

RESIDENCE ELEMENT

AN IMPLEMENTATION PROGRAM OF THE RESIDENCE ELEMENT OF THE MASTER PLAN

CITY AND COUNTY OF SAN FRANCISCO AFFORDABLE HOUSING MONITORING PROCEDURES MANUAL

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I. DEFINITIONS OF TERMS (Bold Face words are further defined in this subsection).

ADMINISTRATIVE FEES When authorized by ordinance, projects which require reporting of compliance with affordability requirements and/or which require resale reports shall submit said reports to the City's **monitoring agency** along with an administrative fee in an amount to be determined in accordance with such ordinance to cover the cost of monitoring and enforcement of affordability requirements.

AFFORDABLE HOUSING PROJECT A housing project or mixed use project, whether new construction or conversion of use, which contains units satisfying affordable housing requirements imposed by **conditions of approval** or other applicable restrictions.

ALLOWABLE CAPITAL IMPROVEMENTS A physical improvement to a dwelling unit which satisfies the following criteria: (1) adds value to the unit or prolongs its life; (2) has a useful life of more than one (1) year, and must not otherwise be considered normal repair or maintenance which would be required to maintain the dwelling unit in good condition; (3) satisfies the criteria for a capital improvement under the Internal Revenue Code; (4) where capital improvements are made to portions of a building or lot which are shared by other dwelling units, only that portion of the capital improvement attributable to the **Below Market Rate (BMR)** unit shall be considered; (5) in no event shall the increased value of the unit exceed the actual direct cost of the allowable capital improvements; (6) is not made within ten (10) years of the issuance of the **First Certificate of Temporary Occupancy** for the **BMR** unit; and (7) is constructed in accordance with all applicable codes, laws and regulations. The owner shall keep accurate records relating to the cost and type of improvement.

ANNUAL REPORT Owner(s) of affordable rental housing units satisfying the requirements of their **conditions of approval** or other applicable restrictions may be required to submit an annual monitoring and enforcement report on a form provided by the **monitoring agency** and submitted on a date and at a location determined by the **monitoring agency**. The report shall provide information regarding rents, household and income characteristics of tenants of designated affordable units, services provided as part of the housing service such as security, parking, utilities, and any other information the monitoring agency may reasonably require to monitor compliance with the **BMR units** specific **conditions of approval**.

APPRAISED FAIR MARKET VALUE The fair market value of an affordable ownership unit determined by an appraiser acceptable to both the City and the Principal **Project Sponsor** or Seller. This appraisal may be required by the

monitoring agency prior to any sale of a **BMR unit**.

**BASE PRICE OF A
BMR UNIT**

The purchase price of the unit paid by the prospective seller plus an amount equal to the sum of the percentage increase in the Housing Component of the Consumer Price Index for the San Francisco PMSA from the date of purchase by the seller to the date of marketing of the unit for sale.

BASE RENT

The monthly monetary consideration paid by a **qualifying tenant household** for use of the designated **BMR unit** as the household's principal residence; it shall be determined at the time of first occupancy by a **qualifying household** based on the U.S. Department of Housing and Urban Development (HUD) income limit established for the percentage of median income specified in the **conditions of approval** for the **Below Market Rate unit**. Base rent, together with a **utility allowance** in an amount determined by the San Francisco Housing Authority, shall not exceed thirty (30) percent of the percentage of median income required by the **conditions of approval**.

**BELOW MARKET
RATE (BMR) UNITS**

An affordable dwelling unit or other approved residential unit which is sold or rented at a price specified in the **conditions of approval** or other applicable use restrictions which may be lower than the **appraised fair market value** of **comparable units**. **BMR units** may be either ownership for **first time homebuyers** or rental, as specified in the **conditions of approval**. The sales or rental price limits on the **BMR unit** are as described in the **conditions of approval** or other restrictions as required by the City and County of San Francisco.

BUILDING PERMIT

Bureau of Building Inspection (BBI) issued permits for the construction of the **principal project** and any linked off-site affordable housing development.

**CERTIFICATE OF
FINAL COMPLETION
AND OCCUPANCY**

A certificate issued to a **project sponsor** by the Bureau of Building Inspection that certifies that all Building Code provisions and project building specifications for the development project have been satisfied.

CLOSING DATE

The date of closing of escrow of the sale of a **BMR** ownership unit to a qualifying **first time homebuyer household**.

COMPARABLE UNIT

A residential unit which satisfies the following standards:
(a) contains equal or greater total livable floor area than the **BMR unit** which it is replacing;
(b) rents for a price equal to or less than the rental rate of the **BMR**

unit which it is replacing while providing equal or greater housing services such as common security, utilities and designated parking, as the displaced, demolished, converted or designated affordable unit;

- (c) meets current Building, Housing and Health Code standards; and
- (d) is located within the same neighborhood as the **principal project** or within a neighborhood with similar physical, environmental and socioeconomic conditions including public utilities, commercial facilities and neighborhood scale, and offers comparable or better accessibility to the displaced tenants principal wage earner's place of employment.

CONDITIONS OF APPROVAL

A set of written conditions imposed by the City Planning Commission or another permit-issuing City agency or legislative body which a **Project Sponsor** agrees to adhere to and fulfill as a condition of approval of a **principal project** which has an affordable housing requirement.

DWELLING UNIT

A room or suite of two or more rooms that is designed for, or is occupied by, one family doing its own cooking therein and having only one kitchen.

EXISTING AFFORDABLE UNITS

Dwelling units or other residential units which were in existence on January 1, 1991 and which are proposed to be converted or demolished by a **project sponsor** in order to build the **Principal Project** and which at last occupancy or on January 1, 1991 were rented or sold at rates affordable to **very low, low, median or moderate income households**, as applicable.

FAIR MARKET VALUE

The value of a **BMR unit** determined without regard to sales or rental restrictions on that unit pursuant to an independent appraisal conducted by an appraiser acceptable to the **monitoring agency** and paid for by the prospective purchaser of such unit.

FAMILY SIZED UNITS

BMR ownership or rental dwelling units which are a minimum two bedroom, 800 net square feet in size.

FIRST TIME HOMEBUYER HOUSEHOLD

A **qualifying household** of which no member has owned any interest in a dwelling unit or any commercial real estate for a three (3) year period prior to applying to qualify for purchase of a **BMR** ownership unit. The **qualifying household** must occupy the **BMR unit** within sixty (60) days of close of escrow on the **BMR** unit and must intend to occupy the unit as a principal residence for the duration of ownership of the **BMR** ownership **unit**, or as otherwise prescribed in Section 1(2) of this manual. Eligibility will be determined by a review of three (3) years Federal income tax returns, three (3) years

W-2 forms, and three (3) consecutive pay stubs or equivalent.

**FIRST CERTIFICATE
OF TEMPORARY
OCCUPANCY**

A certificate issued to a **project sponsor** which certifies that life safety and fire safety provisions of the Building Code and project building specifications have been met and, although the project is not complete, it can be occupied by tenants.

GROUP HOUSING

A residential unit which is not a dwelling unit because it lacks cooking facilities which are inclusive to that unit. Group housing includes residential hotel units, boarding houses, convents, ashrams and transitional housing shelters.

GROSS INCOME

All income from whatever source derived as provided in the Internal Revenue Code (26 USC Section 61), whether or not exempt from federal income tax. Such income includes, but is not limited to, the following:

1. Compensation for services, including fees, commissions, and similar items;
2. Gross income derived from business;
3. Gains derived from dealings in property;
4. Interest;
5. Rents;
6. Royalties;
7. Dividends;
8. Alimony and separate maintenance payments;
9. Annuities;
10. Income from life insurance and endowment contracts;
11. Pensions;
12. Income from discharge of indebtedness;
13. Distribution share of partnership gross income;
14. Income in respect of a decedent;
15. Income from an interest in an estate or trust; and
16. Public benefits including but not limited to AFDC, SSI, Disability income.

**HOUSING
AFFORDABILITY
FUND**

A Fund established under Administrative Code Section 10.1 17-50. Monies deposited in the Fund shall be used solely to increase the supply of housing affordable to **qualifying** low and moderate income **households** in the manner specified in that Section.

**LIFE OF THE
PROJECT**

The time period for which an affordable housing requirement of a **principal project** shall be in effect shall be the period of time shown on the **conditions of approval** and shall be fifty (50) years from the date of the issuance of any **First Certificate of Temporary Occupancy** for the **BMR unit**. Should the **BMR units** be damaged or destroyed by earthquake, fire, war or "act of God" and rendered

uninhabitable, the 50 year term shall cease to run during the period of uninhabitability, and shall recommence upon occupancy by a **qualifying household** in the replacement or repaired **BMR** unit.

**LOW INCOME
HOUSEHOLD**

A household whose combined annual gross income for all members, adjusted for household size, does not exceed sixty (60) percent of the median income for the San Francisco Principal Metropolitan Statistical Area (PMSA) as calculated by the U.S. Department of Housing and Urban Development (HUD) and adjusted for household size.

**LOWER INCOME
HOUSEHOLD**

A household whose combined annual gross income for all members, adjusted for household size, does not exceed eighty (80) percent of the median income for the San Francisco PMSA as calculated by HUD and adjusted for household size.

MARKETING PLAN

A compliance procedure, described in Section C, D and E of this manual, which requires the **project sponsor** of a **principal project** which has an affordable housing requirements to undertake certain measures which are directed to advertise available affordable housing units to **qualifying households**.

**MAXIMUM MONTHLY
RENT**

Maximum monthly rent shall mean the maximum monthly monetary consideration that a **project sponsor** may charge any **qualifying household** occupying a **BMR** rental unit. The rental rate at first occupancy of a **BMR** unit shall not exceed the **base rent**. Subsequent rents may be increased on each anniversary of a tenant's occupancy of a **BMR** rental unit according to the formula set forth in Section F of this manual.

**MEDIAN INCOME
HOUSEHOLD**

A household with combined annual gross income for all members, adjusted for household size, which does not exceed 100 percent of the median income for the San Francisco PMSA as calculated by HUD and adjusted for household size.

**MINORITY
COMMUNITIES**

Minority communities or minority households shall include, as a guideline, members of the following racial, ethnic, gender or otherwise specially disadvantaged groups:

1. African-American - defined as persons of African origin.
2. Latino - defined as persons of Mexican, Caribbean, Central American or South American origin.
3. Asian - defined as persons of Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Southeast Asian or Asian Indian

origin.

4. Native American - defined as persons whose origins are of indigenous peoples of North America.
5. Women - defined as persons of female gender.
6. Gay and Lesbian - defined as a male and female homosexual.
7. Families with dependents - defined as a household with two or more persons in which the head of household is an adult and at least one other household member is an elderly or handicapped person who is financially dependent on the head of household or a person under the age of 18 years who is related to the head of the household by blood, marriage or adoption or related to the domestic partner by blood or adoption.
8. Handicapped - defined as a person who satisfied the definition of "handicapped" under Federal Fair Housing Law on the basis of presence of a long-term physical or mental impairment which substantially limits one or more of such person's major life activities including mobility, visual or hearing impairment, terminal illness or AIDS diagnosis.
9. Elderly - defined as persons over the age of 65 years.

**MODERATE INCOME
HOUSEHOLD**

A household whose combined annual gross income for all members, adjusted for household size, does not exceed 120 percent of the median income for the San Francisco PMSA as calculated by HUD and adjusted for household size.

**MONITORING
AGENCY**

The Department of City Planning or its designee, shall be the monitoring agency for the purposes of this Procedures Manual.

MONITORING FEES

(See Administrative Fee)

NEW CONSTRUCTION

The construction of new habitable living and accessory space, including additions to existing structures. It does not include conversion of use of existing building space or rehabilitation of existing building space.

OFF-SITE UNITS

Residential units which, when authorized by **conditions of approval** for a **principal project** or other applicable use restrictions, have been newly constructed or created by a conversion of use on a site other than that of the **principal project** in order to satisfy an affordable housing requirement. (See Compliance Procedures in Section 11 B of

this manual).

PRINCIPAL PROJECT	A development on which a requirement to provide affordable housing units is imposed as a condition of approval or pursuant to other applicable use restrictions.
PROJECT SPONSOR	The applicant for a building permit and any other permit to allow construction of a principal project which, as a condition of approval , must provide affordable BMR unit(s) . "Project Sponsor" includes any successors in interest to ownership of all or part of the principal project or any BMR unit .
QUALIFYING HOUSEHOLD	A household whose gross annual income at the time of initial occupancy of a BMR unit , adjusted for household size, does not exceed the income limits established by HUD, and adjusted for San Francisco PMSA, for very low, low, lower, median or moderate income households as specified in the conditions of approval or other applicable use restrictions for the principal project . The household must occupy the unit as a principal residence. In the case of a BMR ownership unit, a qualifying household must be a first-time homebuyer household.
SINGLE ROOM OCCUPANCY (SRO) UNITS	A residential unit which lacks a complete individual bathroom or kitchen.
USE RESTRICTION	(i) A restriction which is recorded in the official records of San Francisco County as a lien on the principal project and any linked off-site affordable housing project or (ii) a restriction contained in applicable provisions of San Francisco Codes, either of which restricts the use of real property, either totally or partially as affordable housing.
UTILITY ALLOWANCE	A dollar amount established periodically by the San Francisco Housing Authority based on U.S. Department of Housing and Urban Development (HUD) standards for cost of basic utilities for households.
VERY LOW INCOME HOUSEHOLD	A household whose combined annual gross income for all members, adjusted for household size, does not exceed fifty (50) percent of the median income for the San Francisco PMSA as calculated by the U.S. Department of Housing and Urban Development (HUD) and adjusted for household size.

II. PROCEDURES (Bold Face words are defined in Section 1).

A. Reporting Procedure.

1. BMR Rental Units.

The **Project Sponsor** of **BMR rental units** shall retain initial rental application forms and household income documentation for the greater of (i) five (5) years from the date of a tenant's occupancy of a **BMR rental unit**, or (ii) the duration of the tenure of the tenant occupying the **BMR unit**. This data may be requested by the **monitoring agency**, on an annual basis, along with an **administrative fee**. In addition, the **monitoring agency**, may request **BMR unit** household income and household size data on an annual basis.

2. BMR Ownership Units.

The owners of **BMR ownership units** shall not be required to comply with any reporting requirements other than the information to be provided to the **monitoring agency** as a condition to the sale of any such unit, as specified in Sections G and H of this manual. However, the **monitoring agency** shall have the right to take any steps reasonably necessary to verify that the **BMR unit** is either owner-occupied or being rented in accordance with the procedures set forth on Section I of this manual.

3. Statistical Information.

The **monitoring agency** may at any time require the **Project Sponsor** to collect information from the owners or tenants of all **BMR units** in the project regarding their ethnicity, gender, age, and such other information as may be requested to allow the **monitoring agency** to verify that there have been no discriminatory practices in the selection of such tenants or owners. The collection of such information shall be conducted in a manner and using a form acceptable to the **monitoring agency**, ensuring that the information is being collected after the tenant or owner selection process is complete, and is used solely for statistical reasons and not as the basis for making any decision regarding the qualification of a tenant or owner for occupancy of a **BMR unit**.

B. Compliance Procedures.

1. *Compliance Through New Construction On-Site.*

When required by **conditions of approval** or other applicable use restrictions, the **project sponsor** shall provide the number and type of **BMR units** satisfying the **conditions of approval** through the construction of said units on the site of the **principal project**.

The **project sponsor** shall construct and, when applicable, manage the **BMR units**.

2. *Compliance Through Conversion of Use On-Site.*

The **conditions of approval** may provide that the **project sponsor** may partially or completely comply with its **BMR** obligation through the conversion of non-residential space to residential units, provided that the following provision is satisfied:

- (a) The unit shall satisfy all City Codes and standards; or
- (b) If rear yard, parking, exposure or other residential zoning standards are not met and requirements for exceptions or variances are met pursuant to the Code, additional **BMR units** or lower income limits on **qualifying households** shall be imposed.

3. *Compliance Through New Construction Off-Site.*

When permitted by **conditions of approval** or other applicable use restrictions, the **project sponsor** may construct the required **BMR units** off-site from the **principal project** according to the requirements of the **conditions of approval**.

C. Marketing Procedures for Initial Sale and Rental of BMR Units.

1. *General Requirements for Marketing of all Initial Sales and Rentals of BMR Units.*

The **project sponsor** shall use good faith and affirmative efforts to attract potential qualifying **first time home buyers** or qualifying renters from all minority communities through the marketing and advertising of the **BMR units**. Toward that goal, the **project sponsor** shall prepare and provide to the **monitoring agency** or its designated review agency a copy of the marketing and/or advertising plan for the sale or rental of the **BMR units** prior to accepting applications or statements of interest for the purchase or lease of the units. No marketing or advertising material shall be distributed or published without the prior written approval of the marketing plan by the **monitoring agency** and all such materials shall be consistent with the approved marketing plan. Approval or disapproval of the **marketing plan** shall be made within ten (10) days of receipt.

2. *Contents of Marketing Plan.*

The marketing plan shall include:

- a. the name, address and phone number of the sales or rental agent;
- b. marketing materials which clearly define rental or **first time homebuyer household** eligibility and which specify documentation and monitoring procedures;

- c. notices that buyers of **BMR units** are subject to special use restrictions;
- d. instructions for prospective purchasers of **BMR units** on how to research specific use restrictions;
- e. a list of media the project sponsor will use to reach **minority communities**;
- f. a strategy for marketing to residents of the immediate neighborhood;
- g. on resale, listing of **BMR ownership units** with a multiple listing service;
- h. a list of community housing organizations which are to receive written notification regarding the availability of the **BMR rental units** prior to commencement of advertising or marketing of such units.

Copies of all printed marketing and advertising materials shall be retained by the **project sponsor** for five (5) years following approval by the **monitoring agency** for review upon request by the **monitoring agency**.

3. *Conduct of Marketing Plan.*

No marketing of the BMR unit(s) shall begin until the **project sponsor** has received written conformation from **the monitoring agency** of the number, type, location, and price or rent of the **BMR units** and permissible income limits of purchasers or tenants, pursuant to Sections F and G of this manual.

The project sponsor shall alert sales or rental staff to the **BMR units** and provide such staff with a copy of this procedures manual and the special use restrictions applicable to the **BMR units**.

The sales or rental programs and procedures shall not have the effect of excluding or discriminating against any person on the basis of race, religion, national origin, sex, sexual preferences, health status, source of income such as disability insurance, social security, AFDC, or any other basis prohibited by Federal, state or local law.

The Equal Housing Opportunity symbol shall be displayed in a visible location at any sales of rental office, and shall be incorporated in all advertisements and printed materials.

Accurate records shall be maintained of all parties who have expressed interest in renting or purchasing the **BMR units**, including how they became aware of the units. These records shall be retained for a minimum of five (5) years from the commencement of any marketing activity, and shall be available for review by any

agency that may be monitoring the sales or rental, including but limited to the **monitoring agency** and the Human Rights Commission.

Units must be advertised in at least one local newspaper of general San Francisco circulation for at least one Sunday prior to entering into any lease or purchase sale agreement.

The **project sponsor** shall inform the **monitoring agency** of the initial availability of all **BMR ownership and rental units**, and the **monitoring agency** may include any phone listing of available units.

D. Marketing Procedures for Resale of BMR Ownership Units.

Marketing of resale of individual **BMR ownership units** shall be in compliance with all applicable federal, state and local laws related to fair housing. Owners and their agents may be asked to certify that the units have not been marketed in such a manner as to be discriminatory. The procedures for resales are more fully described in Section H of this manual. At a minimum, the **project sponsor** shall list resale of individual ownership units with a multiple listing service and shall inform the **monitoring agency** of the availability of those units so the **monitoring agency** may include them on any phone listing of available BMR units.

E. Marketing Procedures for Subsequent Rentals of BMR Rental Units.

Marketing of **BMR rental units** following the vacancy of any such unit must include advertisement of that unit in at least one print media for at least one Sunday prior to entering into any rental agreement for that unit. The **project sponsor** shall inform the **monitoring agency** of the availability of any such unit for inclusion on any phone listing of available units.

F. Rental Procedures of BMR Rental Units.

1. Calculation of Rental Rate Upon Initial Occupancy (Base Rent).

- a. The **project sponsor** shall transmit a copy of the **First Certificate of Temporary Occupancy** for the **BMR unit(s)** to the **monitoring agency** within seven (7) days of its issuance along with a request for determination of the **base rent** for each **BMR unit**.
- b. Within thirty (30) days after receipt of the request for determination, the **monitoring agency** shall calculate the **base rent** for each **BMR unit**, adjusted for unit size, based on the percent of median income established in the **conditions of approval** and the then-existing median income amounts, as determined by HUD, and shall transmit this information to the **project sponsor**.
- c. The **project sponsor** shall then commence marketing the **BMR unit(s)** according to the procedures set forth in Section C of this manual.

- d. The qualifying household income limits and base rent for **BMR units** shall be updated annually and will be available at the Department of City Planning Zoning Counter or at the monitoring agency in a document entitled Guidelines for Application of San Francisco's Inclusionary Affordable Housing Policy.

2. *Permissible Rent Increases.*

The **project sponsor** may increase the **maximum monthly rent** for a **qualifying household** on each anniversary of a tenant's occupancy in an amount which does not exceed the amount determined by the **monitoring agency** based on the percent of median income established in the **conditions of approval** and the then-existing median income amounts as determined by HUD.

3. *Rental Rate Upon Subsequent Occupancy by Qualifying Households.*

The **project sponsor** shall notify the **monitoring agency** of a vacancy of a **BMR unit** prior to offering the unit for rent and prior to marketing the unit according to the marketing procedures set forth in Section E of this manual.

Rental rates for **qualifying households** shall not exceed the applicable amounts published in accordance with the provisions of Subsection F (l) (d) above.

4. *Verification of Income.*

The **project sponsor** shall verify the **qualifying household income** by reviewing supporting documentation from all members of the household including the one year previous W-2 forms and three (3) consecutive and current pay stubs or equivalent.

G. Initial Sales Procedures for BMR Ownership Units.

1. Prior to marketing a **BMR ownership unit** for initial sale, the **project sponsor** shall transmit a copy of the **First Certificate of Temporary Occupancy** for the **BMR unit(s)** to the **monitoring agency**, together with a request for determination of initial sales price.
2. The monitoring **agency** shall calculate the initial sales price of the **BMR unit** according to the following assumptions: (i) the income limits specified in the **conditions of approval**; (ii) total payments of no more than thirty-three (33) percent of the gross monthly income, based on the income limits required by the **conditions of approval** and including a five (5) percent allowance for taxes, insurance, homeowner or association's fees and related costs (which may be raised based on actual homeowner's fees); (iii) a thirty (30) year fixed mortgage at an

interest rate equal to the 11th District Cost of Funds plus 2.5 percent; and (iv) a ten (10) percent down payment. The **monitoring agency** shall transmit this information to the **project sponsor** within ten (10) working days after receipt of the request for determination.

3. The **project sponsor** shall commence marketing of the **BMR unit** according to the procedures set forth in Section C of this manual.
4. After the **project sponsor** has entered into a purchase and sale agreement with a prospective purchaser, and at least thirty (30) days prior to the anticipated date of the close of escrow, the **project sponsor** shall submit to the **monitoring agency** for approval the purchase agreement from the proposed purchaser, and supporting documentation from all members of the purchasers household, including three (3) years IRS returns, three (3) years W-2 forms, and three (3) current pay stubs or equivalent.
5. The **monitoring agency** shall verify the sales price, location of unit, the income of purchasers, and eligibility as a **first time homebuyer**. Within ten (10) working days from receipt of the sale agreement and supporting documentation the **monitoring agency** shall notify the sales agent in writing of its approval or disapproval of the purchase and sale agreement.
6. The **project sponsor** shall comply with the documentation and enforcement procedures contained in Section K of this manual. The **monitoring agency** shall prepare documentation to be placed into escrow, including a certification by purchaser that he/she is aware of the special restrictions, and a promissory note, as applicable, for the difference in the appraised value and the **BMR unit** sales price as described in Section K.
7. In cases where, despite the owners good faith efforts, no **first time homebuyer household** purchaser of the required income level has contracted to purchase a **BMR ownership unit** within six (6) months after the owners receipt of information from the **monitoring agency** under subsection G(2) above, the owner shall inform the **monitoring agency**, which may then increase the permissible income levels for prospective purchasers of that unit up to a maximum twenty (20) percent over the income percentage limit specified in the **conditions of approval**, but shall not increase any current or future permissible sales price of that unit as indicated in the **conditions of approval**.

H. Resale Procedures for BMR Ownership Units.

1. The owner of a **BMR ownership unit** shall, at least thirty (30) days prior to marketing the **BMR unit**, advise the **monitoring agency** of his/her intent to sell the unit and shall request a determination of resale price from the **monitoring agency**.

2. Within the 30-day period, the **monitoring agency** shall inform the owner of the permissible sales price of that unit and any other conditions of sale. The resale price shall be equal to the sum of (a) plus (b) plus (c) below.
 - a. A purchase price recalculated at the time of sale pursuant to Section G (2) above; plus
 - b. The actual cost of **allowable capital improvements** made by that owner, without any adjustment for either depreciation or inflation; plus
 - c. If the unit is listed in the Multiple Listing Service, five (5) percent of the sum of the dollar amount calculated pursuant to subsections (a) and (b) above.

The owner may then market the unit in accordance with the **marketing plan** and other conditions received from the **monitoring agency**.

3. After the owner has entered into a purchase and sale agreement with a prospective purchaser, and at least thirty (30) days prior to the anticipated date of the close of escrow, the owner shall submit to the **monitoring agency** for approval the purchase agreement and supporting documentation from each member of the proposed purchaser household, including three (3) years IRS returns, three (3) years W-2 forms, and three (3) current pay stubs or equivalent.
4. The **monitoring agency** shall verify the sales price, location of unit, the income of purchasers, and eligibility as a **first time homebuyer**. Within five (5) working days of receipt of the sale agreement and supporting documentation the **monitoring agency** shall notify the owner or sales agent in writing of its approval or disapproval of the purchase and sale agreement. No sale may proceed without the written approval of the **monitoring agency**.
5. The **project sponsor** shall comply with the documentation and enforcement procedures set forth in Section K of this manual.
6. In cases where, despite the owner's good faith efforts, no **first time homebuyer household** of the required income level has contracted to purchase a **BMR** ownership unit within six (6) months after the owner's receipt of information from the **monitoring agency** under subsection H (2) above, the owner shall inform the **monitoring agency**, which may then increase the permissible income levels for prospective purchasers of that unit up to a maximum twenty (20) percent over the income percentage limit specified in the **conditions of approval**, but shall not increase any current or future permissible sale price of that unit as indicated in the conditions of approval.

I. Permissible Sublease or Rental Procedures for BMR Units.

A tenant or owner may rent all or part of a **BMR ownership** unit or may sublease all or part of a **BMR rental** unit only if the tenant or owner complies with the following procedures. A **qualifying household** tenant or owner of a **BMR unit** may not rent or sublease any part or all of the unit without prior written consent of the **monitoring agency**.

1. *Permissible Sublease of BMR Rental Units.*

In the case of a **BMR rental unit**, it is anticipated that consent to sublease may be granted where the household is forced to temporarily relocate out of the region for employment requirements, provided that

- a. The total period for which the unit may be subleased does not exceed six (6) months;
- b. The sub-tenant satisfies the income, household size and other qualifying household requirements placed on the **BMR unit** by the **conditions of approval**; and
- c. Initial sublease rent does not exceed the rent then payable by the current tenant.

2. *Permissible Rental of BMR Ownership Units.*

In the case of a **BMR ownership unit**, it is anticipated that consent to rent may be granted in circumstances where the household is temporarily forced to temporarily relocate due to employment requirements, provided that

- a. The total period for which the unit may be leased does not exceed six (6) months;
- b. The tenant satisfies the income, household size and other qualifying household requirements placed on the **BMR unit** by the **conditions of approval**; and
- c. Initial rent does not exceed **base rent**, calculated according to the income percentages under subsection (b) above.

J. Conversion of BMR Rental Units to Ownership Units.

1. When authorized by **conditions of approval** or other applicable use restrictions placed on a **principal project**, a **BMR rental unit** may be permitted to be converted to a condominium for owner occupancy only with prior approval of the

City Planning Commission and only upon satisfaction of all of the following additional conditions:

- a. The conversion from rental to condominium ownership of the **BMR unit** shall be subject to any applicable city procedures, standards, fees and regulations in effect at the time of application.
- b. The **BMR unit** must have been maintained in good physical condition as an affordable rental unit for a minimum of twenty (20) years from the date of issuance of a **certificate of final completion and occupancy**.
- c. The prospective purchaser must be a **first time homebuyer** household whose combined **gross** annual household **income** does not exceed the percentage of median income specified in the **conditions of approval** for permissible occupancy of the **BMR unit** as a rental unit.
- d. Once converted, units shall be subject to all restrictions applicable to the marketing, sale and resale of **BMR ownership units** as set forth in Sections C, D, G, H and K of this manual.

K. Documentation and Enforcement of Sales Restrictions for BMR Ownership Units.

1. To secure the obligations contained in the **conditions of approval**, a purchaser of a **BMR unit** shall execute and deliver to the City a promissory note in a form prepared by the monitoring agency (a "BMR Note"), in an original principal amount equal to the difference between (i) the **fair market value** of the **BMR unit** at the time of such sale, determined without regard to the sales and rental restrictions on such unit, and (ii) the affordable purchase price owed by the purchaser of that unit at the time of the initial sale of such unit pursuant to the **conditions of approval**. All such BMR Notes shall contain the above restrictions on resale and rental of a **BMR unit**. The BMR Note shall provide for a stated rate of deferred interest and/or a stated share of any appreciation in the value of the applicable BMR unit.
2. No BMR Note shall be required if the monitoring agency determines that the affordable purchase price of the applicable **BMR unit** is approximately equal to the **fair market value** of that unit at the time of its initial sale, determined without regard to sales or rental restrictions on that unit. In the event no BMR Note is required for a **BMR unit**, the **monitoring agency** may require the recordation of an acknowledgment by the owner of such unit that the unit is subject to the affordability restrictions contained in the **conditions of approval**.
3. Repayment of the BMR Note shall be secured by a deed of trust encumbering the applicable **BMR unit** in a form prepared by the monitoring agency.

4. Subject to the provision of subparagraph K (5) below, the BMR Note shall be due and payable, in full, upon (i) the sale of the **BMR unit** to which it pertains, or (ii) in the event of a default of any of the conditions, obligations or covenants contained in the BMR Note (including without limitation the covenant to sell the applicable **BMR unit** in compliance with the conditions of approval). All funds received by the City from the repayment of BMR Notes shall be used to subsidize low-income housing in the City.
5. Upon any resale of a **BMR unit**, assuming (i) that there has been no event of default that is continuing under the existing BMR Note, and (ii) that the resale of the **BMR unit** complies with this Procedures Manual and the **conditions of approval**, the **monitoring agency** shall accept a replacement BMR Note (a "Replacement BMR Note") made to the order of the City by the new purchaser of the unit, in form and substance acceptable to the **monitoring agency**, as full satisfaction of the existing BMR Note by the City, the deed of trust securing the existing BMR Note shall be reconveyed by the City, and the new purchase of the **BMR unit** shall deliver to the City the Replacement BMR Note and a new deed of trust securing the Replacement BMR Note and encumbering the applicable **BMR unit**. The principal amount of the Replacement BMR Note shall equal the difference between the **fair market value** of the **BMR unit** and the affordable purchase price owed by the purchaser of such unit at the time of the resale.
6. Upon the expiration of the 50-year term of the affordability restrictions contained in the **conditions of approval** for any **BMR unit**, any deed of trust securing a BMR Note shall remain a valid, enforceable lien on the applicable **BMR unit** until the next resale of such unit, at which time the maker of such BMR Note shall pay to the City the full amount due under the BMR Note. At such time as a BMR Note is repaid pursuant to this subparagraph, the lien of the deed of trust securing such BMR Note shall be released and the unit shall no longer be subject to the affordability restrictions.
7. At the request of the **monitoring agency**, and at the time of the initial or any subsequent sale of a **BMR unit**, the purchaser shall enter into such agreements or other documents as the **monitoring agency** may require to ensure that the unit will be subject to the affordability restrictions described in the **conditions of approval**.
8. The restrictions imposed by the **conditions of approval**, and any liens recorded pursuant thereto, shall not be subordinated to any other liens or restrictions affecting the project or a **BMR unit** to which the conditions of approval apply; provided, however, that the **monitoring agency** may approve a refinancing of a first-priority mortgage of the **BMR unit** to secure a lower interest rate, in an amount not to exceed the outstanding principal balance of the original mortgage plus customary transaction costs.

9. Concurrently with and after the filing of any tentative subdivision map or recordation of any final subdivision map, a notice of special deed restrictions and other appropriate documentation (including deeds of trust securing the obligations of the purchasers of **BMR units**) against the land record shall be filed with the Office of the Recorder of the City and County of San Francisco for the **BMR units** in order to implement the **conditions of approval**. Such deed restrictions and other recorded documents shall include language restricting the sale of the **BMR units** in accordance with the **conditions of approval**.

L. Conflict of Interest.

The **project sponsor** may not make an initial sale or rental of a **BMR unit** to the project architect, attorney, prime contractor, or to anyone of its or their employees, directors, officers or agents, or to any of their family members, as determined by the **monitoring agency**.