

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



EDWIN M. LEE
MAYOR

OLSON LEE
DIRECTOR

THIS AGREEMENT is entered into as of _____, 20___, by and between the City and County of San Francisco, a municipal corporation ("City") and _____ ("Lender").

RECITALS

- A. Section 415 of the San Francisco Planning Code (the "Planning Code") requires certain market rate residential developments to, amongst other things, develop a certain percentage of affordable housing for eligible low and moderate income first-time homebuyers (the "BMR Program"). 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 recorded in the project's Notice of Special Restrictions (NSR).
- B. BMR homes formerly sponsored by the San Francisco Development Agency are part of the Limited Equity Homeownership Program (the "LEP Program"). The requirements for the LEP Program are recorded in the Developer Disposition Agreement (DDA) or Owner Participation Agreement (OPA) for each project.
- C. The BMR Program is, in part, designed to provide eligible low and moderate income first-time homebuyers who meet all of the Program requirements the opportunity to purchase affordable homes ("Eligible Borrowers").
- D. The Mayor's Office of Housing and Community Development (MOHCD) has prepared an "Inclusionary Affordable Housing Program Monitoring and Procedures Manual" (the "Program Manual") which further describes the BMR 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."

The "Limited Equity Homeownership Program – Loan Disclosure Information" which further describes the BMR LEP, the DDA, the OPA and Program Manual, each as may be amended from time to time, are collectively referred to as the "BMR LEP Documents."

- E. The Lender and trained Mortgage Loan Originators (MLO) for the lender desires to participate in the BMR Program and LEP Program by providing loans ("First Mortgage Loans") to Eligible Borrowers.

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 Inclusionary Documents and BMR LEP 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.

No Exclusivity_ The Lender acknowledges that the City may enter into Lender Participation Agreements with other financial institutions in connection with the BMR Program and LEP Program.

2. **Lender Orientation/Training**. As a condition to the Lender's participation in the BMR Program and LEP Program, the Lender will attend all orientation and/or training programs provided by the City in connection with the BMR Program and/or the LEP Program, as applicable.
3. **Education of Potential Eligible Borrowers**. The Lender will provide access to and ensure compliance with the requirements in the Program Manual for the Homebuyer counseling education of BMR applicants. The Lender must include evidence that an applicant has completed such education with the application information the Lender submits to MOHCD.
4. **Eligibility Criteria**. The Lender will screen prospective Eligible Borrowers for compliance with the BMR Program eligibility criteria as described in all 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.
5. **Applications for BMR Loan Pre-Approvals**.
 - (a) The Lender will provide the Borrower(s) with a First Mortgage Loan application. The Lender 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.
6. **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 receiving a BMR unit.
 - (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.
7. **BMR Loan Fees**. The Lender should not charge an applicant additional fees to apply for a BMR unit, unless they are applying to the City's Down payment Assistance Loan Program (DALP). DALP application fees are published on the MOHCD website which is non-refundable. In no event shall the Lender receive any compensation from any applicant, Eligible Borrower, or the City (other than the First Mortgage Loan Fees described in Section 7(b)) in connection with its obligations under this Agreement.

8. BMR Lottery Application.

(a) Following the Lender's determination that an applicant may qualify as an Eligible Borrower, the household 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 administration of the lottery, if the applicant is selected, the City will review and issue a conditional purchase approval letter to a qualified household.

(c) If approved, Eligible Borrower shall enter into a sales contract for the property within 10 business days of MOHCD approval. The sales contract shall grant the Eligible Borrower at least 60 days to close with a 45 day financing contingency.

(d) Upon receipt, Lender shall submit a copy of the following to MOHCD: (i) sales contract; (ii) final fair market appraisal; (iii) preliminary title report; (iv) borrower signed loan applications (1003 and 1008); (v) the HUD Good Faith Estimate, (vi) the First Mortgage Loan commitment letter; and (vii) the estimated HUD settlement statement.

(e) MOHCD will then draft City closing documents for a BMR second lien to be reviewed and signed by BMR buyers at escrow, simultaneous with Lender's documents.

(e) Title Company works with BMR buyer to review and sign documents that restrict the resale of the BMR unit and that establish a lien on the property. Buyer will also sign all other closing documents associated with the sale.

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

(g) Unit is subject to annual monitoring by MOHCD.

9. **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 and LEP 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.

10. **Documentation of BMR Loans.** The Lender acknowledges that each approved First Mortgage Loan 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, ALTA title policy, Evidence of Insurance 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 Inclusionary Documents or the LEP Documents, as applicable, shall in no event be subordinated to the First Mortgage Loan.

11. **BMR Loans.** The City shall deposit the approved BMR Loan into escrow for the Borrower's purchase of residence BMR, together with the City's escrow instructions and the receipt of a lender's policy of title insurance.

12. **Secondary Market.** Lender hereby acknowledges that the BMR Program does not currently conform with Fannie Mae (FNMA) or Freddie Mac (FHLMC) guidelines, and therefore these loans are unsellable on the secondary market. As a result, Lender must apply for a variance from FNMA and/or FHLMC guidelines which conflict with the BMR program or Lender must have the ability to offer a portfolio product for these units. 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.

13. 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 available to Eligible Borrowers including for the City's Below Market Rate (BMR) Units and marketing of DALP and other services to Eligible Borrowers, including homebuyer education provided 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 sixty (60) days of the City's notice, the City may automatically terminate this Agreement by written notice to the Lender.

(b) The lender agreement is applicable to all MOHCD first-time homebuyer programs. The participating Lender will adhere to the Mayor's Office of Housing and Community Developments loan processing time lines and perform business in a professional manner at all times, and adhere to all the standards of NMLS, the DRE 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 as part of its requirement to ensure MLOs will adhere to MOHCD loan policies, standards of lender form packaging, application process and time lines. Non-compliance of MOHCD's loan policies and MLOs who submit incomplete or inaccurate information on three occasions shall be removed from the lender list. As a courtesy, a written notice shall be provided by MOHCD with first and second warnings of any non-compliant submissions prior to the MLO removal from the lender list.

14. 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.

15. **Amendments**. This Agreement may be amended only by a written amendment executed by the City and the Lender.
16. **Nondiscrimination**. In the performance of this Agreement, the Lender covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Lender or against any person seeking services from Lender in accordance with this Agreement.
17. **Americans with Disabilities Act**. The 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. The 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. The 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.
18. The Lender agrees to pay an initial participating fee as published in the MOHCD website. For each subsequent year the Lender agrees to pay a renewal fee as published in the MOHCD website, and attend a lender training session annually all fees paid by the Lender shall be non-refundable.
19. **Privacy Requirements**: 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.
20. **Public Records Act**: The City and County of San Francisco 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.
21. **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:

22. 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.

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.

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

Lender's Name _____

Lender's Address: _____

Signature of Lender's Representative

Printed Name

Title

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