

RESOLUTION NO. 21-84

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute All Documents Necessary To Effectuate The Sale Of A Below Market Rate Unit Located At 1500 Park Avenue #322 For \$338,200; Amending The Fiscal Year 2021-2022 Operating Budget To Increase Revenues To, And Expenditures From, The Affordable Housing Fund (Fund No. 299) By The Net Proceeds Collected Upon The Close Of The Sale Of The Property; And Appropriating The Net Proceeds Collected To The Fiscal Year 2021-2022 Capital Improvement Program Budget For The Below Market Rate Acquisition Program (CIP Project # H-06)

WHEREAS, 1500 Park Avenue #322 ("Property"), a one-bedroom condominium unit, was developed as a Below Market Rate ("BMR") unit, affordable to moderate income households; and

WHEREAS, on June 1, 2021 the City Council of the City of Emeryville adopted Resolution No. 21-27 authorizing the City Manager to purchase of the Property for \$338,200 to retain the Property as a part of the BMR homeownership portfolio; and

WHEREAS, the City of Emeryville ("City") intends to resell the Property to a qualified buyer for \$338,200 through a lottery process; and

WHEREAS, the City Council of the City of Emeryville finds that it is in the best interest of the City to modify the Resale Restriction and Right of First Refusal Agreement to be recorded against this Property to allow for the future owner to market the Property to identify an income eligible homebuyer before the City exercises its right for first refusal; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to sell the Property for \$338,200 through a lottery process; and be it further

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the amendment of the Resale Restriction and Right of First Refusal Agreement in substantial form as attached as Exhibit A to this Resolution; and be it further

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute all necessary documents to effectuate the sale of the Property; and be it further

RESOLVED, that the City Council of the City of Emeryville hereby amends the Fiscal Year 2021-2022 operating budget to increase revenues to, and expenditures from, the Affordable Housing Fund (Fund No 299) by the net proceeds collected from the sale of the Property; and be it further

RESOLVED, that the City Council of the City of Emeryville hereby appropriates the net proceeds from the sale of the Property to the Fiscal Year 2021-2022 Capital Improvement Program budget for the Below Market Rate Unit Acquisition Program (CIP Project # H-06).

Resolution No. 21-84
BMR Resale; 1500 Park Avenue #322
City Council Meeting | July 20, 2021
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ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, July 20, 2021 by the following vote:

AYES:	<u>4</u>	Mayor Martinez, Vice Mayor Donahue, and Council Members Bauters and Medina
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:

Dianne Martinez

BBAF287D25AB463...

MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

FB7B5D8EAB6A4BE...

CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:

Andra Visveshwara

962663BD5573494...

INTERIM CITY ATTORNEY

When recorded return to:
City of Emeryville
Emeryville Civic Center
1333 Park Avenue
Emeryville, CA 94608
Attn: City Attorney

**RESALE RESTRICTION AGREEMENT
FOR MODERATE INCOME SET-ASIDE UNITS
(AFFORDABLE HOUSING SET-ASIDE PROGRAM AT 1500 PARK AVENUE)**

This Resale Restriction Agreement (the "Agreement") is entered into as of this _____ day of _____, 2012, by and between the City of Emeryville (the "City") and **XXXX** (the "Owner"). The City is selling to the Owner that certain residential unit located at _____, Unit No. _____, Emeryville, California as more particularly described in Exhibit A attached and incorporated herein ("Residence"). In consideration of the City selling the Residence to the Owner at a price significantly below market price and a price that is affordable to a purchaser whose income is one hundred twenty percent (120%) or less of median income, as determined by the U.S. Department of Housing and Urban Development based on the Oakland Primary Metropolitan Statistical Area (PMSA) median income levels, adjusted for household size ("Moderate Income"), Owner hereby agrees as follows:

1. Sales Price

The Sales Price for a subsequent conveyance of the Residence by Owner to a subsequent purchaser shall be limited to the lesser of the amounts calculated as follows:

(a) City or its designee shall have an appraisal made by an appraiser of its choice to establish the market value if it feels that there is any substantial chance that such an appraisal will be lower than the value calculated by the method described below in Section 3B. The Owner may also have an appraisal made by an appraiser of Owner's choice to establish the market value. If agreement cannot be reached, the average of the two appraisals shall be termed the market price.

(b) **XXXXXX Dollars and XXX Cents (\$XXX,000)** (Owner's purchase price) plus an amount, if any, to compensate for any increase in the cost of living as measured by the Consumer Price Index, All Urban Consumers, for the San Francisco-Oakland-San Jose area published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"). For that purpose, the Index prevailing on the date of the purchase by the selling Owner of the Residence shall be compared with the latest Index available on the date of receipt by City of Owner's notice of intent to sell. The percentage increase in the Index, if any, shall be computed and the purchase price shall be increased by that percentage; provided, however, that the price shall in no event be lower than the purchase price paid by the selling owner when s/he purchased the Residence. This adjusted price shall be increased by: 1) the value of any substantial structural or permanent fixed improvements

which cannot be removed without substantial damage to the Residence or substantial or total loss of value of said improvements and 2) the value of any appliances, fixtures, or equipment which were originally acquired as part of the Residence by Owner; provided that such price adjustment for replacement appliances, fixtures, or equipment shall be allowed only when the expenditure is necessitated by the non-operative or other deteriorated condition of the original appliance, fixture, equipment. The manner in which all such price adjustments shall be determined is described in Appendix A, which is hereby incorporated. No adjustments shall be made without adequate documentation, the manner for which is also described in Exhibit B.

2. Eligible Purchaser

To be an Eligible Purchaser, any subsequent purchaser shall have an income, certified by the City or its designee, which is one hundred twenty percent (120%) or less of current median income, as determined by the U.S. Department of Housing and Urban Development based on the Oakland Primary Metropolitan Statistical Area (PMSA) median income levels, adjusted for household size.

3. Definition of Sale/Transfer

"Sale" or "Transfer" means any voluntary or involuntary sale, conveyance, assignment or transfer of ownership of or any interest in the Residence, including a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate, leasehold interest or any rental of the Residence, or any interest evidenced by a land contract. Any Sale or Transfer without satisfaction of the conditions of this Agreement shall be deemed a "Prohibited Sale/Transfer".

4. Procedure on Sale/Transfer

(a) If Owner desires to transfer the Residence, Owner shall send City a written notice of intent ("Notice of Intent") to sell the Property and City shall, within ten (10) working days of receipt of the Notice of Intent, provide Owner the current maximum household income for an Eligible Purchaser as set forth in Section 2 above and the eligible Sales Price, as set forth in Section 1 above.

(b) The Owner shall then enter into and execute a listing agreement for the sale of the Residence with an approved real estate agent (the "Listing Agreement"), and provide a copy of the executed Listing Agreement to the City. Owner shall be responsible for payment of all real estate sales commissions arising from the purchase and sale of the Residence. City shall have no obligation or liability for the payment of any such real estate sales commissions.

(c) The Owner shall market the Property to Eligible Purchasers for a period of at least three (3) weeks from the first date that the Residence is listed with the Multiple Listing Services ("MLS") to sell the Residence, before accepting an offer, and the sale being completed within ninety (90) days of acceptance of the offer ("Closing Date").

(d) When Owner has a written offer to purchase, then Owner shall send the City a copy of this written offer and an address and telephone number where the Offeror can be reached. Within ten (10) working days thereafter, City shall send an income certification application to the Offeror. The City must receive a completed income certification application from the Offeror at least fifteen (15) working days prior to the Closing Date. City shall notify Owner in writing within ten (10) working days after receipt of a complete income certification application whether the Offeror is an Eligible Purchaser as defined in Section 2 above.

(e) If City certifies that the Sales Price is in compliance with Section 1 above, and the Offeror is an Eligible Purchaser as defined in Section 2 above, Owner may proceed to sell the Residence to the Offeror, provided Offeror executes a Resale Restriction Agreement with the City on terms and conditions substantially similar to this Agreement and give the City a Performance Deed of Trust securing the obligations under the Resale Restriction Agreement, both of which must be recorded against the Residence, as a condition of transferring the Residence to the Offeror.

(f) If Owner does not have an offer from an Eligible Purchaser at the Sales Price set forth in Section 1 above after ninety (90) days from the date the Residence is listed in with the MLS ("90 Day Period"), then City may elect by providing written notice of such election to the Owner within thirty (30) days of the end of the 90 Day Period to either (i) market the Residence itself to secure an Eligible Purchaser or (ii) purchase the Residence at the eligible Sales Price. If the City elects to market the Residence, the City marketing period shall be sixty (60) days from the end of the 90 Day Period with the sale of the Residence to be completed within ninety (90) days after this sixty (60) day marketing period. If the City elects to purchase the Residence, the sale of the Residence shall be completed within ninety (90) days after the City's notice of such election. The City agrees that its option to purchase the Residence shall only be exercised by the City or its assignee for the purpose of resale of the Residence to an Eligible Purchaser in accordance with this Agreement.

(g) Within fifteen (15) calendar days of City's exercise of the option to purchase pursuant to paragraph (e) above, Owner shall obtain evidence of marketable title to the Residence and submit it to City for examination. Thereafter, City shall have ten (10) working days within which to notify Owner as to any defects in or objections to the title as so evidenced, and Owner shall have the opportunity to remedy any such defects or objections within thirty (30) calendar days. If by the end of the last period specified, Owner cannot show satisfactory title, City shall have the option of either (1) continuing the transaction with such contract modifications as the parties may mutually agree to, or (2) rescinding the contract between the parties. Notwithstanding the terms of such bona fide offer, closing costs and title insurance shall be paid pursuant to the custom and practice in the City of Emeryville at the time of the opening of such escrow. The Sales Price, minus any deductions in accordance with this Agreement shall be paid in cash at the close of escrow or as may be otherwise provided by mutual agreement of City and Owner.

(h) Owner shall bear the expense of providing a current written report of an inspection by a licensed Structural Pest Control Operator and shall provide such report to the City no less than thirty (30) days prior to the close of escrow on the City's purchase of the Residence. All work recommended in said report to repair damage caused by infestation or infection of wood-destroying pests or organisms found and all work to correct conditions that caused such infestation or infection shall be done at the expense of the Owner. Any work to correct conditions usually deemed likely to lead to infestation or infection of wood-destroying pests or organisms, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of the Owner, and such work shall be done only if requested by the City and then at the expense of the City. The costs of any work required to be completed by Owner in accordance with this subsection that is not completed prior the close of escrow shall be deducted from the Sales Price.

(i) If City fails to give Owner the notice of its election to market or purchase the Residence as provided in paragraph (e) above or fails to complete a sale after the marketing period set forth in paragraph (e), Owner shall be relieved of all obligation to sell the Residence to an Eligible Purchaser or to the City, and may sell the Residence to a non-Eligible Purchaser. However, all other terms of this Agreement shall continue to apply including the limitation on the Sales Price as set forth in Section 1, and the non-Eligible Purchaser being obligated to resell the Residence to an Eligible Purchaser as set forth in Sections 2 and 4.

(j) Owner shall not levy or charge any additional fees nor shall any finder's fee or other monetary consideration be allowed other than customary real estate commissions and closing costs.

(k) City shall have the right to assign its interests under this Section and/or to designate an individual or entity to exercise its rights under this Section.

5. Prohibited Sale/Transfer

(a) Any attempt by Owner to make a Prohibited Sale/Transfer of title to or any interest in the Residence in violation of this Agreement shall be void, shall be a breach of this Agreement as set forth in Section 10, and shall be subject to exercise by the City of its option to purchase or to have a designee purchase the Residence at the Sales Price set forth in Section 1.

(b) The following are not considered Prohibited Sales/Transfers and therefore are not subject to exercise by the City of its option to purchase the Residence as described in paragraph (a) above: (i) Transfer of title by gift, devise, or inheritance to the Owner's spouse or natural or adopted children; (ii) Transfer of title due to Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property; (iii) Transfer of title to a spouse as part of divorce or dissolution proceedings; (iv) Transfer of title by Owner into an inter vivos trust in which Owner is a beneficiary; or

(v) Transfer of title or an interest in the Residence to the spouse in conjunction with marriage. However, for these not to be deemed Prohibited Sales/Transfers all of the following three conditions must be met: (i) at the time of the Transfer, the Residence was the transferee's primary place of residence as set forth in Section 8 and will continue to be transferee's primary place of residence or transferee meets the definition of an "Eligible Purchaser" and will make the Residence his or her primary place of residence as set forth in Section 8; (ii) these covenants shall continue to run with the title to the Residence following said Sale/Transfer; and (iii) and transferee shall execute and record this Resale Restriction Agreement and the Performance Deed of Trust. A transferee who satisfies the conditions of this Section 5(b) shall then be considered the Owner.

6. Refinancing Approval

The Owner shall obtain the City's approval prior to refinancing the Residence. In no event will the City approve a refinancing that results in the Residence being subject to loans that exceed the sales price as determined in accordance with Section 1.

7. Term of Restrictions

The restrictions contained herein shall continue in full force and effect for a period of forty-five (45) years after the date of recordation of this Agreement. With each Sale or Transfer, the Owner shall ensure that the Purchaser or Transferee executes this Resale Restriction Agreement and Performance Deed of Trust and records them with the Alameda County Recorder. Said forty-five (45) year period shall start over with each resale, should such resale occur within forty-five (45) years of the previous sale.

8. Primary Residency

Owner shall maintain the Residence as his/her/their primary place of residence. Owner shall be considered as occupying the Residence as his/her/their primary place of residence if Owner is living in the Residence for at least ten (10) months out of each calendar year. The City may, in its sole discretion, grant a temporary waiver of this occupancy requirement for good cause such as to facilitate a Sale of the Residence to an Eligible Purchaser, illness, temporary job relocation, or sabbatical. Owner shall provide a written request to the City for a temporary waiver of the owner occupancy requirement at least thirty (30) days prior to such temporary vacancy or rental or lease of the Residence. Owner's failure to comply with the provisions of this paragraph may, following a six (6) month Notice to Cure, at City's election, be deemed a breach of this Agreement, allowing the City or designee to purchase the Residence as set forth in Section 10.

9. Performance Deed of Trust

This Resale Restriction Agreement shall be secured by a Performance Deed of Trust. The Performance Deed of Trust must be recorded against the Residence upon purchase.

10. Breach of the Agreement

- (a) Upon a violation of any of the provisions of this Agreement, the City shall give written notice to the Owner by certified mail return receipt requested, specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as the City determines is necessary to correct the violation, the City may declare a default under this Agreement.
- (b) Upon the declaration of a default, the City may invoke any remedies available to it under this Agreement and/or the Performance Deed of Trust including but not limited to seeking a court order for specific performance of the obligations of this Agreement, for an injunction prohibiting a proposed Sale or Transfer in violation of this Agreement, for a declaration that a Sale or Transfer in violation of this Agreement is void, foreclosure under the Performance Deed of Trust, or for any such other relief at law or in equity as may be appropriate.
- (c) In the event of default by the Owner, and/or by the Owner's transferee in those circumstances where a Transfer has occurred in violation of this Agreement, the Owner and/or the Owner's transferee shall hold the City and its officials, employees, and agents harmless and reimburse the expenses, legal fees and costs for any action the City takes to enforce the provisions of this Agreement.
- (d) In addition to any other remedies available to the City, City has the option to purchase the Residence at the Sales Price in Section 1, minus any amounts owed to the City effective upon the declaration of a default. The City shall have sixty (60) days after a default is declared to notify the Owner of its intent to exercise its option to purchase the Residence, with the sale proceeding as outlined in Section 4(f).

11. Notice of Default under any Deed of Trust or Mortgage

- (a) Owner covenants to cause to be filed for record in the Office of the Recorder of the County of Alameda a request for a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering said Residence pursuant to Section 2924 of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to the Director of Economic Development and Housing, City of Emeryville, 1333 Park Avenue, Emeryville, California, 94608 and to the City Attorney, City of Emeryville, 1333 Park Avenue, Emeryville, CA 94608.
- (b) Any notice of sale given pursuant to Civil Code Section 2924 shall be deemed a Prohibited Transfer and breach of this Agreement allowing City to exercise its option to purchase prior to any trustee's sale, judicial foreclosure sale, or transfer

by deed in lieu of foreclosure under Section 10 above.

- (c) In the event Owner fails to file such request for notice, City's option to purchase shall run from the date City obtains actual knowledge of a sale or proposed sale. In the event City elects not to exercise its option to purchase upon default, and the Residence is sold at a trustee's sale, any excess sales proceeds distributed to the Owner shall be limited to the net amount that Owner would have received after payment of encumbrances had City exercised its option to purchase the Residence on the date of the foreclosure sale, with the balance of any such excess sales proceeds paid to the City.

12. Distribution of Insurance and Condemnation Proceeds

In the event that the Residence or other improvements associated with the Residence are destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild, or in the event of condemnation, if proceeds thereof are distributed to Owner, or in the case of a condominium project, in the event of liquidation of the homeowners' association and distribution of the assets of the association to the members thereof including Owner, any proceeds so distributed remaining after payment on the Residence shall be distributed as follows: That portion of the surplus up to but not to exceed the net amount that Owner would have received under Section 1 above had City exercised its right to purchase the Residence on the date of the destruction, condemnation valuation date, or liquidation, shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the City.

13. Covenant To Keep Residence Drug Free

A material inducement to City's willingness to certify Owner as an eligible purchaser under the affordable housing set-aside program, is Owner's representation to City that Owner shall maintain a drug free environment on the Residence. Therefore, Owner covenants to City that Owner and all persons residing on the Residence shall not unlawfully manufacture, distribute, dispense, possess or use controlled substances, as said term is defined in 21 United States Code Section 812 and California Health and Safety Code Section 11007, including heroin, cocaine, and amphetamines, on the Residence. If Owner or any person residing on the Residence is convicted, pleads guilty or nolo contendere to a charge of unlawfully manufacturing, distributing, dispensing, possessing or using controlled substances on the Residence, then such event shall be a breach of this Agreement, which shall entitle City to exercise its remedies including the option to purchase the Residence as set forth in Section 10 above within sixty (60) days after City's notice of said breach. This covenant shall run with the land.

14. Maintenance and Inspection of Residence

The Owner shall maintain the Property and improvements thereon in good condition and repair throughout the Owner's period of ownership of the Property. In addition, upon City's receipt of a Notice of Intent to sell the Property as detailed in Section 4 above,

City shall be given the right to enter and inspect the Residence to determine whether any violations of applicable building, plumbing, electric, fire, housing, or other applicable codes exist and whether the Residence has been maintained in good condition. City shall notify Owner with regard to any noted code violations and maintenance deficiencies (collectively, the "Deficiencies"), and the Owner shall cure the Deficiencies in a reasonable manner acceptable to City within thirty (30) days of being notified in writing of the result of the inspections. If the Owner fails to cure all the Deficiencies prior to the scheduled Closing Date, at the option of City or a subsequent Eligible Purchaser, escrow may be closed, title transferred but the cost of the repair of the Deficiencies shall be withheld from the Owner and either paid by the escrow agent to the Eligible Purchaser or held by the escrow agent until certification that the Deficiencies have been cured is received by the escrow agent at which time the withheld funds shall be released to the Owner.

15. Non Liability of the City

In no event shall the City become in any way liable or obligated to the Owner or to any successor-in-interest of the Owner by reason of its option to purchase under Section 4 or Section 10 herein nor shall the City be in any way obligated or liable to Owner or any successor-in-interest of the Owner for City's failure to exercise such option to purchase.

16. Binding on Successor and Assigns

This Agreement shall bind, and the benefit hereof shall inure to, the Owner and his heirs, legal representative executors, successors in interest and assigns, and to the City and its successors.

17. Controlling Law

The terms of this Agreement shall be interpreted under the laws of the State of California.

18. Subordination

Notwithstanding any of the foregoing provisions, the rights of the City under this Agreement shall in no way impair a lender's rights to take legal action following a default by Owner under a lender's deed of trust and shall terminate and have no further force and effect upon title to the Residence being acquired by a lender/beneficiary/mortgagee, HUD, or some other third party upon foreclosure or acceptance of a deed in lieu of foreclosure of a loan, mortgage or other indebtedness with a secured position against the Residence.

19. Owner Acknowledgment of Resale Restriction Agreement

Owner covenants that he/she has read this Agreement in its entirety and understands the terms and conditions set forth herein. Owner covenants that he/she has read the Disclosure Statement found as Exhibit C to this Agreement and has signed and dated this

Disclosure Statement.

OWNER

XXXXXX

Date: _____, 2021

CITY

Christine Daniel
City Manager

Date: _____, 2021

(Signatures to be notarized)

Exhibits Attached

- A – Residence Legal Description
- B – Method of Calculating Value of Appliance, Fixture, or Equipment
- C -- Disclosure Statement

EXHIBIT A

RESIDENCE LEGAL DESCRIPTION

EXHIBIT B

METHOD OF CALCULATING VALUE OF APPLIANCE, FIXTURE, OR EQUIPMENT

If at the time of replacement the original appliance, fixture or equipment had in excess of 20% of its original estimated useful life remaining, Owner shall document to the City's satisfaction the condition of the appliance, fixture or equipment which necessitated its replacement. No such price adjustment shall be made significantly in excess of the reasonable cost to replace the original appliance, fixture or equipment with a new appliance, fixture or equipment of comparable quality as hereinafter provided. No such adjustment shall be made except for improvements, appliances, fixtures or equipment made or installed by the Owner. No improvements, appliance, fixture or equipment shall be deemed substantial unless the actual initial cost thereof to the Owner exceeds 1% of the purchase price paid by the Owner for the Premises; provided that this minimum limitation shall not apply in either of the following situations:

- (a) Where the expenditure was made pursuant to a mandatory assessment levied by the homeowner's association for the development in which the Premises is located, whether levied for improvements or maintenance to the Premises, the common area or related purposes.
- (b) Where the expenditure was made for the replacement of appliances, fixtures or equipment which were originally acquired as part of the Premises by Owner.

No adjustment shall be made for the value of any improvements, appliances, fixtures or equipment unless the Owner shall present to the City valid written documentation of the cost of said improvements. The value of such improvements by which the sale price shall be adjusted shall be determined as follows:

- (a) The value of any improvement, appliance, fixture or equipment, the original cost of which was less than Five Thousand Dollars (\$5,000), shall be the depreciated value of the improvement, appliance, fixture or equipment calculated in accordance with principles of straight-line depreciation applied to the original cost of the improvement, appliance, fixture or equipment based upon the estimated original useful life of the improvement, appliance, fixture or equipment.
- (b) The value of any improvement, appliance, fixture or equipment, the original cost of which was Five Thousand Dollars (\$5,000) or more, shall be the appraised market value of the improvement, appliance, fixture or equipment when considered as an addition or fixture to the Premises (i.e., the amount by which said improvement, appliance, fixture or equipment enhances the market value of the Premises) at the time of sale. Said value shall be determined in the same manner as the fair market value of the Premises in Section 3(a) of the Resale Restriction Agreement to which this Appendix is attached.

- (c) On January 1, 1992, and every two years thereafter, regardless of the date of execution or recordation hereof, the amount of Five Thousand Dollars (\$5,000) referred to in paragraphs (a) and (b) immediately above shall be automatically adjusted for the purpose of those paragraphs in the following manner. On each adjustment date, the Housing Cost Component of the Consumer Price Index, All Urban Consumers, for the San Francisco-Oakland area published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") prevailing on January 1, 1990, shall be compared with the Index prevailing on the date of adjustment. The percentage of increase in the Index, if any, shall be computed and the sum of Five Thousand Dollars (\$5,000) shall be increased in the same percentage. In no event shall the sum be reduced below Five Thousand Dollars (\$5,000).
- (d) No price adjustment will be made except upon presentation to City of written documentation of all expenditures made by Owner for which an adjustment is requested.

EXHIBIT C

(1500 Park Avenue) DISCLOSURE STATEMENT

UNIT NUMBER:

322

IN RETURN FOR THE BENEFIT OF PURCHASING A BELOW MARKET RATE “SET-ASIDE” UNIT WITHIN 1500 Park Avenue *SUBSTANTIALLY BELOW* THE MARKET RATE SALES PRICES OF OTHER UNITS WITHIN THE DEVELOPMENT, THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. YOU ARE REQUIRED TO EXECUTE A ***RESALE RESTRICTION AGREEMENT*** WITH THE CITY OF EMERYVILLE WHICH WILL BE RECORDED AGAINST YOUR UNIT. THE ***RESALE RESTRICTION AGREEMENT*** ENSURES THE LONG-TERM AFFORDABILITY OF THE SET-ASIDE UNIT FOR ELIGIBLE HOUSEHOLDS.

THIS PROPERTY MAY ONLY BE SOLD TO AN ***ELIGIBLE HOUSEHOLD*** AT AN ***AFFORDABLE HOUSING COST SUBJECT TO THE TERMS AND CONDITIONS OF THE RESALE RESTRICTION AGREEMENT.***

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE. THESE RESTRICTIONS WILL BE IN EFFECT UNTIL FORTY-FIVE (45) YEARS FROM RECORDING OF THE ***RESALE RESTRICTION AGREEMENT*** ON YOUR UNIT. THIS FORTY-FIVE (45) YEAR PERIOD SHALL START OVER WITH EACH RESALE, SHOULD SUCH RESALE OCCUR WITHIN FORTY-FIVE (45) YEARS OF THE PREVIOUS SALE.

TO DETERMINE WHO IS AN ELIGIBLE HOUSEHOLD AND WHAT AN AFFORDABLE HOUSING COST IS, YOU SHOULD CONTACT THE ECONOMIC DEVELOPMENT AND HOUSING DEPARTMENT OF THE CITY OF EMERYVILLE AT (510) 596-4350.

IF YOU DESIRE TO SELL OR TRANSFER THE PROPERTY, YOU ARE REQUIRED TO FOLLOW THE “PROCEDURE ON SALE/TRANSFER” TERMS CONTAINED IN ***THE RESALE RESTRICTION AGREEMENT.***

I UNDERSTAND THAT THE SET-ASIDE UNIT WILL NOT NECESSARILY APPRECIATE IN VALUE DURING THE TIME THAT I OWN THE UNIT.

I HAVE READ THIS ***DISCLOSURE STATEMENT AND ATTACHED HYPOTHETICAL EXAMPLE OF THE RESALE OF A SET-ASIDE UNIT,*** AND THE ***RESALE RESTRICTION AGREEMENT*** AND I UNDERSTAND WHAT THEY MEAN.

XXX

**HYPOTHETICAL EXAMPLE OF RESALE OF UNIT AT 1500 PARK AVENUE
FOLLOWING TERMS OF
CITY OF EMERYVILLE'S RESALE RESTRICTION AGREEMENT**

Based on the terms of the RESALE RESTRICTION AGREEMENT (as set forth in Section 1 of the Agreement), the Sales Price for a subsequent conveyance of the Residence will be limited to the **lesser** of the amounts calculated below:

METHOD 1: APPRAISAL

Market value as determined by professional appraiser.

METHOD 2: CPI ADJUSTMENT TO OWNER'S PURCHASE PRICE

City will compute the sales price, which shall be the Owner's original purchase price plus an amount, if any, to compensate for any increase in the cost of living as measured by the Consumer Price Index, All Urban Consumers, for the San Francisco-Oakland-San Jose area published by the U.S. Department of Labor, Bureau of Labor Statistics.

EXAMPLE: A Moderate Income Owner purchased a one-bedroom below market rate Set-Aside Unit in March 2000 for \$165,000 and provided written notice to the City of his/her intent to sell the Set-Aside Unit to an Eligible Purchaser in December 2003.

Method 1: Appraisal determines that market value of unit is \$205,000.

Method 2: According to CPI, cost of living has increased by 9.7% between March 2000 and December 2003. Based on original purchase price of \$165,000, \$16,000 is the allowable price increase for the unit, for a total sale price of \$181,000.

Owner must accept the sale price established by Method 2 (\$181,000)