

Analysis by Housing Authority of the City of Napa

COMPARABLE LISTINGS & SALES

Address	List Price	Sales Price	Bdrms	Baths	Sq. Ft.	List Date	Sold
1 1705 Adele St	\$585,000		3	2	2183	10/25/2015	
2 2006 Grant St	\$685,000		3	2	1988	11/30/2015	
3 1126 Denise Dr	\$550,000	\$530,000	3	2		8/5/2015	10/19/2015
4 8 Miriam Dr	\$549,000	\$508,000	3	2	1330	7/17/2015	10/26/2015
5 1521 Harley St	\$549,000	\$472,000	3	2	1375	9/24/2015	11/19/2015

Subject Property: 1807 Aurora Drive

Estimated Fair Market Value of 1807 Aurora Drive per listing agent: \$525,000

EQUITY SHARE CALCULATION

City Loan Amount	\$ 100,000.00
Original Purchase Price	\$ 322,500.00

Equity Share = 31%

PROJECTED SALES & ESCROW COSTS

Sales Price	\$ 525,000.00
Pay off First Mortgage	(318,000.00)
Pay off City Second	(100,000.00)
Misc Charges	(2,000.00)
Real Estate Commissions	(26,250.00)
Remaining Equity	\$78,750.00
Equity Share	X 31%
Equity Share due to City	\$24,412.50
Plus City Loan Amount	100,000.00
TOTAL EST. LOAN PAYOFF	\$ 124,412.50

FIRST AMERICAN TITLE COMPANY
OF NAPA

12033A

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Calistoga
1232 Washington Street
Calistoga, California 94515
Attention: City Manager

No fee for recording pursuant to
Government Code Section 27383



2001-0038913

Recorded
Official Records
County Of
NAPA
JOHN TUTEUR
Recorder

REC FEE 50.00

02:41PM 06-Nov-2001

CW
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RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE

This Resale Restriction Agreement and Option to Purchase (this "Agreement") is entered into as of October 31, 2001 and between the City of Calistoga (the "City") and Cynthia R. Mewhorter (the "Owner"), with reference to the following facts:

A. The Owner is buying the property described in the attached Exhibit A (the "Home"), known commonly as 1807 Aurora Drive, Calistoga, California, as the Owner's principal residence.

B. To enable the Owner's household to buy the Home, the City is providing the Owner with a loan in the amount of One Hundred Thousand Dollars (\$100,000.00) (the "City Loan").

C. Without the City Loan, the Owner would not have been financially able to purchase the Home. In exchange for the ability to purchase the Home, the Owner is agreeing to the resale restrictions on the Home set forth in this Agreement.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the City and the Owner (the "Parties") agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply:

(a) "Agreement" means this Resale Restriction Agreement and Option to Purchase.

(b) "Adjusted Income" means the total anticipated annual income of all persons in a household as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor state housing program that utilizes a reasonably similar method of calculation of adjusted income. If no such program exists, then the City shall provide a method of calculation of adjusted income reasonably similar to that provided in Section 6914.

(c) "Affordable" means, with respect to a household's Monthly Housing Cost, that the Monthly Housing Cost is not greater than Twenty Nine percent (29%) of one twelfth (1/12) of the household's Adjusted Income.

(d) "Approved Loan" means any loan to the Owner in connection with the Home that has been approved by the City in its reasonable discretion.

(e) "City" means the City of Calistoga, a public body, corporate and politic.

(f) "City Deed of Trust" means the deed of trust executed by the Owner to secure the Owner's obligation to repay the City Loan and recorded against the Home concurrently with recordation of this Agreement against the Home.

(g) "City Equity Share" means a share of net sales proceeds, upon the Owner's sale of the Home, payable to the City pursuant to this Agreement and calculated by multiplying the net sales proceeds times a fraction, the numerator of which is One Hundred Thousand Dollars (\$100,000.00), which is the original principal amount of the City Loan, and the denominator of which is Three Hundred Twenty Two Thousand Five Hundred Dollars (\$322,500.00), which is the total purchase price originally paid by the Owner for the Home. For purposes of this definition, net sales proceeds are calculated by subtracting, from the purchase price paid by the purchaser to the Owner, the following amounts (but only to the extent that the Owner provides the City with reasonable documentation of such amounts): repayment of the City Loan principal; repayment of outstanding Approved Loans; payment of any closing costs paid by the Owner; and payment of any real estate brokerage commission paid by the Owner.

(h) "City Loan" means the loan made by the City to the Owner in the amount described above in Recital B to enable the Owner to buy the Home.

(i) "Home" means the improved real property described in the attached Exhibit A, known commonly by the street address given in Recital A.

(j) "Median Income" means the median income adjusted by actual household size for households in the County of Napa, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD"). If such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, then the City shall provide other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

(k) "Moderate Income Household" means a household with an Adjusted Income that does not exceed one hundred twenty percent (120%) of Median Income.

(l) "Option" means the option to purchase the Home granted by the Owner, as optionor, to the Optionee, as optionee, by this Agreement. When the Optionee exercises the Option, the Owner must sell to the Optionee the Home, subject only to the Permitted Exceptions, at the purchase price set forth in Section 2.2(d).

(m) "Optionee" means the City or any government, nonprofit corporation, or natural person designated by the City to be the Optionee through a written notice delivered to the Owner.

(n) "Parties" means the City and the Owner.

(o) "Permitted Exceptions" means this Agreement; the lien of assessments and ad valorem taxes not yet due or payable; such other encumbrances that were exceptions to title on the date of this Agreement (other than taxes, assessments, and encumbrances created or suffered by the Owner); and the lien of Approved Loans.

(p) "Transfer" means any voluntary or involuntary sale, assignment, or other transfer of ownership of the Home or any interest in the Home, including a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate or leasehold in the Home, or any interest evidenced by a land contract.

ARTICLE 2. TRANSFERS, OPTION, AND RESALE RESTRICTIONS

Section 2.1 Transfers Prohibited Except As Specifically Approved.

(a) The Owner shall not make or agree to make any Transfer except where the Transfer is made as explicitly permitted by Sections 2.1(b), 2.2, or 2.3. Any attempt by the Owner to make a prohibited Transfer shall be void and shall trigger the Optionee's right to exercise the Option in the manner described in Section 2.2.

(b) The following Transfers are permitted by this Agreement and will not trigger the Optionee's right to exercise the Option:

(1) Transfer by gift, devise, or inheritance to the Owner's spouse or natural or adopted children;

(2) Transfer by an Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property;

(3) Transfer to a spouse as part of divorce or dissolution proceedings;

- (4) Transfer of a leasehold interest or rental of the Home for a cumulative period of less than two (2) months in any twelve (12) month time period;
- (5) Transfer to the Owner's spouse in conjunction with marriage; and
- (6) Transfer of a security interest to the maker of an Approved Loan.
- (7) Transfer to an intervivos trust in which the Owner is the beneficiary and there is no transfer of the rights of occupancy.

Section 2.2 Option Before A Sale.

(a) Whenever the Owner intends to make a Transfer not permitted by Section 2.1(b), the Owner shall notify the Optionee of the Owner's intent to sell the Home. The Optionee shall then have the right to exercise the Option by delivering to the Owner a notice of the Optionee's intent to exercise the Option. The Optionee's notice of intent to exercise the Option must be delivered to the Owner within sixty (60) days after the Owner's delivery to the Optionee of the Owner's notice of intent to sell the Home, and upon the timely delivery of the Optionee's notice to the Owner this Agreement shall become a purchase agreement enforceable by the Owner and the Optionee.

(b) If the Optionee delivers to the Owner a notice of intent to exercise the Option before the deadline described in Section 2.2(a), then the Owner shall sell the Home to the Optionee through an escrow to close no later than ninety (90) days after the delivery to the Owner of the Optionee's notice of intent to exercise the Option. Provided that the City may extend this time period an additional 90 days upon written notice to the Owner if, in the City's reasonable discretion, such time is needed to satisfy requirements under this agreement. The closing shall be through an escrow with a title insurance company selected by the Optionee, and the Owner and the Optionee shall utilize the form of escrow agreement customarily used by such escrowholder in residential transactions in the community, modified to the extent necessary to conform to this transaction.

(c) Closing costs and title insurance shall be paid by the Optionee. At the closing, the Owner shall convey title to the Home to the Optionee by grant deed subject only to the Permitted Exceptions, as confirmed by an ALTA title insurance policy issued through the closing to insure the Optionee's ownership of the Home in the amount of the purchase price described in Section 2.2(d).

(d) The purchase price for the Home when sold under this Section 2.2 shall be ninety-four percent (94%) of the Home's fair market value, as determined by an appraisal performed by a qualified appraiser selected and paid jointly by the Parties.

(e) At the close of the escrow through which a sale pursuant to the Option is effectuated, the Owner shall repay the City Loan and pay to the City the City Equity Share. The Owner's duty to pay the City the City Equity Share shall be secured by the City Deed of Trust. The Owner acknowledges that the City has no duty to cause reconveyance of the City Deed of

Trust until the City Equity Share has been paid, even if the City Loan has been repaid. The amount payable to the City pursuant to this Section 2.2(e) shall be reduced to the extent necessary to ensure that the City Loan's terms are not considered usurious under applicable law.

Section 2.3 Equity Sharing Where Option Not Exercised.

(a) If, after the Owner has notified the Optionee of the Owner's intent to sell the Home, the Optionee does not notify the Owner by the deadline in Section 2.2(a) of the Optionee's intent to exercise the Option, then the Owner may sell the Home as permitted by this Section 2.3. However, if the Owner does not sell the Home as permitted by this Section 2.3 within twelve (12) months after the deadline in Section 2.2(a), then the Owner may not sell the Home without first repeating the process described in Section 2.2(a) and giving the Optionee another opportunity to exercise the Option.

(b) If the Owner sells the Home pursuant to this Section 2.3, then the Owner may sell the Home to any purchaser that the Owner is able to find at any purchase price that the Owner is able to obtain. However, at the close of escrow through which the sale is effectuated, the Owner shall both (i) repay the City Loan, and (ii) pay to the City the City Equity Share.

(c) The Owner's duty to pay the City the amount described in Section 2.3(b) shall be secured by the City Deed of Trust. The Owner acknowledges that the City has no duty to cause reconveyance of the City Deed of Trust until the full amount described in Section 2.3(b) has been paid, even if the City Loan has been repaid.

(d) The amount described in Section 2.3(b) shall be reduced to the extent necessary to ensure that the City Loan's terms are not considered usurious under applicable law.

(e) If the buyer under Section 2.3(b) is a Moderate Income Household, then the City may offer to the buying Moderate Income Household a down payment assistance loan, on the same terms as those provided to other homebuyers at the time, in an amount up to the repaid City Loan principal plus the City Equity Share, as needed.

ARTICLE 3. DEFAULTS AND MISCELLANEOUS

Section 3.1 Default and Foreclosure Under Approved Loans.

(a) The Owner shall give written notice directly to the Optionee within three (3) days after the Owner receives any notice of default or pending default under any Approved Loan.

(b) Any notice of default under an Approved Loan given to the Optionee pursuant to Civil Code Section 2924b (which requires delivery of a notice of default to specified parties when a notice of default is recorded to commence a foreclosure process) shall constitute an Owner's notice of intent to sell under Section 2.2(a) of this Agreement, and the Optionee may

then exercise the Option pursuant to the provisions of Section 2.2. However, the Optionee must complete such purchase no later than the end of the period established by California Civil Code Section 2924c for reinstatement of a monetary default under the deed of trust or mortgage.

(c) If a notice of default is recorded to commence a foreclosure process under an Approved Loan but the Optionee does not receive a recorded notice of default pursuant to Civil Code Section 2924b because no request for notice has been recorded, then the Optionee shall have the right to exercise the Option from the date the recorded notice of default is given to the Owner, and any such purchase must be completed within the period established in Section 3.1(b).

(d) In the event of default and foreclosure under an Approved Loan, the Optionee shall have the same right as the Owner to cure defaults and redeem the Home prior to foreclosure sale. Such redemption shall be subject to the same fees, charges, and penalties which would otherwise be assessed against the Owner. However, the Optionee has no duty to cure any such default; nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

(e) In the event that the Optionee does not elect to purchase or redeem the Home pursuant to the provisions of this Section 3.1 and the Home is sold through foreclosure, then a percentage of any surplus proceeds to which the Owner is otherwise entitled following foreclosure under California state law, after any required payment of secured obligations (including the City Loan), shall be paid to the City. The percentage of surplus payable to the City shall be a fraction, the numerator of which is the original principal amount of the City Loan and the denominator of which is the total purchase price originally paid by the Owner for the Home.

(f) This Agreement and the Option are subordinate to any deed of trust or mortgage on the Home made or held by an institutional lender or investor to secure an Approved Loan. Any person (and its successors and assigns) receiving title to the Home through a trustee's sale, a judicial foreclosure sale, or a deed in lieu of foreclosure under such deed of trust or mortgage (and any conveyance or transfer thereafter) shall receive title free and clear of the provisions of this Agreement and the Option.

Section 3.2 Distribution of Insurance and Condemnation Proceeds.

If the Home is condemned and the condemnation proceeds are distributed to the Owner, or if the Home is destroyed and insurance proceeds are distributed to the Owner instead of being used to rebuild, a percentage of any surplus proceeds to which the Owner is otherwise entitled, after any required payment of secured obligations (including the City Loan), shall be paid to the City. The percentage of surplus proceeds payable to the City shall be a fraction, the numerator of which is the original principal amount of the City Loan and the denominator of which is the total purchase price originally paid by the Owner for the Home.

Section 3.3 Default Under This Agreement.

(a) At any time after receiving actual notice of a prohibited Transfer, or of any other violation of this Agreement, the Optionee may give written notice to the Owner specifying the nature of the prohibited Transfer or other violation of this Agreement. If the violation is not corrected to the satisfaction of the Optionee within ten (10) days after the date of the notice, or within such further time as the Optionee determines in its sole discretion to be necessary to correct the violation, the Optionee may declare in writing a default under this Agreement.

(b) Upon the declaration of a default under this Agreement, the Optionee may apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting a proposed sale or Transfer in violation of this Agreement, for a declaration that the prohibited Transfer is void, or for any such other relief as may be appropriate. In addition, any written declaration of default that the Optionee gives to the Owner pursuant to this Agreement shall constitute an Owner's notice of intent to sell under Section 2.2(a) of this Agreement, and the Optionee may then exercise the Option pursuant to the provisions of Section 2.2.

(c) Any default under this Agreement is also a default under the City Deed of Trust and shall give rise to City remedies under the City Deed of Trust.

Section 3.4 Owner Representations and Warranties.

The Owner represents and warrants to the City as follows:

(a) The financial and other information previously provided to the City by the Owner for the purpose of qualifying to purchase the Home was true and correct at the time it was given and remains true and correct as of the date of this Agreement.

(b) The Owner expects to and will occupy the Home and maintain it as a single family residence.

(c) The Owner understands the restrictions in this Agreement and has received counseling regarding homeownership subject to the restrictions in this Agreement.

Section 3.5 Running of Benefits and Burdens.

All provisions of this Agreement, including the benefits and burdens, run with the Home, and are binding upon and inure to the benefit of the heirs, successors, assigns and personal representatives of the Parties.

Section 3.6 Termination.

(a) This Agreement shall terminate on the earlier of (1) repayment of the City Loan upon a sale of the Home (but not upon any prepayment), or (2) acquisition of title through the exercise of remedies under a deed of trust securing any Approved Loan. The Owner understands that prepayment of the City Loan is not permitted and will not cause the termination of this Agreement.

(b) Upon termination of this Agreement, on request of the record owner of the fee title to the Home, the City and any other Optionee shall execute, acknowledge, and record a termination of this Agreement. To the extent permitted by law, any unfulfilled obligations of any Owner shall survive the termination of this Agreement, but this Agreement shall no longer affect title to the Home.

Section 3.7 Notice.

Formal notices, demands, and communications between the Parties shall not be deemed given unless dispatched by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personal delivery with a delivery receipt, to the Parties as follows:

City:

City of Calistoga
1232 Washington Street
Calistoga, California 94515
Attention: City Manager

Owner:

Cynthia R. Mewhorter
1807 Aurora Drive
Calistoga, CA 94515

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section 3.7. Receipt shall be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 3.8 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 3.9 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 3.10 Severability.

If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Parties have been materially altered by such holding of invalidity.

Section 3.11 Legal Actions.

If any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement, then the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement).

Section 3.12 Entire Understanding of the Parties.

This Agreement and the City Deed of Trust constitute the entire understanding and agreement of the Parties with respect to resale restrictions on the Home and the City's right to acquire the Home from the Owner.

Section 3.13 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

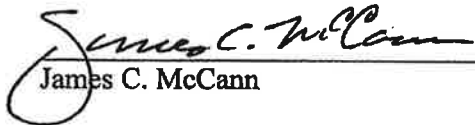
Section 3.14 Modifications.

This Agreement shall not be modified except by written instrument executed by and between the Parties.

THIS AGREEMENT CONTINUES ON THE FOLLOWING PAGE.

AS OF THE DATE FIRST WRITTEN ABOVE, the Parties evidence their agreement to the terms of this Agreement by signing below:

CITY OF CALISTOGA

By: 
James C. McCann

Its: _____
City Manager

OWNER


Cynthia R. Mewhorter

Signatures must be acknowledged by a Notary Public