

Buyer's Disclosure Statement

CITY OF SUNNYVALE BELOW MARKET RATE (BMR) OWNERSHIP HOUSING PROGRAM

The City of Sunnyvale (the "City") provides housing that is affordable to low and moderate income households. The City has made it possible for low and moderate income households like yours to buy a house at a price that is affordable. The price that you are paying for your house is below its fair market value.

In exchange for giving you the opportunity to buy your house at a below-market affordable price, the City will require you to sign a Promissory Note (the "Note"), a Deed of Trust (the "Deed of Trust"), and an Occupancy, Resale, and Refinancing Restriction Agreement and Option to Purchase at Restricted Price (the "Resale Agreement"). **The Deed of Trust and the Resale Agreement will be recorded against your property.**

The purpose of the Resale Agreement and the Deed of Trust is to ensure that the City's goal of helping low and moderate income households own their own homes continues to be met by keeping your house affordable to other low and moderate-income households should you choose to sell or move.

This Disclosure Statement explains the major provisions of the Promissory Note, Deed of Trust, and Resale Agreement so that you will understand their requirements. **You should, of course, read the entire Resale Agreement, Promissory Note, and the Deed of Trust and become completely familiar with them.** The Resale Agreement, Deed of Trust, and Note are together called the "Agreements." If there is any conflict between this Disclosure Statement and the Agreements, the terms of the Agreements will prevail.

A. **REQUIREMENTS IN EFFECT FOR 30-YEAR TERM**

The requirements that are in the Agreements apply until the earlier of (i) 30 years from the date you purchased your home, or (ii) the date you sell or transfer your home in accordance with the Agreements. If you own and live in your home for the whole 30-year term, all of the requirements of the Agreements go away.

B. **PRIMARY RESIDENCE AND PROHIBITION FROM LEASING YOUR HOME**

Your home in must be your main place of residence. This means you must live in your home within 30 days of purchasing your home and at least 10 months out of each calendar year. On or before March 1 of each year, you must tell the City in writing that you are meeting this requirement. You are not allowed to lease or rent the house to anyone, except with prior written City approval. If the City permits you to rent out your home, the rent you may charge is restricted by the City to the lesser of thirty percent (30%) of the tenant's gross household income or the cost of your mortgage payments, taxes, homeowners association dues, and insurance.

If you violate these requirements, the City may sue to prevent you from renting out your home, and you will owe the City the difference between the rent you charged and the allowable rent. (These are called "Excess Rents.") You will also be in default under the Agreements, and the City may exercise its option to purchase your home and require you to sell your home to the City.

C. MAINTAINING YOUR HOME/ PROPERTY INSURANCE

By signing the Agreements, you agree to keep your home and landscaping in good repair and in neat, clean, and orderly condition and to prevent deterioration of the home. You also agree to keep a standard homeowner's insurance policy, with the City named as an additional insured. In addition you are required to continuously claim a homeowner's exemption for property taxes.

D. THE AGENCY HAS THE OPTION TO PURCHASE YOUR HOME

In exchange for the opportunity given to you to buy your home at an affordable, below-market price, you agree that the City has an option to buy your home at a restricted price if you decide to sell your home or transfer it to someone else during the 30-year term of the Resale Agreement. In other words, the City has the first opportunity to buy your home before anyone else. The City may also give the option to purchase your home to another public agency, a nonprofit organization, or a person or household meeting income and other requirements.

The City also has an option to purchase your home at a restricted price if you do not comply with the terms of the Agreements.

E. SALES PRICE OF HOME IS RESTRICTED: MAXIMUM SALE PRICE

The City has helped make the cost of buying a home affordable to you. The City also wants to help another low and moderate income household own a home by keeping your home affordable when you choose to sell or move. Therefore, the Resale Agreement limits the sale price of your home if you sell within the 30-year term of the Resale Agreement. The maximum sale price that you can receive is the **lower** of the Maximum Sale Price as published by the City and described below in Section E.1 below and the Appraised Value as described in Section E.2.

1. MAXIMUM SALE PRICE

The City will publish the Maximum Sale Price for all of the BMR units, including your home, annually. The Maximum Sale Price will be at a purchase price which does not exceed a price affordable to a median income household, based on a housing cost of up to 30% of the monthly gross household income for the unit's assumed household size. The City shall determine the Maximum Sale Price each year for all of the BMR units, including your home, pursuant to Sunnyvale Municipal Code Section 19.67.070(d).

- (a) The City's published Maximum Sale Price for a BMR Unit with the same number of bedrooms as your home in effect at the time your Notice of Intent to Sell is received by the City;

plus

- (b) Any increase in the appraised value of the home (not cost) for any Eligible Capital Improvements, which conformed with applicable building codes, whose initial costs exceeded 1% of the original sale price, and were approved in writing by the city before they were installed;

minus

- (c) The cost of completing any deferred maintenance and costs needed to put the home into a "sellable condition."

Example 1 shows how the Maximum Sale Price formula works.¹

EXAMPLE 1: You purchased a three-bedroom BMR home in 2012 for the Maximum Sale Price in effect at that time, which was \$367,000. After eight years, you decide to sell your home. The Maximum Sale Price published by the City in 2020 for a BMR home with three bedrooms is now \$450,000, based on the 2020 median income for a household of four and other factors affecting housing affordability such as mortgage interest rates. Five years after buying your home, you remodel your kitchen (with prior City written approval) and an appraiser finds that the remodeling work increases the appraised value of the home by \$10,000 at the time you sell. Termite work totaling \$3,000 is needed. A broker did not assist you in selling the home.

(a)	Maximum Sale Price (published by City)	\$450,000
(c)	add Appraised Value Increase of Eligible Capital Improvements	+\$10,000
(d)	subtract termite work	<u>-\$3,000</u>
	<u>MAXIMUM SALE PRICE</u>	\$457,000

Between 2012 and 2020, the Maximum Sales Price increased by 25 percent. However, you should be aware that there is no guarantee that the Median Income for Santa Clara County will increase every year. Consequently, the Maximum Sale Price at the time you decide to sell your home may be the same, higher or lower than the price you paid for your home. If that is the case, it is possible that you could lose money when you sell your home because of closing and other transaction costs.

¹ Numerical examples are included in this Disclosure Statement to help you better understand the concepts, terms, and provisions of the Buyer's Resale Agreement. Please be aware that these are simply to show how things work and that they are not intended to represent your specific situation. If you follow along with a calculator, you may not get exactly the same answers. Any differences are probably due to how your calculator "rounds-off" numbers.

2. APPRAISED VALUE

Under the Resale Agreement, the Appraised Value can be determined in one of two ways. First, it can be established by a real estate appraiser approved in advance by the City. If possible, the appraisal will be based on sale prices of homes similar to yours that are sold in your market area during the preceding three-month period, and will include both a “fair market value” which will not take into account the BMR price restrictions and the “Appraised Value” of your home which will take into account the BMR price restrictions. The added value to the home of any Eligible Capital Improvements that you have made to your home that meet the requirements of the Resale Agreement, or damage or deferred maintenance that occurred while you owned the house that decreased its value shall be included as separate values in the appraisal. In this case, the appraisal will state what the Appraised Value of the home would be without either the improvements or the damage or deferred maintenance. The value of Eligible Capital Improvements or damage or deferred maintenance, if any, will have a direct impact on the Appraised Value.

Upon receiving your Notice of Intent to Sell, the City will inspect your home to determine if there is any deferred maintenance and/or other damage significant enough to warrant an appraisal to determine whether the deferred maintenance/damages and/or the housing market forces have reduced the Appraised Value to less than the current Maximum Sale Price for a BMR home with the same number of bedrooms. The cost of the appraisal used to determine Appraised Value will be shared equally between you and the City. For example, if the appraisal costs \$500, you will be responsible for \$250 and the City will have to pay \$250. However, if you need an appraisal in connection with refinancing your first mortgage loan or junior mortgage loans or equity lines of credit, you must pay the total amount of such appraisal costs. In addition, if the new buyer is required to pay for an appraisal by his or her lender, then the City will not pay for any part of the appraisal.

The Resale Agreement also allows you and the City to set the Appraised Value of your home by mutual agreement instead of relying on an appraiser.

Example 2 shows how the Maximum Sale Price and the Appraised Value of the home are compared to determine the Maximum Restricted Resale Price at which you can offer your house for sale.

EXAMPLE 2: The assumptions are the same as Example 1. The Appraised Value of your home is determined by appraisal. The appraisal determines the Appraised Value at \$430,000. This amount includes the value of the kitchen improvements at \$10,000 and the deduction for \$3,000 in termite work and other market conditions affecting value.

<u>MAXIMUM SALE PRICE</u>	is more than	<u>APPRAISED VALUE</u>	then	<u>MAXIMUM RESTRICTED RESALE PRICE</u>
\$457,000	>	\$430,000	⇒	\$430,000

Since the Appraised Value of the home is less than the Maximum Sale Price of the house, the Maximum Restricted Resale Price which you can receive from the sale of your home is \$430,000, as the Maximum Restricted Resale Price is the lesser of these two values.

F. SELLING YOUR HOME

Under the terms of the Resale Agreement, when you decide to sell your home within the 30-year term, you must notify the City. As described below, there are three different ways that the sale of your home can take place. Under all three methods, you will receive approximately the same net amount from the sale of your home.

1. THE AGENCY MAY EXERCISE THE OPTION TO PURCHASE YOUR HOME

When you decide to sell your home, you must let the City know in writing before you contact a real estate broker or lender and before you list the home in the Multiple Listing Service. This notice is called the "Owner's Notice of Intent to Transfer." If you fail to send this notice, you will be in default under the Resale Agreement, and the sale of your home may be delayed.

Upon receipt of a complete Owner's Notice of Intent to Transfer, the City will then let you know within 90 days, in a notice called the "First City Response Notice," whether or not it will use its option to purchase your home at the Maximum Restricted Resale Price. If the City chooses to use its option to purchase your home at the restricted price, it may also assign its rights to a public agency, nonprofit sponsor, or another household meeting income and other requirements. You are responsible for putting the home in good condition for its sale and allowing prospective buyers to view and inspect the home as is customary with any home listed for sale.

2. SALE TO AN "ELIGIBLE PURCHASER" AT THE RESTRICTED SALES PRICE

If the City does not choose to buy your home, you have a 60-day "Marketing Period" in which to make a good faith effort to find an Eligible Purchaser to buy the home at the Maximum Restricted Resale Price. An Eligible Purchaser is an individual or household who will live in the home, who meets income requirements, and who is willing to sign new Agreements. The City will provide you with the Maximum Restricted Resale Price and current income limits in the First City Response Notice.

Once you find a potential Eligible Purchaser, you will refer the proposed buyer to the City so that the City can determine if in fact he or she meets the requirements of an Eligible Purchaser. When the sale of your home to the Eligible Purchaser is completed, you must submit to the City the information and documents listed in the Resale Agreement. However, the sale of your home will be handled by you and the buyer rather than the City. You are responsible for putting the home in good condition for its sale.

3. SALE TO A "MARKET PURCHASER"; PAYMENT OF "EXCESS SALES PROCEEDS" TO THE AGENCY

If you are unable to locate an Eligible Purchaser within the 60-day Marketing Period, you may ask the City to extend the Marketing Period so that you can find an Eligible Purchaser, or you can send a written notice to the City called the "Owner's Notice of Failure to Locate Eligible Purchaser."

When you send the City the Owner's Notice of Failure to Locate Eligible Purchaser, the City is again given the opportunity to use the option to purchase your home. The City will let you know within 15 days in the "Second City Response Notice" if it will buy your home or assign the right to purchase the home to another party or if it will allow you to sell the house at an unrestricted sale price ("fair market value") to a Market Purchaser. If the City decides to purchase your home, the purchase by the City or its designee will take place within 75 days of the date the Second City Response Notice is sent to you, unless you have not completed all actions needed for close of escrow.

If the Second City Response Notice permits the sale to a Market Purchaser at an unrestricted price, you will be required to give the City specific documents and information as described in the Resale Agreement. The unrestricted sale price at which you sell the house to the Market Purchaser must be at or near the home's fair market value, supported by an appraisal as described in the Resale Agreement. In addition, you must pay to the City any "Excess Sales Proceeds" that result from the sale of your house to a Market Purchaser.

The term "Excess Sales Proceeds" is defined in the Resale Agreement as the amount by which the gross sales proceeds you receive from the buyer exceed the Maximum Restricted Resale Price for the home.

Any Excess Sales Proceeds are used by the City to provide affordable housing. You were given the opportunity to buy your home at a price that was below-market and affordable to you. If you are required to pay Excess Sales Proceeds, those funds will help other low and moderate income households who, like you, would not be able to obtain affordable housing without City assistance.

Example 3 shows how the Excess Sales Proceeds are calculated.

EXAMPLE 3 You sell your house at the end of eight years. You purchased your home for \$367,000. The Maximum Restricted Resale Price is at \$440,000. When you are unable to find an Eligible Purchaser, the City permits you to sell your house to a Market Purchaser at an unrestricted price, or fair market value, which is determined by an appraisal to be \$550,000. You are able to sell the house for \$545,000. You must pay the City Excess Sales Proceeds as follows:

Sale Price of House	\$545,000
MINUS	
Maximum Restricted Resale Price	<u>\$440,000</u>
Amount of Excess Sales Proceeds You Pay to City	\$ 105,000

When the sale of your home to the Market Purchaser is completed, you must submit to the City the information and escrow documents listed in the Resale Agreement.

G. SALE IN VIOLATION OF THE RESALE AGREEMENT

If you sell your home without notifying the City and/or for more than the Maximum Restricted Resale Price, you will have to pay all Excess Sales Proceeds to the City. In addition,

you will be responsible for all costs incurred by the City, including attorneys fees, in enforcing the Resale Agreement, and the City may declare a default under its City Deed of Trust and exercise its option to purchase the home.

The City may check title to your home from time to time to see if you are complying with the Resale Agreement.

H. CAPITAL IMPROVEMENTS AND DEFERRED MAINTENANCE

If you make capital improvements to the home, and you want the value of the capital improvements to be considered when the Maximum Restricted Resale Price is calculated, you must obtain written approval of the improvements by the City before the improvements are made, the initial cost of such improvements must be at least one percent (1%) of the original purchase price, and they must conform with the building code, as evidenced by obtaining any required building permits or other permits.

If there are any violations of the building code when you sell your home, or if other repairs (such as plumbing, cleaning, painting, appliance repairs, and pest control repairs) are needed to put the home in a sellable condition, you must complete such repairs before listing your home for sale, or these costs will be deducted from the Maximum Restricted Resale Price.

I. REFINANCE OF YOUR FIRST MORTGAGE; JUNIOR LIENS/LOANS

The Resale Agreement allows you to refinance your first mortgage loan but places restrictions on the amount received by you from the refinancing. You may not place any additional mortgage or deed of trust on the property ***unless you obtain the prior written consent of the City.*** A form for requesting approval of refinancing is included as Exhibit I of the Resale Agreement. The Resale Agreement does not permit subordinate junior loans, unless first approved in writing by the City and the additional restrictions set forth in the Resale Agreement are met. Home equity-lines of credit loans are not permitted.

As a requirement of refinancing your first mortgage loan, lenders usually require that the City subordinate its Agreements to them. The City will only subordinate its Resale Agreement and Deed of Trust if the following conditions are met:

- Following the refinance, the total amount of all debt secured by your property may not exceed the lesser of ninety-five percent (95%) of the Maximum Restricted Resale Price (calculated as of the date of the proposed refinancing) or ninety-five percent (95%) of the fair market value of the home at the date of the proposed refinancing (the "Permitted Encumbrance Amount").
- The new first mortgage loan must be fully amortized with a fixed rate of interest with a 15 year or 30 year term. The City will not subordinate to interest-only loans, "no documentation" loans, loans that require a balloon payment after a period of time, or loans that carry an interest rate higher than the original first mortgage loan.

- The new first mortgage loan must lower the interest rate or term of your original first mortgage loan.
- At the time you refinance the first mortgage loan, your total monthly housing cost under the proposed new loan may not exceed the maximum front and back ratio set forth in the BMR Home Ownership Program Guidelines.

If you are considering a refinance of your first mortgage, you should notify the City. The City will provide you with a calculation of the Permitted Encumbrance Amount before you contact your financial institution. Example 4 shows how this would work.

EXAMPLE 4

(d)	Maximum Resale Restricted Price	\$440,000
(e)	95% of Maximum Resale Restricted Price	$\frac{x}{\$418,000} .95$

Assuming that payments and proposed loan terms on a loan of \$418,000 meets the other requirements described above and the BRM Home Ownership Program Guidelines, the City will subordinate its Resale Agreement for a loan of up to \$418,000.

J. DEFAULT PROVISIONS

When you sign the Resale Agreement, you agree to meet all of the conditions of the Resale Agreement, Deed of Trust, and Promissory Note. If you violate any provisions of these documents, you are considered to be in default. Also, if you default under any other loan on the home, such as the first mortgage, you are also considered to be in default under the Resale Agreement. If you do not correct the violation, you must pay any amounts due under the Resale Agreement. The City can also exercise its option and buy your home or get a court order to enforce the provisions of the Resale Agreement, or the City could foreclose and take your home.

Please sign this Buyer's Disclosure Statement in the space provided below, and keep a signed copy for your records, and return the original to the City at the following address:

City of Sunnyvale
Housing Division
P.O. Box 3707
Sunnyvale, CA 94088—3707
Attention: Housing Officer

I have received, read and understand the above Buyer's Disclosure Statement. I also understand the following:

1. The restrictions last for 30 years.
2. The home may be sold only to a low or moderate income household for 30 years, and the price will be restricted so it is affordable to a low or moderate income household.
3. The resale restrictions will usually substantially reduce my home's sale price compared to the sales price of other homes. There is no guarantee that the sale price of my house will be greater than its purchase price.
4. Refinancing of the property is restricted, and junior loans are not permitted unless first approved in writing by the City. Home equity lines of credit loans are not permitted.
5. I must contact the City before any sale or refinancing of the property. Any sale or refinancing must be approved by the City.
6. I must live in the home for at least ten (10) months out of each calendar year. I cannot lease or rent it unless first approved by the City.
7. The City has the right to buy my home at the restricted price when I decide to sell it or if I violate any of the provisions of the Agreements.

I have read and understand the above Buyer's Disclosure Statement.

By: _____ Dated: _____
Signature of Buyer

Print Name of Buyer

By: _____ Dated: _____
Signature of Buyer

Print Name of Buyer