

SAN FRANCISCO MAYOR'S OFFICE OF HOUSING  
CONDOMINIUM CONVERSION BELOW MARKET RATE PROGRAM  
*Release Fee Option for Pre-Affidavit Owners*

**AGREEMENT TO PAY A FEE TO RELEASE BMR UNIT FROM THE CONDO  
CONVERSION BMR PROGRAM AS ALLOWED BY SUBDIVISION CODE SECTION 1344**

This Agreement to Pay a Fee to Release BMR Unit ("Agreement") is made as of \_\_\_\_\_, 20\_\_, (the "Effective Date") by and between \_\_\_\_\_ as \_\_\_\_\_ ("Owner") and the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through the Mayor's Office of Housing ("City"). Owner has acquired a fee interest in that certain real property in the City with a street address of \_\_\_\_\_, San Francisco, California \_\_\_\_\_, and more particularly described on Exhibit A attached hereto ("Property"). The following recitals of fact are a material part of this Agreement:

- (a) The City developed the Condominium Conversion Below Market Rate Program (the "Program") to provide home ownership opportunities to individuals and families with low and moderate incomes and to existing tenants being displaced by proposed condominium conversions by offering homes for sale at prices which are below those otherwise prevailing in the market;
- (b) The City's intent is to preserve the affordability of such homes by restricting the resale price and by imposing certain other restrictions on occupancy and transfers; and
- (c) Pursuant to San Francisco Subdivision Code Section 1344, the Owner is a Pre-Affidavit Owner (as defined in the Code) who has requested to be released from the Program in exchange for payment of a fee.

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the Program, Owner and the City agree as follows:

1. Owner hereby agrees to pay a fee to the City's affordable housing fund in exchange for the permanent release of the Property from the Program, as allowed by Subdivision Code Section 1344. In doing so, Owner hereby acknowledges, represents and warrants that it has reviewed the Subdivision Code sections applicable to the Program and agrees to the terms therein.

2. Owner hereby agrees to perform as follows:

(a) Owner shall pay the fee amount as published in Subdivision Code Section 1344 of \$\_\_\_\_\_ (the "Fee"). Except as set forth in Sections 2(b) and 2(c) below, Owner shall pay such fee on the Effective Date.

(b) Unless prohibited to do so under Section 2(c) below, in lieu of paying the Fee on the Effective Date, Owner may execute a promissory note ("Note") and a deed of trust securing such Note ("Deed of Trust") in favor of the City, which Deed of Trust shall be recorded against the Property on the Effective Date (the "Lien Option"). Under the Lien Option, the Note shall be in the amount of the lesser of: (i) the Fee or (ii) 50% of the difference between the BMR sales price and the Fair Market Value at the time of repayment. The Note shall be due and payable in full upon any "Transfer" of the Property, but in any event no later than the date that is fifty (50) years from the Effective Date. "Transfer" means any voluntary or involuntary sale, assignment or transfer of any interest in the Property, except for those transfers expressly permitted under the Note. For the purposes of this Agreement, the BMR sales price and Fair Market Value shall be determined pursuant to Subdivision Code Sections 1341 and 1344. Additionally, the City shall increase the BMR sales price by \$\_\_\_\_\_, representing

**SAMPLE CLOSING DOCUMENTS**

the amount paid by Owner and approved by MOH for capital improvements and special assessments made on the Property prior to the Effective Date.

(c) Notwithstanding the foregoing, Owner may only select the Lien Option if total debt on the Property, including the City's lien, is determined by MOH to be less than 80% of the Fair Market Value of the Property as of the Effective Date. In the event that Owner is not permitted to select the Lien Option on the Effective Date, Owner shall have ten (10) years from the Effective Date to either (i) pay the Fee, or (ii) reduce total debt on the Property to less than 80% of the fair market value of the Property. Owner may submit documentation to the Mayor's Office of Housing ("MOH") at any time within said 10 year period to establish that total debt on the Property to less than 80% of the fair market value of the Property. If MOH determines that the total debt on the Property has been reduced to less than 80% of the Fair Market Value of the Property, MOH will inform Owner and Owner may execute and record the Note and Deed of Trust, at which time the City shall execute and record the Release (as defined below). In the event that Owner cannot meet the requirements of this Section 2(c) within 10 years of the Effective Date, this Agreement shall terminate and the Property shall remain subject to the Program for the life of the Property. Owner hereby agrees and acknowledges that in such an event, Owner and the Property shall thereafter be subject to the restrictions set forth in Subdivision Code Section 1344 applicable to a "Pre-Legislation Owner" (as defined in Subdivision Code Section 1344).

(d) Owner shall provide to City written notice of any proposed Transfer at least sixty (60) days prior to the agreed upon transfer date; provided however that any Transfer expressly permitted under the Note shall not require such written notice. Failure to provide timely notice in compliance with this Section shall be a default hereunder.

3. Concurrently with Owner's payment of the Fee or execution and recordation of the Note and Deed of Trust, City shall execute a Release of Special Restrictions Under the City Subdivision Code (the "Release"). The Release will provide that the Property shall no longer be subject to the Program restrictions. As set forth in Section 2 above, in the event that (i) Owner does not pay the Fee on the Effective Date; and (ii) total debt on the Property equals or exceeds 80% of the fair market value of the Property as of the Effective Date such that Owner is not permitted to select the Lien Option, City shall not execute and record the Release unless and until Owner satisfies the requirements of Section 2(c) above.

4. If Owner selects the Lien Option, Owner may cause or permit any future mortgages, encumbrances or liens upon the Property. If Owner wants such lien to be senior to the City lien, Owner shall make a written request to MOH. For proposed senior liens that MOH determines would not increase the total debt secured by the Property, including the City lien, over 80% of Fair Market Value of the Property, the City shall subordinate the City lien to such permitted lien. For proposed senior liens that MOH determines would increase the total debt secured by the Property, including the City lien, over 80% of fair market value of the Property, the City may elect, in its sole discretion, whether or not to subordinate the City lien to such lien in accordance with the terms and conditions set forth in the Deed of Trust.

5. If Owner desires to use the Lien Option, MOH and Owner will determine Fair Market Value of the Property in accordance with Subdivision Code Section 1344(b) in order to determine whether the Lien Option is available under the terms of Section 2(c) above. If Owner selects the Lien Option, MOH agrees to pay fifty percent (50%) of all closing costs (but only up to \$650) in connection with the execution and recordation of the Deed of Trust and Release; provided however that MOH will not pay any closing costs if Owner is entering into another transaction with respect to the Property concurrently therewith. Owner acknowledges and agrees that all other closing costs and the cost of any future transactions related to the Property, including but not limited to the cost of any fair market appraisals needed to establish the appropriate payoff amount or to determine loan to value ratio, will be the Owner's responsibility.

#### **SAMPLE CLOSING DOCUMENTS**

MOH WILL PROVIDE INDIVIDUALIZED CLOSING DOCUMENTS FOR YOUR BMR UNIT AT ESCROW

6. Owner shall provide a copy of any notice of default under any senior lien recorded against the Property (a "Senior Lien") to the City within three (3) days of Owner's receipt of such notice. In the event of any default under a Senior Lien, City, in addition to any other rights and remedies it may have under this Agreement, the Note, the Deed of Trust, at law or in equity, shall have the right to cure such default or foreclose its Deed of Trust on the Property. Although the City has no obligation to do so, the City may perform any act required of Owner in order to prevent a default under, or an acceleration of the indebtedness secured by, a Senior Lien or the commencement of any foreclosure or other action to enforce the collection of such indebtedness. If the City elects to cure any such default, Owner shall pay the expenses incurred by the City in effecting any cure upon demand within thirty (30) days, together with the interest thereon at the maximum interest rate permitted by law, which amount shall be secured by the Deed of Trust.

7. As a material term of this Agreement and condition to City's approval of the Property's release from the Program, Owner, on behalf of itself and its successors, heirs and assigns, waives any right to recover from, and forever releases and discharges, City, its officers, employees, boards, departments, commissions, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the Program.

This release and discharge includes, to the extent applicable, an express waiver, release and relinquishment of all rights under section 1542 of the California Civil Code, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

8. If any action or legal proceeding is instituted by Owner or the City arising out of this Agreement, the prevailing party therein shall recover reasonable attorneys' fees and costs in connection with such action or proceeding. For purposes of this Agreement, reasonable fees of any in-house counsel for the City shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the City's in-house counsel's services were rendered who practice in law firms located within the City.

9. This Agreement constitutes an integration of the entire understanding and agreement of the Owner and the City with respect to the subject matter hereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically and expressly incorporated in this Agreement, shall not be binding on any of the parties, and Owner and the City each acknowledge that they have not relied, in entering into this Agreement, on any representation, warranty, promise or condition, not specifically and expressly set forth in this Agreement. All prior discussions and writings have been, and are, merged and integrated into, and are superseded by, this Agreement.

IN WITNESS WHEREOF, Owner and the City have executed this Agreement as of the date written above.

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OWNER:

\_\_\_\_\_

CITY:

City of the City and County of San Francisco

By:

\_\_\_\_\_  
Myrna Melgar  
Director of Homeownership Programs  
Mayor's Office of Housing

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By:

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