

SAN FRANCISCO MAYOR'S OFFICE OF HOUSING
CONDOMINIUM CONVERSION BELOW MARKET RATE PROGRAM
Release Fee Option for Original Subdividers

AGREEMENT TO PAY A FEE FOR RELEASE FROM THE CONDO CONVERSION BMR PROGRAM AS ALLOWED BY SUBDIVISION CODE SECTION 1344 (ORDINANCE #320-08)

This Agreement to Pay a Fee For Release ("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 the following real property in the City of San Francisco:

[LIST EVERY UNIT SUBJECT TO THIS AGREEMENT]

(each, a "BMR Unit" and collectively, the "BMR Units"). 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;
- (c) Pursuant to San Francisco Subdivision Code Section 1344, the Owner is an Original Subdivider (as defined in the Code) who has chosen to rent the BMR Units under Subdivision Code Section 1341(d) and has continued to rent such units; and
- (d) In accordance with Subdivision Code Section 1344(h), Owner is requested to have the BMR Units 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 BMR Units from the Program, as allowed by Subdivision Code Section 1344(h). 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) For each BMR Unit, Owner shall pay the fee amount as published in Subdivision Code Section 1344(h). The fee for each BMR Unit subject to this Agreement is as follows:

[LIST EACH UNIT AND ACTUAL FEE FOR EACH UNIT AS PER 1344(H)]

Each fee listed above shall hereinafter be referred to individually as the "Fee". Except as set forth in Sections 2(b) and 2(c) below, Owner shall pay the Fee for each BMR Unit 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 for any particular BMR Unit, Owner may execute a promissory note (each, a "Note") and a deed of trust securing such Note (each, a "Deed of Trust") in

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favor of the City, which Note and Deed of Trust shall be recorded on the Effective Date against each applicable BMR Unit (the "Lien Option"). The Note shall be in the amount of the lesser of: (i) the applicable Fee or (ii) the sum of 50% of the difference between the BMR sales price and the Fair Market Value at the time of repayment for that particular BMR Unit. The Note shall be due and payable in full upon the earlier of: (i) any "Transfer" of the BMR Unit; or (ii) January 18, 2029. "Transfer" means any voluntary or involuntary sale, assignment or transfer of any interest in the applicable BMR Unit. 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 for each applicable BMR Unit by \$_____, representing the amount paid by Owner and approved by MOH for capital improvements and special assessments made on all of the BMR Units prior to January 18, 2009 and divided by the number of BMR Units to establish a per unit cost. Unless prohibited to do so under Section 2(c) below, Owner shall be required to execute a Note and Deed of Trust for each and every BMR Unit that Owner does not pay the Fee for on the Effective Date.

(c) Notwithstanding the foregoing, Owner may only select the Lien Option for particular BMR Units if total debt on such BMR Units, including the City's lien, is less than 80% of the fair market value of such BMR Units as of the Effective Date (as determined by MOH in its sole discretion). In the event that Owner is not permitted to select the Lien Option for such BMR Units on the Effective Date, and Owner does not want to pay the Fee for such BMR Units, Owner shall have ten (10) years from the Effective Date to either (i) pay the Fee for such BMR Units, or (ii) reduce total debt on the BMR Units to less than 80% of the fair market value of the BMR Units. 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 BMR Units to less than 80% of the fair market value of the BMR Units. If MOH determines in its sole discretion that the total debt on the BMR Units has been reduced to less than 80% of the fair market value of the BMR Units, MOH will inform Owner and Owner may execute and record a Note and Deed of Trust for each such BMR Unit, at which time the City shall execute and record the Release (as defined below). In the event that the Owner cannot meet the requirements of this Section 2(c) within 10 years of the Effective Date, this Agreement shall terminate with respect to the applicable BMR Units, and those BMR Units shall remain subject to the Program. 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 Sections 1341, 1344 and 1385.

(d) Owner shall provide to City written notice of any proposed Transfer at least sixty (60) days prior to the agreed upon transfer date. Failure to provide timely notice in compliance with this Section shall be a default hereunder.

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

4. If Owner selects the Lien Option for a BMR Unit, Owner shall not be permitted to subsequently request a release from the Fee payment obligations for that BMR Unit pursuant to Subdivision Code Section 1344(h)(1).

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5. Owner shall provide a copy of any notice of default under any senior lien recorded against a BMR Unit (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 applicable BMR Unit. 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.

6. If Owner selects the Lien Option for a BMR Unit, Owner shall not cause or permit any future mortgages, encumbrances or liens upon such BMR Unit, whether for the purpose of refinancing or otherwise, except as permitted by MOH. For proposed liens that would not increase the total debt secured by the BMR Unit, including the City lien, over 80% of fair market value of the BMR Unit (as determined by MOH in its sole discretion), MOH shall approve or disapprove of such lien in its reasonable discretion, and in the event that MOH approves such lien, the City shall, upon the Owner's request, subordinate the City lien to such permitted lien. For proposed liens that would increase the total debt secured by the BMR Unit, including the City lien, over 80% of fair market value of the BMR Unit (as determined by MOH in its sole discretion), MOH shall approve or disapprove of such lien in its sole discretion, and in the event MOH approves such lien, City may elect, in its sole discretion, to subordinate the City lien to such lien in accordance with the terms and conditions set forth in the Deed of Trust.

7. If Owner desires to use the Lien Option for a BMR Unit, MOH and Owner will determine Fair Market Value of the BMR Unit 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 for a BMR Unit, 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 BMR Unit concurrently therewith. Owner acknowledges and agrees that all other closing costs and the cost of any future transactions related to the such BMR Unit, 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.

8. As a material term of this Agreement and condition to City's approval of the BMR Units' 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."

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9. 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.

10. 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.

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