

**MAYOR'S OFFICE OF HOUSING  
AND COMMUNITY DEVELOPMENT  
CITY AND COUNTY OF SAN FRANCISCO**



**EDWIN M. LEE**  
MAYOR

**OLSON LEE**  
DIRECTOR

**LENDER PARTICIPATION AGREEMENT  
(Below Market Rate Housing Program)**

THIS AGREEMENT is entered into as of \_\_\_\_\_, 20\_\_, by and between the City and County of San Francisco, a municipal corporation ("City"), acting through the Mayor's Office of Housing and Community Development ("MOHCD"), and \_\_\_\_\_ ("Lender").

**RECITALS**

A. The Inclusionary Affordable Housing Program (the "Inclusionary Program") is governed by Section 415 of the San Francisco Planning Code (the "Planning Code") and requires certain market rate residential developments to, amongst other things, develop a certain percentage of units at a "below market rate" ("BMR") price that is affordable to low and moderate income first-time homebuyers. The specific Planning Code requirements for a project are set forth in the project's planning motion approving the project's entitlements (the "Planning Motion"), and in the project's recorded Notice of Special Restrictions ("NSR").

B. Planning Code Section 415 also requires that MOHCD and the San Francisco Planning Department publish an "Inclusionary Affordable Housing Program Monitoring and Procedures Manual" (the "Program Manual") containing procedures for monitoring and enforcement of the policies and procedures for implementation of the Inclusionary Program. The Planning Code, the Planning Motion, the NSR, and the Program Manual, each as may be amended from time to time, are collectively referred to as the "BMR Inclusionary Documents."

C. BMR homes formerly sponsored by the San Francisco Redevelopment Agency are part of the Limited Equity Homeownership Program (the "LEP Program"). The requirements for the LEP Program are set forth in the Developer Disposition Agreement ("DDA") or Owner Participation Agreement ("OPA") for each project. The "Limited Equity Homeownership Program – Loan Disclosure Information" ("Loan Disclosure") further describes the LEP Program. The DDA, the OPA and Loan Disclosure, each as may be amended from time to time, are collectively referred to as the "BMR LEP Documents."

D. The Inclusionary Program and the LEP Program are, hereafter collectively or individually referred to as the "BMR Program." The BMR Inclusionary Documents and the BMR LEP Documents are, hereafter collectively or individually referred to as the "BMR Documents."

E. The BMR Program is, in part, designed to provide eligible low and moderate income first-time homebuyers who meet all of the Program requirements with the opportunity to purchase affordable homes ("Eligible Borrowers").

F. Lender desires to participate in the BMR Program by providing loans (“First Mortgage Loans”) to Eligible Borrowers and by administering and servicing first mortgage applications and loans in compliance with the BMR Program requirements.

G. Each Mortgage Loan Originator (“MLO”) for Lender whether originating on a retail, correspondent or wholesale basis, must be individually approved to participate in the BMR Program.

Now, therefore, in consideration of the mutual promises in this Agreement, the City and the Lender agree as follows:

1. **Program Documents.** The City will provide the Lender with a copy of the BMR Documents prior to close of escrow for the sale of a BMR unit. The City agrees to provide the Lender with any amendments to such documents, and the Lender agrees to comply with all such documents, as they may be amended from time to time, in performing its obligations under this Agreement.

2. **Lender Participation.** The City hereby authorizes the Lender as one of the City’s approved Lenders for receipt and processing of applications for the BMR Program in accordance with the Agreement and the BMR Program requirements and documents. The Lender acknowledges that the City may enter into Lender Participation Agreements with other financial institutions in connection with the BMR Program.

3. **Lender Orientation/Training.** As a condition to the Lender’s participation in the BMR Program, the Lender will attend all orientation and/or training programs provided by the City in connection with the BMR Program, as applicable, prior to originating a loan. Each individual MLO must attend a lender training session annually.

4. **Education of Potential Eligible Borrowers.** The Lender will provide access to and ensure compliance with the Program Manual for all BMR applicants. The Lender must submit evidence that a prospective Eligible Borrower has completed such education with the application information the Lender submits to MOHCD under Section 9(a).

5. **Eligibility Criteria.** The Lender will screen prospective Eligible Borrowers for compliance with the BMR Program eligibility criteria and application requirements as described in the BMR Documents. Lender’s determination that an applicant qualifies shall have no bearing on the City’s application process or the City’s determination as to whether an applicant qualifies as an Eligible Borrower.

6. **Applications for BMR Loan Pre-Approvals.**

(a) The Lender will provide the prospective Eligible Borrower(s) with a First Mortgage Loan application and will require that all prospective Eligible Borrowers complete the application form and provide all information necessary to substantiate the information provided on that form.

(b) The Lender will review and verify the information in each application and supporting documentation to determine whether an applicant qualifies as an Eligible Borrower. Lender’s determination that an applicant qualifies shall have no bearing on the City’s application process or the City’s determination as to whether an applicant qualifies as an Eligible Borrower.

7. **Investigation/Underwriting for First Mortgage Loan.**

(a) The Lender agrees that, with respect to a First Mortgage Loan, it shall perform only such investigations and verifications of potential Eligible Borrowers that it would normally perform for a loan where a borrower was not applying for the BMR Program.

(b) The Lender's fees for the First Mortgage Loan may not exceed fees customarily charged for mortgage loans which are not made in connection with the BMR Program.

(c) Lender shall not provide a First Mortgage Loan in an amount where total Loan to Value ratio would be less than 50% of the BMR sales price.

8. **BMR Loan Fees.** The Lender shall not charge an applicant additional fees to apply for a BMR unit, including the City's BMR Down payment Assistance Loan Program ("BMR DALP"). In no event shall the Lender receive any compensation from any applicant, Eligible Borrower, or the City in connection with its obligations under this Agreement.

9. **BMR Lottery Application.**

(a) Following the Lender's determination that an applicant may qualify as an Eligible Borrower, the applicant must apply for a BMR property by delivering the City's BMR application form and supporting documents, to the sales agent/realtor named in the BMR listing, together with a copy of the First Mortgage Loan Pre-Approval.

(b) Upon the conclusion of the lottery, if the applicant is selected, MOHCD will review the BMR application documents. If the applicant's income and assets meet the BMR Program criteria, MOHCD will issue a BMR Purchase Eligibility Letter to the applicant. Any changes to the applicant's income, household size, or assets may alter their eligibility status.

(c) Upon issuance of the Eligibility Letter, the sales agent shall schedule a viewing of the available unit with the applicant based on final lottery ranking within 48 hours from the date of the Eligibility Letter. The Eligible Borrower shall enter into a sales contract for the property within 10 calendar days from the date of the Eligibility Letter. The sales contract shall grant the Eligible Borrower at least 60 days to close with a 45 day financing contingency.

(d) Upon completion of the final first mortgage loan approval, the Lender shall deliver to MOHCD all of the following: (i) Sales Contract; (ii) Fair Market Appraisal; (iii) Preliminary Title Report with Wire Instructions and Escrow Deposit Receipt; (iv) final signed and dated Loan Application and Transmittal Summary (Form 1003 and 1008); (v) Loan Estimate and/or Closing Disclosure, (vi) First Mortgage Loan Approval; (vii) estimated Settlement Statement, and (viii) Lender Checklist and documents described in the checklist. The Lender must include information about any loan assistance programs and Mortgage Credit Certification (MCC) programs, as applicable.

(e) Upon MOHCD review and approval of the BMR application documents and the First Mortgage Loan Documents, MOHCD will draft City closing documents for a BMR second lien to be reviewed prior to closing. BMR buyers shall execute the final City closing documents at escrow, simultaneous with Lender's documents for the First Mortgage Loan and all other closing documents associated with the sale.

(f) The Title Company will work with BMR buyer to review and sign documents that restrict the resale of the BMR unit and that establish a lien on the property.

(g) The Title Company returns signed, notarized and recorded closing documents to MOHCD.

(h) BMR units are subject to annual monitoring by MOHCD to ensure full compliance of all occupancy requirements.

10. **Limitation of Liability.** Notwithstanding any other provision of this Agreement, Lender and City hereby acknowledge and agree that they are entering into this Agreement in order to establish the Lender requirements for participation in the BMR Program. The parties understand and agree that the City would not be willing to enter into this Agreement if it could result in any liability or cost to the City. Accordingly, in the event that Lender believes that the City has violated any of the terms of this Agreement, its sole remedy shall be to terminate this Agreement.

11. **BMR Documents.** The Lender acknowledges that each approved BMR lien shall be evidenced by a silent second Promissory Note which is the difference between the Fair Market Value (FMV) and BMR sales price, Deed of Trust, and any other documents reasonably required by the City, in form and substance prepared by the City, to ensure compliance with the BMR Documents. The Deed of Trust and any other security for a BMR Loan shall be subordinate to the documents securing the Borrower's obligations under the First Mortgage Loan; provided however, that the affordability resale and occupancy restrictions required under the BMR Documents, as applicable, shall in no event be subordinated to the First Mortgage Loan. Under no circumstance is Lender to provide and/or allow any other mortgage lien to be recorded against a BMR unit without the prior written consent of MOHCD. Lender further agrees to provide MOHCD notice of any loan other than the First Mortgage Loan.

12. **Escrow Account.** All BMR sales transactions shall take place through an escrow account with a mutually acceptable Title Company. No transaction shall be permitted unless such title company complies with any and all escrow instructions provided by MOHCD.

13. **Secondary Market.** The Lenders who are approved by Fannie Mae or Freddie Mac to sell such mortgages must submit their written approval to participate in the BMR Program. A copy of the Lender's Product Information and Matrix will be requested prior to becoming a BMR Approved Lender. Lender must have the ability to lend on both BMR Inclusionary and BMR LEP units.

14. **Maximum Number of Authorized MLOs.** A maximum of five (5) MLOs from one approved Lender may be authorized to participate in or make First Mortgage Loans in connection with the BMR Program. Any request for an increased number of MLOs must include a written justification, and will require approval from the Director of MOHCD. Under no circumstances shall the unauthorized MLOs be involved in the origination of the First Mortgage Loans secured by the City's BMR properties without the express, prior approval of the MOHCD.

15. **Lender's Performance.**

(a) The City shall periodically review Lender's performance under this Agreement, including but not limited to the number of loans originated, loan performance, types of loans made to Eligible Borrowers including refinancing on the BMR Units, marketing of DALP and other services to Eligible Borrowers, and providing homebuyer education to applicants. In the event the City determines that the Lender has not satisfactorily performed its obligations under this Agreement, the City shall provide written notice of that fact to the Lender. If, in the City's reasonable judgment, the Lender has not remedied this situation within thirty (30) days of the

City's notice, the City may automatically terminate this Agreement as to Lender and all of its MLOs by written notice to the Lender.

(b) This Lender Agreement is applicable to all MOHCD first-time homebuyer programs. The participating Lender will adhere to the MOHCD loan processing time lines and conduct business in a professional manner at all times, and adhere to any applicable standards of Nationwide Multistate Licensing System (NMLS), California Bureau of Real Estate (BRE), California Department of Business Oversight (DBO), and all administrative agencies and bodies representing the mortgage loan originations for home buyers.

(c) The Lender understands that submission of incomplete loan application package or submission of inaccurate information declared in lender forms will delay the processing, review, underwriting, approval and closing of the sale of a BMR unit. MOHCD performs lender training to ensure MLOs will adhere to MOHCD loan policies, standards of lender form packaging, application process and time lines. Noncompliance with MOHCD's loan policies and MLOs that submit incomplete or inaccurate information on three occasions shall be removed from the Lender list. As a courtesy, a written notice may be provided by MOHCD with first and second warnings of any noncompliant submissions prior to the MLO removal from the Lender list.

(d) Lender shall utilize only competent MLOs under the supervision of, and in the employment of Lender. Lender will comply with City's reasonable requests regarding assignment and/or removal of MLOs.

16. **Participation Fee.** Lender agrees to pay an initial participating fee as published on the MOHCD website. For each subsequent year, the Lender agrees to pay a renewal fee as published on the MOHCD website. All fees paid by the Lender shall be non-refundable.

17. **Term.**

(a) This Agreement shall continue until terminated by either the City or the Lender. Either party may terminate this Agreement for any reason upon sixty (60) days prior written notice to the other party. In addition, the City may immediately terminate this Agreement upon written notice from the City upon the Lender's failure to comply with any provision of this Agreement. In the event of any termination, the Lender may no longer participate in or make First Mortgage Loans in connection with the City's BMR Program.

(b) Any termination of this Agreement shall not affect (i) any outstanding First Mortgage Loan, or (ii) any outstanding BMR Loan.

18. **Amendments.** This Agreement may be amended only by a written amendment executed by the City and the Lender.

19. **Independent Contractor.** Lender is an independent contractor with the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Lender is solely responsible for: (a) its own acts and those of its MLOs, agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by Lender, any of its MLO's, contractors or subcontractors and the City and its officers, representatives, agents and employees on account of any act, error or omission of Lender in the

performance of this Agreement or any other Lender document; and (c) all costs and expenses relating to Lender's participation under this Agreement.

20. **Nondiscrimination.** In the performance of this Agreement, Lender covenants and agrees not to discriminate against any employee, City and County employee working with Lender, applicant for employment with Lender, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

21. **Americans with Disabilities Act.** Lender acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Lender shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Lender agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of the Lender, its employees, agents or assigns will constitute a material breach of this Agreement.

22. **Nondisclosure of Private, Proprietary or Confidential Information.**

(a) Lender must be sensitive to the privacy interests of the Borrowers, and should use the information received only for purposes of verifying the borrowers' eligibility for a first mortgage loan and qualification for a BMR and any City administered homeownership loan program.

(b) If this Agreement requires City to disclose "Private Information" to Lender within the meaning of San Francisco Administrative Code Chapter 12M, Lender and MLOs shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services set forth in this Agreement. Lender is subject to the enforcement and penalty provisions in Chapter 12M.

(c) Lender understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Lender may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Lender agrees that all information disclosed by City to the Lender shall be held in confidence and used only in performance of the Agreement. Lender shall exercise the same standard of care to protect such information as a reasonably prudent the Lender would use to protect its own proprietary data.

23. **Public Records Act and Sunshine Ordinance.** The City is subject to the requirements of California Public Records Act, Government Code Section 6250, et seq. The Public Records Act provides that virtually all documents held or used by the City in the course of conducting the public's business are public records which the City, subject to certain limited exemptions, must make available for inspection and copying by the public. Applications for loans or grants from the City are public records as are the completed loan and grant documents. Under Section 67.24(e)

of San Francisco Administrative Code, applications for financing and all other records of communications between the City and the Borrower must be open to public inspection immediately after a contract has been awarded. All information provided by Borrower which is covered by that ordinance (as it may be amended) will be made available to the public upon appropriate request. In addition, contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this Section will be made available to the public upon request.

24. **Compliance.** Lender will comply with all federal, state and local laws in connection with fair lending and fair housing regulations, including any and all regulations which govern housing, residential and mortgage lending. Lender shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

25. **Notices.** Any notice or other communication shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

To the City: Mayor's Office of Housing and Community Development  
One South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attn: BMR Homeownership Programs

To the Lender: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Any notice or other communication shall be deemed given two (2) days after the date when mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

26. **Dispute Resolution Procedure.**

(a) The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Lender's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Lender of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Lender shall proceed diligently with the performance

of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or for matters costs resolved under this section.

(b) No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Lender's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

27. **Assignment.** This Agreement nor any duties or obligations hereunder may be assigned or delegated by Lender unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

28. **Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

29. **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

30. **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

31. **Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Lender to remove from, City facilities personnel of any Lender that City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

32. **Limitations on Contributions.** By executing this Agreement, Lender acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of

either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Lender's board of directors; Lender's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Lender; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Lender. Lender must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

33. **Conflicts of Interest.** Through its execution of this Agreement, Lender acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

34. **MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Lender confirms that Lender has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

[Intentional Page Break]

**BMR Housing Program - List of Authorized MLOs of Lender:**

<u>Printed Name of MLO</u>	<u>Phone #</u>	<u>Email Address</u>	<u>Signature</u>

THIS AGREEMENT is entered into as of the date first written above.

Lender's Name: \_\_\_\_\_

Lender's Address: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Signer

\_\_\_\_\_  
Printed Name of Authorized Signer

\_\_\_\_\_  
Title of Authorized Signer

\_\_\_\_\_  
Email Address

Telephone # \_\_\_\_\_

Fax#: \_\_\_\_\_

CITY:

Mayor's Office of Housing and Community Development  
Of the City and County of San Francisco

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

Maria Benjamin  
Director of Homeownership & Below Market Rate Programs

**The CITY AND COUNTY OF SAN FRANCISCO  
MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT  
BMR HOUSING PROGRAM**

**Authorized MLOs Update Form  
(Please disregard if no applicable)**

MLOs Authorized to Participate in the Program

**Note:** Changes made using this form will update current MLO lists and **MUST** be made by the authorized signer of Lender. Please allow 3-5 business days for MOHCD to be updated.

<u>Printed Name of MLO</u>	<u>Add or Remove</u>	<u>Phone #</u>	<u>Email Address</u>	<u>Signature</u>

\_\_\_\_\_  
Signature of Authorized Signer

\_\_\_\_\_  
Printed Name of Authorized Signer

\_\_\_\_\_  
Title of Authorized Signer

\_\_\_\_\_  
Email Address

Telephone # \_\_\_\_\_

Fax#: \_\_\_\_\_