordinance and Guidelines.

D. The City Community Funding Agreement requires Owner to provide the BMR Units in accordance with this Agreement. Pursuant to the Menlo Park Municipal Code Chapters 15.36 and 16.96 establishing the Below Market Rate Housing Program (“**BMR Ordinance**”), and the Below Market Rate Housing Program Guidelines, as such may be revised by City from time-to-time (“**Guidelines**”), Owner is required to execute and record an approved “**BMR Housing Agreement**”. The intent of City is to preserve the number and availability of affordable homes in

the BMR program for persons with low-income for as long as possible. This Agreement is intended to satisfy the requirement that Owner sign and record a BMR Housing Agreement.

E. In connection with developing the Project, Owner will implement its typical model for producing affordable housing where, among other things, the affordable units are constructed through a contribution by each Eligible Buyer of a required amount of "sweat equity," and each Eligible Buyer will be made a loan by Owner at zero percent (0%) interest and no required down payment. Owner has a long and successful track record with the implementation of its affordable housing model. However, as a result of certain programmatic elements of Owner's affordable housing program, it was necessary for City Council to consider and approve particular deviations from City's Guidelines where Owner's program did not strictly adhere to the Guidelines but was determined to achieve the goal or spirit of the Guidelines. City Council approved such deviations from the Guidelines in connection with Owner's implementation of its affordable housing program to develop the Project on \_\_\_\_\_, 2024, pursuant to Resolution \_\_\_\_\_. This Agreement reflects the deviations from the Guidelines approved by City Council.

F. As required by this Agreement, Owner agrees to observe all of the terms and conditions set forth below for purposes of development and operation of the BMR Units. This Agreement will ensure the continuing affordability of the BMR Units.

**NOW, THEREFORE**, in consideration of the foregoing, which are incorporated herein by references, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows.

1. **DEFINITIONS.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

**"Actual Household Size"** means the actual number of persons in the applicable household.

**"Affordability Period"** is defined in Section 3.2.

**"Affordable Housing Cost"** means a monthly obligation to pay mortgage payments (principal and interest), property taxes, property insurance, mortgage insurance (if required by mortgage lender), utilities, and homeowners' association dues (if applicable) in an aggregate amount not greater than one-twelfth of thirty percent (30%) of household Gross Income. For the purpose of calculating Affordable Housing Cost, mortgage payments that the homeowner is required to pay on a current basis are included, but "silent" mortgages that do not require payment of principal and interest are excluded.

**"Affordable Sales Price"** means the maximum sales price for a BMR Unit, as determined pursuant to Section 4.2, that will result in an Affordable Housing Cost for the homebuyer.

**"Applicable Laws"** is defined in Section 2.3.

**"Area Median Income" or "AMI"** is referred to in Recital C and means the median income for San Mateo County, California, adjusted for Actual Household Size as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by HCD in Section 6932 of Title 25 of the California Code of Regulations or successor provision.

**“Assignee”** is defined in Section 5.

**“BMR Housing Agreement”** is defined in Recital E.

**“BMR Ordinance”** is defined in Recital E.

**“BMR Purchase Legacy List”** is defined in Section 4.2.

**“BMR Unit”** is defined in Recital C.

**“Buyer Deed of Trust”** is defined in Section 4.9.

**“City”** is defined in the first paragraph of this Agreement.

**“City Purchase Option”** is defined in Section 5.

**“Claims”** is defined in Section 8.10.

**“County”** is defined in Recital C.

**“Effective Date”** is defined in Section 3.1.

**“Eligible Buyer”** means a Low Income Household.

**“Event of Default”** is defined in Section 7.1.

**“Fair Market Value”** means the then market value of a BMR Unit as determined by an appraisal performed pursuant to customary appraisal standards and processes by a qualified third-party appraiser.

**“First Deed of Trust”** is defined in Section 4.8.

**“Gross Income”** shall have the meaning set forth in Section 6914 of Title 25 of the California Code of Regulations as such section may be revised from time to time.

**“Guidelines”** is defined in Recital E.

**“HCD”** means the State of California Department of Housing and Community Development.

**“HUD”** means the U.S. Department of Housing and Urban Development.

**“Indemnitees”** is defined in Section 8.10.

**“Low-Income Household”** means a household whose Gross Income does not exceed the qualifying limit for lower income households as established and amended from time to time by HUD pursuant to Section 8 of the United States Housing Act of 1937 and published by the HCD pursuant to Section 50079.5 of the California Health and Safety Code, adjusted for Actual Household Size.

**“Marketing Plan”** is defined in Section 4.2.

“**Official Records**” means the Official Records of the San Mateo County Clerk-Recorder.

“**Option Exercise Period**” is defined in Section 5.

“**Owner**” is defined in the first paragraph of this Agreement.

“**Owner Purchase Option**” is defined in Section 5.

“**Party**” and “**Parties**” is defined in the first paragraph of this Agreement.

“**Prohibited Transfer**” is defined in Section 4.6.

“**Project**” is defined in Recital B.

“**Project Approvals**” is defined in Section 2.1.

“**Property**” is defined in Recital A.

“**Resale Restriction Agreement**” is defined in Section 4.9.

“**Senior Lien Holder**” is defined in Section 4.8.

“**transfer**” is defined in Section 4.5.

“**USPS**” is defined in Section 5.

## 2. CONSTRUCTION OF THE IMPROVEMENTS.

**2.1 Construction of the Project.** Prior to commencing construction of the Project, Owner shall obtain all governmental entitlements and approvals necessary (as determined by City) for the development of the Project (“**Project Approvals**”). Owner agrees to construct the Project in accordance with the Menlo Park Municipal Code, the Project Approvals and all Applicable Laws.

**2.2 City and Other Governmental Permits.** Before commencement of the Project, Owner shall secure or cause its contractor to secure any and all permits which may be required by City or any other governmental agency with any authority over such construction, including without limitation building permits. Owner shall pay all necessary fees and timely submit to City final drawings with final corrections to obtain such permits; City staff will, without incurring liability or expense therefore, process applications in the ordinary course of business, including in compliance with State law, for the issuance of building permits and certificates of occupancy for construction that meets the requirements of the Menlo Park Municipal Code, the Project Approvals, and all Applicable Laws.

**2.3 Compliance with Laws.** Owner shall carry out the design, construction and operation of the Project in conformity with all applicable laws, including, without limitation, all applicable state labor standards, City zoning and development standards, City and state building, plumbing, mechanical and electrical codes, and all other provisions of the Menlo Park Municipal Code, and all applicable disability access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* (collectively, “**Applicable Laws**”).



### 3. OPERATION OF PROJECT.

**3.1 Effective Date.** The effective date of this Agreement shall be the date that Owner obtains a certificate of occupancy or temporary certificate of occupancy from City for the Project (“**Effective Date**”).

**3.2 Affordability Period.** The Property shall be subject to the requirements of this Agreement from the Effective Date until the fifty-fifth (55<sup>th</sup>) anniversary of the Effective Date. The duration of this requirement shall be known as the “**Affordability Period.**”

**3.3 Maintenance.** Owner shall comply with every condition of the Project Approvals applicable to the Project and shall, at all times that Owner owns the Property, maintain the Project and the Property in good repair and working order, reasonable wear and tear excepted, and in a safe and sanitary condition, and from time to time shall make all necessary and proper repairs, renewals and replacements to keep the Project and the BMR Units in a good, clean, safe, and sanitary condition. Without limiting the foregoing, Owner agrees, while it owns the Property, to maintain the Property (including without limitation, landscaping, driveways, parking areas, and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property. Owner shall, during Owner's ownership of the Property, prevent and/or rectify any physical deterioration of the Improvements and shall make all repairs, renewals and replacements necessary to keep the Property in good condition and repair, ordinary wear and tear excepted.

**3.4 Monitoring and Recordkeeping.** Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in the Guidelines. City shall have the right to inspect the books and records of Owner and its rental agent, sales agent or bookkeeper upon reasonable notice during normal business hours. During any period that a BMR Unit is owned by Owner, representatives of City shall be entitled to enter the Property, upon at least 48-hour prior written notice, which can be provided via email, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the BMR Units, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with City in making the Project and Property available for such inspection or audit. Owner agrees to maintain records in businesslike manner, and to maintain such records for all periods of time that Owner owns the Property or any of the BMR Units.

**3.5 Non-Discrimination Covenants.** Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, ancestry or other class protected by Applicable Laws in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the BMR Units. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

a. **Grant Deed.** The following language shall appear in each BMR grant deed:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against

or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

b. Contracts. In contracts pertaining to management, construction, maintenance or other element of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

(1) There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

**3.6** Subordination. This Agreement shall be recorded in the Official Records of the County and shall run with the land. City agrees that City will not withhold consent to reasonable requests for subordination of this Agreement for the benefit of lenders providing financing for the Project, provided that the instruments effecting such subordination include reasonable protections to City in the event of default, including without limitation, extended notice and cure rights.

#### **4. BMR UNIT RESTRICTIONS.**

**4.1** Sale to Low-Income Households. Each BMR Unit shall be sold to an Eligible Buyer at a sales price that will result in an Affordable Housing Cost to the homebuyer based on the homebuyer's household Gross Income. The BMR Units shall be affordable to Eligible Buyers

which (a) are Low Income Households, and (b) meet all of the requirements set forth in this Agreement (“**Eligible Buyer**”).

#### **4.2 Affordable Sales Price; Buyer Selection; Marketing; Education.**

a. Use of City List of Prospective Buyers. City may maintain a list of potential Eligible Buyers referred to as the “**BMR Purchase Legacy List**” (as defined in the Guidelines). Developer agrees to include any Eligible Buyers on the BMR Purchase Legacy List in marketing the BMR Units, and agrees to comply with any priorities established by such list or otherwise specified in this Agreement to the extent consistent with Applicable Laws; provided however, Owner shall retain responsibility for verifying prospective buyers’ income, qualifications and eligibility to purchase a BMR Unit (during the initial sale of a BMR Unit and any subsequent sale thereof) in accordance with Owner’s usual and customary processes and procedures related to pricing, buyer selection and marketing, so long as such comply with this Agreement. Notwithstanding the foregoing, Owner agrees that ten percent (10%) of or a minimum of one (1) BMR Unit in the Project shall be sold to an Eligible Buyer on the BMR Purchase Legacy List and agrees to comply with any priorities established by such list or otherwise specified in this Agreement to the extent consistent with Applicable Laws (“**Legacy List Inclusionary Unit**”).

b. Affordable Sales Price. The sale price of each BMR Unit may not exceed the lesser of (i) the Affordable Sales Price applicable to the particular Eligible Buyer, and (ii) the Fair Market Value of the BMR Unit. The Affordable Sales Price calculation undertaken by Owner shall consider the interest rate and down payment requirements of all financing being utilized by Eligible Buyer that makes up part of the Affordable Housing Cost for the applicable BMR Unit.

c. Calculation. No less than ninety (90) days prior to offering a BMR Unit for sale, Owner shall provide City with written notice of its calculation of the Affordable Sales Price for such BMR Unit, as calculated in accordance with this Agreement, for City’s review and approval. Within twenty (20) days of City’s receipt of Owner’s calculation of the Affordable Sales Price, accompanied by all applicable financing information for each BMR Unit, including without limitation, all financing provided by Owner and all “silent” mortgages that require no debt service payments, City shall provide Owner with its approval or rejection of the Affordable Sales Price. If City requests, City and Owner shall meet and confer in good faith if City disagrees with Owner’s calculation of the Affordable Sales Price.

d. Preferences. Owner and City agree that, in addition to the Legacy List Inclusionary Unit, the following preferences in the sale of BMR Units to Eligible Buyers shall be adhered to by Owner, to the extent permitted by Applicable Laws: (1) to Eligible Buyers on the BMR Purchase Legacy List; (2) to Eligible Buyers qualifying the preferences set out in the Guidelines, and (3) to other Eligible Buyers. Notwithstanding the foregoing, in the event of a conflict between this provision and Applicable Laws, the provisions of such Applicable Laws shall control.

e. Income Verification. Prior to entering into a contract to sell each BMR Unit, Owner shall provide a certification to City attesting to the prospective buyer’s Gross Income and status as an Eligible Buyer. In connection with such certification, prospective buyers shall be required to provide written certification of household income, including without limitation such documents as income tax returns for the previous calendar year, W-2 statements, and pay stubs.

f. Use of Qualified Brokers and Lenders. Owner hereby represents to City that it shall independently conduct the sales and marketing functions for the sale and re-sale of

each BMR Unit in accordance with the terms and conditions of this Agreement and at no additional cost to City. Notwithstanding the foregoing, if Owner uses a third-party broker or lender in marketing the BMR Units for the initial sale or a subsequent sale, Owner agrees to use a realtor or broker that has experience in marketing below market-rate units that require homebuyers to meet income qualifications and that require recordation of Resale Restriction Agreements limiting appreciation on future sales, and agrees to use a realtor or broker that is on City's approved list of realtors/brokers with such experience, if City maintains such a list. In addition, Owner agrees that the purchase of BMR Units will be financed by lenders that are familiar with affordable housing programs that impose resale price restrictions, and agrees to work with lenders listed on the City's approved list of lenders with such experience if City maintains such a list. Notwithstanding the above, Owner may provide financing to Eligible Buyers.

g. Marketing Plan. Not fewer than one hundred twenty (120) days before Owner begins offering BMR Units for sale, Owner shall provide to City, for its review and approval, Owner's written marketing plan describing Owner's plan for marketing BMR Units for sale to Eligible Buyers and incorporating the requirements set forth in this Section 4 ("**Marketing Plan**"). Upon receipt of the Marketing Plan, City shall promptly review the Marketing Plan and approve or disapprove it within thirty (30) days after submission. If the Marketing Plan is not approved, Owner shall submit a revised Marketing Plan within thirty (30) days.

h. Eligible Buyer Education. Following selection of Eligible Buyers through application of Owner's usual and customary processes and procedures, Owner shall be responsible for providing homeowner education to each Eligible Buyer in advance of each Eligible Buyer closing on and taking occupancy of the applicable BMR Unit.

**4.3** Term. This Agreement shall remain effective and fully binding for the full term hereof regardless of any sale, assignment, transfer or conveyance of the Property or the Project or any part thereof or interest therein; provided however, that upon initial sale of each BMR Unit to an Eligible Buyer and recordation of a fully executed Resale Restriction Agreement, such BMR Unit shall be released from this Agreement, and Owner's obligations under this Agreement with respect to each such BMR Unit shall terminate unless otherwise provided for herein.

**4.4** Third Party Purchasers. The execution and delivery of this Agreement shall not be deemed to be for the benefit of the third party purchasers of a BMR Unit or any other third party and any and all obligations and responsibilities of Owner under this Agreement are to City for whose benefit this Agreement has been entered into. No third party purchaser of a BMR Unit, homeowners' association or any other third party shall obtain any rights or standing to complain that a BMR Unit was not constructed, designed, sold or conveyed in accordance with this Agreement, the BMR Ordinance and/or the Guidelines as a result of this Agreement. Furthermore, the acceptance of this Agreement by City, the acceptance of the interior specifications for a BMR Unit, and the conveyance of a BMR Unit to an Eligible Buyer shall conclusively indicate that Owner has complied with this Agreement, the BMR Ordinance and the Guidelines.

**4.5** Conditions of Transfer. For purposes of this Agreement, "transfer" shall mean any voluntary or involuntary sale, assignment or transfer of ownership or any interest in a BMR Unit, including, but not limited to, a fee simple interest, joint tenancy interest, or life estate. A "transfer" shall also include the recording of one or more deeds of trust against a BMR Unit to secure one or more loans or to refinance an existing loan. There shall be no transfer of a BMR Unit to any person or entity, except with the express written consent of Owner and City or its designee, which consent shall be consistent with City's goal of creating, preserving, maintaining and protecting

housing in Menlo Park for persons of low-income. Any transfer of a BMR Unit shall be subject to the conditions set forth in this Agreement.

**4.6 Prohibited Transfer/Default.** Any transfer which is not in substantial compliance with the above conditions shall be deemed a **"Prohibited Transfer"**. Upon receipt of any evidence of a Prohibited Transfer or any other violation of the terms of this Agreement, City shall give written notice to Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of City within ten (10) days after the date of the notice, or within such further time as City determines is necessary to correct the violation, City may declare a default under this Agreement. Upon the declaration of a default, City may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate under the circumstances. Owner shall reimburse City for all reasonable City costs, including but not limited to attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

**4.7 Owner Occupancy.** Prospective purchasers of a BMR Unit must sign a written statement acknowledging their agreement that the BMR Unit must be occupied as the purchaser's principal residence and that the BMR Unit may not be rented or leased (including short term leases, such as through Airbnb or comparable rental platform), except as allowed under the Resale Restriction Agreement. Further, each purchaser of a BMR Unit must annually sign a written statement certifying compliance with the foregoing requirements.

**4.8 Senior Lien Holder.** Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage ("First Deed of Trust") held by a Senior Lien Holder and/or a federally or state chartered bank or savings and loan association qualified to do business in the State of California which mortgage was obtained at the time owner purchased the BMR Unit ("Senior Lien Holder"). City and Owner acknowledge and agree that this Agreement is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust held by a Senior Lien Holder including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by Owner under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust, or (b) constructing, renovating, repairing, furnishing, fixturing or equipping a BMR Unit. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of a BMR Unit to low-income households or otherwise restricting Owner's ability to sell a BMR Unit shall have no further force or effect on subsequent owners or purchasers of the BMR Unit. Any person, including his or her successors or assigns (other than Owner or a related entity of Owner), receiving title to a BMR Unit through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to that BMR Unit free and clear from such restrictions. Further, if the Senior Lien Holder acquires title to a BMR Unit pursuant to a deed in lieu of foreclosure, the lien of this Agreement shall automatically terminate upon the Senior Lien Holder's acquisition of title, provided that (i) City was given written notice of a default under the First Deed of Trust, (ii) City was given a reasonable period of time under the First Deed of Trust to cure the default, and (iii) City did not timely cure the default or diligently pursue a cure

of the default as determined by the Senior Lien Holder, within the sixty (60) day period provided in such notice of default sent to City. Any and all deeds of trust recorded against a BMR Unit, other than the First Deed of Trust held by the Senior Lien Holder and/or such Senior Lien Holder's successor or assignee of its interest, shall be subordinate and subject to the terms and provisions of this Agreement.

**4.9 Resale Restriction Agreement.** The initial buyer and each subsequent buyer of a BMR Unit (except City in connection with its exercise of the City Purchase Option) shall (a) execute and record an agreement that restricts the future sale of that BMR Unit to low-income households at no more than the Affordable Sales Price at the time of sale for a period of fifty-five (55) years ("**Resale Restriction Agreement**"), and (b) execute and record a performance deed of trust securing the obligations set out in the Resale Restriction Agreement ("**Buyer Deed of Trust**"), and with respect to both the Resale Restriction Agreement and the Buyer Deed of Trust, in a form and substance acceptable to City in its sole discretion. The Resale Restriction Agreement and Buyer Deed of Trust must be recorded against that BMR Unit at the closing of the applicable purchase and sale of the BMR Unit. Among other things, the Resale Restriction Agreement shall provide that for a term equal to fifty-five (55) years, subsequent sales of a BMR Unit may only be made at no more than the then Affordable Sales Price (as determined by Owner and approved by City) to an Eligible Buyer that qualifies as a Low- Income Household, that the buyer must occupy the BMR Unit as its principal residence, that the BMR Unit may not be rented or leased except as allowed under the Resale Restriction Agreement, that the buyer may not make the BMR Unit available for short term rentals, and that the buyer is required to annually sign a written statement certifying compliance with all of the foregoing requirements. In connection with the sale of a BMR Unit, City may, in its discretion, require prospective buyers to (i) be pre-qualified by City or its designee, (ii) execute a disclosure agreement that explains the provisions of the Resale Restriction Agreement, and (iii) execute and record the Buyer Deed of Trust that secures performance under the Resale Restriction Agreement. Concurrently with the recordation of the first Resale Restriction Agreement and Buyer Deed of Trust applicable to a BMR Unit, City shall execute and cause to be recorded an instrument releasing and reconveying this Agreement with respect to such BMR Unit, so that the particular BMR Unit will no longer be encumbered by this Agreement.

**5. OWNER AND CITY PURCHASE OPTIONS.** City acknowledges and agrees that Owner intends to sell each of the BMR Units to an Eligible Buyer. If Owner is unable to sell the BMR Unit to an Eligible Buyer for the Fair Market Value of the BMR Unit within one hundred eighty (180) days of issuance of a certificate of occupancy for a BMR Unit, as such period may be extended by mutual agreement of the Parties, Owner hereby grants to City, or another governmental entity or tax-exempt nonprofit organization to whom City may assign the rights set forth in this Section 5 ("**Assignee**"), a right to purchase, at a purchase price calculated by City in the manner described in the Guidelines, any such BMR Unit solely for rental or resale as a BMR unit ("**City Purchase Option**"). Owner shall deliver a written notice to City that Owner has been unable to sell the BMR Unit to an Eligible Buyer within such one hundred eighty (180) day period. Upon receipt of such notice City or its Assignee shall have the right to exercise the City Purchase Option with respect to any or all unsold BMR Units for a period ("**Option Exercise Period**") of ninety (90) days from the date of such notice. Owner's notice shall be sent by certified mail through the United States Postal Service ("**USPS**") to the Community Development Director and Housing Manager, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025. If City does not deliver written notice to Owner of City's decision to exercise its option to purchase all or some of the BMR Units prior to the expiration of the Option Exercise Period, Owner may sell the other BMR Units to Eligible Buyers at a purchase price up to or equal to the Affordable Sales Price in accordance with the requirements of this Agreement. City may, in its sole discretion, assign the City Purchase

Option to an Eligible Buyer, as described in the BMR Ordinance and Guidelines; City reserves the right to reassign the City Purchase Option to another Eligible Buyer(s) in the event the initial or any subsequent Eligible Buyer fails or is unable to complete a purchase and sale transaction and in such event, applicable timelines and deadlines shall be extended. If City elects to rent all or any BMR Units, then City shall select a tenant from City's interest list, if one exists. Alternatively, City may market the BMR Unit(s) for rental or sale and may retain a realtor or comparable service to locate Eligible Buyers who are Low Income Households.

**5.1** Acceptance. Exercise of the City Purchase Option by City or its Assignee shall be in writing, shall state the BMR Unit(s) that City elects to purchase, the sales price (as calculated by City) for each BMR Unit being purchased and shall state if the option is being exercised on behalf of City or its Assignee. The notice shall be sent via certified mail through USPS to the address of Owner stated in Owner's notice to City. The BMR Unit(s) shall be sold to City, its Assignee or an Eligible Buyer in "salable condition" as defined in the Guidelines following an inspection by City, its Assigned or an Eligible Buyer, as described in the Guidelines. Owner's notice to City described in Section 5 shall be deemed an offer to sell and City's acceptance of Owner's offer shall be deemed an acceptance of such offer and shall collectively constitute a legally binding contract to transfer title to the BMR Unit(s) from Owner to City or its Assignee that may not be withdrawn without the written consent of City or its Assignee, as applicable.

**5.2** Escrow. Within five (5) days of City's or Assignee's acceptance of the offer and full execution by City, its Assignee or Eligible Buyer and Owner of a purchase and sale agreement consistent with the Guidelines and otherwise acceptable to City, an escrow account shall be opened by City or its Assignee at a title company selected by City. Closing shall occur within sixty (60) days of opening escrow. At closing, the title insurance company shall issue to City, its Assignee or Eligible Buyer a CLTA owner's title insurance policy for the BMR Unit(s) being purchased, in a form reasonably approved by City and subject only to such title exceptions as reasonably approved by City. Taxes and assessments shall be prorated as of the date of closing. Taxes must be paid current as of the closing date and all liens must be satisfied and removed from title unless City expressly agrees otherwise in writing. City, its Assignee or Eligible Buyer shall pay the cost of the title insurance. The title company shall utilize the form of escrow agreement customarily used for residential transactions within Menlo Park, modified to the extent necessary to conform to the transaction and otherwise acceptable to City. If a BMR Unit is sold to an Eligible Buyer, then prior to closing, City and Eligible Buyer shall deliver into escrow an executed Resale Restriction Agreement and Buyer Deed of Trust; the Resale Restriction Agreement and Buyer Deed of Trust shall be recorded at closing. The Eligible Buyer must also certify at closing that he or she will occupy the BMR Unit as his or her primary residence (i.e., his/her/their principal or main home that he/she/they lives in for a minimum of ten (10) months of each twelve (12) month period). At closing, Owner shall convey title to City, Assignee or Eligible Buyer by grant deed and otherwise in conformance with this Agreement.

**6.** ADVANCES BY CITY. In the event City advances any amounts for the payment of mortgages, including the curing of defaults on senior liens and redeeming a BMR Unit prior to a lien sale, taxes, assessments, insurance premiums, homeowner's fees and/or associated late fees, costs, interest, attorneys' fees, pest inspections, resale inspections and other expenses related to a BMR Unit, which Owner has failed to pay or has permitted to become delinquent, City shall be entitled to a lien against that BMR Unit in the amount of all costs and expenses incurred by City.

## 7. DEFAULT AND REMEDIES

**7.1 Events of Default.** The following shall constitute an “**Event of Default**” by Owner under this Agreement: a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement where such breach continues for a period of thirty (30) days after written notice thereof to Owner without Owner curing such breach, or if such breach cannot reasonably be cured within such thirty (30) day period, Owner must commence the cure of such breach within such thirty (30) day period and thereafter diligently proceed to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other section of this Agreement, the specific provision shall control.

**7.2 Remedies.** The occurrence of any Event of Default under Section 7.1 shall give City the right to proceed with an action in equity to require Owner to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

**7.3 Obligations Personal to Owner.** The liability of Owner under this Agreement to any person or entity is limited to Owner’s interest in the Project, and City and any other such persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to the Project or any other agreement securing Owner’s obligations under this Agreement), shall be rendered against Owner, the assets of Owner (other than Owner’s interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or any agreement securing the obligations of Owner under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. No subsequent Owner of the Project shall be liable or obligated for the breach or default of any obligations of Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was Owner at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be Owner. Each Owner shall comply with and be fully liable for all obligations Owner hereunder during its period of ownership of the Project.

**7.4 Attorneys’ Fees.** In addition to any other remedies provided hereunder or available pursuant to law, if either Party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing Party shall be entitled to recover from the other Party its costs of suit and reasonable attorneys’ fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

**7.5 Remedies Cumulative.** No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.

**7.6 Waiver of Terms and Conditions.** City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition



contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

**7.7 Non-Liability of City Officials and Employees.** No member, official, employee or agent of City shall be personally liable to Owner or any occupant of a BMR Unit, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Owner or its successors, or on any obligations under the terms of this Agreement.

**7.8 Cure Rights.** Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by (i) Owner's limited partner, or (ii) Owner's senior mortgage lender, shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

## **8. GENERAL PROVISIONS**

**8.1 Below Market Rate Guidelines.** This Agreement incorporates by reference the Guidelines, as amended from time to time. In the event of any conflict or ambiguity between this Agreement, the requirements of state and federal fair housing laws and the Guidelines, the terms and conditions of this Agreement and the requirements of State and federal fair housing laws shall control.

**8.2 Time.** Time is of the essence in this Agreement.

**8.3 Notices.** Unless otherwise indicated in this Agreement, any notice requirement set forth herein shall be deemed to be satisfied three days after mailing of the notice first-class United States certified mail, postage prepaid, or at the time of personal delivery, addressed to the appropriate Party as follows:

Owner: Habitat for Humanity Greater San Francisco  
300 Montgomery Street, Suite 450  
San Francisco, California 94104  
Attention: Maureen Sedonaen, Chief Executive Officer

City: City of Menlo Park  
701 Laurel Street  
Menlo Park, California 94025-3483  
Attention: City Manager

Such addresses may be changed by notice to the other Party given in the same manner as provided above.

**8.4 Successors and Assigns.** This Agreement constitutes a covenant and legal restriction on each BMR Unit and shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.

**8.5 Intended Beneficiaries.** City is the intended beneficiary of this Agreement and shall have the sole and exclusive power to enforce this Agreement. It is intended that City may enforce this Agreement in order to, satisfy its obligations to improve, increase and preserve affordable housing within City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of very low, low

and moderate incomes as required by the Guidelines. No other person or persons, other than City and Owner and their assigns and successors, shall have any right of action hereon.

**8.6** Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

**8.7** Governing Law. This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.

**8.8** Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by Owner and City.

**8.9** Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of City, such approval shall not be unreasonably withheld and may be given on behalf of City by the City Manager or designee. The City Manager or designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of City hereunder.

**8.10** Indemnification. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold City, its heirs, successors, assigns, elected and appointed officials, employees and agents ("**Indemnitees**") harmless from and against any and all demands, losses, claims, costs and expenses, and any other liability whatsoever, including without limitation, reasonable accountants' and attorneys' fees, charges and expense (collectively, "**Claims**") arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the BMR Unit and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 8.10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 8.10 shall survive the expiration or earlier termination of this Agreement, but only as to claims arising from events occurring during Owner's ownership of the Project.

**8.11** Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

**8.12** Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents

of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

**8.13 Non-Liability of City and City Officials, Employees and Agents.** No member, official, employee or agent of City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

**8.14 Headings; Construction; Statutory References.** The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Menlo Park shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

**8.15 Insurance Coverage.** Owner shall comply with the insurance requirements set forth in Exhibit B, attached hereto and incorporated herein by this reference, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B until recordation of both a grant deed conveying each BMR Unit to a third party and the Resale Restriction Agreement at which time the insurance requirements in the Resale Restriction Agreement shall control.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date and year set forth above.

**OWNER:**

HABITAT FOR HUMANITY GREATER SAN FRANCISCO, INC., a California non-profit public benefit corporation

By: \_\_\_\_\_  
Maureen Sedonaen, Chief Executive Officer

**CITY:**

**CITY OF MENLO PARK**, a California municipal corporation

By: \_\_\_\_\_  
Justin I.C. Murphy, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Judi Herren, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Nira Doherty, City Attorney

**List of Exhibits:**

Exhibit A: Property Description

Exhibit B: Insurance Requirements

**Exhibit A**

**Property Description**

[to be attached]

Exhibit A

## Exhibit B

### **Insurance Requirements**

Prior to initiating work on the Project and continuing throughout the Affordability Period, Owner shall obtain and maintain the following policies of insurance and shall comply with all provisions set forth in this Exhibit.

1. General Requirements. Owner shall procure and maintain the following insurance providing coverage against claims for injuries to persons or damages to property that may arise from or in connection with the Project, construction, management, or operation of the Property by Owner or Owner's agents, representatives, employees, consultants and contractors, or subcontractors, including the following:

(a) Commercial General Liability: Owner and all contractors working on behalf of Owner on the Property shall maintain a commercial general liability policy in an occurrence policy for protection against all claims arising from injury to person or persons not in the employ of Owner and against all claims resulting from damage to any property due to any act or omission of Owner, its agents, or employees in the conduct or operation of the work or the execution of this Agreement. Such insurance shall include products and completed operations liability, blanket contractual liability, personal injury liability, and broad form property damage coverage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage.

(b) Commercial Automobile Liability: Owner and all contractors working on behalf of Owner on the Property shall maintain insurance for protection against all claims arising from the use of vehicles, owned, hired, non-owned, or any other vehicle in connection with the Project, construction, operation or management of the Property. Such insurance shall cover the use of automobiles and trucks on and off the site of the Property. Coverage shall be at least as broad as Insurance Services Office covering Commercial Automobile Liability, any auto, owned, non-owned and hired auto.

(c) Workers' Compensation Insurance: Owner (and the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Owner (and the general partners thereof), and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, shall maintain Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

(d) Builder's Risk: Upon commencement of any construction work on the Property, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee as its interests may appear.

(e) Professional Liability/Errors and Omissions: Owner shall require any architects, engineers, and general contractors working on the Property to maintain Professional Liability/Errors and Omissions insurance with limits not less than Two Million Dollars (\$2,000,000) each claim. Certificates evidencing this coverage must reference both Owner and City, its heirs, successors, assigns, elected and appointed officials, employees and agents ("**Indemnitees**"). If the professional liability/errors and omissions insurance is written on a claims made form: (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3)

Exhibit B

years after completion of Project construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Owner must purchase, or require the provision of, extended period coverage for a minimum of three (3) years after completion of construction.

(f) Property: Owner shall maintain property insurance covering all risks of loss, including earthquake and flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee as its interests may appear.

2. Minimum Limits; Adjustments. Insurance shall be maintained with limits no less than the following:

(a) Commercial General Liability and Property Damage: One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate for bodily injury, personal injury and property damage; provided however, with City's advance written approval, subcontractors may maintain liability coverage with limits not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate.

(b) Products and Completed Operations: Three Million Dollars (\$3,000,000) per occurrence/aggregate.

(c) Commercial Automobile Liability: One Million Dollars (\$1,000,000) combined single limit.

(d) Employer's Liability:

Bodily Injury by Accident – One Million Dollars (\$1,000,000) each accident.

Bodily Injury by Disease – One Million Dollars (\$1,000,000) policy limit.

Bodily Injury by Disease – One Million Dollars (\$1,000,000) each employee.

(e) Professional Liability/Errors and Omissions: Two Million Dollars (\$2,000,000) per occurrence or claim.

Coverage limits, and if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Owner of any such adjustments, and Owner shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

3. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, City. Payment of all deductibles and self-insured retentions will be the responsibility of Owner. If the City determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense.

Exhibit B

4. Additional Requirements. The required general liability and automobile policies shall contain, or be endorsed to contain, the following provisions:

(a) The Indemnitees are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of Owner; products and completed operations of Owner; premises owned, occupied or used by Owner; or automobiles owned, leased, hired or borrowed by Owner. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnitees. Additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(b) All insurance shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of Owner's/contractor's insurance and shall not contribute with it.

(c) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Indemnitees.

(d) Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.

(e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(f) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

(g) Owner agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against Indemnitees regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with any construction on the Property to do likewise. Each insurance policy shall contain a waiver of subrogation for the benefit of City. If any required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the applicable occurrence limits specified above.

(h) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. For all liability insurance required by this

Exhibit B



Agreement, Owner (and Owner's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner (and Owner's contractors, as applicable) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner (or Owner's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Owner (or Owner's contractors as applicable) obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before City's own insurance or self-insurance shall be called upon to protect it as a named insured.

5. Acceptability of Insurers. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

6. Verification of Coverage. Prior to the Effective Date of this Agreement, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (a), (b), (c), and (e) of Section 1, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of any construction work on the Property, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (d) and (g) of Section 1. Prior to City's issuance of a final certificate of occupancy or equivalent for the Project, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (f) of Section 1. Owner shall furnish City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7. Insurance Certificates and Endorsements. Owner shall submit to City all of the necessary insurance documents, including the applicable amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of required Owner policies listing all required policy endorsements to City. Insurance Certificates and Endorsements are to be received and approved by City within the time periods specified in Section 6. Should Owner cease to have insurance as required at any time, all work by Owner pursuant to this Agreement shall cease until insurance acceptable to City is provided. Upon City's request, Owner shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.

Exhibit B

September 13, 2024

Tim Wong, Housing Manager  
City of Menlo Park  
701 Laurel Street  
Menlo Park, CA 94025

**RE: Proposal for reasonably equivalent alternatives to the BMR Guidelines under Section 13**

Dear Tim Wong,

Habitat for Humanity Greater San Francisco (“HGSF”) is excited to progress the funding approval for the project at 335 Pierce Road. This 100% Below Market Rate homeownership project will fulfill the adopted housing element proposal specific to this site and contribute to the City’s ultimate target for the required RHNA affordable housing provision within the City. As part of the project implementation, HGSF would like to propose reasonably equivalent alternatives to the Resolution 6708 - BMR guidelines, approved December 2023.

HGSF’s program is designed to forge and maintain continuing community partnerships that includes future homeowners, the City and residents of the City more broadly. Preparing families for the opportunity to be first-time homeowners through 500 hours of sweat equity requirement for all households embeds the responsibility that owning a home brings. This partnership provides meaningful interaction among families, affiliate representatives, the community, and Habitat volunteers and achieves the mission of allowing traditionally excluded groups to build generational wealth through the equity accumulated in their homes. HGSF hopes to contribute to the shared goal to subsidize homeownership for low to moderate income families although the Habitat methodology varies in the calculation of initial home value. The end result is still the same in that the resident household does not pay more than 30% of their AMI in housing costs.

HGSF accepts the intent of the BMR Guidelines while recognizing the provisions within those Guidelines for the City Council to allow amendments to support the success of alternative established programs such as HGSF. Amendments will facilitate HGSF’s proven regional and national affordable homeownership program and enable an effective partnership between the City of Menlo Park and HGSF. This letter identifies modification requests, and as always, HGSF is open to meeting with City staff for this request and continued collaboration to achieve this projects success.

**The project:**

*Site acquisition from Mid Peninsular Housing for the purpose of designing and constructing 8-12 for sale deed-restricted low-income affordable homes with the approved City of Menlo Park funds for the project commonly referred to as 355 Pierce Road (“Project”) in the City of Menlo Park.*

**1. City of Menlo Park Below Market Rate Guidelines – Section 13**

The BMR Guidelines set the framework for how affordable housing will be created within the City of Menlo Park. Within Section 13 of these guidelines, the City allows reasonably equivalent alternatives to be proposed to and approved by City Council. Section 13 states:

*Nothing set forth herein shall preclude the City from approving reasonably equivalent alternatives to these BMR Guidelines...Any modifications to these Guidelines shall be approved by the City Council and shall contain findings that the alternative is commensurate with the applicable requirement(s) in the BMR Guidelines and is consistent with the goals of the BMR Guidelines.*

Modification of the BMR Guidelines will allow our organization to build and sell homes through our longstanding homeownership program. The amendments will result in identifiable efficiencies in the ability of HGSF to apply its model to the benefit the City and the homeowners being served.

The reasonably equivalent alternatives are proposed in such a way that, should the City Council accept them, they are commensurate with the intent and purpose of the BMR Guidelines. The narrative evaluation provides evidence for the findings to be made.

## **2. The Project's Reasonably Equivalent Alternative Requests**

Our organization will serve as the project's developer, complete the construction of the project, and provide affordable loans to complete the sale of homes to income qualified buyers.

**BMR Guidelines Section 5.3 and BMR Guidelines Section 5.4: The BMR Price Must Be Set Before Building Inspection, and Maximum Sales Price for BMR For-Sale Units; Transaction Costs.**

HGSF's program differs from City Guidelines as the home is sold at fair market value price (FMV) established by third-party appraisal. The affordable housing cost is set for each qualified household at no more than 30% of the household's income which then establishes the Affordable First Mortgage. The affordable housing cost effectively duplicates the Guidelines intention to control the affordable price of the first mortgage.

The first mortgage provided by Habitat is typically 0% down and 0% interest. No deposit is required as identified in Section 9.1.7. The remaining difference between Fair Market Value and the Affordable First mortgage, is then made up of forgivable and deferred loans, including those provided by subsidy provides, as well as a forgivable loan issued by HGSF.

This would differ from the Guidelines approach to maximum sales price, including but not limited to sections 9.1.3; 9.1.4; 9.1.6; and 9.2.2.

**BMR Guidelines section 5.5: requires that affordable units have a right of first refusal in favor of the City.**

As the lender, HGSF requires the right of first refusal including the recordation of 99-year deed restriction at each sale of the property for affordability in perpetuity. This agreement is typically a tri-party agreement between the buyers, HGSF, and the local municipality providing subsidy for the project. The City will hold the second right of refusal. Through our 30-year history, HGSF has repurchased every home that has been offered back for

sale by a Habitat homebuyer. After repurchasing and repair a new qualified homebuyer will be selected for homeownership.

**BMR Guidelines section 7.1:** requires “all members of the applicant household to be first time homebuyers.”

To follow our current board approved policies that ensure the project can accommodate multigenerational families, HGSF requests the city allow only those on title to be first time homebuyers, typically the primary adults in the home. Multigenerational households may include seniors who living with adult children or adult children in need of temporary and/or part-time residence. Restricting only title holders be first-time homeowners allows the opportunity for a more inclusive, diverse, and multigenerational household.

HGSF’s application and verification process addresses scenario’s where current homeowners have secondary properties.

**BMR Guidelines section 7.1.1:** makes an exception to the first-time homebuyer preference for households that already own BMR units.

HGSF requests that the City waive this exception as it is inconsistent with the HGSF Board approved policy as the programs mission is to provide first ownership opportunities to individuals who have otherwise not had that chance.

**BMR Guidelines section 7.2:** states, “Only households that have completed the education requirement will be invited to apply when units become available” and provides detailed requirements about the education provider and content of such programs.

HGSF requires homeownership education during the “sweat equity” phase of its homebuyer process. Homebuyer readiness is a core of our mission, contributing to part of the 500-hour sweat equity. For this reason, HGSF must identify households for its units before the units are available. HGSF encourages interested applicants to attend a 90-minute information session prior to applying. Accommodations for the elderly, people with limited physical mobility and allowing friends and family to contribute to sweat equity hours benefits the wider community.

This education model accomplishes BMR Guideline section 7.2, to ensure homeowner preparation for ownership. The main alteration relates to timing to accommodate the sweat equity model.

**BMR Guidelines section 7.4:** provides a list of assets and how they count towards income limits for the purchasers of affordable units.

The HGSF asset test requires liquid assets over \$60k to be assessed at 10% of their value and added to annual income. This approach factors in larger substantial savings as part of the household annual income, which helps to ensure lower income households are served and sets reasonable conditions that allow as many potential homebuyers as possible to qualify. This allows households with lower incomes to count a small percent of other assets to show that they qualify for an affordable home.

**BMR Guidelines section 8.3:** Applicant Financing Rules.

HGSF issues the households an affordable first mortgage which is typically 0% down and at a 0% interest. For each qualified household/buyer, HGSF determines an affordable housing cost – this affordable housing payment is set a no more than 30% of the household’s income and includes mortgage payments, insurance, taxes, HOA dues, and an allowance for utilities. No downpayment is therefore requested and loan terms can be between 30-40 years.

**BMR Guidelines section 9.1.11:**

As the City’s designee, HGSF will conduct a lottery, subject to approval of the City, for the selection of households to proceed to the homeowner selection process with the selected households being required to complete the required sweat equity requirements to qualify for the HGSF program.

**BMR Guidelines section 9.1.13: No applications.**

The sale price set at Fair Market Value can not be amended as a way to encourage additional applications. Based on the demonstrated demand for affordable homeownership units, there is typically a large number of applicants to participate in the lottery. If available applicants are low, additional marketing parameters can be added to expand the marketing area, or refine the process to promote the income qualified homes to a wider audience.

**BMR Guidelines section 9.2.3 Administrative fee.**

The sales process is conducted entirely by HGSF including the administration of the program and establishment of the mortgage. No administration fee is therefore required for sales.

**BMR Guidelines section 10.2 discusses refinancing options.**

HGSF does not allow homeowners to refinance homes or assume second loans. Refinancing is not part of the HGSF process because the property value is shared between the homeowner, who receives their principle at the time of a resale, and HGSF who uses any realized capital appreciation to build more affordable homes. Allowing second mortgages also jeopardizes affordability and increases foreclosure risk.

Accordingly, not allowing refinancing provides an equivalent means of accomplishing the BMR Guidelines purpose of protecting low-income homeowners from predatory lending practices and foreclosure.

**BMR Guidelines section 11 sets forth a detailed process for the resale of affordable units, including how the sales price will be set and that the City will retain the realtor for the sale.**

We request the city allow HGSF to use its standard process for calculating the resale price of the home during a repurchase sale and our process for the actual sale of the home. HGSF sets the resale price at the time of sale and the price is based on the original price. HGSF construction staff rehabilitates the repurchased home at the same time as a second affordable homebuyer is identified. HGSF repeats the steps normally performed during an application cycle to find a qualified buyer, including marketing and outreach, performing a lottery, determining eligibility and ultimately selection a qualified household.

Please note that in the case of a previously owned home, buyers are only required to perform 250 hours of sweat equity.

HGSF's model accomplishes the goal of BMR Guidelines section 11, which is to ensure that homes remain affordable upon resale and are sold to qualified low-income households with an affordable mortgage.

**3. HGSF as the City's Designee and Program Provider for Education, Marketing, Applicant Selection, and Title**

HGSF can act as the designee and program provider (BMR Guidelines section 9.1.8; 9.1.11; 9.1.13; and 9.1.15) for orientation; educational meetings, marketing, applicant selection, title requirements, approaches to education, marketing, selection strategies, and sales. Marketing strategies will be created in collaboration with City staff and shared with the City at least 30 days prior to marketing.

\* \* \* \*

Please do not hesitate to contact me if you have questions about HGSF's reasonably equivalent alternatives requests or HGSF's qualifications to be the City's designee and program provider. We look forward to continuing to work with the City to bring much needed affordable housing to the area.

If additional information is needed or you have questions, please contact me directly by phone at 415-625-1001 or email at [msedonaen@habitatgsf.org](mailto:msedonaen@habitatgsf.org).

Sincerely,

Maureen Sedonaen  
Chief Executive Officer  
Habitat for Humanity Greater San Francisco

CC;