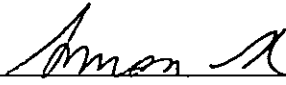


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



Glen R. Googins
City Attorney

Dated: 3-11-15

AFFORDABLE HOUSING REGULATORY AGREEMENT
BETWEEN
THE CITY OF CHULA VISTA AND
LENNAR HOMES OF CALIFORNIA, INC.

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Chula Vista
276 Fourth Avenue
Chula Vista CA 91910
Attn: Housing Manager

No fee for recording pursuant to
Government Code Section 27383

(Space above for Recorder's Use)

AFFORDABLE HOUSING REGULATORY AGREEMENT

THIS AFFORDABLE HOUSING REGULATORY AGREEMENT (this "Agreement") is entered into as of March 10, 2015, between the CITY OF CHULA VISTA, a municipal corporation ("City"), and LENNAR HOMES OF CALIFORNIA, INC., a California corporation ("Developer") and/or its successors or assignees.

ARTICLE 1 - Recitals

1.1 Authority. The City is a municipal corporation, organized and existing under the laws of the State of California. City is authorized to enter into binding agreements for the purpose of protecting public health, safety, and welfare.

1.2 Developer. Developer is the legal owner of the fee title to the real property which is described in the attached Exhibit "A", which is hereby incorporated herein (the "Real Property"). The Real Property will be a condominium project established pursuant to Section 1350, *et seq.* of the California Civil Code.

1.3 Project. Developer proposes to construct a multifamily housing project (the "Project") with 221 town home styled condominiums. Each condominium dwelling unit in the Project is referred to as a "Unit" in this Agreement. The Project will consist of eleven (11) Units affordable to Moderate Income Buyers, with the remaining two hundred ten (210) Units unrestricted in any manner by this Agreement. The two hundred ten (210) unrestricted Units are referred to as the "Unrestricted Units". Developer shall not be bound by any provisions contained hereinbelow with respect to the Unrestricted Units.

1.4 Implementation of City Council Resolution 2013-046. This Agreement is intended to meet a requirement of City Council Resolution 2013-046 and the Agreement to Post Security previously entered into between Developer and the City on March 13, 2013, Section 2.1.d.1 which requires within two years of posting of the bond, Developer enters into a Regulatory Agreement restricting Units. The parties intend that this Agreement constitute the agreement referred to in City Council Resolution 2013-046 and the Regulatory Agreement described in this Section 1.4. The remaining in-lieu fee obligation of \$1,378,842 (11.1 units), shall be placed into the City's Inclusionary Housing Fund in order to satisfy Section 1.2.b. of the Agreement to Post Security.

1.5 Implementation of City Council Policy No. 453-02. This Agreement is also intended to implement City Council Policy No. 453-02, "Development of Affordable For Sale Housing for Low- and Moderate-Income Buyers", which became effective on December 9, 2003.

1.6 Binding On Successive Owners. Pursuant to California Government Code Section 27281.5, the parties intend that this Agreement constitute an encumbrance against the Real Property (other than the Unrestricted Units) which, during the Term of this Agreement, is binding on the owners and successive owners of the Real Property (other than the Unrestricted Units) for the benefit of the City.

NOW THEREFORE, THE CITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

ARTICLE 2 - Definitions

The following definitions apply for purposes of this Agreement:

2.1 "Affordable Unit" means a Moderate Income Unit.

2.2 "Area Median Income" means the latest median income from time to time determined by the United States Department of Housing and Urban Development (pursuant to Section 8 of the United States Housing Act of 1937) for the San Diego Standard Metropolitan Statistical Area, and as established by regulation of the State of California pursuant to Health and Safety Code Section 50093.

2.3 "Buyer-Elected Options and Upgrades" means options and upgrades included in a Unit that are not included within the plans and specifications for standard production Units and that are paid for in cash by the buyer.

2.4 "Buyer-Qualified Interest Rate" means the interest rate a buyer qualifies for and obtains under a loan, the proceeds of which are used to purchase the Affordable Unit.

2.5 "Homeowner's Regulatory Agreement" shall refer to the covenants that run with the land to regulate and restrict the occupancy and ownership of the qualifying household. The form of the Homeowner's Regulatory Agreement shall be in substantial form to the approved First-Time Homebuyer Regulatory Agreement, as provided in Exhibit "B".

2.6 "Market Rate Price(s)" shall be as described in Section 3.2 below.

2.7 "Moderate Income Affordable Sales Price" shall be a price set by the City, as more particularly described in Sections 3.3.2 and 3.8.

2.8 "Moderate Income Buyers" means individuals or families with an income which does not exceed one hundred twenty percent (120%) of the Area Median Income, as adjusted for household size pursuant to Exhibit B attached hereto; provided, however, all income from members of the household who are under the age of twenty-three (23) years old and are full-time students, upon submission to the City of sufficient verification thereof, shall be excluded from the calculation of a Moderate Income Buyer's income.

2.9 "Moderate Income Unit" means any of the eleven (11) Units which shall be sold by Developer to and initially occupied by a Moderate Income Buyer.

2.10 "Monthly Housing Cost" means the sum of monthly payments for all of the following with respect to a Moderate Income Unit:

2.10.1 Principal and interest, amortized over thirty (30) years, at the then current fixed interest rate, payable under the First Trust Deed Loan (as defined below), which is used to acquire an Affordable Unit;

2.10.2 Any special tax district assessments, Mello-Roos special taxes, prorated monthly, which apply to the Affordable Unit;

2.10.3 The monthly homeowners' association regular assessments which apply to the Affordable Unit;

2.10.4 A monthly utility allowance based on the City approved utility schedule; and

2.10.5 A reasonable allowance for real estate taxes and insurance not included in the above costs, prorated monthly.

2.11 "**Mortgage Amount**" shall be as described in **Sections 3.3.1**.

2.12 "**Silent Second Note**" shall refer to the promissory note made by a Moderate Income Buyer in favor of the City which is equal to the difference between the Market Rate Price and the Moderate Income Affordable Sales Price of a Moderate Income Unit. The form of the Silent Second Note shall be in substantial form to the approved First-Time Homebuyer Program Silent Second Note, as provided in **Exhibit "C"**.

2.13 "**Silent Second Trust Deed**" shall refer to a deed of trust which secures a Silent Second Note. The form of the Silent Second Trust Deed shall be in substantial form to the approved First-Time Homebuyer Program Silent Second Trust Deed, and shall be subordinate to any First Deed of Trust securing a mortgage for the purchase of the units. The form of the Silent Second Trust Deed shall be in substantial form to the approved First-Time Homebuyer Program Silent Second Trust Deed, as provided in **Exhibit "D"**.

2.14 "**Term**" shall be described in **ARTICLE 4** below.

ARTICLE 3 - Marketing of Affordable Units

3.1 **Moderate Income Units.** Of the two hundred twenty one (221) Units in the Project, Developer shall sell eleven (11) Units only to Moderate Income Buyers. The eleven (11) Moderate Income Units shall be comprised as follows: (a) four 2 bedroom homes in Palermo Plan 1 (Units 7, 77, 115 and 125); (b) five 3 bedroom homes in Siena Plans 1 & 2 (Units 37, 42, 68, 72 and 77); (c) one 4 bedroom home in Palermo Plan 2 (Unit 64); and (d) one 4 bedroom home in Palermo Plan 3 (Unit 92). The sales price of each such Moderate Income Unit shall be the Market Rate Price, with the Silent Second Note being of an original principal amount equal to the difference between the Market Rate Price and the Moderate Income Affordable Sales Price of such Moderate Income Unit. The Silent Second Note shall be secured by the Silent Second Trust Deed encumbering the Moderate Income Unit which is sold to a Moderate Income Buyer. The Silent Second Trust Deed shall be subordinate in priority to the institutional trust deed loan ("First Trust Deed Loan") which the Moderate Income Buyer obtains to purchase the property. Such documents shall be in substantial form to the City standard documents as established through the City's First-Time Homebuyer Program. If the Market Rate Price is equal to or less than the Moderate Income Affordable Sales Price as calculated in Section 3.3.2, no restrictions in the form of a Silent Second Note, Trust Deed or Regulatory Agreement shall be placed on such Moderate Income Unit or the real property on which it is situated or the Moderate Income Buyer and the actual sales price of such Moderate Income Unit shall be the Market Rate Price, provided, however that all qualification procedures set forth hereinbelow for Moderate Income Buyers shall remain in effect.

3.2 **Market Rate Price.** The Market Rate Prices for the Affordable Units shall initially be the amounts set forth in the attached **Schedule "1"**. Pursuant to the procedures set forth in this Section 3.2 and subject to the procedure set forth herein, the Market Rate Prices for the Affordable Units in an upcoming phase may be revised at any time prior to the release of such phase. No less than ten (10) days prior to the scheduled release date of a phase, Developer shall submit to the City Housing Manager, Developer's proposed revisions,

if any, to the Market Rate Prices and adjustments for assessments for the Affordable Units in such phase. Within five (5) days after such submission, the City Housing Manager shall review and determine whether or not any of the Affordable Units within such phase will be subject to the requirements of Section 3.1 regarding the delivery of the Silent Second Note and Silent Second Trust Deed by the Moderate Income Buyer purchasing such Affordable Unit. If the City disapproves and objects to Developer's proposed revisions within such five (5)-day period, Developer may re-submit further revisions to the Market Rate Prices to address the City's grounds for objection, and the City shall thereafter have five (5) days to approve or disapprove Developer's proposed revisions. If, however, the City Housing Manager fails to provide notice to Developer regarding its proposed revisions and any need for the Silent Second Note or Silent Second Deed of Trust within the initial five (5)-day period, Developer's proposed revisions shall be deemed approved.

3.3 Calculation of Moderate Income Affordable Sales Price. The Moderate Income Affordable Sales Price of a Moderate Income Unit shall be composed of the sum of the Mortgage Principle Amount plus a down payment of 3% of the Moderate Income Affordable Sales Price.

3.3.1 The Mortgage Amount. For loans, the Mortgage Amount for Moderate Income Buyers shall be a First Trust Deed Loan in that original principal amount which requires equal monthly payments, amortized over thirty (30) years at the Buyer-Qualified Interest Rate, which when added to the other Monthly Housing Costs results in Monthly Housing Costs that shall not exceed 36% of 120% of the Area Median Income for the applicable household size for FHA loans and 40% of 120% of the Area Median Income for the applicable household size for conventional loans.

3.3.2 Moderate Income Affordable Sales Price. The calculation of the Moderate Income Affordable Sales Price for a Moderate Income Unit pursuant to this **Section 3.3.2** shall be the lesser of the Market Price or the maximum purchase price that will result in a Monthly Housing Cost, as defined in **Section 2.10**, equal to or less than one-twelfth of thirty six percent (36%) of 110% of the Area Median Income based on presumed occupancy count equal to the bedroom count plus one (1) persons and the factors further described in **Section 3.8**.

3.4 Proof of Qualification. Developer will obtain from each prospective purchaser of an Affordable Unit a "Supplemental Buyer Application" (the "Application") in the form of **Exhibit "E"** attached hereto (or such other form as the City may from time to time adopt and of which the City will notify Developer in writing). Developer will be entitled to rely on the Application and the supporting documents thereto in determining the eligibility of such person(s) to buy such Affordable Unit. Developer will retain the Application and supporting documents for a period of at least seven (7) years after the buyer thereof closes escrow for the purchase of the Affordable Unit.

3.5 Records, Audits. Developer will submit to the City monthly copies of all Applications, available settlement or closing statements with respect to each Affordable Unit that has closed escrow, and documents submitted containing information with respect to each Affordable Unit including (i) the monthly amortized Mortgage Amount, (ii) the number of occupants for which the Affordable Unit is sold, (iii) the income of such occupant(s), (iv) the Market Rate Price of the Affordable Unit and (v) the Moderate Income Affordable Sales Price or the Market Rate Price of the Moderate Income Unit, whichever is applicable. Such submission shall be in the form of **Exhibit "E"** attached hereto (or such other form as the City may from time to time adopt and of which the City notifies Developer in writing). If the City reasonably believes that violations of the sales price, occupancy and/or income requirements of this Agreement have occurred, and that an audit is necessary to verify submitted Applications and documentation, it will so notify Developer in writing thereof. Within ten (10) days after delivery of said notice, Developer will deliver to the City the names of three certified public accountants doing business in the metropolitan San Diego area. The City will promptly deliver to Developer the former's approval of one or more of said names. The audit will be completed by an approved

certified public accountant, at Developer's cost, within 60 days after the delivery to Developer of the City's said approval. The certified public accountant will promptly deliver a copy of the written audit to the City and Developer. Developer shall regularly evaluate its compliance with the sales price, occupancy and income requirements of this Agreement and exercise good faith efforts to avoid any violations thereof.

3.6 City Approval of Marketing Plan; Selection of Moderate Income Unit Buyers. The following requirements shall apply with respect to Developer's marketing of the Moderate Income Units:

3.6.1 Marketing Plan. Developer shall prepare a marketing plan in compliance with Federal and State Fair Housing Laws, and the City shall review the same for compliance with City laws. Such marketing plan shall include a plan for publicizing the availability of the Moderate Income Units within the City, such as notices in any City sponsored newsletter, newspaper advertising in local newspapers and notices in City offices. The marketing plan shall require Developer to obtain from the City the names of moderate income households who have been displaced, and to notify persons on such list of the availability of Moderate Income Units in the Project prior to undertaking other forms of marketing. The marketing plan shall provide that the persons on such list of displaced persons be given not fewer than fifteen (15) days after receipt of such notice to respond by completing application forms for purchase of Moderate Income Units, as applicable.

3.6.2 Income Requirements. All buyers of each Moderate Income Unit shall meet the income requirements set forth in this Agreement. Selection of Moderate Income Buyers shall be made based upon the Buyer Selection Criteria as established by the City's Policy for the Development of Affordable For Sale Housing for Moderate Income Buyers within the following levels of priority. A point system has been established so that applicants with a higher number of points will receive preference for Moderate Income Units.

5 points Households which are displaced from their primary residence as a result of any of the following: (i) expiration of affordable housing covenants applicable to such residence; (ii) an action of the City; (iii) closure of a mobile home or trailer park community in which the household's residence was located; or (iv) a condominium conversion involving the household's residence. One member in the household must have resided in such housing as the primary place of residence for at least one year prior to such action or event.

3 points Households with at least one member who has worked within the City, as that person's principal place of full-time employment, for at least one year prior to the date of application for such housing.

2 points Households with at least one member who is a Public Safety employee (fire and police) or Credentialed Teacher.

1 point All other applicants who do not meet any of the above criteria.

In the situation where there are applicants with equal number of points but not enough Moderate Income Units are available, the tie will be broken by determining which of the most qualified applicants completed the application first, including pre-qualification for a mortgage to purchase the property.

3.7 City's Evaluation of Qualification of Moderate Income Buyers; Authority of City To Receive Loan Applications. Developer shall obtain from each Moderate Income Buyer (or prospective Moderate Income Buyer) a form signed by the Moderate Income Buyer authorizing the release to the City of the prospective buyer's 1003 (Mortgage Loan Application), Good Faith Estimate and Underwriting Transmittal Summary (1008) or similar form from the applicable lender. The City shall have the right to require each such lender to forward to the City the loan documentation for any loan to a Moderate Income Buyer. The City will

evaluate these forms and communicate its evaluation to Developer. After the City's review and verification that a prospective buyer is qualified as a Moderate Income Buyer, and in no event more than five (5) days after submittal of the above referenced forms by the applicable lender, the City will send an Approval Notice to the lender and Developer confirming the prospective buyer's eligibility. At least five (5) business days prior to the close of escrow on any Affordable Unit as to which a Silent Second Deed of Trust will be recorded, Developer shall cause copies of all escrow documents to be sent to the City to assist the City in preparing the Silent Second Deed of Trust and Silent Second Note; the City shall have three (3) business days after such submittal to submit the Second Deed of Trust to escrow.

3.8 Qualification Criteria. The City will utilize the following criteria in evaluating an application by a Moderate Income Buyer (or prospective Moderate Income Buyer):

3.8.1 Neither the Moderate Income Buyer nor such Moderate Income Buyer's spouse has owned a home during the three (3) year period immediately preceding the purchase of the Moderate Income Unit.

3.8.2 The Moderate Income Buyer's down payment must not be less than three percent (3%) of the Moderate Income Affordable Sales Price.

3.8.3 The Moderate Income Buyer's liquid assets after down payment, Moderate Income Buyer's closing costs and Moderate Income Buyer's cash payments for Buyer-Elected Options and Upgrades must not exceed \$25,000.00, excluding any retirement accounts, to include without limitation any 401K or IRA accounts, as well as any other exclusions set forth in City Council policy.

3.8.4 Non-occupant co-borrowers are not allowed.

3.8.5 The maximum Monthly Housing Costs must not exceed 36% of monthly income for FHA insured loans and 40% of monthly income for all other loans.

3.8.6 The maximum debt-to-income ratios must not exceed forty-one percent (41%) for FHA insured loans and 45% for all other loans.

ARTICLE 4 - Term

4.1 Affordable Housing Regulatory Agreement. The Term of this Agreement commences on the date of this Agreement. The Term ends on the date the close of escrow occurs for the sale by Developer of the last Affordable Unit pursuant to the requirements of this Agreement. Immediately following the close of escrow of the last Affordable Unit pursuant hereto, the City shall record a termination of this Agreement in the Office of the County Recorder of San Diego County, California.

Each Affordable Unit shall automatically be released from the encumbrance of this Agreement at the close of the buyer's escrow for the Affordable Unit for the purchase of the Affordable Unit from Developer. Any portion of the Real Property that is conveyed by Developer to the condominium homeowner's association established for the Real Property shall be automatically released from the encumbrance of this Agreement upon such conveyance.

4.2 Agreement to Post Security. Satisfaction of the terms of the Agreement to Post Security ("Security Agreement"), referenced in Section 1.4, shall be met and all obligations under such Security Agreement shall be released upon the recordation of this Affordable Housing Regulatory Agreement on each of the eleven (11) Moderate Income Units and payment of the in-lieu fee into the City's Inclusionary Housing Fund totaling \$1,378,842 (1.1 units) per Section 1.2.b. of such Security Agreement.

ARTICLE 5 - Subordination

Upon request, the City shall subordinate this Agreement to any first deed of trust which Developer obtains for construction of the Project and the First Trust Deed Loans obtained by buyers to purchase their Affordable Units. However, any subordination agreement entered into by the City shall contain written commitments which the City finds are reasonably designed to protect the City's interests in the event of default, such as any of the following: (a) a right of the City to cure a default on the loan prior to foreclosure, (b) a right of the City to negotiate with the lender after notice of default from the lender and prior to foreclosure, (c) an agreement that if prior to foreclosure of the loan, the City takes title to the property and cures the default on the loan, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the City, and (d) a right of the City to acquire through foreclosure (and subject to the First Trust Deed Loan) under the Silent Second Trust Deed the Affordable Unit from the buyer at any time after a material default on the First Trust Deed Loan.

ARTICLE 6 - Additional Provisions Regarding The Real Property

6.1 Condition of the Real Property. The following provisions shall apply only during the period of time that Developer is developing and marketing the Project.

6.1.1 Developer shall take all necessary precautions to prevent the release, by Developer or its contracts, into the environment of any Hazardous Materials which may be located in, on or under the Real Property. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

6.1.2 Developer shall indemnify, defend and hold the City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon Developer's or its contractor's (i) release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Real Property, no matter when such claim, action, suit or proceeding is first asserted or begun and no matter how the Hazardous Materials came to be released, used, generated, discharged, stored or disposed of on, under, in or about, to or from the Real Property, or by whom or how they are discovered, or (ii) violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Real Property. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. This indemnity shall survive the Term or earlier termination of this Agreement.

6.1.3 For purposes of this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, San Diego County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25130 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined

as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, *et seq.*

6.1.4 For purposes of this Agreement, "Governmental Requirements" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County of San Diego, the City, or any other political subdivision in which the Property is located, and of any other political subdivision or instrumentality exercising jurisdiction over the City, Developer or the Real Property.

6.1.5 Developer shall pay prior to delinquency all real estate taxes and assessments properly assessed and levied on portions of the Real Property which are owned by Developer.

Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance, or lien, nor to limit the remedies available to Developer in respect thereto.

6.2 Hold Harmless. Developer agrees to indemnify, protect, defend and hold harmless the City, and their elected officials, officers, agents, employees, volunteers, representatives and successors, from and against any and all claims, damages, actions, costs, demands, expenses or liability, including without limitation, reasonable attorneys' fees and court costs, which may arise from the direct or indirect actions or inactions of Developer or those of its contractors, subcontractors, agents, employees or other persons acting on Developers' behalf which relate to Developer's construction, marketing, and sales activities of the Real Property or Project. This hold harmless agreement applies, without limitation, to all damages and claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this Section 6.2, regardless of whether or not the City prepared, supplied or approved plans or specifications, or both, for the Real Property or Project. Notwithstanding anything to the contrary contained herein, this indemnity shall not apply to any claims, damages, actions, costs, demands, expenses or liability which arises out of either: (a) the exclusive marketing requirements contained in Section 3.6.1, or (b) the use of the point system contained in Section 3.6.2. This indemnity by Developer, and all other indemnities set forth herein shall survive any foreclosure of the Real Property by the City pursuant to the terms of the Silent Second Trust Deed and the Term or earlier termination of this Agreement.

6.3 Obligation to Refrain from Discrimination. There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the enjoyment of the Real Property. Developer shall further comply with all the requirements of the Americans with Disabilities Act and the Americans with Disabilities Act Accessibility Guidelines (collectively, "ADA").

6.4 Form of Nondiscrimination and Nonsegregation Clauses. Developer shall refrain from restricting the sale of any portion of the Real Property, or contracts relating to the Real Property, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person and shall comply with

all the requirements for the ADA. All such deeds, leases or contracts, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

6.4.1 In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee himself, or any persons claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed and further covenants that all such individuals and entities shall comply with all requirements of the Americans with Disabilities Act of 1990, as the same may be amended from time to time (42 U.S.C. Section 12101, *et seq.*), and the Americans with Disabilities Accessibility Guidelines. The foregoing covenants shall run with the land."

6.4.2 In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions: "That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased, nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein lease and the lease shall be carried out in compliance with all requirements of the Americans with Disabilities Act of 1990, as the same may be amended from time to time (42 U.S.C. Section 12101, *et seq.*), and the Americans with Disabilities Accessibility Guidelines

6.4.3 In contracts: "There shall be no discrimination against or segregation of any persons or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of land and all such activities shall be conducted in compliance with all the requirements of the Americans with Disabilities Act of 1990, as the same may be amended from time to time (42 U.S.C. Section 12101, *et seq.*), and the Americans with Disabilities Accessibility Guidelines."

ARTICLE 7 - Breach

7.1 Breach by City. If the City breaches any of its covenants contained in this Agreement, Developer will have available to it all legal and equitable remedies afforded by the laws of the State of California.

7.2 Breach by Developer of Sale Price Limit Requirements. If, with respect to any Affordable Unit, Developer intentionally breaches this Agreement by charging a higher sales price than a Moderate Income Affordable Sales Price, Developer will, immediately upon the City's demand, (i) reduce the sales price to a Moderate Income Affordable Sales price, and (ii) refund to any buyers who theretofore paid such higher sales price to Developer for the purchase of an Affordable Unit the amount of the excess, together with interest thereon at the rate of ten percent (10%) per annum or the maximum legal rate, whichever is less, computed from the date(s) of payment of the excess by said buyers to the date of said refund. The provisions of this **Section 7.2** constitute a third-party beneficiary contract in favor of such buyers. Further, the City is hereby granted the power (but not the duty) to act as attorney-in-fact of such buyers in enforcing this **Section 7.2**.

7.3 Breach by Developer of Sales Requirements. If, with respect to any Affordable Unit, Developer intentionally breaches this Agreement by selling to buyers who are not Moderate Income Buyers qualified by the City pursuant to **Section 3.7**, Developer will, immediately upon the City's written demand, and at Developer's sole cost, use its reasonable best and lawful efforts to terminate such sale or otherwise substitute an Unrestricted Unit in such sale.

7.4 Breach by Developer of Other Requirements. If Developer breaches any of its covenants contained in this Agreement, the City shall have available to it all legal and equitable remedies afforded by the laws of the State of California.

7.5 Remedies Not Exclusive. The remedies set forth in this ARTICLE 7 are not exclusive, but are in addition to all legal or equitable remedies otherwise available to the City and Developer.

ARTICLE 8 - Conflicts of Law

8.1 Conflict of City and State or Federal Laws. In the event that state or federal laws or regulations enacted after this Agreement has been entered into prevent or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by the City, the parties will:

8.1.1 Notice and Copies: Provide the other party with written notice of such state or federal restriction, provide a copy of such regulation or policy and statement of conflict with the provisions of this Agreement.

8.1.2 Modification Conferences: The parties will, within 30 days, meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation.

8.2 City Council Hearings. Thereafter, regardless of whether the parties reach an agreement on the effect of such federal or state law or regulation upon this Agreement, the matter will be scheduled for consideration by the governing board of the City Council. The City Council, at such meeting, will determine the exact modification or suspension which shall be necessitated by such federal or state law or regulation. Developer, at the meeting, will have the right to offer oral and written testimony. Any modification or suspension will be taken by the affirmative vote of not less than a majority of the authorized voting members of the governing board of the City Council.

8.3 Cooperation in Securing Permits. The City shall cooperate with Developer in the securing of any permits which may be required as a result of such modifications or suspensions.

ARTICLE 9 - General Provisions

9.1 Severability. The parties hereto agree that the provisions are severable. If any provision of this Agreement is held invalid, the remainder of this Agreement will be effective and will remain in full force and effect unless amended or modified by mutual consent of the parties.

9.2 Entire Agreement, Waivers and Amendments. This Agreement, together with any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision hereof may be amended, modified, waived, cancelled or discharged except by an instrument in writing executed by the party against which enforcement or such amendment, modification, waiver, cancellation or discharge is sought.

9.3 Capacities of Parties. Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.

9.4 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the Federal or State courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance hereunder, shall be the City of Chula Vista.

9.5 Assignment. Subject to the City's prior review and approval, which review and approval shall not be unreasonably withheld, delayed or conditioned, the rights and obligations of Developer under this Agreement may be transferred or assigned and Developer may be released from such obligations upon such transfer or assignment, provided such transfer or assignment is made as a part of the conveyance of the fee of all or a portion of the Real Property. Any such transfer or assignment will be subject to the provisions of this Agreement. During the term of this Agreement, any such assignee or transferee will observe and perform all of the duties and obligations of Developer contained in this Agreement as such duties and obligations pertain to the portion of the Real Property so conveyed.

9.6 Enforcement. Unless amended or cancelled as provided in **Section 9.2**, this Agreement is enforceable by any party to it despite a change in the applicable general or specific plans, zoning, subdivision or building regulations adopted by the City which alter or amend the rules, regulations or policies governing permitted uses of the land, density and design.

9.7 Binding Effect of Agreement. The burdens of this Agreement bind and the benefits of this Agreement inure to the parties' successors or assignees in interest.

9.8 Relationship of Parties. It is understood that the contractual relationship between the City and Developer is such that Developer is an independent contractor and not an agent of the City.

9.9 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands or requests to be sent to any party shall be deemed to have been properly given or served if (i) personally served, (ii) deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified herein as the places of business for each of the designated parties, or (iii) electronically transmitted with a backup copy given or served pursuant to the methods set forth in (i) or (ii) above and addressed to such party at the e-mail and places of business addresses identified herein for each of the designated parties.

City:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attn: Housing Manager, Development Services Department

Developer:

Lennar Homes of California, Inc.
25 Enterprise, Ste. 300
Aliso Viejo CA 92656
Attn: John Baayoun and Dana Bracco

A party may change its address by giving notice in writing to the other party. Thereafter, notices, demands and requests shall be addressed and transmitted to the new address.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the day and year first written above.

"CITY"

CITY OF CHULA VISTA, a municipal corporation of the State of California

By: _____
Mary Salas, Mayor

ATTEST:

Donna Norris, City Clerk

APPROVED AS TO FORM:

Glen Googins, City Attorney

"DEVELOPER"

LENNAR HOMES OF CALIFORNIA, INC., a California corporation

By: _____

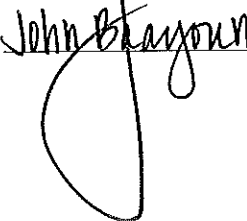

John Beayon, Vice President

EXHIBIT A

LEGAL PROPERTY DESCRIPTION

All that certain real property situated in the City of Chula Vista, County of San Diego, State of California, described as follows:

TO BE INSERTED AS APNs ARE ASSIGNED

EXHIBIT A

**EXHIBIT B
HOMEOWNER'S REGULATORY AGREEMENT**

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

WHEN RECORDED PLEASE MAIL TO:

City of Chula Vista
Housing Division
276 Fourth Avenue
Chula Vista, CA 91910

(SPACE ABOVE FOR RECORDER'S USE ONLY)

APN: _____

FTHB # _____

HOMEOWNER'S REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT ("REGULATORY AGREEMENT" OR "AGREEMENT") IS ENTERED INTO AS OF THIS _____ DAY OF _____, 201____ BETWEEN THE CITY OF CHULA VISTA, A MUNICIPAL CORPORATION ("CITY"), AND A QUALIFYING HOUSEHOLD, ON BEHALF OF ITSELF AND _____ ("OWNER").

PREFACE

WHEREAS, the Owner is interested in participating in the City's First-Time Homebuyer Program, and will comply with all program rules and requirements, and

WHEREAS, the City and Owner have entered into a Deed of Trust and Promissory Note Agreement dated _____ (the "Loan Agreements"), pursuant to which City will make a certain loan to Owner; and

WHEREAS, Owner will use the proceeds of such loan for the acquisition of the real property with the street address of _____, Chula Vista California 9191____ more particularly described in Exhibit A attached and incorporated by this reference ("Property"), and other costs as provided in the Loan Agreement; and

WHEREAS, as further consideration for the loan and to further the interests of City, Owner has agreed to enter into and record this Agreement; and

Initials _____

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EXHIBIT B
HOMEOWNER'S REGULATORY AGREEMENT

WHEREAS, the purpose of this Agreement is to regulate and restrict the occupancy and ownership of the project for the benefit of project occupants and the people of the City of Chula Vista.

The covenants in this Agreement are intended to run with the land and be binding on Owner for the full term of this Agreement.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Owner shall receive City investment in real property owned by the Owner, as evidenced by legal title or a valid contract of sale. Acting in this capacity, the Owner will comply with all aspects of the City's First-Time Homebuyer Program including, but not limited to, the following:

A. DEFINITIONS

The following terms have the meanings and content set forth in this Section A where used in this Agreement or attached exhibits.

1. "AREA MEDIAN INCOME" means the median income for the San Diego County Primary Metropolitan Statistical Area (PMSA), with adjustments for household size, as adjusted from time to time by the U.S. Dept. of Housing and Urban Development (HUD).
2. "CITY" is the City of Chula Vista, a municipal corporation.
3. "DEED OF TRUST" means any deed of trust, assignment of rents, and security agreement placed on the Property or any part thereof as security for any Loan and other obligations with Owner as trustor and the City as beneficiary, as well as any amendments to, modification of, and restatements of said deed(s) of trust.
4. "EQUITY SHARE" means the split of appreciation between the City and Owner, as further defines in Section F.1.
5. "HUD" means the United States Department of Housing and Urban Development.
6. "HOMEOWNER INVESTMENT" is defined as the amount of down payment made by the owner towards the purchase price at time of purchase (excluding normal costs of a loan transaction) and City approved capital improvements made by the owner since purchase.
7. "HOUSE" means a residential dwelling unit that is located on the Property.
8. "LOAN" is any investment of funds provided by the City to any Owner for the purchase of any House.
9. "LOAN AGREEMENT" means any loan agreement executed by any Owner and the City which governs any Loan, as well as any amendments to, modifications of, or restatements of said loan agreement(s). The Loan Agreements will be on file with the City of Chula Vista.
10. "LOAN DOCUMENTS" are collectively the Loan Agreement, Deed of Trust, Note, this Agreement and any loan agreement, deed of trust, or promissory note entered into between the City and Owner with respect to any of the Property, as they may

Initials _____

EXHIBIT B
HOMEOWNER'S REGULATORY AGREEMENT

be amended, modified or restated from time to time, along with all exhibits and attachments to these documents.

11. "NOTE" means the promissory note and note rider executed by Owner in favor of the City evidencing any part of a Loan, which is secured by a Deed of Trust, as well as any amendments to, modifications or, or restatements of said promissory note. The Notes will be on file with the City of Chula Vista.
12. "ONE HUNDRED TWENTY PERCENT" means annual income, which does not exceed one hundred twenty percent (120%) of the Area Median Income.
13. "OWNER" or "OWNERS" is the qualifying household that is the purchaser of a House within the Project.
14. "PROJECT" means the purchase of the Property, which will be affordable to households earning one hundred twenty percent (120%) of Area Median Income.
15. "PROPERTY" means the real property described in the attached Exhibit A, which is hereby incorporated into this Agreement by this reference, and any buildings or improvements now or hereafter situated on said real property.
16. "QUALIFYING HOUSEHOLD" means a household whose income is One Hundred Twenty Percent of Area Median Income (120% of AMI), as determined periodically by HUD, with adjustments in accordance with 24 CFR 92.252, and who is otherwise eligible to purchase a House.
17. "QUALIFYING SALES PRICE" means an affordable price set at 110% of the Area Median Income based on the bedroom count plus one (1) persons, and as further described in the Regulatory Agreement between the Developer and City of the Inclusionary Housing Project.

B. TERM OF AGREEMENT

The term of this Agreement shall remain in full force and effect for the life of the loan as defined on the Promissory Note, unless terminated earlier by City in writing or extended by the mutual consent of the parties. However, failure to record this Agreement by City shall not relieve Owner of any of the obligations specified herein. The covenants in this Agreement will run with the land for the benefit of City and its heirs, assigns and successors and be binding on Owner and Owner's heirs, assigns and successors for the full term of this Agreement.

C. CITY INVESTMENT

The City's investment is being made through the Balanced Communities ("Inclusionary") Policy. The investment is an assistance program, which will effectively allow the Qualifying Household to acquire the Property. All funds recaptured from this Loan will be placed in the City's Inclusionary Housing Fund for the development of future affordable housing.

D. AFFORDABILITY

1. The House will qualify as affordable housing and will have:
 - a. an initial purchase price that is a Qualifying Sales Price; and

Initials _____

EXHIBIT B
HOMEOWNER'S REGULATORY AGREEMENT

- b. an appraised value at acquisition that is the Market Rate Price.
- 2. The House must be the principal residence of an Owner that is a Qualifying Household at the time of purchase.
- 3. The Loan Agreement for the City-assisted House is \$ _____ or _____ percent (____%) of the total purchase price.

E. MONITORING

It is contemplated that, during the term of this Agreement, the City will perform the following monitoring functions: (a) prepare and send an Annual Occupancy Form for the Owner to complete and return. (b) review the documentation submitted by Owner in connection with the annual occupancy verification process. (c) inspect the Property to verify it is being maintained in accordance with Section G, below. Notwithstanding the foregoing description of City functions, Owner shall have no claim or right of action against the City based on any alleged failure to perform such function.

F. RECAPTURE OF CITY INVESTMENT

- 1. The City of Chula Vista requires that First-Time Homebuyer funds be recaptured if the housing does not continue to be the principal residence of the family for the duration of the loan. If all or any part of the Property or any interest in it is sold, rented, refinanced, conveyed or transferred (or if a beneficial interest in Owner is sold, rented, refinanced, conveyed, or transferred and Owner is not a natural person), the "Equity", as hereafter defined, in the Property shall be shared between the Owner and the City on the following basis:

"Equity" is defined as the dollar amount that constitutes the difference between the sales price of the Property and the sum of the following amounts:

- (a) principal on the original First Note and the Deed of Trust; and
- (b) principal on this Second Note and Deed of Trust to the City of Chula Vista, along with any interest and fees due thereof; and
- (c) all costs of sale, including costs of brokers' commissions, escrow fees, title costs and fees, recording costs, etc.; and
- (d) current year taxes, including all pro-rata real estate taxes calculated to the date of sale; and
- (e) borrower's net down payment not including the loan from the City to Borrower (excluding normal fees associated with a loan transaction); and
- (f) Costs of any improvements to the Property provided such improvements were approved by the City prior to construction and provided that such improvements have been documented to the satisfaction of the City.

Initials _____

EXHIBIT B
HOMEOWNER'S REGULATORY AGREEMENT

The remaining balance ("Equity") shall be split between the City and Borrower using the following formula:

$$\frac{\text{City investment (Principal amount of the Silent Second Note)}}{\text{Fair Market Value of the Property at time of initial purchase}} = \text{City \% of Equity to be recaptured}$$

G. PROPERTY MANAGEMENT

1. **Maintenance and Security.** Owner shall at his or her own expense maintain the Property in good condition, in good repair, and in decent, safe, sanitary and habitable living conditions for the benefit of that Owner's household and any prospective occupants. Owner shall maintain the Property in conformance with all applicable state, federal and local laws, ordinances, codes and regulations.
2. In the event that Owner fails to maintain the Property in accordance with these standards and after at least thirty (30) business days prior notice to Owner, the City or the City's contractor or agent may, but shall be under no obligation to, enter upon the Property, make such repairs or replacements as are deemed necessary in the City's discretion, and provide for payment thereof. Any amount advanced by the City to make such repairs, together with interest thereon from the date of such advance at the rate of seven (7) percent (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowable by applicable law), shall become an additional obligation of the Owner to the City and shall be secured by any Deed of Trust, if not previously reconveyed.

H. REPAYMENTS

Funds that are loaned to the Owner are to be remitted (principal, interest, and equity, as warranted) to the City to be retained and used as program income for additional affordable housing opportunities.

I. PROJECT REQUIREMENTS

Compliance with the following project requirements is required as follows:

- 1) Occupancy Requirements. The Program requires that occupancy standards must be maintained for the Effective Period for each of the assisted House as follows:
 - a. The prospective purchaser must be low income; that is, the purchaser must have an annual (gross) income that does not exceed One Hundred Twenty Percent (120%) of Area Median Income, which will be determined at the time the household initially occupies the property.
 - b. Each Owner must occupy the property as a principal residence. Only loan default and subsequent foreclosure negates the principal residence limitation.

- 2) Ownership Interest. The purchaser must have fee simple title upon sale of an assisted unit or cooperative ownership interest upon sale of an assisted unit.

Initials _____

EXHIBIT B
HOMEOWNER'S REGULATORY AGREEMENT

3) Refinance. The City will subordinate to the following refinance situations only, subject to City approval and additional documentation is required:

- a. FHA streamline refinance, with a reduction in total PITI and no cash out.
- b. VA rate reduction refinance, with a reduction in total PITI and no cash out.
- c. Conventional rate and term refinance, with a reduction in total PITI and no cash out.

J. REVERSION OF ASSETS.

Owner must transfer to the City any funds remaining in the Property when there is a change to title on the Property or any sale, rental, refinance, conveyance or transfer of Property. Any funds received as a result of this reversion of assets shall be used for additional eligible activities.

K. DEFAULTS AND REMEDIES.

In the event of any breach or violation of any agreement or obligation under this Agreement, the City may proceed with any or all of the remedies as described in paragraph 18 of the Deed of Trust.

L. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.

No officer, official, director, employee, agent or representative of the City shall be personally liable to Owner for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

M. INDEMNITY.

Notwithstanding the insurance coverage required herein, Owner shall indemnify and hold the City and its officers, officials, directors, employees, agents and authorized representatives (each, an "Indemnified Party," and collectively, "Indemnified Parties"), free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorney's fees) which any Indemnified Party may incur as a direct or indirect consequence of (1) Owner's failure to perform any obligations as and when required by this Agreement; (2) any failure of any of Owner's representations or warranties to be true and complete; or (3) any act or omission by Owner or any contractor, subcontractor, management agent, or supplier with respect the Property, except where such losses are caused by the sole negligence or willful misconduct of Indemnified Parties. Owner shall pay immediately upon the City's demand any amounts owing under this indemnity. The duty of the Owner to indemnify includes the duty to defend Indemnified Parties in any court action, administrative action, or other proceeding brought by any third party arising from the Property. Owner's duty to indemnify Indemnified Parties shall survive the term of this Agreement.

N. SUBORDINATION.

Initials _____

EXHIBIT B
HOMEOWNER'S REGULATORY AGREEMENT

This Agreement shall be subordinated in priority only to the liens and encumbrances approved by the City in the Loan Agreement or otherwise in writing by the City in its sole and absolute discretion.

O. GENERAL PROVISIONS

1. **Governing Law:** This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.
2. **This Agreement Controls:** In the event that any provisions of this Agreement and any Loan Documents conflict, the terms of this Agreement shall control.
3. **Time:** Time is of the essence in this Agreement.
4. **Consents and Approvals:** For those provisions of this agreement which are expressly subject to consent or approval of the City, said consent or approval shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the City.
5. **Notices, Demands and Communications:** Formal notices, demands and communications between Owner and the City shall be sufficiently given and shall not be deemed given unless dispatched by mailing it first class mail or by certified mail, return receipt requested, to the principal offices of Owner and City as follows:

City:

City of Chula Vista
Housing Division
276 Fourth Avenue
Chula Vista, CA 91910

Owner:

Any such written communications by mail shall be conclusively deemed to have been received by the addressee five days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above.

6. **Severability:** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
7. **Attorney's Fees:** In the event of any litigation over the performance of this Agreement, the prevailing party shall be entitled to attorney's fees and costs incurred during the course of litigation.

Initials _____

**EXHIBIT B
HOMEOWNER'S REGULATORY AGREEMENT**

IN WITNESS HEREOF, The City and the Owner have executed this Agreement as of the date first hereinafter set forth.

CITY OF CHULA VISTA,
a municipal corporation

Leilani Hines, Housing Manager

OWNER:

Name: _____

Print Name: _____

Name: _____

Print Name: _____

ACKNOWLEDGMENT:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On _____ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

(SEAL)

Initials _____

EXHIBIT B
HOMEOWNER'S REGULATORY AGREEMENT

ACKNOWLEDGMENT:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On _____ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

(SEAL)

Initials _____

**EXHIBIT B
HOMEOWNER'S REGULATORY AGREEMENT**

**EXHIBIT "A"
Legal Description**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

(INSERT LEGAL DESCRIPTION)

ASSESSOR'S PARCEL NUMBER: _____

Initials _____

EXHIBIT C
SILENT SECOND PROMISSORY NOTE
FIRST-TIME HOMEBUYER PROGRAM
PROMISSORY NOTE

APN: _____

FTHB # _____

NOTICE: THIS NOTE MAY REQUIRE PAYMENT OF PRINCIPAL AND INTEREST UPON THE SALE OR TRANSFER OF THE PROPERTY OR UPON A PREPAYMENT. FURTHER, THIS NOTE IS A SHARED APPRECIATION NOTE AS DEFINED IN SECTION 1917, ET SEQ. OF THE CALIFORNIA CIVIL CODE.

PROMISSORY NOTE SECURED BY DEED OF TRUST

\$ _____,00
Amount

_____, 201____
Date

_____, Chula Vista California 9191____
[Property Address]

1. **Borrower's Promise to Pay.** For value received, the undersigned, _____ ("Borrower"), promises to pay to the City of Chula Vista ("City"), or order, the sum of _____ Thousand Dollars and 00/cents (\$ _____,00) with interest accruing thereon as hereinafter provided, and the Equity portion payable as set forth below. It is understood that the City may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder".

2. **No Interest.** This Note will bear no interest unless the Borrower defaults under the terms of this Note, the Deed of Trust securing it and/or the Covenants, Conditions and Restrictions affecting the Property. In the event of default, interest from the Date of this Note shall be calculated at:
 - a) The rate equal to the interest rate of the senior trust deed or, in the event of no senior trust deed,
 - b) The prevailing rate of the Prime Rate as published in the Wall Street Journal, on the date of default.

3. **Payments and Term.** No periodic payments are required hereunder. Borrower agrees to pay the unpaid principal balance, unpaid accrued interest, and any other amounts due under this Note upon the earlier of:
 1. 30 years from the date of this Note, may be extended by 5 years with prior written consent of the City; or
 2. Upon refinancing of any debt that is secured by a lien on the Property, except for refinancing due to reduce interest rate due to favorable market conditions; or
 3. Upon sale, transfer, or encumbrance of all of any interest in the Property without City prior written consent, except for a transfer permitted as defined below; or
 4. Upon the maturity date, or full repayment, of any debt that is secured by a lien on the Property that is senior to the Deed of Trust; or
 5. Upon Borrower's failure to occupy the Property as Borrower's principal place of residence.

A transfer constitutes sold, or otherwise conveyed, by operation of law or otherwise. No delay or omission on the part of the City shall operate as a waiver of such right of repayment or of any other right of this Note. The principal amount of this Note, together with interest (if any) accruing

Initials _____

EXHIBIT C
SILENT SECOND PROMISSORY NOTE

thereon from the date hereof, and any shared equity (if any), as set forth in Section 5, shall be due and payable on or before the date provided by the City in the Notice of Acceleration, which shall not be less than thirty (30) days, if all or any part of the Property or any interest in it is sold, rented, refinanced, conveyed, or transferred (or if a beneficial interest in Borrower is sold, rented, refinanced, conveyed, or transferred and Borrower is not a natural person) (herein called "Transfer) without the prior written consent of the City. The City shall not exercise this right of acceleration if prohibited by federal law as of the date of the Deed of Trust or in the City has executed a separate written waiver of this option. The following shall not constitute a Transfer:

- (a) A transfer of the Property from a deceased Borrower to the surviving spouse of the Borrower if the surviving spouse is also named as a Borrower;
- (b) A transfer of the Property by a Borrower to his/her spouse pursuant to which the spouse becomes a co-owner of the Property;
- (c) A transfer of the Property resulting from a decree of dissolution of the marriage or legal separation or from a property settlement agreement incidental to such a decree which requires the Borrower to continue to make payments on the Note and by which a spouse who is already a Borrower becomes the sole owner of the Property;
- (d) A transfer of the Property to a Borrower to an inter-vivos trust in which the Borrower is the sole beneficiary; and
- (e) A transfer by means of encumbering the Property with a lien that is a junior lien to the lien securing the loan to Borrower evidenced by the Deed of Trust.

All payments made under this Note shall be paid in lawful money of the United States to the City of Chula Vista at 276 Fourth Avenue, Chula Vista, CA 91910, Attention: Development Services Department, Housing Division.

4. **Prepayment.** Borrower has the right to prepay the principal without incurring any penalty, apart from any interest that may be due under default provisions above. In the event that Borrower chooses to prepay the Note, Borrower must notify Note Holder in writing. Upon, such prepayment, the City's share of the Equity shall become immediately due and payable to the Note Holder. If the property is for sale or in escrow at the time of notification, the Note will be part of the escrow and Borrower will incur appropriate equity share as an obligation. Upon full repayment under this Section 4, all related Loan Documents shall be released.

5. **Equity.**

"Equity" is defined as the dollar amount that constitutes the difference between the sales price of the Property and the sum of the following amounts:

- (a) principal on the original First Note and the Deed of Trust; and
- (b) principal on this Second Note and Deed of Trust to the City of Chula Vista, along with any interest and fees due thereof; and
- (c) all costs of sale, including costs of brokers' commissions, escrow fees, title costs and fees, recording costs, etc.; and
- (d) current year taxes, including all pro-rata real estate taxes calculated to the date of sale; and
- (e) borrower's net down payment not including the loan from the City to Borrower (excluding normal fees associated with a loan transaction); and

Initials _____

EXHIBIT C
SILENT SECOND PROMISSORY NOTE

- (f) Costs of any improvements to the Property provided such improvements were approved by the City prior to construction and provided that such improvements have been documented to the satisfaction of the City.

The remaining balance ("Equity") shall be split between the City and Borrower using the following formula:

$$\frac{\text{City Investment (Principal amount of the Silent Second Note)}}{\text{Fair Market Value of the Property at time of initial purchase}} = \text{City \% of Equity to be recaptured}$$

6. **Default Under Deed of Trust.** Notwithstanding any other provisions of the Note, if default occurs in any of the covenants or agreements contained in the Deed of Trust securing this Note, this Note shall immediately become due and payable in full at the option of the City. In the event the City exercises such option, the amounts due and payable shall be the principal balance remaining on the Note and other amounts owing, together with accrued but unpaid interest as described above.
7. **Acceleration of Payment.** The principal amount of this loan, together with any then outstanding accrued interest thereon shall become immediately due and payable, at the option of the holder and without demand or notice, upon the occurrence of any of the following events:
- a. In the event of a default under the terms of this Note, Deed of Trust, or Regulatory Agreement;
 - b. In the event as Borrower shall cease to occupy the Property as Borrower's principal place of residence; or
 - c. In the event of any sale, transfer, lease, or encumbrance of the Property without City's prior written consent in violation of Paragraph 3 of this Note.
8. **Attorneys' Fees.** Should suit be commenced to collect on this Note, or any portion thereof, such sum as the court may deem reasonable shall be added hereto as attorneys' fees.
9. **Time.** Time is of the essence herein.
10. **Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention and signed by an authorized representative of the City and Borrower.
11. **Severability.** If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity and binding effect of the remainder of this Note upon the parties.
12. **Borrower's Waivers.** Borrower waives any rights to require the City to perform certain acts. Those acts are:
- (a) To demand payment of amounts due (known as "presentment").
 - (b) To give notice that amounts due have not been paid (known as "notice of dishonor").
 - (c) To obtain an official certification of non-payment (known as "protest").
13. **Giving of Notices.** Any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it first class mail or by certified mail, return receipt requested, addressed to Borrower at the address set forth above. A notice that must be given to the City under this Note will be given by mailing it certified mail, return receipt request, to the City at the address

Initials _____

EXHIBIT C
SILENT SECOND PROMISSORY NOTE

stated in Section 3 above. Any party may change its address by a notice given to the other party in the manner set forth in this Section.

14. **Joint and Several Responsibility.** If more than one person executes this Note, each is fully and personally obligated to pay the full amount owed and to keep all promises in this Note.

NOTICE TO BORROWER

Do not sign this Note if it contains blank spaces.
All spaces should be completed before you sign.

Borrower: _____
(INSERT BORROWER NAME)

Date: _____

Borrower: _____
(INSERT BORROWER NAME)

Date: _____

**EXHIBIT D
SILENT SECOND TRUST DEED**

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

WHEN RECORDED PLEASE MAIL TO:

City of Chula Vista
Housing Division
276 Fourth Avenue
Chula Vista, CA 91910

(SPACE ABOVE FOR RECORDER'S USE ONLY)

APN: _____

FTHB # _____

**NOTICE: THIS DEED OF TRUST SECURES A SHARED APPRECIATION LOAN WITHIN
THE MEANING OF CIVIL CODE SECTION 1917, ET SEQ.**

**DEED OF TRUST
(SHARED APPRECIATION)**

THIS DEED OF TRUST, is made this _____ day of _____, 201____, among the Trustor, _____, as **(Insert Vesting)** (herein "Borrower"), and the City of Chula Vista (herein "Beneficiary") a public body, corporate and politic, whose address is 276 Fourth Avenue, Chula Vista, CA 91910.

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to **(Insert Title Company)** (herein "Trustee"), in trust, with power of sale, the following described property located in the City of Chula Vista, County of San Diego, State of California [which has the address of _____, Chula Vista California 9191__ (herein "Property Address")]:

SEE EXHIBIT "A" ATTACHED HERETO FOR LEGAL DESCRIPTION

Said Deed of Trust is second and subsequent in lien to a First Deed of Trust recording concurrently herewith in favor of the first lien holder, _____ Lender is a Corporation organized and existing under the laws of the State of California, first lien in the amount of _____ Dollars and 00/cents (\$_____.00);

TOGETHER with all the improvements now and hereafter erected on the Property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to the Beneficiary to collect and apply such rents), all of which shall be deemed to be and remain part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property";

TO SECURE to the Beneficiary the repayment of the indebtedness evidenced by Borrower's promissory note, dated _____ and extensions and renewals thereof (herein "Note"), in the principal sum

Initials _____

Deed of Trust (rev. 3-10-15)

EXHIBIT D
SILENT SECOND TRUST DEED

of _____ Dollars and 00/cents (\$_____.00), with default interest thereon, if any, and the Equity portion payable to Beneficiary as provided hereinafter, if not sooner paid, which shall become immediately due and payable if all or any part of the Property or any interest in it is sold, rented, refinanced, conveyed or transferred (or if a beneficial interest in Borrower is sold, rented, refinanced, conveyed or transferred and Borrower is not a natural person), (each of which is called a "Transfer") without the prior written consent of Beneficiary; the payment of all other sums, with default interest thereon, if any, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Borrower's subject property is unencumbered except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS

Borrower and Beneficiary covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal, interest, and shared equity (if any) indebtedness evidenced by the Note.

If payment of the indebtedness is required due to a Sale of the Property where the purchase price is equal to or less than the Acquisition Cost of the Property, assuming an open and competitive sale, then repayment shall be made in the following order and amount:

- (a) Outstanding principal balance of the primary lender's loan;
 - (b) Borrower's net down-payment investment and normal cost of sale (3% minus closing costs/fees);
 - (c) The principal and interest amount of the Beneficiary's loan;
 - (d) Shared Equity; and
 - (e) Any remainder to borrower.
2. **Funds for Taxes and Insurance.** To protect the security of the Deed of Trust, Trustor agrees to pay, at least ten (10) days before delinquency, all taxes and assessments affecting said property; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; and all costs, fees and expenses of this Deed of Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary, without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his/her reasonable fees.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Beneficiary under section 1 and 2 shall be applied; first, to any prepayment charges due under the

EXHIBIT D
SILENT SECOND TRUST DEED

Note; second, to amounts payable under section 2; third, to principal due; fourth, to shared equity due; and last, any remainder to the borrower.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.
5. **Hazard Insurance.** Borrower shall keep the improvement(s) now existing or hereinafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Beneficiary may require and in such amounts and for such periods as Beneficiary may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Beneficiary; provided, that such approval will not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Beneficiary and shall include a standard mortgage clause in favor of and in a form acceptable to Beneficiary. Beneficiary has the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly by Borrower.

If Property is abandoned by Borrower, or if Borrower fails to respond to Beneficiary within 30 days from the date notice is mailed by Beneficiary to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Beneficiary is authorized to collect and apply the insurance proceeds at Beneficiary's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

6. **Preservation and Maintenance of Property, Condominium, Cooperatives, Planned Unit Developments.** Borrower will keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall maintain property including the principle house, garage, and out buildings as well as lawn maintenance, and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants, conditions and restrictions, creating or governing the condominium, planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.
7. **Protection of Beneficiary Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, then Beneficiary, at Beneficiary's option, upon notice to Borrower, may make such appearances, disburse such sums including reasonable attorneys' fees, and take such action as is necessary to protect Beneficiary's interest. If Beneficiary required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Beneficiary's written agreement or applicable law.

Any amounts disbursed by Beneficiary pursuant to this Paragraph, with interest thereon, at the original Note rate, will become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Beneficiary agree to other terms of payment, such amounts will be payable

EXHIBIT D
SILENT SECOND TRUST DEED

upon notice from Beneficiary to Borrower requesting payment thereof. Nothing contained in this Paragraph will require Beneficiary to incur any expense or take any action hereunder.

8. **Inspection.** Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property, provided that Beneficiary will give the Borrower notice prior to any such inspection specifying reasonable cause therefore related to Beneficiary's interest in the Property.
9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.
10. **Borrower Not Released; Forbearance by Beneficiary Not a Waiver.** Extension of the time for payment or modification of payment of the sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Beneficiary shall not be required to commence proceedings against such successor or to extend time for payment or otherwise modify payment of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.
11. **Successors and Assigns Bound, Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Borrower, subject to the provisions of Paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note:
 - (a) Is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property to Trustee under the terms of this Deed of Trust,
 - (b) Is not personally liable on the Note or under this Deed of Trust, and
 - (c) Agrees that the Beneficiary and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Note, without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.
12. **Notice.** Except for any notice required under applicable law to be given in another manner, any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail, addressed to Borrower at the Property address or such other address as Borrower may designate by notice to Beneficiary as provided herein, and
 - (a) Any notice to Beneficiary will be given by certified mail, return receipt requested, to Beneficiary address stated herein or to such other address as Beneficiary may designate by notice to Borrower as provided herein.
 - (b) Any Notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Beneficiary when given in the manner designated herein.
13. **Governing Law, Severability.** The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this

EXHIBIT D
SILENT SECOND TRUST DEED

Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and this Deed of Trust at the time of execution or after recordation hereof.
15. **Regulatory Agreement.** Borrower shall fulfill all of Borrower's other loan agreement(s) which Borrower enters into with the City, including, without limitation, the Regulatory Agreement with the City.
16. **Rehabilitation Loan Agreement (if applicable).** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Beneficiary. Beneficiary, at Beneficiary's option, may require Borrower to execute and deliver to Beneficiary, in a form acceptable to Beneficiary, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.
17. **Transfer of the Property or a Beneficial Interest in Borrower during Regulatory Agreement's Effective Period.** If all or any part of the Property or any interest in it is sold, rented, refinanced, conveyed or transferred (or if a beneficial interest in Borrower is sold, rented, refinanced, conveyed or transferred and Borrower is not a natural person), the "Equity", as hereafter defined, in the Property shall be shared between the Borrower and the Beneficiary on the following basis:

"Equity" is defined as the dollar amount that constitutes the difference between the sales price of the Property and the sum of the following amounts:

- (a) principal on the original First Note and the Deed of Trust; and
- (b) principal on this Second Note and Deed of Trust to the City of Chula Vista, along with any interest and fees due thereof; and
- (c) all costs of sale, including costs of brokers' commissions, escrow fees, title costs and fees, recording costs, etc.; and
- (d) current year taxes, including all pro-rata real estate taxes calculated to the date of sale; and
- (e) borrower's net down payment not including the loan from the City to Borrower (excluding normal fees associated with a loan transaction); and
- (f) Costs of any improvements to the Property provided such improvements were approved by the City prior to construction and provided that such improvements have been documented to the satisfaction of the City.

The remaining balance ("Equity") shall be split between the City and Borrower using the following formula:

$$\frac{\text{City investment (Principal amount of the Silent Second Note)}}{\text{Fair Market Value of the Property at time of initial purchase}} = \text{City \% of Equity to be recaptured}$$

NON-UNIFORM COVENANTS

Borrower and Beneficiary further covenant and agree as follows:

Initials _____
Deed of Trust (rev. 3-10-15)

EXHIBIT D
SILENT SECOND TRUST DEED

18. **Acceleration, Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, and those contained in paragraph 17 hereof, the Beneficiary, prior to acceleration, shall give notice to Borrower as provided in Paragraph 12 hereof specifying:

- (a) The breach;
- (b) The action required to cure such breach;
- (c) A date, not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and
- (d) That failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property.

The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration of sale. If the breach is not cured on or before the date specified in the notice, Beneficiary, at Beneficiary's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Paragraph 17, including, but not limited to, reasonable attorneys' fees.

If Beneficiary invokes power of sale, Beneficiary shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Beneficiary's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Beneficiary or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Beneficiary or Beneficiary's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order:

- (a) To all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence;
- (b) To all sums secured by this Deed of Trust; and
- (c) The excess, if any, to the person or persons legally entitled thereto.

19. **Borrower's Right to Reinstate.** Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if:

EXHIBIT D
SILENT SECOND TRUST DEED

- (a) Borrower pays Beneficiary all sums, which would be then due under this Deed of Trust, and the Note, had no acceleration occurred;
- (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in the Deed of Trust;
- (c) Borrower pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Beneficiary's and Trustee's remedies as provided in Paragraph 18 hereof, including, but not limited to, reasonable attorneys' fees; and
- (d) Borrower takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired.

Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. **Assignment of Rents; Appointment of Receiver; Beneficiary in Possession.** As additional security hereunder, Borrower hereby assigns to Beneficiary the rents of the Property, provided that Borrower shall, prior to any default by Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder, have the right to collect and retain such rents as they become due and payable.

Upon any such default, the Beneficiary, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the property including those past due. All rents collected by Beneficiary or the receiver shall be applied first to payment of the cost of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. Beneficiary and the receiver shall be liable to account only for those rents actually received. The entering upon and taking possession of said property and the collection of such rents and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

21. **Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Property and will surrender this Deed of Trust and all Notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.
22. **Substitute Trustee.** The Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Beneficiary and recorded in the office of the Recorder of the county where the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.
23. **Request for Notices.** Borrower requests that copies of the Notice of Default and Notice of Sale be sent to Borrower's address, which is the Property Address. Beneficiary requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to

EXHIBIT D
SILENT SECOND TRUST DEED

Beneficiary's address, as set forth on Page One of this Deed of Trust as provided by Section 2924b of the Civil Code of California.

24. **Fee for Requested Statements.** The Beneficiary may charge a fee not to exceed Sixty Dollars (\$60.00) for furnishing the statement of obligation as provided in Section 2943 of the Civil Code of California.
25. **Deed of Trust Rider.** The Deed of Trust Rider executed by Borrower is attached and made part of this Deed of Trust.
26. **Covenants, Conditions and Restrictions.** The Property is subject to Covenants, Conditions and Restrictions ("Restrictions") between the Beneficiary and the Borrower, that are not attached hereto but are incorporated by reference. Borrower acknowledges receipt of said Restrictions and agrees for him/herself/ his/her heirs, successors and assigns to be bound by the same. Restrictions refer to any and all program specific documents including any and all certifications made by the Borrower and Lender to the Beneficiary in order for the Borrower to receive First Time Homebuyer assistance.
27. **Warranties of Borrower.** Borrower warrants to City that:
- (a) Borrower is a first-time homebuyer; that is, s/he and/or spouse has not owned a home, or had any ownership interest in a home within a three-year (3 year) period immediately preceding the date of this Deed of Trust, and
 - (b) That Borrower's annual gross income does not exceed one hundred twenty percent (120%) of the median income for the San Diego metropolitan area, as adjusted for family size, as said median income is determined by the U.S. Department of Housing and Urban Development (HUD), on the latter of:
 - 1. The date of initial application to the City; or
 - 2. The date of the recordation of this Deed of Trust.
 - (c) That for so long as Borrower owns the Property, Borrower will reside in the Property as Borrower's principal place of residence. Borrower agrees not to sublet, lease or rent out the Property during the term of this Deed of Trust.
28. **Subordination.** The Beneficiary and Borrower acknowledge and agree that this Deed of Trust is subject to and will subordinate in all respects to the liens, terms, covenants and conditions of the First Trust Deed and to all advances heretofore made or which may be hereafter be made pursuant to the First Trust Deed including all sums advanced for the purpose of:
- (a) Protecting or further securing the lien of the First Trust Deed, curing defaults by the Borrower under the First Trust Deed or for any other purpose expressly permitted by the First Trust Deed; and
 - (b) Constructing, renovating, repairing, furnishing, fixturing or equipping the Property.

The terms and provisions of the First Trust Deed are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure of deed in lieu of foreclosure of the First Trust Deed, any provisions herein or any provision in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting the Borrower's ability to sell the Property shall have no further force or effect on subsequent owners or purchasers of the Property. Any person, including his/her successors or assigns (other than the Borrower or a related entity of the Borrower), receiving title to the Property

EXHIBIT D
SILENT SECOND TRUST DEED

through a foreclosure or deed in lieu of foreclosure of the First Trust Deed shall receive title to the property free and clear from such restrictions.

Further, if the Primary Lender acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Deed of Trust shall automatically terminate upon the Primary Lender's acquisition of title, provided that:

- (a) The Beneficiary has been given written notice of a default under the First Trust Deed; and
- (b) The Beneficiary shall not have cured the default under the First Trust Deed, or diligently pursued curing the default as determined by the Primary Lender, within the 60-day period provided in such notice sent to the Beneficiary.

The Beneficiary and Borrower further acknowledge and agree that this Deed of Trust will only subordinate for a rate and term refinance of the First Trust Deed at the discretion of the Beneficiary and shall not be subject to subordination for a cash out refinance, equity line of credit or any other such form of refinance as deemed inappropriate by the Beneficiary.

29. **Funds for Taxes and Insurance.** The Beneficiary will waive collection of impounds for taxes and assessments (including condominium, planned unit development and planned residential development assessments, if any). Borrower will make all payments for impounds to First Trust Deed holder.
30. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

- Transfer Rider 1-4 Family Rider Other(s) [specify]:
- Condominium Rider PUD Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

BORROWER

BORROWER

EXHIBIT D
SILENT SECOND TRUST DEED

ACKNOWLEDGMENT:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On _____ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

(SEAL)

**EXHIBIT D
SILENT SECOND TRUST DEED**

DO NOT RECORD THIS PAGE

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Dated: _____

DO NOT LOSE OR DESTROY THIS DEED OF TRUST OR THE NOTE WHICH IT SECURES. BOTH MUST BE DELIVERED TO THE TRUSTEE FOR CANCELLATION BEFORE RECONVEYANCE WILL BE MADE.

EXHIBIT D
SILENT SECOND TRUST DEED

EXHIBIT "A"
Legal Description

EXHIBIT E
SUPPLEMENTAL APPLICATION

Siena and Palermo at Lake Pointe

Lake Pointe offers attached town homes in the master planned community of Eastlake III in Chula Vista. Each unit has a garage, 2-4 bedrooms, and 1.5-3 baths. Community amenities include a swimming pool, picnic/barbeque facilities, tot lot and access to a public trail system.

11 Affordable Units Available

(4)	2 bd/1.5 bath	\$281,990
(5)	3 bd/ 2-3 bath	\$335,990-\$339,990
(1)	4 bd/2.5 bath	\$369,900
(1)	4 bd/3.5 bath	\$371,990

210 Market Rate Units Available

(X)	2 bd/1.5 bath	No Income Verification Required
(X)	3 bd/ 2-3 bath	No Income Verification Required
(X)	4 bd/2.5 bath	No Income Verification Required

For more information about Lake Pointe, the units, floorplans, etc, please visit the website at www.lennar.com or stop by the Sales Center in Eastlake at Olympic Parkway between Olympic Vista Road and Wueste Road.

The purpose of this program is to provide affordable homeownership opportunities for moderate-income households.

The City of Chula Vista and Lennar Homes thanks you for your interest in Lake Pointe and requests that you read this information in its entirety. It is very important that you understand ALL of the program requirements.

AFFORDABLE HOUSING UNITS

The City of Chula Vista has established an Affordable For Sale Housing Policy that governs all affordable for sale housing units constructed within the City. In order to qualify to purchase an Affordable Housing Unit, applicants must meet **ALL** of the requirements outlined within this document and provide the required documentation.

Income restrictions apply. Please refer to the chart below for the **MAXIMUM** gross income based upon household size, which is defined as the total number of people residing within the household. You must be able to provide evidence that the people you list as household occupants will reside in the affordable unit. Gross income is the total amount of income earned by all persons, over the age of 18, within the household before all standard withdrawals (including federal tax, state tax, social security, etc.)

Household Size	1	2	3	4	5	6	7
Maximum Gross Income	\$61,100	\$69,800	\$78,550	\$87,250	\$94,250	\$101,250	\$108,200

EXHIBIT E
SUPPLEMENTAL APPLICATION

ADDITIONAL AFFORDABLE HOUSING PROGRAM REQUIREMENTS

- Buyer must be a First time Homebuyer, which is defined as a person who has not had ownership interest in a property within the last three years.
- Have sufficient funds available to contribute the required downpayment of three percent (3%) of the Purchase Price plus closing costs (approximately 3%).
- Maximum liquid assets after down payment and closing cost contribution must not exceed \$25,000.
- Must be able to qualify for the loan with the incomes of only the members who will occupy the Affordable Unit. Non-occupant co-borrowers are NOT allowed.
- Be a citizen or other national of the United States or a qualified alien as defined by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).
- Be pre-qualified by a designated Mortgage sales representative using their credit, income and loan requirements.

BUYER SELECTION CRITERIA

The Developer will use the following criteria in order to determine priority for purchase of an Affordable Unit. A point system has been established so that applicants with a higher number of points will receive preference for units.

5 points	Households which are displaced from their primary residence as a result of any of the following: (i) expiration of affordable housing covenants applicable to such residence; (ii) an action of the City; (iii) closure of a mobile home or trailer park community in which the household's residence was located; or (iv) a condominium conversion involving the household's residence. One member in the household must have resided in such housing as the primary place of residence for at least one year prior to such action or event.
3 points	Households with at least one member who has worked or lived within the City, as that person's principal place of full-time employment or residency, for at least one year prior to the date of application for such housing.
2 points	Households with at least one member who is a Public Safety employee (fire and police) or Credentialed Teacher.
1 point	All other applicants who do not meet any of the above criteria.

In addition to the established point system, larger families will be given consideration for larger units with a greater number of bedrooms. Please be advised that you will be required to verify each household member that you indicate will occupy the unit.

EXHIBIT E
SUPPLEMENTAL APPLICATION

LAKE POINTE
AFFORDABLE HOUSING UNIT APPLICATION

(1) APPLICANT #1			

Name	Social Security Number		Age

Address	City	State	Zip Code

Employer Name and Address		Position/Title	

Home Phone		Work Phone	

(1a)	Marital Status	Gender	First-time Buyer
_____	Single	_____ Male	_____ Yes
_____	Divorced	_____ Female	_____ No
_____	Married		

(2) APPLICANT #2			

Name	Social Security Number		Age

Address	City	State	Zip Code

Employer Name and Address		Position/Title	

Home Phone		Work Phone	

(2a)	Marital Status	Gender	First-time Buyer
_____	Single	_____ Male	_____ Yes
_____	Divorced	_____ Female	_____ No
_____	Married		

EXHIBIT E
SUPPLEMENTAL APPLICATION

HOUSEHOLD INFORMATION: List **ALL** household members **Including Applicant(s)** that will reside in the Affordable Housing Unit. Attach proof of this information.

Total # of persons in Household _____		Total yearly Household Income \$ _____	
Name _____	Age _____	M/F _____	Relationship to Applicant _____
Name _____	Age _____	M/F _____	Relationship to Applicant _____
Name _____	Age _____	M/F _____	Relationship to Applicant _____
Name _____	Age _____	M/F _____	Relationship to Applicant _____
Name _____	Age _____	M/F _____	Relationship to Applicant _____
Name _____	Age _____	M/F _____	Relationship to Applicant _____
Name _____	Age _____	M/F _____	Relationship to Applicant _____

BUYER SELECTION CRITERIA INFORMATION: If you respond YES to any of the questions below, you MUST provide written evidence with your application or you may not receive all eligible points.

- 1) Do/Did you have to leave your most recent PRIMARY residence due to either: 1) the expiration of affordable housing covenants; 2) an action of the City of Chula Vista; 3) closure of the mobilehome park that you reside in; or 4) the conversion from rental condominiums to for-sale condominiums. Please note that in order for you to be eligible under this category at least one member of your household must have resided in the unit for at least one year. In addition, the displacement must have occurred within the last year or is scheduled to occur within one year. **You must submit evidence of your displacement with your application in order to be awarded points in this category.**

Yes No

- 2) Do you have one member of your household whose principal place of full-time employment or residency is located within the City of Chula Vista for a minimum year prior to this application?

Yes No

- 3) Do you have any member of your household who is a full-time Public Safety employee (fireman/woman or policeman/woman) or full-time CREDENTIALLED teacher? **You must submit evidence of your employment position in order to be**

Yes No

EXHIBIT E
SUPPLEMENTAL APPLICATION

AFFORDABLE HOUSING APPLICATION CHECKLIST

This checklist contains a list of documents that you are **REQUIRED** to submit, along with the completed Application as part of the application review process. Please review the list carefully and include **COPIES** of all documents that you are submitting. If there are any documents listed that you do not believe you are required to submit please indicate N/A and state the reason why the information is not attached. You must attach this signed checklist as part of your application packet. **APPLICATIONS THAT ARE MISSING DOCUMENTATION WILL NOT BE CONSIDERED.**

- Six months of most current and consecutive bank/investment/retirement statements for ALL accounts (all pages)
- Most recent paycheck stubs covering a 30-day period for each borrower
- Most recent three (3) years W-2s and/or 1099s for each borrower
- Most recent three (3) years Federal Tax Returns for each borrower (all schedules)
- Complete divorce decree(s) with all attachments, if applicable
- Complete bankruptcy papers with all schedules and discharge papers for bankruptcies within the last 7 years, if applicable
- Copy of Green Card, front and back, if applicable or other appropriate proof of legal U.S. residency

If you are self-employed, also provide the following:

- Most recent three (3) years tax returns and copies of 1040s, W-2s, 1099s and/or K-1s for each borrower
- Limited or General Partnership returns (if ownership interest is 25% or greater)-copies of form 1065
- Sub Chapter S Corporation returns (if ownership interest is 25% or greater)-copies of form 1120 S
- U.S. Corporation returns (if ownership interest is 25% or greater)- copies of form 1120
- YTD Profit and Loss Statement (in some cases this may need to be audited)

EXHIBIT E
SUPPLEMENTAL APPLICATION

AFFORDABLE HOUSING UNIT AFFIDAVIT

By signing below each applicant makes the following certifications:

I, the undersigned, as part of my application for an Affordable Housing Unit within the Lennar Homes Lake Pointe development (the "Program"), and in connection with a purchase of a multi-family condominium (the "Residence") and an application for a mortgage loan (the "Mortgage Loan") from a lender (the "Lender") of my choosing, do hereby state that I have carefully reviewed this document. I understand and agree with the answers I have provided, and do furthermore certify the following:

1. That those people who I expect to share occupancy of the Residence with me are listed under the Household Information section of the Application.
2. That my spouse, whether on title or not, is an Applicant for the Program and must sign this Application.
3. That I am a first-time homebuyer, who has not had an ownership interest in a principal residence within the three years immediately preceding the date of this application, and I do not and will not have an ownership interest in a principal residence prior to the date of loan closing. (An ownership interest means ownership by any means, whether outright or partial, including property subject to mortgage or other security interest; it also includes a fee simple ownership interest, a joint ownership interest by joint tenancy in common, or tenancy by the entirety or a life estate interest.)
4. That I will submit true and complete copies of all requested documentation.
5. That the Residence will be occupied and used as my principal place of residence within 30 days of the date of Mortgage Loan closing.
6. That the Residence will not be used as an investment property or second home
7. That the Mortgage Loan is a first mortgage, not a replacement mortgage.
8. That my income does not exceed the program income limits.
9. That no person related to me has, or is expected to have, an interest as a creditor in the Mortgage Loan being acquired for the Residence.
10. That I may seek financing from any Lender of my choosing, and that I am in no way prohibited from seeking financing from any potential Lender, so long as the Lender executes and complies with the terms of the Program Guidelines.

AFFORDABLE HOUSING UNIT CERTIFICATION

I acknowledge and understand that this Affidavit, as completed above, will be relied on for determining my eligibility for An Affordable Housing Unit. I acknowledge that a material misstatement negligently made by me in this Affidavit or in any other connection with my Application for an Affordable Housing Unit will constitute a violation punishable by a fine and possible criminal penalties imposed by law, and will result in the cancellation or revocation of the Loan. I acknowledge that any false statement or misrepresentation or the fraudulent use of any instrument, facility, article, or other valuable thing or service pursuant to my participation in the Program is punishable by fine.

BUYER

DATE

BUYER

DATE

SCHEDULE 1
LIST OF MARKET RATE PRICES*
FOR PHASE 2

PALERMO PLAN 1	(2 bedroom)	\$281,990
SIENA PLAN 1	(3 bedroom)	\$335,990
SIENA PLAN 2	(3 bedroom)	\$339,990
PALERMO PLAN 2	(4 bedroom)	\$369,990
PALERMO PLAN 3	(4 bedroom)	\$371,990

***NOTE: Prices of market rate units are subject to change with each subsequent sales release.**