

## Exhibit A

### City of Emeryville Below Market Rate (BMR) Homeownership Program Guidelines

#### **BMR SALES PRICE**

The maximum allowable sales prices for Below Market Rate units are set by the City at the time unit is placed on the market.

In most cases the maximum sales price will be determined based upon the then current "Housing Affordability Table" as approved by the City Council of the City of Emeryville. The maximum sales price is based on several factors, including the applicable State of California Income Limits for Alameda County in effect at the time the unit is put on the market, homeowner's associations dues for the unit, and assumptions regarding mortgage interest rates, down payment, property taxes, utilities/maintenance, insurance, and private mortgage insurance (if applicable).

For Below Market Rate units located in the Emeryville Warehouse Lofts project, the resale price is based on the percentage change in the local Consumer Price Index from the date the owner purchased the property to the time the unit is placed on the market.

#### **ELIGIBILITY REQUIREMENTS**

##### **1. Maximum Household Income**

Current household income must be at or below the most current income limits as approved by the City Council of the City of Emeryville and found on the Housing Affordability Table. Household eligibility is based on current gross household income projected for a year (or an average of the prior year and year-to-date gross income, if income varies, or an average of your prior two years' net income, if self-employed).

Household income includes all income that is derived by all adult household members, age 18 and above, from all sources. The exception to this includes all dependents who are up to 24 years of age and full-time students.

Buyers who work less than a full-time equivalent or are unemployed must demonstrate that they have a combination of income and/or assets to purchase at least 50% of the value of the unit. Examples of unacceptable applicants are students or others for whom a third party (e.g. parents) is providing the capital or

income for a substantial portion of the purchase price and/or monthly housing costs.

## **2. Asset Limits**

Assets include all savings, checking, accounts, gifts, cash in safety deposit boxes, equity in real property, cash value of stocks (including options), bonds, Treasury bills, certificates of deposit, money market accounts, and revocable trusts; personal property held as an investment such as gems, jewelry, coin and art collections, antiques, and vintage and/or luxury cars; lump sum or one-time receipts such as inheritances, capital gains, lottery winnings, gambling winnings, victim's restitution, and insurance settlements; payment of funds from mortgages or deeds of trust held by the applicant(s); boats and planes; motor homes intended for primary residential use, and other sources of cash.

An applicant who has assets that exceed \$30,000 dollars will have the following amounts added to their total household income:

1. 10% of assets between \$30,001 and \$130,000
2. 30% of assets over \$130,000

The maximum amount of allowable assets is \$250,000.

Qualified retirement accounts (ie. accounts that would incur a penalty if withdrawn before a specified retirement age), the funds that will be used toward the down payment on the home, and 529 college saving accounts will not be counted toward an applicant's income or the maximum allowable assets.

## **3. First-time Homebuyer**

Applicants must be First-Time Homebuyers. A First-Time Homebuyer is defined as the following:

- a. As an individual who has not owned or jointly owned a home or a principle place of residence in the last three years, up to the date of the current Below Market Rate unit purchase.

Exceptions to this definition include:

- a. An individual who owned a home with a former spouse during their marriage.
- b. A displaced homemaker who has only owned a home with a spouse.

- c. An individual who has owned a principle residence that was not permanently affixed to a permanent foundation, according to applicable regulations.
- d. An individual who has owned a property that was not in compliance with state or local building codes and which cannot be brought into compliance for less than the cost of constructing a permanent structure.

**4. Household Size and Occupancy Limits**

A household is defined as all persons who live in the Below Market Rate unit. Pregnant applicants are counted as two members of a household upon submittal of medical documentation.

Under penalty of perjury the applicant(s) must execute a notarized affidavit stipulating the household size at the time of the application.

Minimum occupancy is one person or the number of bedrooms, whichever is greater. Maximum occupancy of unit is determined as follows: each bedroom may have a maximum of two people, one additional person may live outside of a bedroom within the unit.

Applying these standards, in order to purchase a three bedroom unit, there must be a minimum of three people in the household and a maximum of seven. The table below provides occupancy limits by unit type.

<b>Unit Type</b>	<b>Minimum Occupancy/ Maximum Occupancy</b>
Studio	1 Person Minimum/ 2 Person Maximum
1 Bedroom	1 Person Minimum / 3 People Maximum
2 Bedrooms	2 Person Minimum / 5 People Maximum
3 Bedrooms	3 People Minimum / 7 People Maximum
4 Bedrooms	4 People Minimum / 9 People Maximum

**5. Credit Score**

The applicant must be able to demonstrate sufficient creditworthiness. This includes:

1. Having *at least* two years of clean credit following a bankruptcy or foreclosure,
2. A minimum FICO credit rating of 660

A lower credit score can be considered following review from the Economic Development and Housing Department Director or his/her designee.

**6. Front and Back Ratios (Debt-to-Income Ratios)**

The “front-end” ratio is the proportion of monthly housing costs as a percentage of monthly income. Monthly housing costs include mortgage (principal and interest), private mortgage insurance (if applicable), hazard insurance, property taxes, condominium fees or dues, and utilities.

The applicant’s total or "back-end" debt-to-income ratio is the proportion of monthly housing costs plus all other monthly debt payments (e.g. student loans, car payments, credit cards, etc.) as a percentage of total monthly household income may not exceed the limits in the table below.

Income Level	Maximum Qualifying Debt Ratios	
	Monthly Housing Cost (Front-End Ratio)	Total Monthly Debt (Back-End Ratio)
Very Low	30%	35%
Low	35%	40%
Moderate	40%	45%

The qualifying debt ratios applied to a particular applicant will be based upon the applicant’s household income category, not the maximum allowable income category for the BMR unit. For example, a low income household purchasing a BMR sold at a moderate income price must have a front-end ratio of no more than 35%.

Depending on whether the applicant has a high credit score, such as 720, or is able to give a down payment that is higher than the required 3% (described in

detail in Section 8 of these Guidelines), the Economic Development and Housing Department Director or his/her designee has the option of increasing the back-end ratio by up to 3%.

If the applicant's back-end ratio is at the maximum limit for the applicant's income level, Economic Development and Housing Department staff will evaluate if the applicant will be subject to "rent shock" (i.e. new housing costs will increase by 100% or more over current housing costs). If the applicant is both at the maximum limit for a back-end ratio and would be subject to rent shock as a result of the purchase of the BMR unit, then Economic Development and Housing Department Director or his/her designee has the option of declining the application.

## **7. Legal Resident**

All applicants must be citizens or nationals of the United States, or qualified permanent residents. The Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 provides more details as to the description of a qualified legal resident.

## **FINANCING REQUIRMENTS**

### **8. Down Payment**

The applicant must be able to make at least a 3% down payment from the borrower's own funds.

The applicant's down payment funds must be held in their bank account for at least three months prior to submitting this application.

### **9. Gift Fund Limits**

The applicant may use gift funds in an amount where the applicant's down payment plus the gift funds do not exceed 20% of the purchase price. Gift funds may not be used for the 3% down payment requirement. All gift funds must be documented in the Below Market Rate program application using a form of "gift letter" provided by the City. All signatures on the gift letter must be notarized. The gift letter includes:

- a. The amount of money being provided;
- b. The relationship of the giftor to the applicant; and
- c. Statement, under penalty of perjury, that the applicant is not required nor expected to repay the funds, nor is the giftor to hold title for the property, in whole or in part, upon the close of escrow or in the future.

Attached to the letter, the applicant must provide documentation of the funds to be gifted (e.g. most current account statement).

#### **10. Senior Financing**

The first mortgage used by applicant(s) must be for no more than a 30-year term, (shorter terms are acceptable). Loans must also be fixed-rate and fully amortizing.

Balloon payments, negative amortization, adjustable and/or non-prime interest rate loans, prepayment penalties, and stated-income loans are prohibited. The City, in its sole discretion, may identify other prohibited loan characteristics.

Co-signing for a loan by non-BMR household member is prohibited.

#### **11. Home Equity Lines of Credit and Home Equity Loans**

Home equity lines of credit and home equity loans are not allowed on a BMR unit. Owners who use such programs without approval from the City of Emeryville will be in default of the Resale Restriction Agreement. The default must be cured by a removal of the unauthorized line of credit/loan or the City will invoke any remedies available to it.

#### **12. Loan to Value Limits**

Housing mortgage assistance loans must not have a loan-to value ratio that exceeds 98% of the sales price.

#### **13. Refinancing**

Owners may refinance their first mortgage loans only with the express written permission of the City of Emeryville and under the following conditions:

- a. The principal amount for the new first mortgage is for an amount equal to, or less than, the original first mortgage plus closing costs.
- b. The interest rate for the new first mortgage is less than the interest rate on the original first mortgage.
- c. All other conditions for senior financing under section 10 and 12 apply.

#### **14. All Cash Sale**

In the event of an all cash sale, the following conditions must be met:

- a. The buyer's remaining housing costs as related to their applicable household income level must not exceed the maximum qualifying debt

- ratios as described in Section 6; and
- b. The buyer's household income cannot exceed the maximum allowable income for the BMR unit; and
- c. Cash assets being used to purchase the BMR unit will be excluded from the maximum asset limit calculation in Section 2.

## **BUYER/OWNER OBLIGATIONS**

### **15. Homebuyer Education Workshop**

The applicant must complete a City-approved homebuyer education workshop and submit a certificate of completion for the workshop to the City prior to the close of escrow. The workshops cover such topics as: the loan application process, closing costs and escrow fees, recurring housing expenses, refinancing, budgeting, responsibilities of homeownership, home maintenance, and the importance of maintaining good credit.

### **16. Resale Restriction**

A 45-year deed restriction will be recorded on the property in the form of a Resale Restriction Agreement as a condition for the close of escrow. This deed restriction requires:

- a. The unit will be sold for no more than the maximum allowable resale purchase price, as determined by the City.
- b. The unit must be sold to an income eligible household, whose income eligibility will be determined by the City after the parties are in contract to purchase the unit.

In addition to the deed restriction, the buyer will be required to record a performance deed of trust on the property related to the Resale Restriction Agreement as a condition of the close of escrow to purchase the property.

The Resale Restriction Agreement will be secured by a Performance Deed of Trust, also to be recorded on the property as a condition for the close of escrow.

### **17. Owner Occupancy**

The applicant must use the Below Market Rate unit as their primary place of residence. The household must move into the unit within 60 days of escrow and it must be owner-occupied for at least ten months of the calendar year.

Homeowners must provide the City of Emeryville with annual owner occupancy certification consisting of a signed and notarized affidavit, under penalty of

perjury. Attached to the affidavit must be valid third party documentation, such as a property tax statement or utility bill, proving that the unit is owner-occupied.

Renting, leasing, or subleasing is prohibited unless authorized by the City of Emeryville. Owner occupancy waivers may be granted as follows:

- a. Owner occupancy waivers of up to one year may be granted under one or more of the following circumstances:
  - i. The current documented fair market value of the property is less than the outstanding balance on the first mortgage lien,
  - ii. The property is in foreclosure,
  - iii. Litigation related to the development precludes a first time homebuyer from obtaining mortgage financing,
  - iv. The owner is on active military duty, and/or
  - v. For reasons deemed acceptable by the City, in its sole discretion, that are temporary in nature (e.g. sabbatical, caring for a sick relative, temporary relocation for work) after which the owner unambiguously intends to return to the unit as an owner-occupant.
  
- b. Owner-occupancy waivers for more than a year shall only be granted, in one-year increments, under the following circumstances:
  - i. the current documented fair market value of the property is less than the outstanding balance on the first mortgage lien,
  - ii. the property is in foreclosure,
  - iii. litigation related to the development precludes a first time homebuyer from obtaining mortgage financing, and/or
  - iv. if the owner is on active military duty.
  
- c. Any owner-occupancy waiver request must be in writing and accompanied by appropriate supporting documentation. The specific documentation requirement will be based upon the conditions under which the waiver will be granted. The Economic Development and Housing Department Director or his/her designee will inform the owner-occupancy waiver applicant of the documentation requirements upon request.
  - i. Owner-occupancy waiver applicants must have made the request and provided supporting documentation at least 30 days prior to commencement of the waiver period.
  - ii. Owner-occupancy waiver recipients requesting an additional one-year increment to their current owner occupancy waiver must make the request at least 60 days prior to the expiration of the owner-occupancy waiver period. If the extension is granted, the property may be rented during the City-approved owner-occupancy waiver period.

- d. At the end of the owner-occupancy waiver period, if a BMR owner does not reoccupy a BMR unit, it must be listed for sale prior to the expiration of the waiver period. Tenants must be given a minimum notice to vacate of at least 60 days prior to the expiration of the waiver period, and the property may no longer be rented.
- e. Owners of BMR units with a CalHome loan may not obtain an owner-occupancy waiver. On a case-by-case basis, a three-month waiver may be allowed if litigation related to the development precludes a first-time homebuyer from obtaining mortgage financing.

Owner-occupancy waiver recipients shall provide copies of executed lease/rental agreements to the City for the entire rental period.

Program participants who have purchased a principal residence elsewhere shall not be eligible for owner-occupancy waivers.

### **18. Insurance**

The owner must obtain and maintain a standard homeowner's insurance policy, with the City named as an additional insured. The owner must ensure that the City receives a copy of evidence of insurance on at least an annual basis.

### **19. Homeowner's Exemption**

The owner must continuously claim a homeowner's exemption for property taxes for the BMR unit.

### **20. Maintenance of Home**

The homeowner is required to maintain the unit throughout the ownership period. All appliances shall be in good and working order, the unit must be sanitary and free of code violations, as well as in compliance with all the health and safety laws of the City of Emeryville. Ordinary wear and tear are not excepted.

### **21. Inspection Upon Resale**

Upon notification of resale, the City will inspect the unit to ensure the unit is in good repair, free of code violations, and clean. All appliances, finishes and fixtures must be fully operable and free of defects or any damage. No units may sold as-is. Ordinary wear and tear are not excepted.

This inspection is for purposes of the BMR program only, and is not be used in lieu of a home purchase inspection by the new buyer. The unit must pass the City inspection prior to the close of escrow. If the unit does not pass inspection, the City will not approve the close of escrow.

In the sole discretion of the Economic Development and Housing Department Director, the City may approve painting of the unit by the buyer. However, the seller must clean and prepare all paintable surfaces such that they are ready to accept paint. Prior to the close the escrow, the following must be completed:

- a. The prepared surfaces must be inspected and approved by the City.
- b. The buyer must submit a signed letter to the City acknowledging that he/she will paint the unit at his/her own cost after the close of escrow.

Not including painting of the unit as addressed in the prior paragraph, at his/her sole discretion the Economic Development and Housing Department Director may allow the buyer (if desired by the buyer) to undertake some repairs identified by the City as part of its pre-close inspection after the close of escrow. In order to allow the seller to transfer this obligation to the buyer, the following must occur prior to the close of escrow:

- a. The seller must obtain at least two bids from a licensed, bonded contractor to complete the needed repairs.
- b. Buyer and seller must agree in writing to reduce the original contract price by the amount of the highest bid and submit evidence of that agreement to the City.
- c. The buyer must submit a signed letter to City staff acknowledging that they will complete the repair, accepting full responsibility (including additional costs above and beyond the initial estimate) for implementing the repair to the satisfaction of the City, and allowing the City to inspect the completed repair 30 days after the close of escrow.

## **22. Short Sale**

BMR units that received loan assistance from the City will be governed by the most restrictive applicable program guidelines related to the associated loan type(s).

For BMR units that have not received loan assistance from the City, the City will consent to a short sale request provided that the short sale price does not exceed the maximum sales price allowed under the BMR program and the buyer will be required to record a performance deed of trust on the property related to the Resale Restriction Agreement as a condition of the close of escrow to purchase the property.