

NOTICE TO BORROWER:

This document contains provisions restricting resales and assumptions.

**BELOW MARKET PURCHASE PROGRAM
PROMISSORY NOTE**

Secured by City Subordinate Deed of Trust

Note Amount: **\$XX,000.00**

Santa Clara, California

Loan Date: **DATE**

FOR VALUE RECEIVED, the undersigned (“Borrower”) promises to pay to the CITY OF SANTA CLARA (“City”) at such place as the City may designate from time to time in writing, the principal sum of **\$XX,000.00**. All sums hereunder shall be payable in lawful money of the United States of America.

1. **Definitions.** The terms set forth in this section shall have the following meanings in this Note.

“Affordable Housing Cost” shall mean a Monthly Housing Cost not exceeding one-twelfth (1/12) of thirty-five percent (35%) of one hundred percent (100%) of Median Income, adjusted for household size appropriate for the size of the Residence, but in no event less than one-twelfth (1/12) of twenty five percent (25%) of the Borrower's actual gross income.

“Affordable Sales Price” shall mean a below-market sales price for a Residence, as **ADDRESS** determined by the City as of the date of the City Covenant.

“Appreciation Amount” shall mean the difference between the Initial Market Value and the Unrestricted Resale Price (less Borrower’s “capital improvements” as this term is defined in the City Covenants and approved by the City).

“City Covenants” shall mean those certain Covenants, Restrictions and Option to Purchase entered into by and between the Borrower and the City, as amended, modified or supplemented from time to time.

“City Lien” shall mean that certain secondary mortgage lien, made to the Borrower by the City and evidenced by this Note.

“City Lien Documents” shall collectively mean this City Note, the City Covenants and the City Deed of Trust.

“City Note” or “Note” shall mean this promissory note from the Borrower to the City evidencing the City Lien to the Borrower, as amended, modified or supplemented from time to time.

“City Subordinate Deed of Trust” shall mean the deed of trust against the Residence executed by the Borrower in favor of the City, securing the City Note, as amended, modified or supplemented from time to time.

“CalHFA” shall mean the California Housing Finance Agency.

“Eligible Household” shall mean a Moderate Income Household which: (i) is defined as a first-time homebuyer in the City Covenants; (ii) intends to owner-occupy the Residence; and, (iii) meets the Program’s household income and liquid assets requirements.

“Initial Market Value” shall mean the fair market value of the Residence, as determined by the City as of the date of the City Covenants.

“Moderate Income Household” shall be a household with a gross income which does not exceed one hundred and twenty percent (120%) of the Median Income, adjusted for household size.

“Notice of Intended Transfer” shall mean the notice required under Section 4 of the City Covenants that shall specify all the terms of the intended Transfer.

“Program” shall mean the City’s Below Market Purchase Program.

“Resale Restriction Period” shall mean five years from the date of the City Covenants.

“Restricted Resale Price” shall mean that price determined by the City in accordance with the provisions in the City Covenants.

“Residence” shall mean the housing unit commonly known as **ADDRESS**, together with the land thereon and any subparts thereof, and more particularly described in Exhibit A attached to the City Subordinate Deed of Trust that secures this Note.

“Senior Lender” or “Senior Lenders” shall mean any of the following entities and their successors and assigns, which is the beneficiary of a recorded security instrument used to secure financing for the purchase of the Residence: (i) the First Mortgage Lender, (ii) CalHFA; (iii) the City of Santa Clara; or (iv) a lender under a CalHFA first mortgage program.

“Senior Loan” or “Senior Loans” shall refer to loans made by Senior Lenders to the Borrower.

“Senior Loan Deeds of Trust” shall refer to the deeds of trust securing each Senior Loan, which documents shall at all times be senior to the City Lien Documents.

“Term” shall mean the twenty (20) year period commencing upon the date of this Note.

“Transfer” shall mean any sale, assignment, transfer, or encumbrance voluntary or involuntary, in part or in full, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Residence is transferred and

Borrower retains title; provided, however, that Transfer shall not include transfers by gift, devise or inheritance to an existing spouse, surviving joint tenant, or transfers to a spouse in the course of a dissolution proceeding or in connection with marriage, or transfers by devise or inheritance to children, or a transfer into an inter vivos trust of which the Borrower is the sole beneficiary.

“Unrestricted Resale Price” shall mean the actual unrestricted price of the Residence that the Owner transfers between the expiration of the Resale Restriction Period and the twentieth (20th) anniversary of this Note.

2. **City Lien.** This Note is made and delivered pursuant to, and in implementation of, the City’s Below Market Purchase Program, under which the City, in order to assist Borrower to purchase the Residence, is making the City Lien to Borrower in the amount set forth above. The amount of the City Lien consists of the difference between the Initial Market Value and the Affordable Sales Price for the Residence, as determined by the City as of the date of the City Covenants. Concurrently with the execution of this City Note, Borrower is executing the following instruments in connection with the purchase of the Residence:
 - (a) The City Subordinate Deed of Trust that secures this Note; and
 - (b) The City Covenants, recorded concurrently with the City Subordinate Deed of Trust.
3. **Loan Security.** This Note is secured by the City Subordinate Deed of Trust of even date herewith. Borrower shall purchase an ALTA lender’s policy of title insurance, insuring such City Subordinate Deed of Trust as a secondary lien on the Residence, with no delinquent taxes or assessment liens that appear as exceptions to title.
4. **Repayment.**
 - (a) Notwithstanding any other provision of this Note, the entire outstanding principal balance of this Note and the amount set forth in subsection (b) below, shall be due and payable upon the first to occur of the following:
 - (i) a default by Borrower under the City Lien Documents;
 - (ii) a Transfer that occurs after the expiration of the Resale Restriction Period and before the expiration date of this Note, except as otherwise provided herein;
 - (iii) payment in full of the First Mortgage Loan;
 - (iv) Borrower refinances all, or any part of, the First Mortgage Loan without first obtaining the written consent of the City to the proposed refinancing. City may approve or deny the proposed refinancing at its sole discretion, depending on whether the proposed refinancing would meet all the requirements listed in the then-current version of the City’s Below Market Purchases Program Policies and Procedures; or
 - (v) twenty (20) years from the date of this Note.

- (b) In addition to paying the entire outstanding principal balance of the Note, Borrower shall pay the City the lesser of either (i) simple interest at the rate of seven percent (7%) on the principal amount of the City Lien commencing from the date of this Note to the date all amounts due under this Note have been repaid in full, or (ii) an equity share, defined as the City's proportionate share of the Appreciation Amount decreased at the rate of five percent (5%) per year commencing from the date of this Note until the maturity date of this Note. See Equity Share/Interest Payment Example attached hereto as **Attachment A**
- c) After payment of the outstanding balance of the Note and any interest or equity share, the City shall then remove or cause to be removed the City Covenants as a lien on the Residence and the City Covenants shall cease to be covenants running with the land for the Residence.
5. **Repayment Deferral/Forgiveness.** Except as provided under Section 4 above, the Borrower is not obligated to repay this Note during the Resale Restriction Period if the Residence is transferred at a Restricted Resale Price pursuant to and in accordance with the City Covenants.
6. **Exception.** The City may, at its sole and absolute discretion, permit exceptions on a case-to-case basis to the accelerated repayment provisions under paragraph (a) of the preceding Section 4 of this Note.
7. **Prepayments.** Borrower may prepay all or part of the principal balance due under this Note. If prepayment occurs after the expiration of the Resale Restriction Period and prior to transfer of the Residence, Borrower shall also pay either interest or an equity share as specified in Section 4 (b). The City shall use Fair Market Value, as defined in the City Covenants in determining the Appreciation Amount. The City Covenants shall continue to remain in full force and effect until the 20th anniversary of this Note. Borrower shall not prepay the First Mortgage Loan unless this Note is paid in full.
8. **Application of Payments.** Any payments made pursuant to the terms of this Note shall be applied first to sums, other than principal, that are due to the City pursuant to this Note, and the balance, if any, to the payment of principal.
9. **Indemnification.** Without prejudice to the rights of the City hereunder or under any other City Lien Documents, Borrower shall indemnify defend and hold harmless the City against, and shall pay the City on demand, any expense or loss which City may sustain or incur as a result of the failure by Borrower to pay when due any installment of principal, interest, fees, or other amounts payable to the City under this Note or any other City Lien Documents.
10. **Restrictions on Transfer Proceeds.** Except as otherwise provided by the requirements of any Fannie Mae or CalHFA rules or guidelines applicable to the First Mortgage Loan, or by this Note, proceeds from any Transfer, after paying any and all superior liens against the Residence and costs and fees relating to the transaction, if any (such as escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), shall be applied in the following order of priority: (i) accrued interest or shared equity under this Note; (ii) the outstanding balance under this Note; and (iii) any excess proceeds shall belong to the Borrower.

11. **Junior Liens.** Borrower shall not encumber the Residence for the purpose of securing financing and excluding the Senior Loan, whether senior in priority or subordinated to the City Deed of Trust without the prior written approval of the City. Notwithstanding any other provision of this Note, the following shall apply in the case of junior liens:
- (a) Borrower shall give written notice to the City at least 30 days prior to recording any junior lien against the Residence to secure any loan of funds, including documentation of the proposed use of the proceeds of such loan.
 - (b) Borrower shall give written notice to City of any notice of default under any junior lien.
 - (c) Failure to give any notice required under this Section 11 and any uncured default under the terms of the junior lien shall be a default under this Note.
12. **Default.** The occurrence of any of the following shall be deemed a default hereunder:
- (a) Failure by Borrower to make timely payments as required under this Note; or
 - (b) Failure or delay in the performance, or any other violation by Borrower of any other covenant or agreement of Borrower under this Note; or
 - (c) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Deed of Trust, the City Covenants or any other lien recorded against the Residence.
13. **Notice of Default; Cure Periods.**
- (a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Note or any other City Lien Document, the Borrower must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence. In the event the Borrower is unable or unwilling to enter into a forbearance agreement or otherwise implement the required cure, correction or remedy, the Senior Lenders shall have the right to cure, correct, or remedy any such default of the Borrower provided the Senior Lenders give notice to the City of its intention to cure, correct, or remedy the default within thirty (30) days after receipt of notice thereof. The City shall not commence foreclosure proceedings or accept a deed in lieu of foreclosure until it has given the Senior Lenders at least thirty (30) days' prior written notice of the default in accordance with this Section 13.
 - (b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, written notice of default to the Borrower, the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; and (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums owing under this Note, the sale of the Residence or the exercise of such other remedies

available to the City under the City Lien Documents or as provided by law; (5) that Borrower has the right to seek reinstatement after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Borrower to such acceleration and sale. If the non-monetary default is reasonably capable of being cured within thirty (30) days, the City may grant the Borrower, the Senior Lenders such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower, the Senior Lender (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, the City may grant the Borrower, the Senior Lender such additional time as is reasonably necessary to cure the default.

- (c) In the event of a monetary default by the Borrower under the terms of this Note or the City Deed of Trust, the procedures and time periods established in Section 13 (a) above shall govern.
- (d) Notwithstanding the cure periods established in this Section 13, in no event shall the City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or if the default is not cured within ninety (90) days after the first notice of default or delinquency is given.
- (e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

14. **Borrower's Waivers.** Borrower waives any right to require the City:

- (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 nonpayment (known as "protest").

15. **Remedies.** Upon the occurrence of a default, the giving of notice and the expiration of the applicable cure period, the City may, at its option: (a) Declare all of the sums owing hereunder and secured by the City Deed of Trust to be immediately due and payable without further demand, and invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Residence and take possession thereof (or any part thereof), in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Residence, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Residence shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding its continuance in possession of the Residence, the City shall be entitled to exercise every right provided for in this Note and the City Deed of Trust, or

by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose the City Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to one or more of the Trustees named in the City Deed of Trust, the trustee named in the deed of trust securing the Senior Loan, or any of them, a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found in California Civil Code Sections 2924, *et seq.*, as amended from time to time, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to Residence, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law. No delay or omission on the part of the City in exercising any right under this City Note or the City Deed of Trust shall operate as a waiver of such right.

16. **City Assignment.** City may, at its option, assign its right to receive payment under this Note without obtaining the consent of the Borrower. City shall provide written notice of any such assignment to the Senior Lenders.

17. **Attorney Fees and Costs.**
 - (a) Borrower agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by City, or adjudged by a court: (i) reasonable costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suite is filed; and (ii) costs of suit and such sum as the court may adjudge as attorneys' fees in any action to enforce payment of this Note or any part of it.

 - (b) In addition to the foregoing award of attorneys' fees, City shall be entitled to its attorneys' fees incurred in any post judgment proceedings to enforce any judgment in connection with this Note. This provision is separate and several and shall survive the merger of this provision into any judgment.

18. **Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

19. **Severability.** The covenants of this Note are severable. Invalidation of any covenant or any part thereof by law, judgment, or court order shall not affect any other covenant.

20. **Notices.** Except as otherwise expressly provided in this Note, in every case when, under the provisions of this Note, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (i) personally; or (ii) by independent, reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Borrower: **NAME**
 ADDRESS
 Santa Clara, CA 9505X

To Senior Lender: **Name of Lender**
 ADDRESS
 CITY, CA XXXXX

To City: The City of Santa Clara
 1500 Warburton Avenue
 Santa Clara, California 95050
 Fax: (408) 248-3381
 (Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

21. **Non-Waiver.** Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.
22. **Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.
23. **Joint and Several Obligations.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

[Signature on following page]

BORROWER

By: _____

Printed Name: **NAME**

By: _____

Printed Name: **NAME**

Address: **ADDRESS**

Attachment A

Equity Share and 7% Simple Interest Illustration

The seller will pay the lesser of the City's Equity Share of the Appreciation Amount or 7% simple interest based on a 20-Year Promissory Note

Example:

Initial Market Value of the Unit	\$500,000
Less Affordable Sales Price at time of initial sale	<u>\$385,000</u>
equals Principal amount of City Note	\$115,000

Equity Share Calculation of the Appreciation Amount (Equity Subject to Sharing):

	<u>Year Resale Occurs</u>		
	<u>6</u>	<u>10</u>	<u>15</u>
Assumed Unrestricted Resale Price	\$600,000	\$675,000	\$750,000
Less capital improvements approved by City	5,000	7,500	10,000
Net Unrestricted Resale Price	595,000	667,500	740,000
Less Initial Market Value	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>
 Appreciation Amount	 \$ 95,000	 \$167,500	 \$240,000
 City's Equity Share			
(20-6)/20 times the Appreciation Amount	(\$66,500)		
(20-10)/20 times the Appreciation Amount		(\$83,750)	
(20-15)/20 times the Appreciation Amount			(\$60,000)
 <i>Seller's Equity (Appreciation Amount less City's Share)</i> <i>(Seller gets 5%/yr increase in shared Appreciation Amount)</i>	 \$28,500	 \$83,750	 \$180,000

OR

7% Simple Interest Illustration:

Appreciation Amount	\$95,000	\$167,500	\$240,000
7% simple interest (\$115,000 principal)	(\$48,300)	(\$80,500)	(\$120,750)
 <i>Seller's Equity (Appreciation Amount less City's Interest)</i>	 \$46,700	 \$87,000	 \$119,250
 Principal amount of City Note	 \$115,000	 \$115,000	 \$115,000

Borrower must pay principal amount of the City Note in addition to either the City's share of the Appreciation Amount or the 7% simple interest amount.

It is assumed that no further encumbering of the property has occurred since the initial sale. Further encumbering of the unit is prohibited without the written permission of the City. The City offers no assurances or guarantee whatsoever that the property will increase in value to any extent or that it will not decrease in value. This illustration is solely created to serve as an illustration of calculated equity share or interest that may be owed.