

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Cypress  
5275 Orange Avenue  
Cypress, California 90630  
Attn: City Clerk

Exempt From Recording Fee Pursuant to Government Code § 27383

**AFFORDABLE HOUSING COVENANTS AND RESTRICTIONS AFFECTING REAL  
PROPERTY, EQUITY SHARING AGREEMENT AND OPTION TO PURCHASE  
PROPERTY SECURED BY DEED OF TRUST  
*(Moderate Income)*  
[Affordable Housing Agreement with Resale Restrictions]**

This AFFORDABLE HOUSING COVENANTS AND RESTRICTIONS AFFECTING REAL PROPERTY, EQUITY SHARING AGREEMENT AND OPTION TO PURCHASE PROPERTY SECURED BY DEED OF TRUST (the “**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (“**Participant**”) and the CITY OF CYPRESS, a California municipal corporation (“**City**”). City and Participant are hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties.”

**RECITALS**

A. Participant has entered into an agreement to purchase condominium unit number \_\_\_\_ located at \_\_\_\_\_, in the City of Cypress, California (“**Property**”) for a purchase price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (“**Original Purchase Price**”) which is substantially less than the fair market value of the Property (“Original Property FMV”, as such term is defined in Section 3 below). In consideration for acquiring the Property at less than its Original Property FMV, Participant agrees that the Property shall be restricted by the covenants and restrictions as set forth in this Agreement in perpetuity. The difference between the Original Property FMV and the Original Purchase Price is \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Property is more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference.

B. The Property and adjacent real property were developed by CYPRESSMOODYM 2002 LLC, a California Limited Liability Company (“**Developer**”), as part of a project consisting of ninety-eight (98) senior residential units, of which fifty (50) are designated as moderate affordable income (“**Project**”). Cypress City Council approved the Project on October 25, 2021, per Resolutions Nos. 6683 and 6684 (“**CC Resolutions**”). In accordance with the CC Resolutions, Condition of Approvals numbers 6.5, 6.6, 6.7, 6.8, and 6.9 for Conditional Use Permit (CUP) No. 2021-03 and Vesting Tentative Tract Map No. 19, require the restricting, in perpetuity, of the 50 residential units for ownership to persons and families of moderate income.

C. In accordance with the Conditions of Approval referenced in the Recital above, the CC Resolutions, Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Citrus Square, recorded in the official records of the Orange County Clerk-Recorder, instrument number 2023000270222, on November 3, 2023 for the Project (“**Project CC&Rs**”), condominium map for the Project, and Amended and Restated Affordable Housing Implementation Agreement and Declaration of Covenants, Conditions, and Restrictions, Including Resale Restrictions in the official records of the Orange County Clerk-Recorder, instrument number 2024000032078 recorded on February 13, 2024 (the “**Affordability Covenant**”), fifty (50) of the Project’s residential condominium units are restricted for sale to and occupancy by income-qualified households at an affordable sales price (“**Affordable Unit(s)**”) in perpetuity. The Affordability Covenant requires notice of affordability to be included in the sales documents for the initial sale, and all subsequent sales, of the Affordable Units.

D. Participant acknowledges that Participant is purchasing an Affordable Unit as described in the Recital above, and Participant must purchase the Property at an affordable sales price, would not be able to purchase the Property if it were being sold at the current market price, and, if he or she so chooses, may only sell the Property at an affordable sales price to a moderate income household that includes a member 62 years of age or older. Participant is a moderate income household whose current income does not exceed one hundred twenty percent (120%) of the current annual “area median income” for the Orange County area, adjusted for household size, as those terms are defined by California Health and Safety Code Section 50093.

E. One of City’s objectives is to assist moderate income households and to increase, improve and preserve moderate-income housing available at “affordable housing cost” (as defined in Health and Safety Code Section 50052.5) within the territorial jurisdiction of City.

F. Participant has represented to City that Participant shall reside in the Property as Participant’s principal residence at all times throughout the term of this Agreement.

G. Participant’s obligations hereunder (including all monetary/payment obligations of Participant under this Agreement) are secured by the City Deed of Trust, as that term is defined in Section 4.

H. City and Participant now wish to enter into this Agreement restricting Participant’s resale of the Property, pursuant to which the Participant agrees that Participant may only sell the Property at an affordable sales price to a moderate income household that includes a member 62 years of age or older, and that if it breaches said provision, (which would be an Event of Acceleration, as that term is defined in Section 6 below), must pay to City the amount of the FMV Difference (as that term is defined in Section 3 below) and the amount of the Shared Appreciation (as that term is defined in Section 3 below), and to set forth additional terms and conditions applicable to Participant’s purchase and occupancy of the Property.

## A G R E E M E N T

**NOW, THEREFORE**, for good and valuable consideration the Parties agree as follows:

### 1. Restrictions.

a. **Affordable Housing Restriction.** Participant acknowledges receipt of a copy of the Affordability Covenant (defined in Recital C above), and acknowledges that the Affordability Covenant (a) identifies the Property as a condominium restricted for sale to and occupancy by income-qualified households at an Affordable Sales Price, (b) restricts the Property, in perpetuity, for sale to and occupancy by income-qualified households, (c) requires notice of affordability to be included in the sales documents for the initial sale, and all subsequent sales, of the Property, (d) requires Participant provide City notice of its intent to sell the Property not less than four (4) weeks prior to the proposed transfer, and obtain City's approval of the proposed sale, (e) requires each subsequent purchaser of the Property enter into an Equity Sharing Agreement with City consistent with the terms of this Agreement, and (f) that the foregoing list is not all inclusive. Section 7 below contains restrictions on the sale of the Property.

b. **Senior Housing Restriction.** The Project CC&Rs contain, in Article X, certain age restrictions, advising that the Property is a "senior housing development" that subjects the Property to certain "age-restricting housing laws" as defined therein, which generally require that at least one resident in the household occupying the Property must be 62 years of age or older.

2. **Duration of Covenants.** The covenants set forth in this Agreement shall remain in effect as to Participant from the date this Agreement is recorded and continue thereafter until (i) the Property is transferred by Participant pursuant to an Exempt Transfer, as that term is defined in Section 5 below, which includes a sale by Participant to a Proposed Buyer who is in a Qualified Household at an Affordable Sales Price (as defined in Section 7(b)), or (ii) the occurrence of an Event of Acceleration and Participant's repayment, in full, of the FMV Difference and Shared Appreciation (as those terms are defined in Sections 3 and 4 below).

3. **Reimbursement Obligation upon Non-Exempt Transfer; Shared Appreciation.** Upon a Non-Exempt Transfer (as that term is defined in Section 5 below) or upon the City's acceleration of the repayment obligation upon a default hereunder, Participant shall pay to the City the FMV Difference (as defined below).

The "**FMV Difference**" shall be equal to difference between the fair market value of the Property as of the date hereof as determined by an appraisal of the Property relied upon by Participant's lender at the time of sale (the "**Original Property FMV**") and the Original Purchase Price, as identified in the Recitals above. Participant shall execute, as

maker, and deliver to City a reimbursement agreement secured by a deed of trust in favor of City, as holder, in the principal amount of the FMV Difference, substantially in the form attached hereto and incorporated herein as Exhibit "B" ("**Reimbursement Agreement**").

Participant acknowledges that Participant shall also pay to City, in addition to the FMV Difference, a percentage of the appreciation in the Property between the date Participant purchases the Property and fair market value on the date Participant sells the Property ("**Shared Appreciation**"). The fair market value at the time Participant sells the Property shall be the fair market value ascribed in Section 1263.320 of the California Code of Civil Procedure, as it now exists or may subsequently be amended and shall be determined by a real estate appraiser selected by City. The appraiser shall have been previously approved by the Federal National Mortgage Association or the Federal Housing Administration and at the time of the appraisal shall be on the list of approved single-family housing appraisers. If possible, the appraisal shall be based upon properties sold in the market during the three (3) month period prior to the date of the Notice of Intent to Transfer (as defined in Section 5). The cost of the appraisal shall be divided equally between City and Participant. In the event that improvements to the Property have been made by Participant that increase the value of the Property, or if damage to the Property has occurred or deferred maintenance while Participant owned the Property has decreased the value of the Property, the appraisal shall specifically ascribe a value to these adjustment factors and state what the fair market value of the Property would be without such adjustments. Nothing in this Section shall preclude Participant and City from establishing the fair market value of the Property by mutual written agreement in lieu of an appraisal pursuant to this Section. Participant acknowledges that its obligation to pay Shared Appreciation to City will reduce the amount of the net appreciation, if any, that Participant will receive on sale of the Property.

The Shared Appreciation is based on the percentage of the Original Property FMV represented by the FMV Difference.

For example, if the Original Purchase Price is \$200,000, and the Original Property FMV at the time of purchase is \$300,000, then the FMV Difference is \$100,000, and the Shared Appreciation is 33.3% of the Property's appreciation.

The value of any capital improvements made to the Property by Participant shall be added to the Original Purchase Price before calculating the Shared Appreciation. For purposes of this Agreement, the term "**capital improvements**" shall mean improvements individually valued at more than Ten Thousand Dollars (\$10,000) each that substantially increase the value or life of the Property, such as a bathroom or kitchen remodel. To claim a capital improvement, Participant shall provide documentary evidence of the improvement and the cost thereof. Routine maintenance and minor upgrades, such as painting and new flooring, shall not constitute capital improvements unless the City Manager determines, in his or her sole and absolute discretion, that such improvement,

either individually or made in conjunction with other similar improvements made by Participant, is likely to increase the appraised value of the Property.

**4. Deed of Trust.** Concurrently with the approval of this Agreement, Participant shall also execute and deliver to City a second deed of trust which shall secure the obligations under the Reimbursement Agreement, substantially in the form attached hereto and incorporated herein as Exhibit “C” (the “**City Deed of Trust**”). As a further condition of Participant’s purchase of the Property, Participant shall execute and deliver to City a Borrower Disclosure Statement (the “**Disclosure Statement**”), substantially in the form attached hereto and incorporated herein as Exhibit “D”.

**5. Transfers.** A “**Transfer**” is defined as any sale, assignment, or transfer of an interest in the Property, including, without limitation, a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate, leasehold interest or any rental of the Property that is either an Exempt Transfer or Non-Exempt Transfer.

a. As used herein, the term “**Non-Exempt Transfer**” shall mean (i) any Transfer other than an Exempt Transfer, (ii) any interest evidenced by a land contract, (iii) the refinancing of the lien of the City Deed of Trust, or (iv) the refinancing of the primary mortgage on the Property (the “**First Lien**”) other than a Permitted Refinance (as defined in Section 10 hereof).

b. Each of the following shall constitute an “**Exempt Transfer**” provided City is given notice of such event and, if required, the transferee assumes the obligations under the Reimbursement Agreement, pursuant to the requirements of subsection c below: (i) a Transfer from Participant to himself/herself and his/her spouse (such that the spouses become co-owners of the Property) as a result of a marriage; (ii) if there is more than one individual constituting Participant (e.g., spouses, joint tenants, etc.), a Transfer of one of the individuals constituting Participant’s interest in the Property to the other individual constituting Participant by reason of death, voluntary conveyance, or divorce; and (iii) a City-approved Transfer to an Eligible Purchaser as defined below) for a purchase price that does not exceed the Affordable Housing Cost (as defined below).

“**Eligible Purchaser**” means a household whose annual income does not exceed the qualifying limits under California law for “persons and families of moderate income” as defined in Health and Safety Code section 50093 and as published periodically by the State of California Department of Housing and Community Development. “**Affordable Housing Cost**” means a sales price that would result in a Monthly Housing Cost (as defined below) that does not exceed the maximum percentage of income “for persons and families of moderate income” that can be devoted to housing cost by a household under California Law. “**Monthly Housing Cost**” shall include all of the following associated with the Property, estimated or known as of the date of the proposed Transfer of the Property: (a) principal and interest payments to be paid in the form of loan proceeds on a thirty (30) year fixed mortgage loan and any loan insurance fees associated therewith; (b) property taxes and assessments; (c) flood insurance, if required by the purchaser’s primary mortgage lender or by the Project CC&Rs; (d) fire

and casualty insurance covering replacement value of property improvements, unless such insurance is procured by a homeowner association; (e) homeowner association fees; and (f) a reasonable utility allowance. The Monthly Housing Cost of a purchaser shall be an average of estimated costs for the next twelve (12) months.

**PARTICIPANT, AND EACH SUCCESSOR, HEIR OR ASSIGN OF PARTICIPANT, UNDERSTANDS THAT THE DETERMINATION OF THE AFFORDABLE HOUSING COST CAN BE MADE ONLY AT THE TIME OF A PROPOSED SALE OR OTHER TRANSFER OF THE PROPERTY, TAKING INTO CONSIDERATION PREVAILING INTEREST RATES, THE OFFERED TERMS OF SALE, THE ECONOMIC CIRCUMSTANCES OF THE ELIGIBLE PURCHASER AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED, AND THAT THE TRANSFER PRICE PERMITTED HEREUNDER MAY BE LESS THAN THE FAIR MARKET VALUE OF THE SAME OR OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS AGREEMENT. PARTICIPANT, AND EACH SUCCESSOR, HEIR OR ASSIGN OF PARTICIPANT, FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE TRANSFER PRICE, THE PRIMARY OBJECTIVE OF CITY AND THIS AGREEMENT IS TO PROVIDE HOUSING TO MODERATE INCOME HOUSEHOLDS AT AN AFFORDABLE HOUSING COST.**

\_\_\_\_\_  
Participant's Initials

c. The following notice requirements shall apply to Exempt Transfers:

*Conveyance as a Result of Marriage.* If the Exempt Transfer is a Transfer from Participant to himself/herself and his/her spouse (such that the spouses become co-owners of the Property) as a result of a marriage, Participant shall provide City notice of the proposed Exempt Transfer prior to the occurrence of the Exempt Transfer. Participant shall not Transfer the Property until such time as the transferee spouse has executed an assumption agreement in a form approved by City jointly assuming the obligation to pay the FMV Difference and Shared Appreciation, and Participant, at Participant's cost has provided City an endorsement to City's lenders title insurance policy to reflect the change in title to the Property (or, if an endorsement is not available, a new title insurance policy with the same title exceptions as reflected on the original title policy).

*Conveyances Between Individuals Constituting Participant as a Result of Death, Voluntary Conveyance, or Divorce.* If there is more than one individual constituting Participant (e.g., spouses, joint tenants, etc.) and the Exempt Transfer is of one member of Participant's interest in the Property to the other individual constituting Participant by reason of death, voluntary conveyance, or divorce, the transferee of the Exempt Transfer shall notify City in writing of the occurrence of the Exempt Transfer no later than thirty (30) days after the occurrence of the Exempt Transfer.

*City-Approved Conveyance to a “Moderate Income Household” For a Purchase Price that Does Not Exceed the “Affordable Housing Cost.”* If the Participant desires to Transfer the Property by way of an Exempt Transfer to a transferee who qualifies as a Moderate Income Household and for a purchase price that does not exceed the Affordable Housing Cost, Participant shall first notify City of its intent to Transfer the Property pursuant to the provisions of Section 7 below, which provisions shall govern the Transfer of the Property.

d. For the first two listed types of Exempt Transfer (specifically: (i) a Transfer from Participant to himself/herself and his/her spouse [such that the spouses become co-owners of the Property] as a result of a marriage; and (ii) if there is more than one individual constituting Participant [e.g., spouses, joint tenants, etc.], a Transfer of one of the individuals constituting Participant’s interest in the Property to the other individual constituting Participant by reason of death, voluntary conveyance, or divorce), this Agreement shall remain in full force and effect upon such Exempt Transfer and the transferee of such an Exempt Transfer shall constitute Participant under this Agreement upon said Exempt Transfer and shall be subject to, and required to comply with, all of the terms and conditions of this Agreement, including without limitation the requirement in Section 13 that Participant occupy the Property as its principal place of residence. The Participant shall sign a new Equity Sharing Agreement consistent with the terms of this Agreement and Deed of Trust.

**6. Events of Acceleration.** The FMV Difference and Shared Appreciation shall become due and immediately payable irrespective of any provisions herein to the contrary upon the occurrence of any one of the following events of acceleration (“Event of Acceleration”): (i) Transfer of the Property (as defined in Section 5 above), except an Exempt Transfer, or (ii) such time if or when Participant is no longer in compliance with the occupancy requirements set forth in Section 13 of this Agreement or is in default of any other obligation under this Agreement, the Reimbursement Agreement, or the City Deed of Trust.

**7. Sale of Property.** If Participant desires to Transfer the Property or any part thereof (“**Proposed Sale**”), Participant shall first notify City of its desire to transfer the Property, by sending to City the notification form attached hereto and incorporated herein as Exhibit “E” (“**Notice of Intent to Transfer**”). Participant shall not place the Property on the market for sale or initiate any other actions related to the Proposed Sale unless City does not respond within thirty (30) days of its receipt of the Notice of Intent to Transfer. If City approves the Transfer or does not respond within such thirty (30) day timeline, Participant may sell the Property to an Eligible Purchaser subject to the following limitations and conditions:

a. **Disclosures and Submittals.** Participant and the Eligible Purchaser shall provide the following documents and information in writing to City no later than thirty (30) days before the Proposed Sale:

i. The name, address, and telephone number of the Eligible Purchaser.

- ii. Financial information certified by the Eligible Purchaser in a form acceptable to City and any other supporting documentation requested by City which shall include authorization for City to verify the information provided. The financial information shall be used by City to determine the income eligibility of the Eligible Purchaser as a Moderate Income Household in accordance with HCD Laws/Regulations.
- iii. The proposed sales contract, escrow instructions and all other related documents that shall set forth the terms of the sale of the Property.
- iv. A written certification from Participant and the Eligible Purchaser in a form acceptable to City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by City. The certification shall also provide that the Eligible Purchaser or any other party has not paid and will not pay to Participant, and Participant has not received and will not receive from the Eligible Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to City, City shall have the right to file an action at law or in equity to make the parties terminate and/or rescind the sale contract and/or declare the sale void or pursue damages, notwithstanding the fact that the sale may have closed and become final as between Participant and the Eligible Purchaser. In any event, any costs, liabilities or obligations incurred by Participant and the Eligible Purchaser for the return of any monies paid or received in violation hereunder or for any costs and legal expenses, shall be borne by Participant and/or the Eligible Purchaser and they shall hold City and its designee harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.
- v. Equity sharing agreement consistent with the terms of this Agreement secured by deed of trust.

b. **Eligibility of Purchaser.** An Eligible Purchaser shall meet the following requirements:

- i. Each Eligible Purchaser shall certify to City in a form acceptable to City that he or she will occupy the Property as his or her principal residence;



- ii. The combined maximum income for all household members of the Eligible Purchaser qualifies as a Moderate Income Household in accordance with HCD Laws/Regulations; and
- iii. At least one member of the household must be aged 62 years or older.

c. **Determination of Affordable Sales Price.** The maximum sales price (“**Affordable Sales Price**”) that Participant shall receive for an Exempt Transfer of the Property shall be the Increased Base Price as adjusted by Section 7(c)(ii) below, but, in no event, shall the sales price exceed the amount specified in Section 50052.5 of the Health & Safety Code and HCD Laws/Regulations.

i. **Increased Base Price.** The “**Base Price**” of the Property means the Original Purchase Price paid by Participant (which is set forth in Recital D for the initial Participant), inclusive of closing costs actually paid by Participant. The “**Increased Base Price**” of the Property means the Base Price, increased by the percentage of increase for a Moderate Income Household adjusted for family size, for Orange County as published by the California Department of Housing and Community Development as determined by California Health & Safety Code Section 50000 et seq. and applicable regulations adopted from time to time. The increase in household income shall be computed from the date of the original purchase of the Property by Participant to the date of the Notice of Intent to Transfer. In the event that such income determination is no longer published, or has not been updated for a period of at least eighteen (18) months, City may use or develop such other reasonable method as it may choose in order to determine such increase in income.

ii. **Adjusted Increased Base Price.** The Increased Base Price shall also be adjusted for the Value of Capital Improvements. The “**Value of Capital Improvements**” shall mean the value of substantial structural or permanent fixed improvements that cannot be removed without substantial damage to the Property or substantial or total loss of value of the improvements. No such valuation shall be made except for improvements (i) made or installed by or under the direction of Participant and permitted by the covenants restricting the Project; (ii) approved in advance by City or its designee; and (iii) with an initial cost of Ten Thousand Dollars (\$10,000) or more. The value of such improvements to be taken into account in calculation of the Increased Base Price shall be the increase in value of the Property by reason of the improvements, and shall be determined by agreement of City and Participant, or, in the event of failure to agree, by appraisal pursuant to Section 3.

## 8. Defaults and Remedies.

UPON A BREACH OF THIS AGREEMENT BY PARTICIPANT OR THE CITY DEED OF TRUST, CITY SHALL GIVE WRITTEN NOTICE TO PARTICIPANT SPECIFYING IN REASONABLE DETAIL THE NATURE OF THE BREACH (“**BREACH NOTICE**”). IF THE BREACH IS NOT CURED TO THE SATISFACTION OF CITY WITHIN (I) TEN (10) DAYS AFTER DELIVERY OF THE BREACH NOTICE FOR FAILURE TO PAY ANY SUMS DUE TO THE CITY UNDER THIS AGREEMENT; (II) WITHIN THIRTY (30) DAYS AFTER DELIVERY OF THE BREACH NOTICE FOR FAILURE TO CURE ANY NON-MONETARY BREACH, AND (III) WITHIN THIRTY (30) DAYS AFTER RECORDATION OF A NOTICE OF DEFAULT UNDER ANY SENIOR NOTE OR TRUST DEED, CITY MAY ELECT TO DECLARE PARTICIPANT IN DEFAULT UNDER THIS AGREEMENT BY DELIVERING A NOTICE OF DEFAULT TO PARTICIPANT AND FIRST LENDER (“**NOTICE OF DEFAULT**”).

Immediately following the Notice of Default, City may apply to a court of competent jurisdiction for specific performance of this Agreement, or for any such other relief at law or in equity as may be appropriate, including suit for recovery of the amount to be paid to City under Section 7 plus Default Interest. Furthermore, City shall also be entitled to an award of its attorneys' fees, including the cost to City of time expended by the office of the City Attorney and other City staff and outside consultants, attorneys and other personnel involved in enforcing the terms of this Agreement.

Any default under the City Deed of Trust is a default under this Agreement. The City Deed of Trust secures the City's Share of Appreciation only.

9. City Purchase Option. Upon City's receipt of a Notice of Intent to Transfer to anyone other than an Eligible Purchaser, or upon issuance by City of a Notice of Default to Participant and First Lender, City shall have the option, but not the obligation, to purchase the Property for the Exercise Price (defined below) (“**Option**”). City may exercise its Option to purchase the Property by delivering written notice of exercise to Participant within thirty (30) days of receipt of the Notice of Intent to Transfer (“**Exercise Notice**”). Within ninety (90) days of the date of the Exercise Notice, City shall purchase the Property at the lesser of: (i) the Fair Market Value of the Property, or (ii) Affordable Sales Price calculated pursuant to Section 7(c) (“**Exercise Price**”). City may assign its right to purchase the Property to an Eligible Purchaser or to a governmental agency or nonprofit organization that is devoted to developing or preserving low income housing. After a Transfer, if the City does not exercise the Option, the Option rights set forth herein shall remain in full force and effect and apply to any future Transfer of the Property during the Term.

## 10. Refinance of First Lien.

a. Participant shall be permitted to refinance the First Lien for either of the following amounts (each, a “**Permitted Refinance**”): (i) not more than the then-current principal balance of the First Lien, or (ii) for more than the then-current principal loan balance of the First Lien (i.e., obtain a “cash out” refinance) in accordance with paragraph b below.

b. In a “cash out” refinance, the new first mortgage loan principal shall not exceed the lesser of:

(1) An amount which when combined with the sum of the FMV Difference and the Shared Appreciation (calculated based on an appraisal paid for by Participant from a qualified appraiser, or based on other evidence acceptable to the City Manager or authorized designee in his/her sole and absolute discretion) (i.e., the total of the principal of the new first mortgage loan, the FMV Difference, and the Shared Appreciation) does not exceed eighty-five percent (85%) of the appraised value of the Property as evidenced by an appraisal (paid for by Participant) from a qualified appraiser, or based on other evidence acceptable to the City Manager or authorized designee in his/her sole and absolute discretion;

(2) An amount equal to the sum of (x) the outstanding principal balance, at the time of the refinance, of the then-current First Lien that is being refinanced, plus (y) usual and customary closing costs paid by Participant but excluding loan origination points or loan origination fees, plus (z) Twenty-Five Thousand Dollars (\$25,000.00).

Notwithstanding the foregoing, the City Manager shall have the authority, in his/her sole and absolute discretion, on behalf of the City to approve the following: (i) with respect to subparagraph (1) above, an increase from 85% to up to 90% in the maximum loan-to-value ratio, and (ii) with respect to subparagraph (2) above, an increase from Twenty-Five Thousand Dollars (\$25,000) to up to Fifty Thousand Dollars (\$50,000); provided, however, in both cases, Participant shall have provided evidence satisfactory to the City Manager, in his/her sole and absolute discretion, that the additional amount is needed to remedy a specific and significant current or identifiable future adverse financial condition of Participant and the City Manager determines, in his/her sole and absolute discretion, that such additional amount shall not jeopardize Participant’s repayment of the FMV Difference and Shared Appreciation.

Participant may seek subordination of the City Deed of Trust to the deed of trust of the new first mortgage loan not more than once every three (3) years; provided, however, this restriction may be waived if Participant provides evidence satisfactory to the City Manager, in his/her sole and absolute discretion, that waiver of this restriction is needed to remedy a specific and significant current or identifiable future adverse financial condition of Participant and the City Manager determines, in his/her sole and absolute discretion, that waiver of this requirement shall not jeopardize Participant’s repayment of the FMV Difference or Shared Appreciation.

c. Participant shall notify City not less than thirty (30) days prior to the date proposed for the closing of the refinance loan and shall execute such documents, and shall cause the new first mortgage lender to execute such documents, as City requires to effect the City’s subordination of the City Deed of Trust to the deed of trust of the new first mortgage lender. City shall only approve a subordination of the City Deed of Trust to the deed of trust of the new first mortgage lender upon confirmation of the new

first loan amount and review of Participant's loan application and related material and documents.

**11. Term of Agreement.** The covenants, restrictions and equitable servitudes in this Agreement shall burden the Property and run in favor of and for the benefit of, the City. The term ("**Term**") of this Agreement shall commence on the date this Agreement is recorded ("**Effective Date**") in the Official Records of Orange County and shall continue in perpetuity

**12. Maintenance of Property.** Participant shall maintain the Property in a manner consistent with community standards which will uphold the value of the Property, in accordance with both the Project CC&Rs and the Cypress Municipal Code. Participant agrees to comply with all applicable federal, state and, local laws and regulations.

**13. Occupancy Standards.**

a. The Property shall be used as the principal residence of Participant and for no other purpose;

b. Participant shall not enter into an agreement for the rental or lease of the Property.

c. the minimum occupancy of the Property shall be one (1) person for a one (1) bedroom Condominium, and one (1) person for a two (2) bedroom Condominium.

d. The maximum occupancy of the Property shall not exceed two (2) persons for a one (1) bedroom Condominium, and four (4) persons for a two (2) bedroom Condominium.

e. Participant shall, upon demand by City, submit to City an affidavit of occupancy verifying Participant's compliance with this Section 13. Said affidavit may be required by City on an annual basis.

f. City may charge Participant an annual compliance fee related to the foregoing. The compliance fee may (or may not) be billed to Participant monthly (or otherwise) by the Association, and paid to City by the Association.

**14. Income and Asset Information.** Participant has submitted information verifying income and asset eligibility to City prior to execution of this Agreement. Participant represents, warrants and declares under penalty of perjury to City that all information Participant has provided and will provide in the future to City is and will be true, correct and complete. Participant acknowledges that City is relying upon Participant's representations that Participant is a moderate income household whose current income does not exceed one hundred twenty percent (120%) of the current annual "area median income" for the Orange County area, adjusted for household size, as those terms are defined by California Health and Safety Code Section 50093, and City would not have entered into this Agreement if Participant did not so qualify.

**15. Loan Servicing.** City may contract with a private lender or other person or entity (the “Administrator”) to carry out City’s obligations under this Agreement. Any reference to the duties of City herein shall also apply to the Administrator.

**16. Participant Financing.** Participant shall obtain first trust deed financing for the purchase of the Property from a reputable institutional lender (the “Lender”). In addition, Participant must make a down payment of not less than three percent (3%) of the Original Purchase Price together with all escrow fees, recording fees, transfer taxes, title insurance costs, broker’s fees, loan fees and any other closing or transaction costs paid by Participant. Nothing in this Agreement shall be construed as a promise or guaranty by City that the Participant will qualify for or receive such first trust deed financing.

**17. Title Insurance.** As a condition to the sale of the Property to Participant at an affordable sales price, Participant, at no cost to City, shall obtain and cause to be delivered to City a standard form ALTA Lender’s policy of Title Insurance, issued by a title company as may be mutually approved by City and Participant, in an amount not less than the FMV Difference, insuring the priority of the City Deed of Trust against all monetary liens and encumbrances against the Property, including but not limited to, mechanic’s liens claims and excepting only (i) the lien of any non-delinquent property taxes; (ii) the First Lien and Subordination Agreement referred to in Section 5; and (iii) other encumbrances and exceptions to title as may be approved by City in City’s sole and absolute discretion.

**18. Covenants Do Not Impair Lien.** City agrees to subordinate the provisions of this Agreement and the City Deed of Trust to any First Lien on the Property held by the Lender by recording a subordination agreement, in a form approved by City (“**Subordination Agreement**”).

Participant agrees it shall instruct the Escrow Agent for the acquisition of the Property by the Participant that the order of recording in the escrow for the purchase of the Property by the Participant shall occur as follows: 1) this Agreement; 2) the City Deed of Trust; 3) the First Lien; and 4) the Subordination Agreement.

Participant shall cause a Request for Notice to be recorded on the Property subsequent to the recordation of the First Lien deed of trust or mortgage requesting a statutory notice of default as set forth in the California Civil Code Section 29246. Such notice shall be sent to: City of Cypress, 5275 Orange Avenue, Cypress, California 90630, Attention: City Manager.

**19. Indemnification.** Participant shall defend, indemnify and hold harmless City and City’s officers, officials, agents, members, employees, representatives, and volunteers from and against any loss, liability, claim, or judgment relating in any manner to the Property or this Agreement. The Participant shall remain fully obligated for the payment of taxes, liens and assessments related to the Property. There shall be no reduction in taxes for Participant, nor any transfer of responsibility to City to make such payments, by virtue of the FMV Difference.

**20. Non-Liability of City.** City shall not be liable or obligated to Participant or any successor-in-interest to Participant by reason of its Option to purchase under Sections 9, or for any failure to exercise its Option to purchase pursuant thereto.

**21. Fannie Mae Requirements.**

a. Insurance Settlements and Condemnation Proceeds. The First Lender shall have a first claim to insurance settlements and condemnation proceeds.

b. Termination Upon Foreclosure or Deed in Lieu of Foreclosure. The provisions of this Agreement shall automatically terminate and be of no further force and effect upon a foreclosure or deed in lieu of foreclosure. Any mortgagee who forecloses or accepts a deed in lieu of foreclosure shall take title free and clear of this Agreement and the covenants, conditions and restrictions set forth herein, and the City shall not be entitled to any proceeds from future sales or transfer of the property after foreclosure or acceptance of a deed in lieu of foreclosure.

c. Non-Applicability to Private Loans. To the extent Participant obtains a loan from a private individual, the provisions of this Section 21 shall not apply. Notwithstanding the foregoing, the provisions of this Section 21 are intended to fully comply with all requirements of Fannie Mae and nothing contained in this Section 21(c) shall be deemed to supersede any requirements of Sections 21(a) or 21(b) as to any Fannie Mae loan.

d. Non-Applicability to FHA Loans. Notwithstanding any provision in this Agreement, the provisions of this Agreement are intended to fully comply with all requirements of the Federal Housing Administration (FHA) project approval requirements and nothing contained in this Agreement shall be deemed to supersede any project approval requirements imposed by FHA as to any FHA loan.

**22. Restrictions of Foreclosure Proceeds.** If a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon foreclosure sale, or otherwise, Participant shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to Participant when added to the proceeds paid or credited to the creditor exceed the amount Participant would have received by a sale in accordance with Section 7. Participant hereby irrevocably instructs the holder of such excess proceeds to pay such proceeds to city as consideration for the regulatory requirements of city allowing the Property to be sold to a household that would not otherwise have been able to afford it.

**23. Covenant to Keep Property Drug Free.** Participant covenants to City that Participant and all persons residing on the Property shall not unlawfully manufacture, distribute, dispense, possess or use controlled substances, as said term is defined in 21 United States Code Section 812 and California Health and Safety Code Section 11007,

including heroin, cocaine, and amphetamines on the Property. If Participant or any person residing on the Property is convicted, pleads guilty or nolo contendere to a charge of unlawfully manufacturing, distributing, dispensing, possessing or using controlled substances on the Property, then such event shall be a default of this Agreement, which shall entitle City to accelerate repayment of the FMV Difference and Shared Appreciation within sixty (60) days after City's notice of said default.

**24. Rights and Remedies are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

**25. Covenants to Run with the Land.** All conditions, covenants, and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, City and its successors and assigns, against Participant, its successors and assigns, to or of the Property or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof.

In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that City shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any action at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

In further amplification and not in restriction of the provisions set forth hereinabove, the covenants, conditions, and restrictions, including resale restrictions, that touch and concern the Property shall run with the land in perpetuity. Upon the Transfer of any Affordable Unit by the Participant, the covenants, conditions, and restrictions, including resale restrictions, shall run with the land and remain the obligation of the owner of the Property with oversight by the Association in accordance with the Project CC&Rs, which shall comply in perpetuity with Conditions of Approval numbers 6.5, 6.6, 6.7, 6.8, and 6.9 for Conditional Use Permit (CUP) No. 2021-03 and Vesting Tentative Tract Map No. 19, approved by the City in accordance with the CC Resolutions.

**26. Non-Waiver.** Failure to exercise any right City may have or be entitled to, in the event of default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.

**27. Further Assurances.** The Participant shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form, as City shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Agreement.

**28. Governing Law.** This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Orange, State of California or in the Federal District Court in the District of California in which Orange County is located.

**29. Amendment to Agreement.** No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by the Participant and City.

**30. City May Assign.** City may, at its option, assign its right to receive repayment of the FMV Difference and Shared Appreciation proceeds without obtaining the consent of the Participant.

**31. Participant Assignment Prohibited.** Except as expressly provided hereinabove, in no event shall Participant assign or transfer any portion of this Agreement or any of the other agreements referred to herein without the prior express written consent of City. Any such assignee or transferee shall be required to expressly assume this Agreement by execution of a written assignment document to be provided by City.

**32. Relationship of Participant and City.** The relationship of Participant and City pursuant to this Agreement is that of debtor and creditor and shall not be or be construed to be a joint venture, equity venture, partnership, or other relationship.

**33. Notices.** Any notices, requests or approvals given under this Agreement from one Party to another may be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, registered or certified mail, return receipt requested to the following address:

To Participant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To City: City of Cypress  
5275 Orange Avenue  
Cypress, CA 90630  
Attention: City Manager

Either Party may change its address for notice by giving written notice thereof to the other Party.

**34. Attorneys' Fees and Costs.** In the event that any action is instituted to enforce payment or performance under this Agreement, the Parties agree the non-



prevailing Party shall be responsible for and shall pay all costs, including expert witness fees, and all attorneys' fees incurred by such prevailing Party in enforcing this Agreement.

**35. Entire Agreement.** This Agreement, together with all attachments hereto, constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between City and the Participant concerning all or any part of the subject matter of this Agreement.

**36. Authority.** Each signatory hereto warrants to the other Party that it has authority to sign on behalf of the Party for whom it purports to sign.

**37. Non-Liability of Officers and Employees.** No officer, official, member, employee, agent, or representative of City shall be personally liable to Participant, or any successor or assign of same, in the event of any default or breach by City, or for any amount which may become due to Participant, or any successor or assign of same, or for breach of any obligation of the terms of this Agreement.

**38. Time of Essence.** Time is of the essence of every portion of this Agreement in which time is a material part.

**39. Interpretation; Severability.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party hereto by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

**40. Integration; Amendment.** It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the Parties with respect to the subject matter hereof, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing.

**41. Counterparts.** This Agreement may be executed in counterparts, each of which, when this Agreement has been signed by each of the Parties hereto, shall be deemed to be an original.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written below.

“Participant”

Date: \_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

“City”

CITY OF CYPRESS, a California municipal corporation

Date: \_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
Aleshire & Wynder, LLP

\_\_\_\_\_  
City Attorney

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF THE PROPERTY**

In the City of Cypress, County of Orange, State of California, being a subdivision of a portion of the west half of the southwest quarter of the northwest quarter of Section 16, Township 4 South, Range 11 West, in the Rancho Los Coyotes as shown on a map filed in book 51, page 11 of Miscellaneous maps, in the Office of the County Recorder of said County

**EXHIBIT "B"**  
**REIMBURSEMENT AGREEMENT**

[see following document]

**REIMBURSEMENT AGREEMENT**  
**SECURED BY DEED OF TRUST**

\$ \_\_\_\_\_

Cypress, California  
\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ (the "Borrower") promises to pay to the CITY OF CYPRESS, a California municipal corporation (the "City"), the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) ("FMV Difference") plus the City's share of the appreciation of the Property ("Shared Appreciation") as defined in the Equity Sharing Agreement referenced in Section 3 below.

**THIS IS A SHARED APPRECIATION AGREEMENT. CITY'S INTEREST INCLUDES A PERCENTAGE OF THE APPRECIATED VALUE OF THE PROPERTY. A BALLOON PAYMENT WILL BE REQUIRED. FOR FURTHER INFORMATION, READ THE TRUTH IN LENDING DISCLOSURE STATEMENT PROVIDED BY THE CITY.**

1. Capitalized Terms. Unless otherwise expressly defined herein, all capitalized terms shall have the meanings ascribed thereto in the Equity Sharing Agreement.

2. Security. This Reimbursement Agreement ("Agreement") is secured by a Deed of Trust with an Assignment of Rents and Rider to Deed of Trust Attached Hereto of even date herewith ("Deed of Trust") for purchase of the property located at \_\_\_\_\_, Unit \_\_\_\_\_, Cypress, California, APN No. \_\_\_\_\_, as more particularly described in the legal description attached to the Deed of Trust (the "Property"). The Deed of Trust is incorporated herein by reference as if set forth in full.

3. Equity Sharing Agreement. Borrower acknowledges that the Property was developed as an affordable housing unit, which enabled Borrower to acquire the Property at a purchase price below the market price for the Property. In connection with Borrower's purchase of the Property, City and Borrower have, concurrently herewith, entered into an Affordable Housing Covenants and Restrictions Affecting Real Property, Equity Sharing Agreement and Option to Purchase Property Secured By Deed of Trust ("Equity Sharing Agreement") that requires Borrower, upon the occurrence of certain events, including, without limitation, Borrower's sale of the Property, to repay the difference between Borrower's purchase price for the Property and the market price for the Property, plus a share of the Property's appreciation during Borrower's ownership of the Property, all as more fully set forth in the Equity Sharing Agreement.

4. No Assumption of Note by Subsequent Buyers. Except in connection with an Exempt Transfer, this Agreement shall not be assignable or assumable without the



express prior written consent of City, which consent may be given or withheld in City's sole and absolute discretion.

5. City May Assign. City may, at its option, assign its right to receive payment under this Agreement without obtaining the consent of Borrower.

6. Terms of Repayment of FMV Difference and Payment of Shared Appreciation.

a. The full amount of the FMV Difference and the Shared Appreciation shall be immediately due and payable by Borrower upon a Transfer of the Property, with the exception of an Exempt Transfer. Borrower's obligation to pay the Shared Appreciation to City upon a Transfer of the Property is subject to a superior right of Borrower to receive repayment of money paid by Borrower for purchase of the Property and the capital improvements to the Property, in accordance with Civil Code Section 1917.006.

b. Payment shall be made in lawful money of the United States. Payments shall be made to City at: 5275 Orange Avenue, Cypress California 90630, or such other place as the City or the holder of this Agreement may designate in writing.

7. Attorney Fees and Costs. Borrower shall pay all costs and expenses of collection and reasonable attorney fees paid or incurred by City in connection with the collection or enforcement of this Agreement, whether or not suit is filed.

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

9. Default. Borrower shall be deemed in default of this Agreement in the event Borrower (a) fails to timely make any payment required by this Reimbursement Agreement or fails to perform any other obligation under this Agreement, or (b) defaults on any of its obligations set forth in the Equity Sharing Agreement or the Deed of Trust, including without limitation the obligation to occupy the Property as Borrower's primary residence for the required period, and fails to timely cure the default under the terms of the applicable document, or if there is no cure period, within thirty (30) days after notice of the default; or (c) defaults on any obligations under any documents relating to any other financing that is secured by the Property. In the event of a default, City may, at its option, declare this Agreement immediately due and payable pursuant to Section 10.

10. Acceleration Upon Default. Upon the occurrence of a default under this Agreement, the Equity Sharing Agreement, or the Deed of Trust, and if such default is not cured within the applicable cure period, City shall have the right to declare the full amount of the FMV Difference and Shared Appreciation immediately due and payable. No delay or omission on the part of City in exercising any right hereunder shall constitute a waiver of any such right or of any other right under this Agreement, the Deed of Trust, or the Equity Sharing Agreement.

11. No Offset. Borrower hereby waives any rights of offset it now has or may hereafter have against City, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Agreement.

12. Waiver. To the extent permitted by law, Borrower and any endorsers or guarantors of this Agreement, for themselves, their heirs, legal representatives, successors and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of non-payment of the FMV Difference and Shared Appreciation, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waive the right to plead any and all statutes of limitations as a defense to any demand on the FMV Difference and Shared Appreciation or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

13. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

14. No Waiver by the City. No waiver of any breach, default or failure of condition under the terms of this Agreement shall be implied from any failure of City to take, or any delay by City in taking, action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of this Agreement must be made in writing and shall be limited to the express written terms of such waiver.

**BORROWER SIGNATURE(S):**

\_\_\_\_\_  
\_\_\_\_\_, Borrower

\_\_\_\_\_  
\_\_\_\_\_, Borrower

**EXHIBIT "C"**

**DEED OF TRUST**

[see following document]

Order No.  
Escrow No.  
Loan No.

WHEN RECORDED MAIL TO:

CITY OF CYPRESS  
5275 Orange Avenue  
Cypress, CA 90630  
Attn: City Clerk

(Space Above This Line For Recorder's Use)  
(Exempt From Recording Fees Pursuant To Government Code Section 27383)

## DEED OF TRUST WITH ASSIGNMENT OF RENTS AND RIDER TO DEED OF TRUST ATTACHED HERETO

**This DEED OF TRUST WITH ASSIGNMENT OF RENTS AND RIDER TO DEED OF TRUST ATTACHED HERETO** ("Deed of Trust"), made this \_\_\_\_\_ day of \_\_\_\_\_, between \_\_\_\_\_, herein called "PARTICIPANT" or "TRUSTOR," whose address is \_\_\_\_\_, Cypress, CA 90630, CHICAGO TITLE INSURANCE COMPANY, a California corporation, herein called TRUSTEE, and the CITY OF CYPRESS, herein called BENEFICIARY,

WITNESSETH: That Participant grants to Trustee in trust, with power of sale, that property in the City of Cypress, County of Orange, State of California, described in the legal description attached hereto as Exhibit "A", together with rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$ \_\_\_\_\_, and a portion of the appreciation of the Property, according to the terms of an Affordable Housing Covenants and Restrictions Affecting Real Property, Equity Sharing Agreement and Option to Purchase Property Secured By Deed of Trust ("Equity Sharing Agreement") of even date herewith made by Participant, payable to order of Beneficiary, and extensions or renewals thereof; (2) the performance of each agreement of Participant incorporated by reference or contained herein; and (3) payment of additional sums and interest thereon which may hereafter be loaned to Participant, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

A. To protect the security of this Deed of Trust, Participant agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Participant. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Participant fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Participant and without releasing Participant from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5) To pay immediately upon demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5) That as additional security, Participant hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of this Trust, to collect the rents, issues and profits of said property, reserving unto Participant the right, prior to any default by Participant in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Participant in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, the Equity Sharing Agreement and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Participant, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale.

Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Participant, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Participant, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Participant, Beneficiary or Trustee shall be a party unless brought by Trustee.

The undersigned Participant requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

**Signature of Participant**

**Signature of Participant**

\_\_\_\_\_

\_\_\_\_\_

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

(Seal)

**DO NOT RECORD**

REQUEST FOR FULL RECONVEYANCE

TO CHICAGO TITLE INSURANCE COMPANY, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes and of all indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, an all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,

Note and Reconveyance to

\_\_\_\_\_

**Do Not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.**

**DEED OF TRUST**  
WITH POWER OF SALE

*Chicago*  
*Title Insurance*  
*Company*  
TRUSTEE



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

In the City of Cypress, County of Orange, State of California being a subdivision of a portion of the west half of the southwest quarter of the northwest quarter of Section 16, Township 4 South, Range 11 West, in the Rancho Los Coyotes as shown on a map filed in book 51, page 11 of Miscellaneous maps, in the Office of the County Recorder of said County

## RIDER TO DEED OF TRUST

This Deed of Trust is subject to the terms and conditions of that certain Affordable Housing Covenants and Restrictions Affecting Real Property, Equity Sharing Agreement and Option to Purchase Property Secured By Deed of Trust (“Equity Sharing Agreement”) dated \_\_\_\_\_, and recorded concurrently herewith in the Official Records of the County of Orange and incorporated herein by reference, pursuant to which Beneficiary is deemed to have loaned Trustor the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the “City Loan”). All terms in this Rider to Deed of Trust, if not separately defined herein, shall have the meanings as defined in the Equity Sharing Agreement.

**1. Events of Acceleration.** The City Loan and Shared Appreciation shall become due and immediately payable irrespective of any provisions herein to the contrary upon the occurrence of any one of the following events of acceleration (“Event of Acceleration”): (i) Transfer of the Property (as defined in the Equity Sharing Agreement), except an Exempt Transfer, or (ii) such time if or when Trustor is no longer in compliance with the occupancy requirements set forth in Section 10 of the Equity Sharing Agreement or is in default of any other obligation under the Equity Sharing Agreement, the Note, or the Deed of Trust.

**2. Covenants Do Not Impair Lien.** The Beneficiary agrees to subordinate the provisions of the Equity Sharing Agreement and the deed of trust to any first trust deed for the purchase of the Property held by a reputable institutional lender (“First Lien”) on the Property by recording a subordination agreement, in a form approved by Beneficiary’s legal counsel (“Subordination Agreement”).

Trustor agrees it shall instruct the Escrow Agent for the acquisition of the Property by the Trustor that the order of recording in the escrow for the purchase of the Property by the Trustor shall occur as follows: 1) the Equity Sharing Agreement; 2) the Deed of Trust; 3) the First Lien; and 4) the Subordination Agreement.

Trustor shall cause a Request for Notice to be recorded on the Property subsequent to the recordation of the First Lien deed of trust or mortgage requesting a statutory notice of default as set forth in the California Civil Code Section 29246. Such notice shall be sent to: City of Cypress, 5275 Orange Avenue, Cypress, CA 90630, Attention: City Manager.

**3. Protection of Beneficiary’s Rights in the Property.** If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or there is a legal proceeding that may significantly affect Beneficiary’s rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Beneficiary may do and pay for whatever is necessary to protect the value of the Property and Beneficiary’s rights in the Property. Beneficiary’s actions may include paying any sums secured by a lien which has priority over this Deed of Trust, appearing in court, paying reasonable attorneys’ fees and entering on the Property to

make repairs. Although Beneficiary may take action under this Section 3, Beneficiary does not have to do so.

Any amount disbursed by Beneficiary under this Section 3 shall become additional debt of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, these amounts shall bear interest from the date of disbursement at nine percent (9%) per annum or the maximum legal rate, whichever is less, and shall be payable, with interest, upon notice from Beneficiary to Trustor requesting payment.

[end - signature page follows]

**IN WITNESS WHEREOF**, Trustor has executed this Rider to Deed of Trust as of the date set forth below.

By: \_\_\_\_\_  
Printed Name:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name:

Dated: \_\_\_\_\_

The foregoing Deed of Trust and Rider to Deed of Trust is approved, and consented to, by Beneficiary.

By: CITY OF CYPRESS

\_\_\_\_\_  
City Manager

Dated: \_\_\_\_\_

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

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State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT "D"**

**BUYER DISCLOSURE STATEMENT**

[see following document]



## BUYER DISCLOSURE STATEMENT

Name of Participant(s): \_\_\_\_\_

Property Address: \_\_\_\_\_

I/we \_\_\_\_\_ (“Participant”), are about to purchase the above-described property (the “Property”). I/we understand that the developer of the Property, CYPRESSMOODYM 2022 LLC, a California Limited Liability Company (the “Developer”), agreed to sell the Property to an affordable buyer at an affordable sales price. I understand that the sale to me/us of the Property at such affordable sales price is conditioned on all of the following factors:

- I/we understand that the fair market value of the Property at the time of my/our purchase is \_\_\_\_\_ (the “Original Property FMV”), and the difference between my/our purchase price for the Property, which is \_\_\_\_\_ (“Property Purchase Price”), and the Original Property FMV is \_\_\_\_\_ (the “City Loan”). I/we understand that the City Loan is treated for all purposes as a loan from the City.
- I/we have signed or will sign the following documents in connection with my/our purchase of the Property:
  - Affordable Housing Covenants and Restrictions Affecting Real Property, Equity Sharing Agreement and Option to Purchase Property Secured By Deed of Trust (“Equity Sharing Agreement”) (the “Agreement”);
  - Reimbursement Agreement Secured by Deed of Trust; and
  - Deed of Trust with Assignment of Rents and Rider Attached Hereto.
- I/we have read or had explained to me/us the terms and conditions of all of those documents. I/we understand that all of those documents impose binding legal obligations on me/us.
- I/we understand that the City Loan is a shared appreciation loan, and that at the time I/we sell or otherwise transfer the Property, refinance the primary loan for the Property in a manner not permitted by the Agreement, no longer live in the Property as my/our primary residence, or otherwise violate the Agreement or the other documents we have signed in connection with the City Loan, I/we must repay the City Loan plus a portion of the appreciation, based on the ratio of the City Loan to the Original Property FMV.

For example, if the Original Property FMV is \$300,000, and my/our original purchase price is \$200,000, then the City Loan is \$100,000,

and the City's share of any appreciation during my/our ownership of the Property is 33.3%.

- I/we must qualify as a Moderate Income Buyer.
- My/our monthly payments for housing expenses, including the cost for a thirty (30) year fixed-rate mortgage, cannot be less than twenty-eight percent (28%) of the gross income of my/our household, nor more than thirty-five percent (35%) times one hundred ten percent (110%) of the Orange County area median income adjusted for a household size appropriate for the Property, as set forth in California Health and Safety Code section 50052.5.
- During my/our ownership of the Property, I/we must continuously occupy the Property and I/we may not rent or lease the Property.
- City shall not be held responsible for any costs associated with my/our purchase of the Property, including, but not limited to, any loan fees or charges, any charges for appraisals or any escrow costs or other costs relating to the transfer of the Property.
- The Property Purchase Price is the total purchase price for the Property and no other compensation, either financial or other, will be given to the seller of the Property, any real estate broker, or any other person, as additional consideration for the purchase of the Property.
- The City Loan may be considered to be income for purposes of federal or state income taxes and City shall not be held responsible for the payment of any taxes which I/we may incur by virtue of the receipt of such financial assistance.
- I/We are responsible for payment of the cost of a title insurance policy insuring the Deed of Trust to be recorded against the Property to secure City's right to repayment of the City Loan.
- City shall not be charged with the knowledge of the contents of the documents of the lender.
- City cannot ensure that information provided by or on my/our behalf will be kept confidential.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT "E"**

**NOTICE OF INTENT TO TRANSFER**

[see following page]

**NOTICE OF INTENT TO TRANSFER**

NOTICE OF INTENT TO TRANSFER MUST BE DELIVERED  
TO THE CITY OF CYPRESS PRIOR TO PROCEEDING  
WITH ANY TRANSFER OF THE PROPERTY.

From: \_\_\_\_\_  
("Participant")

To: City of Cypress  
5275 Orange Avenue  
Cypress, CA 90630

Attn: City Manager

Re: \_\_\_\_\_ (street address)  
Cypress, CA (the "Property")

Participant desires to [sell, convey, transfer by inheritance or devise, lease, gift, otherwise transfer] (circle appropriate words) the Property.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Participant

( ) \_\_\_\_\_  
Day time telephone of Participant

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Participant

( ) \_\_\_\_\_  
Day time telephone of Participant