

Memorandum of Understanding Below Market Rate Homeownership Program

This Memorandum of Understanding ("MOU") is entered into as of _____, between the Housing Authority of the County of Marin, a public body, corporate and politic (the "Housing Authority"), and _____, a _____ [entity type] (the "Locality"), individually a "Party" and collectively the "Parties," on the basis of the following purposes and understandings of the Parties.

RECITALS

- A. The Locality and the Housing Authority have developed a Below Market Rate Homeownership Program (the "BMR Program") to assist qualified lower and moderate income households in purchasing dwellings (the "BMR Units") at an affordable price, which is lower than the dwellings' unrestricted fair market value. The Locality and the Housing Authority require that certain restrictive covenants be imposed on the BMR Units to ensure that they remain affordable over time.
- B. The Housing Authority has provided administrative assistance to the Locality in designing its BMR Program, managing the initial sale and any resale of the BMR Units, monitoring compliance with the restrictive covenants, and administering provisions regarding refinancing of the BMR Units.
- C. Pursuant to Health and Safety Code Section 34312(e), the Housing Authority is authorized to provide counseling, referral, and advisory services to persons and families of low or moderate income in connection with the purchase and occupancy of housing, such as the BMR Units; and the Housing Authority is specially trained and experienced to undertake such programs;
- D. Locality desires to contract with the Housing Authority for the provision of special services and advice related to the administration of its BMR Program, based on the special training and expertise of the Housing Authority and its staff resources, which are not available to the Locality.
- E. The Parties desire to enter into this MOU to establish the policies and procedures related to the Housing Authority's administration of the Locality's BMR Program and to set forth the Parties' responsibilities and obligations regarding the administration of the BMR Program.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in this MOU, the Parties agree as follows:

AGREEMENT

1. **Scope of Work.** As authorized by the Locality, the Housing Authority will provide the following services related to the Locality's BMR Program:
 - a. Predevelopment consultation, as requested by the Locality, related to the provision of BMR Units in new developments.
 - b. Acceptance of applications and maintenance of a waiting list for purchase of BMR Units.
 - c. Administering sales of new BMR Units and resales of existing BMR Units, including marketing the BMR Units to potential homebuyers; holding a lottery, where appropriate, to choose buyers of BMR Units; determining resale prices for BMR Units; reviewing capital improvements to be added to the resale price; certifying homebuyer incomes; and ensuring that restrictive covenants are properly recorded.
 - d. Monitoring existing BMR Units for compliance with the restrictive covenants; providing status reports to the Locality on sales of BMR Units and monitoring results; responding to routine inquiries from homebuyers, the Locality, and other interested parties; calculating affordable housing cost; providing current median household income information; and similar tasks.
 - e. Processing refinancing and subordination requests from owners of BMR Units.
 - f. Other work related to the BMR Program as authorized by the Locality.
2. **Compensation.** In consideration for the services to be performed by the Housing Authority, the Locality agrees that the Housing Authority shall be entitled to the program fees (the "BMR Fees") set forth in the attached Exhibit A--BMR Program Fee Schedule. The BMR Fees shall be paid by the Locality or by other entities as specified in Exhibit A. BMR Fees to be paid by entities other than the Locality shall be reviewed annually by the Parties and may be revised by mutual agreement of the Parties.
3. **Term.** This MOU shall expire on January 1, 2010 and may be extended until January 1, 2013, upon the mutual agreement of the Parties.
4. **Requirements for the Locality's` BMR Program.** To provide for the Housing Authority's efficient administration of the BMR Program, Locality agrees as follows:
 - a. **Form of Restrictive Covenants.** The continued affordability of the BMR Units in the Locality's BMR Program shall be secured by a Resale and Refinancing Restriction Agreement and Option to Purchase (the "Resale Agreement") entered into by the Housing Authority and the homebuyer, and Deed of Trust in favor of the Housing Authority (the "Deed of Trust"), both of which will be recorded against any new or resold BMR Unit at the close of escrow in substantially the form attached as Exhibit B and Exhibit C. Alternative forms for the Resale Agreement and Deed of Trust may be utilized by mutual agreement of the Parties.
 - b. **Priorities and Preferences in the Selection of Homebuyers.** The Housing Authority will utilize a lottery system to select prospective homebuyers from

among all applicants. The Housing Authority will not utilize any priorities or preferences in the selection of prospective homebuyers for any BMR Unit. If the Locality desires to implement any priorities or preferences in the selection of homebuyers for any BMR Unit, the Locality must assume all of the duties associated with the selection of the buyer for the BMR Unit. The Housing Authority will not participate in any buyer selection system that requires the use of any priority or preference system.

- 5. Default on Resale Agreement or Deed of Trust.** If the Housing Authority declares that the owner of a BMR Unit is in default as defined by the Resale Agreement or Deed of Trust, whether due to foreclosure, bankruptcy, over-encumbrance, or any other reason, the Housing Authority will notify the Locality in writing within five working days after declaring the default and, at the option of the Locality, will either: a) assign to the Locality the Housing Authority's option to purchase the BMR Unit, with the Locality assuming responsibility for enforcing the Resale Agreement and Deed of Trust ; or b) enforce the Resale Agreement and Deed of Trust on behalf of the Locality after receiving written authorization from the Locality. If the Locality authorizes the Housing Authority to enforce the Resale Agreement and Deed of Trust, the Locality shall reimburse the Housing Authority for all costs incurred as shown in Exhibit A.

6. General Provisions.

- a. Notices. Any notices required by this MOU to served on a Party shall be in writing, and may be given either personally, by certified mail, return receipt requested, or by reputable overnight courier, to the addresses listed below. Notice shall be deemed to have been given when delivered to the Party to whom it is addressed. A Party may at any time, by giving ten (10) days written notice to the other Parties pursuant to this Section 6(a), designate any other addresses to which such notice shall be given.

Housing Authority: Housing Authority of the County of Marin
Attention: Executive Director
4020 Civic Center Drive
San Rafael, CA 94903-4173

Locality:

- b. Relationship of Parties. Nothing contained in this MOU shall be deemed or construed by the Parties or any third party to create the relationship of partners or joint venturers between the Housing Authority and the Locality.
- c. Controlling Law. This MOU shall be construed and enforced in accordance with the laws of the State of California.
- d. Amendments. Neither this MOU nor any of its terms may be amended, modified, waived, or terminated except by a written instrument signed by the Parties. The

Parties may enter into operating memoranda to implement the MOU's provisions without formally amending this MOU.

- e. Termination of Agreement. Notwithstanding Section 3, either Party may terminate this MOU at any time, without cause, by giving at least sixty (60) days written notice to the other Party. In the event of termination, the Parties agree to cooperate with each other in transferring the administration of the BMR Program to another entity.
- f. Entire Agreement. This MOU constitutes the entire agreement between the Locality and the Housing Authority with respect to its subject matter and supersedes all prior offers and negotiations, oral and written.
- g. Each Party's Role in Drafting the MOU. Each Party to this MOU has had an opportunity to review the MOU, confer with legal counsel regarding the meaning of the MOU, and negotiate revisions to the MOU. Accordingly, neither party shall rely upon Civil Code Section 1654 to interpret any uncertainty in the meaning of the MOU.
- h. Execution in Counterparts. This MOU may be executed in counterparts and multiple originals.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the day first written above.

HOUSING AUTHORITY:

HOUSING AUTHORITY OF THE COUNTY OF MARIN, a public body, corporate and public

By: _____

Name: _____

Its: _____

LOCALITY:

_____, a _____

By: _____

Name: _____

Its: _____

Exhibit A

BMR Program Fee Schedule

Effective January 2, 2007

FEES PAID BY THE LOCALITY

Annual Participation and Monitoring Fee

In consideration of the monitoring activities to be performed by the Housing Authority pursuant to Section 1(d) of the MOU, the Locality shall pay to the Housing Authority an annual participation and monitoring fee of \$50 for each BMR Unit in the Locality administered by the Housing Authority, payable upon presentation of invoice, at the start of the calendar year.

FEES PAID BY OTHERS

Initial Sale and Resale of BMR Units

For each initial sale or resale of an existing BMR Unit in the Locality that is facilitated by the Housing Authority, the Housing Authority shall be paid a BMR Sales Transaction Fee equal to three percent (3.0%) of the sales price of the BMR Unit, to be divided and paid in equal shares—one-half by the buyer and one-half by the seller at close of escrow. However, the BMR Sales Transaction Fee may not exceed the amount specified in Resale Agreements executed prior to the effective date of this MOU.

BMR Lottery Application

Households shall pay an application fee of \$50 when initially submitting an application for the lottery to purchase a BMR Unit and shall pay an additional fee of \$50, payable on January 1 of each calendar year, to remain eligible for any BMR Unit lottery held by the Housing Authority.

Processing Fees

1. **BMR Resale Price Valuation:** The fee for calculation of the resale price of a BMR Unit shall be \$100, payable by the seller in advance.
2. **Capital Improvements:** The fee for inspecting and assigning a value to capital improvements to be added to the resale price of a BMR Unit shall be \$100, payable by the seller in advance. The Housing Authority will not review any capital improvements with an initial cost of less than \$1,000 or improvements that were not approved in writing by the Housing Authority in advance of installation.

- 3. Requests for Refinancing or Subordination:** The fee for requests by owners of BMR Units for refinancing or subordination shall be \$100, payable by the owner in advance.

Pre-Development Activities and Consultation with Developers

Pre-development consultation with the Locality and with developers regarding the Locality's BMR Program shall be provided pursuant to a further written agreement between the Housing Authority and the Locality to reimburse the Housing Authority for its costs. Such pre-development consultation may include but is not limited to: a) delivering, pricing, and marketing BMR Units, and b) preparation of a BMR Housing Agreement between the Locality or Housing Authority and the developer specifying the developer's obligations to construct, market, and sell BMR Units.

Default

If the Housing Authority declares that the owner of a BMR Unit is in default as defined by the Resale Agreement or Deed of Trust, and the Locality authorizes the Housing Authority in writing to enforce the Resale Agreement and Deed of Trust on behalf of the Locality, the Locality shall reimburse the Housing Authority for all of its costs, including but not limited to all staff time, attorneys fees, court costs, and other consultants.