

Marin County Below Market Rate Home Ownership Program

BUYER'S DISCLOSURE STATEMENT

Buyer(s):
Property Address:
Name of Development:
Local Jurisdiction:
Income Category of Unit:
Purchase Price:

NOTICE: THIS AGREEMENT RESTRICTS THE REFINANCE AND TRANSFER OF YOUR PROPERTY.

As a participant in the Marin County Below Market Rate Home Ownership Program, you are buying a home at an affordable price that is significantly below the market rate. In exchange for giving you the opportunity to buy your house at a below-market affordable price, you are required to sign a Resale and Refinancing Restriction Agreement and Option to Purchase (the "Resale and Refinancing Restriction Agreement") and a deed of trust. **The Deed of Trust and the Resale and Refinancing Restriction Agreement will be recorded against your property.** These agreements are enforceable by the Housing Authority of the County of Marin (the "Authority"), which has been designated as the public agency that will administer the Below Market Rate Home Ownership Program on behalf of the Local Jurisdiction.

In general, the Deed of Trust and the Resale and Refinancing Restriction Agreement set forth conditions that you must meet, including but not limited to the following:

- The Resale and Refinancing Restriction Agreement requires you to live in your home as your principal place of residence, and prohibits you from renting-out your home, except under certain limited circumstances.
- The Resale and Refinancing Restriction Agreement places restrictions on refinancing your home. You must obtain approval of the Authority before you may refinance any existing loan or take out an additional loan (including an equity line of credit) on your home.

- The Authority has an option to purchase your home at a restricted price when you put the home up for sale or if you violate the terms of the Resale and Refinancing Restriction Agreement or the Deed of Trust.
- The Resale and Refinancing Restriction Agreement places controls on the sale of your home. If the Authority does not exercise its option to purchase the home and you sell the home on the open market, you will have to pay the Authority any excess sales proceeds you may get from the sale of your home. In addition, you must follow certain steps and procedures when you decide to sell your home.

The purpose of the Resale and Refinancing Restriction Agreement and Deed of Trust is to make sure that the Local Jurisdiction's goal of providing affordable homeownership opportunities to low and moderate income buyers continues to be met. The Local Jurisdiction has helped you to buy a home at an affordable price; it wants to help others like you as well.

This Disclosure Statement explains the major provisions of the Resale and Refinancing Restriction Agreement so that you will understand its requirements. **You should, of course, read the entire Resale and Refinancing Restriction Agreement, and the Deed of Trust and become completely familiar with them.**¹

A. REQUIREMENTS IN EFFECT FOR 50-YEAR TERM

The requirements that are in the Resale and Refinancing Restriction Agreement apply until the earlier of (i) fifty (50) years from the date the Resale and Refinancing Restriction Agreement is recorded, or (ii) the date you sell or transfer your home in accordance with the Resale and Refinancing Restriction Agreement and the Deed of Trust. If you own and live in your home for the whole fifty (50)-year term, all of the requirements of the Resale and Refinancing Restriction Agreement go away.

B. PRIMARY RESIDENCE AND LEASING YOUR HOME

Your house must be your main place of residence. This means you must live in your home for at least ten (10) months out of each calendar year. If you are absent from your home for a period of sixty (60) days, the Authority will assume that you have abandoned your home. Upon the Authority's request, you must tell the Authority in writing that you are meeting this requirement. You are not allowed to lease or rent the house to anyone, except in the event of extreme hardship (e.g., you require hospitalization), you may apply in writing to the Authority for approval to rent out your home for not more than twelve (12) months. If the Authority approves the rental, the rent

¹ Numerical examples are included in this Disclosure Statement to help you better understand the concepts, terms, and provisions of the Resale and Refinancing Restriction Agreement. Please be aware that these are simply to show how things work and that they are not intended to represent your specific situation. If you follow along with a calculator, you may not get exactly the same answers. Any differences are probably due to how your calculator "rounds-off" numbers.

will be limited to an amount to be determined by the Authority, and the tenant will have to qualify as income-eligible, as determined by the Authority. If you violate either of these requirements, you will be in default under the Resale and Refinancing Restriction Agreement, and the Authority may sue to enforce this requirement or may require you to sell the home to the Authority in the manner described in the Resale and Refinancing Restriction Agreement.

C. MAINTAINING YOUR HOME/ PROPERTY INSURANCE

By signing the Resale and Refinancing Restriction Agreement and Deed of Trust, you agree to keep your home and landscaping in good repair and in neat, clean, and orderly condition and to prevent deterioration of the home. You also agree to keep a standard homeowner's insurance policy, with the Authority named as an additional insured. The insurance policy shall be in an amount equal to the replacement value of the home. Every five (5) years, if requested by the Authority (or as provided by the policy), the replacement value will be reviewed and adjusted.

D. AUTHORITY HAS OPTION TO PURCHASE

In exchange for the opportunity that the Local Jurisdiction gave you to buy your home at an affordable, below-market price, you agree that the Authority has an option to buy your home at a restricted price if you sell your home during the term of the Resale and Refinancing Restriction Agreement. In other words, the Authority has the first opportunity to buy your house before anyone else. The Authority may also give its option to purchase your house to another public agency or a person or family meeting income and other requirements.

E. SALES PRICE OF HOME IF PURCHASED BY THE AUTHORITY OR ITS ASSIGNEE: RESTRICTED RESALE PRICE

The Authority and the Local Jurisdiction have helped make the cost of buying a home affordable to you. The Authority also wants to make sure that others like you get the same chance. Therefore, the Resale and Refinancing Restriction Agreement limits the sales price of your home if the Authority exercises its option to purchase your home within the term of the Resale and Refinancing Restriction Agreement. The maximum price you can receive if the Authority exercises its option to purchase your home (the "Restricted Resale Price") is determined by taking the **lowest** of the Median Income Price, the Index Price, and the Fair Market Value, as described below; and then increasing or decreasing that amount to account for the cost of capital improvements, special assessments, damage to the home, and/or advances made by the Authority, as also described below.

THE RESTRICTED RESALE PRICE IS CALCULATED BY TAKING THE LOWEST OF THE FOLLOWING:

1. **Median Income Price**
 - (a) Base Price of Home (price at which you bought it)
 - (b) increased by the percentage increase of the median household income for the San Francisco Primary Metropolitan Statistical Area (as defined in the Resale and Refinancing Restriction Agreement), from the date of your original purchase (the recording date of the Grant Deed for the property) to the date of receipt by the Authority of notice of an event triggering the Authority Option
2. **Index Price**
 - (a) Base Price of Home (price at which you bought it)
 - (b) increased by the percentage increase in the Consumer Price Index for All Urban Consumers for the San Francisco Bay Area, published by the U.S. Department of Labor ("CPI") from the date of your original purchase (the recording date of the Grant Deed for the property) to the date of receipt by the Authority of notice of an event triggering the Authority Option
3. **Fair Market Value**
 - (a) Determined by appraiser selected and paid for by you
 - (b) Approved in writing by Authority

AND MAKING THE FOLLOWING ADJUSTMENTS TO THAT AMOUNT:

1. **Capital Improvements**
 - (a) Increased by the original cost of any Capital Improvements, meeting the requirements of Section 10(a) of the Resale and Refinancing Restriction Agreement
 - (b) less any depreciation in value since the time of installation²
2. **Special Assessments**
 - (a) Increased by any special assessments (not including interest or penalties) paid to pay for special repair or litigation costs assessed against homeowners' association members,
 - (b) as approved by the Authority

² Note that Capital Improvements, among other requirements, must be approved in writing by the Authority before they are installed, as further described in the Resale and Refinancing Restriction Agreement.

3. **Damage**
 - (a) Decreased by the amount necessary to repair damage to the home to place the home in sellable condition
4. **Advances by Authority**
 - (a) Decreased by the amount of all costs advanced by the Authority for any expenses related to the home

Example 1 shows how the Restricted Resale Price formula works.

EXAMPLE 1 You sell your house at the end of 8 years. The original price you paid for your home was \$250,000 (the Base Price). The fair market value of your home, as determined by an appraisal at the time you wish to sell your home is \$400,000. The median income for a family of four in Marin County when the home was bought was \$95,000. Median income increases by 24% over the 8 years. CPI increases by 26% over the 8 years. Five years after buying your home, you remodel your kitchen (with prior Authority approval) at a cost of \$4,500.

(a)	<u>Median Income Price</u> multiply Base Price by 24%, then add result (\$60,000) to Base Price	\$310,000
(b)	<u>Index Price</u> multiply Base Price by 26%, then add result (\$65,000) to Base Price	\$315,000
(c)	<u>Fair Market Value</u>	\$400,000

Take the lowest of the Median Income Price, the Index Price, and The Fair Market Value. In this case, the lowest is the Median Income Price.

(a)	Median Income Price	\$310,000
(b)	Add Cost of Eligible Capital Improvements	+ 4,500
(c)	Less Depreciation of Value of Eligible-Capital Improvements	- <u>1,000</u>
	<u>RESTRICTED RESALE PRICE</u>	\$313,500

F. SELLING YOUR HOME

Under the terms of the Resale and Refinancing Restriction Agreement, when you go to sell your home at any time within the fifty (50)-year term, there are three (3) different ways that the sale can take place:

- The Authority chooses to use its option to purchase your house at the restricted sales price, or the Authority assigns this option to a third party that purchases the home at the Restricted Resale Price.
- The Authority consents to your sale of your home at the Restricted Resale Price to an income-qualified third party if that party agrees to enter into a new fifty (50)-year Resale and Refinancing Restriction Agreement with the Authority.
- The Authority decides not to exercise its option and permits you to sell your home at an unrestricted (market) sales price to a purchaser of your choosing. You must pay the Authority any "Excess Sales Proceeds" that may result from this type of sale.

These three cases are described below.

1. AUTHORITY (OR THIRD PARTY ASSIGNEE) EXERCISES ITS OPTION TO PURCHASE YOUR HOME AT THE RESTRICTED RESALE PRICE

When you decide to sell your home, you must let the Authority know in writing. This notice is called the "Notice of Intent to Transfer". The Notice of Intent to Transfer must be sent in a particular way and must include specific information as detailed in Section 5(a) (Notice of Intent to Transfer) and Section 26 (Notices) of the Resale and Refinancing Restriction Agreement. If you fail to send the Authority this notice, you will be in default under the Resale and Refinancing Restriction Agreement and the sale of your home may be delayed.

Once the Authority has received your "Notice of Intent to Transfer", a series of inspections and reports will be made. If, for any reason, you withdraw your "Notice of Intent to Transfer" after the Authority has sent the "Acknowledgement of Receipt of Notice to Transfer", you will be liable for a fee of \$1,000.

Seller(s)'s Initials: _____

You are responsible for putting the home in good condition for its sale. Once you have sent the Owner's Notice of Intent to Transfer, you must take the steps to prepare the home for sale as described in Section 6 (Preparation of Premises for Sale; Authority Inspection of Premises) of the Resale and Refinancing Restriction Agreement.

The Authority will then let you know in a notice called the "Notice of Exercise" if it will use its option to purchase. The Authority must send you this Notice within sixty (60) days of receiving a complete Notice of Intent to Transfer. See Section 5(b) (Notice of Exercise). If the Authority decides to use its option to purchase your home at the Restricted Resale Price, the Authority will provide the Restricted Resale Price amount in the Notice of Exercise. At the time you send the Notice of Intent to Transfer to the Authority, you will need to follow the steps in Section 6 (Preparation of Premises for Sale; Authority Inspection of Premises) of the Resale and Refinancing Restriction

Agreement to prepare your home for sale and allow the Authority to inspect the home. The purchase by the Authority shall take place within the later of (i) ninety (90) days after the Authority receives the Notice of Intent to Transfer or (ii) ten (10) days after you have completed all of the requirements of Section 6 (Preparation of the Premises for Sale; Authority Inspection of Premises) of the Resale and Refinancing Restriction Agreement.

If the Authority or its assignee exercises the Option, the Authority will charge a transaction fee equal to two percent (2%) of the Restricted Resale Price, to be divided equally between buyer and seller. This transaction fee is not added to the Restricted Resale Price.

Instead of the Authority itself exercising the Option and purchasing your home, the Authority may assign the Option to a qualified third party (usually a homebuyer), who will buy your home at the Restricted Resale Price under the same procedure as described above.

2. SALE TO A THIRD PARTY WHO WILL ENTER INTO A NEW RESALE AND REFINANCING RESTRICTION AGREEMENT WITH THE AUTHORITY

If the Authority decides not to exercise the Authority Option, and you have located a potential income-eligible purchaser to purchase your home at the Restricted Resale Price, you may request the Authority to approve the sale. The Authority will issue a notice of Consent to Transfer if the Authority verifies that the purchaser is income-eligible and if it approves the sale at the Restricted Resale Price to the proposed purchaser. The Authority must send you the Consent to Transfer within sixty (60) days of receiving a complete Notice of Intent to Transfer. See Section 5(c) (Notice of Consent to Transfer). The Authority will confirm the Restricted Resale Price amount in the Consent to Transfer. At that time you will need to follow the steps in the Section 6 (Preparation of Premises for Sale; Authority Inspection of Premises) of the Resale and Refinancing Restriction Agreement to prepare your home for sale and allow the Authority to inspect the home. The proposed purchaser must sign a new Resale and Refinancing Restriction Agreement with the Authority within thirty (30) days after the Authority has received the Notice of Intent to Transfer. If no such agreement is executed, the Authority has an additional fifteen (15) days to exercise its Option.

3. SALE TO A "MARKET PURCHASER;" PAYMENT OF "EXCESS SALES PROCEEDS" TO AUTHORITY

If the Authority decides not to exercise the Authority Option or the Authority fails to deliver a Notice of Exercise or a Consent to Transfer within the applicable time periods, you may sell the house at an unrestricted sales price to a purchaser of your choosing (a "Market Purchaser"). At the close of escrow, upon your request, the Authority will record a notice of abandonment of the Option.

If you sell your home to a Market Purchaser at an unrestricted price, you will be required to give the Authority specific documents and information as described in Section 11 (Obligations of Owner if Authority Does Not Exercise Option; Payment of Excess

Sales Proceeds from Unrestricted Sale) of the Resale and Refinancing Restriction Agreement.

The unrestricted sales price at which you sell the house to the Market Purchaser must be supported by an appraisal. In addition, you must pay to the Authority any "Excess Sales Proceeds" that result from the sale of your house to a Market Purchaser. You must also pay Excess Sales Proceeds to the Authority if you sell or transfer your home in a way that violates the terms of the Resale and Refinancing Restriction Agreement.

The term "Excess Sales Proceeds" is defined in Section 11 of the Resale and Refinancing Restriction Agreement (Obligations of Owner if Authority Does Not Exercise Option; Payment of Excess Sales Proceeds from Unrestricted Sale) as the amount by which the gross sales proceeds you receive from the buyer (less six percent (6%) realtor commission) exceed the Restricted Resale Price for the home. Another way to put it is the following:

$$\begin{array}{r} \text{Gross Amount of Money the New Buyer Paid for the House} \\ \text{MINUS} \\ \text{6\% realtor commission} \\ \text{MINUS} \\ \text{Restricted Resale Price} \\ \text{Equals the Payment to the Authority of Excess Sales Proceeds} \end{array}$$

This formula is intended to ensure that you receive the same net amount of sales proceeds from an unrestricted sale that you would have received if the Authority had purchased your home at the Restricted Resale Price.

The amount of Excess Sales Proceeds that you pay to the Authority is used by the Authority for other affordable housing programs. The Local Jurisdiction and the Seller gave you the chance to buy your home at a price that was below-market and affordable to you. When you pay the Excess Sales Proceeds, those funds are going to help other low and moderate income families who, like you, would not be able to obtain affordable housing without assistance.

Example 2 shows how the Excess Sales Proceeds are calculated.

EXAMPLE 2 You sell your house at the end of 8 years. You originally paid \$250,000 for your home. The Restricted Resale Price is \$313,500. You sell your house to a Market Purchaser at an unrestricted price. The house is appraised at \$400,000. You find a Market Purchaser who agrees to buy your home at \$400,000. You must pay the Authority Excess Sales Proceeds as calculated below:

$$\begin{array}{r} \text{Total Amount Market} \\ \text{Purchaser Paid For House} \end{array} \qquad \qquad \qquad \$ 400,000$$

MINUS	
6% realtor commission	- \$24,000
MINUS	
Restricted Resale Price	<u>-\$313,500</u>
	\$ 62,500
Amount of Excess Sales Proceeds You Pay to Authority	\$ 62,500

When the sale of your home to the Market Purchaser is completed, you must submit to the Authority the information and documents listed in Section 11 (Obligations of Owner if Authority Does Not Exercise Option; Payment of Excess Sales Proceeds from Unrestricted Sale) of the Resale and Refinancing Restriction Agreement and pay the Excess Sales Proceeds to the Authority.

G. TRANSFER OF OWNERSHIP

A Transfer of the property must meet the requirements of the Resale and Refinancing Restriction Agreement. Please read the Agreement for a specific description of the requirements.

H. REFINANCE OF YOUR FIRST MORTGAGE

The Resale and Refinancing Restriction Agreement allows you to refinance your first mortgage loan ONLY with prior written Authority consent. The Authority will give consent to the refinance only if, following refinancing of your first mortgage, the principal amount of all debt secured by your house will not exceed the greater of: (i) ninety percent (90%) of the Restricted Resale Price as established by the Authority; or (ii) the outstanding balance on the existing first mortgage. Negatively amortizing first mortgage loans are not permitted. If you are considering a refinance of your first mortgage, you should contact the Authority for a calculation of the Restricted Resale Price amount. You must obtain approval of your new first mortgage from the Authority in order for the Authority to subordinate its deed of trust to a refinanced first mortgage. Failure to comply with these requirements is a default under the Resale and Refinancing Restriction Agreement, which could result in foreclosure of your home or exercise of the Authority's option to purchase your home.

I. LIMITATION ON DEBT SECURED BY YOUR HOME

The Resale and Refinancing Restriction Agreement allows you to place additional mortgages on your home (including equity lines of credit) ONLY with prior written Authority consent. The Authority will give consent to the refinance only if, following the additional encumbrance, the total principal amount of debt secured by your home does not exceed the greater of: (i) ninety percent (90%) of the Restricted Resale Price as established by the Authority; or (ii) the outstanding balance on the existing first mortgage. Negatively amortizing junior loans are not permitted. If you are considering obtaining a second mortgage loan or equity line of credit, you should contact the

Authority for a calculation of the Restricted Resale Price amount. Failure to comply with these requirements is a default under the Resale and Refinancing Restriction Agreement, which could result in foreclosure of your home or exercise of the Authority's option to purchase your home.

J. DEFAULT PROVISIONS

When you buy your home, you agree to meet all of the conditions of the Authority documents. If you violate any provisions of the documents, you are considered to be in default under the Resale and Refinancing Restriction Agreement. Also, if you default under any other loan on the home, such as the first mortgage, you would also be considered to be in default under the Resale and Refinancing Restriction Agreement. If you do not correct the violation, the Authority could exercise its option and buy your home. The Authority could also go to court and get a court order to enforce the provisions of the Authority documents, which may result in a foreclosure on your home.

Please sign this Buyer's Disclosure Statement in the space provided below, and keep a signed copy for your records, and return the original to the Authority at the following address:

Housing Authority of the County of Marin
Attention: BMR Home Ownership Program
4020 Civic Center Drive
San Rafael, CA 94903-4173

I have read and understand the above Buyer's Disclosure Statement.

By: _____
Signature of Buyer

Dated: _____

Print Name of Buyer

By: _____
Signature of Buyer

Dated: _____

Print Name of Buyer