

*****NOTE: Standard terms and conditions in this form do not conform to City's standard and will not be updated when we make revisions to City's standard terms and conditions.*****

[DP – delete note above when completing this form.]

SECURED PROMISSORY NOTE

(City of Mountain View – Below-Market-Rate Units)

EXCESS SALES PROCEEDS _____ Mountain View, California
and _____, 20__

EXCESS RENTAL PROCEEDS

FOR VALUE RECEIVED, the undersigned _____ and _____ (collectively, the “**Maker**”) promise to pay immediately when due to the order of the City of Mountain View, a California charter city and municipal corporation (“**City**”), at P.O. Box 7540, Mountain View, California, 94039-7540, or at any other place that may be designated in writing by City, all amounts due to City as Excess Rental Proceeds pursuant to Section 5.2 of the Resale Restriction Agreement (defined below) and as Excess Sales Proceeds pursuant to Section 14 of the Resale Restriction Agreement. All sums hereunder shall be payable in lawful money of the United States of America. City and Maker are hereinafter collectively “**Parties**” or individually “**Party**”.

1. **Definitions.** As used herein, the following terms shall have the meanings set forth in this Section.

“City Deed of Trust” means that certain Performance Deed of Trust, Assignment of Rents, and Security Agreement dated as of the date hereof, executed by Maker as Trustor for the benefit of City and recorded against the Property to secure repayment of this Note and performance under the Resale Restriction Agreement, as such instruments may be amended, modified, or supplemented from time to time.

“City Documents” means collectively this Note, the City Deed of Trust, and the Resale Restriction Agreement.

“Default” is defined in Section 8 of this Note.

“Excess Rental Proceeds” is defined in Section 5.2 of the Resale Restriction Agreement.

“Excess Sales Proceeds” is defined in Section 14 of the Resale Restriction Agreement.

“Note” means this Secured Promissory Note, as it may be amended, modified, or supplemented from time to time.

“Prohibited Transfer” is defined in Section 7 of the Resale Restriction Agreement.

“Property” means the property located at _____ in the City of Mountain View, together with the improvements located thereon, as more particularly described in Exhibit A, attached to the City Deed of Trust.

“Resale Restriction Agreement” means that certain Affordable Housing Resale Restriction Agreement and Option to Purchase executed by and between City and Maker, dated as of the date of this Note and recorded in the Official Records of Santa Clara County.

“Security” is defined in the City Deed of Trust.

2. **Excess Proceeds.** This Note is made and delivered pursuant to, and in implementation of, City’s Below-Market-Rate Affordable Housing Program, pursuant to which City, in order to assist Maker to purchase the Property, has arranged for the sale of the Property to Maker at a below-market price. Concurrently with the execution of this Note, Maker shall execute the City Deed of Trust and the Resale Restriction Agreement, each of which shall be recorded against the Property. The Resale Restriction Agreement requires the Property to be owner-occupied and obligates Maker to pay to City Excess Rental Proceeds in connection with any rental or lease of the Property in violation of the Resale Restriction Agreement. In addition, the Resale Restriction Agreement imposes restrictions upon the price at which the Property may be sold, and obligates Maker to pay to City Excess Sales Proceeds in connection with any Market-Rate Transaction (as defined in Section 14 of the Resale Restriction Agreement) or upon the occurrence of any Prohibited Transfer.

3. **Payments.** In the event that Excess Sales Proceeds become due and payable under the Resale Restriction Agreement, including, without limitation, upon the occurrence of a Prohibited Transfer of the Property, the amount of such Excess Sales Proceeds, determined in accordance with the Resale Restriction Agreement, shall be immediately due and payable hereunder. Failure to declare such amounts due in any instance shall not constitute a waiver on the part of City to declare them due in the future. Maker will pay to City all sums owing under this Note without deduction, offset, or counterclaim of any kind.

4. **Default Rate of Interest.** If the Excess Sales Proceeds payable to City pursuant to the Resale Restriction Agreement and this Note are not paid to City within ten (10) days of the due date thereof, then interest shall accrue on such sum at a rate equal to the

lesser of twelve percent (12%) interest per annum, compounded annually, or the maximum rate permitted by law.

5. **Prepayment.** This Note may not be prepaid in whole or in part.

6. **Security.** This Note is secured by the City Deed of Trust. The holder of this Note will be entitled to the benefits of the security provided by the City Deed of Trust and will have the right to enforce the covenants and agreements of Maker contained therein and in the Resale Restriction Agreement.

7. **Transfer.** Maker shall not transfer, lease, sell, assign, refinance, encumber, or convey any interest in the Property without complying with all requirements of the Resale Restriction Agreement. Maker's failure to comply with the requirements of this paragraph shall be a Default under this Note.

8. **Default.** The occurrence of any one or more of the following shall constitute a default ("Default") hereunder:

a. The occurrence of a breach of any of Maker's representations, warranties, or covenants under this Note, the City Deed of Trust, or the Resale Restriction Agreement, including, without limitation, any unauthorized refinancing, sale, conveyance, lease, assignment, encumbrance, or other Prohibited Transfer of the Property; Maker's failure to occupy the Property as Maker's principal residence; or Maker's failure to maintain insurance on the Property as required pursuant to the City Deed of Trust.

b. The entry of an order for relief under Federal bankruptcy laws as to Maker, or the adjudication of Maker as insolvent or bankrupt pursuant to the provisions of any State or Federal insolvency or bankruptcy act, or Maker's consent to, acquiescence in, or attempt to secure the appointment of, any receiver for all or any substantial part of the Property.

c. The occurrence of an event of default under any loan secured by the Property and the continuance of such default beyond the expiration of all applicable cure periods such that the holder of such loan has the right to accelerate such loan.

9. **Remedies.** Upon the occurrence of a Default, the giving of any required notice thereof, and the expiration of any applicable cure period, City may, at its option, exercise any one or more of the following remedies:

a. Declare all of the sums payable under this Note to be immediately due and payable without further demand.

b. Pursue the exercise of the power of sale provided under the City Deed of Trust.

c. 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 Property and take possession thereof (or any part thereof) and of any of the Security in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach, and notwithstanding the continuance in possession of the Property, City shall be entitled to exercise every remedy provided by the City Documents or by law, upon the occurrence of any uncured breach.

d. Commence an action to foreclose the City Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants set forth in the City Documents.

e. Exercise its option to purchase the Property pursuant to the Resale Restriction Agreement.

f. Exercise all other rights and remedies provided herein or in any other City Document.

g. Exercise any other remedy provided by law or in equity.

The rights and remedies of City hereunder are cumulative, and City's exercise or failure to exercise one or more of such rights or remedies shall not preclude City's exercise, at the same time or different times, of any other right or remedy for the same Default or any other Default.

10. **Maker's Personal Liability.** Maker will be fully and personally liable for all loss, cost, liability, damage, and expense (including, without limitation, attorneys' fees) suffered or incurred by City arising from any of the following:

a. Failure to pay taxes, assessments, and any other charges that could result in liens against any portion of the Property or any other Security.

b. Failure to pay and discharge any mechanics' liens, materialmen's liens, or other unpermitted liens against any portion of the Property or any other Security.

c. Maker's fraud or intentional misrepresentation with respect to any representations, warranties, or certifications made in the City Documents or in

connection with Maker's application to participate in the City's affordable housing program.

d. Maker's retention or use of insurance proceeds, condemnation awards, or other similar funds or payments attributable to the Property or any other Security that pursuant to the City Documents should have been paid to City or used for another purpose.

e. Waste of the Property, or any other failure to maintain, repair, or restore any portion of the Property or any other Security in accordance with the requirements of the City Documents.

f. The failure of the City Documents to constitute a lien or security interest, as applicable, on the Property or any other Security, subject only to those exceptions, if any, permitted by the City Documents or otherwise approved in writing by City.

Nothing in this paragraph will affect or limit the rights of City to enforce any of City's rights or remedies with respect to any portion of the Property or any other Security.

11. **Maker's Waivers.** Maker hereby expressly waives diligence, presentment, protest, and demand, and notice of protest, notice of dishonor, and notice of nonpayment of this Note, and expressly waives any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration, or release of any security given for the payments hereof, and expressly waives the right to plead any and all statutes of limitation as a defense to any demand on this Note.

12. **Notices.** Any notice given under this Agreement shall be in writing and shall be given by delivering the same to such Party in person, by delivering the same to such Party by reputable overnight courier or express service, or by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid. The address(es) of each Party for the giving of notices hereunder are, until changed as hereinafter provided, the following:

To City: Community Development Department
 Housing and Neighborhood Services Manager
 City of Mountain View
 500 Castro Street
 P.O. Box 7540
 Mountain View, CA 94039-7540

To Maker: _____

With a copy to: _____ (optional)

Any notice will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. A Party may change its notice address(es) at any time by giving written notice of such change to the other Party in the manner provided herein. Notice given by counsel shall be deemed given by the Party represented by such counsel.

13. **Assignment by Lender; Successors and Assigns.** This Note shall be binding upon Maker and Maker's heirs, successors, and assigns; provided, however, Maker may not assign this Note without City's prior written consent except as may be permitted in accordance with the City Deed of Trust and the Resale Restriction Agreement. City may assign its rights to receive the proceeds under this Note to any person or entity without the consent of Maker, and upon notice to Maker of such assignment, all payments shall be made to the assignee.

14. **No Joint Venture.** The relationship of Maker and City under this Note is solely that of a participant and administrator of an affordable housing program, and in no manner are City and Maker partners or joint venturers, nor do any of the City Documents establish a principal and agent relationship between City and Maker.

15. **Applicable Laws and Attorneys' Fees.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Santa Clara. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

16. **No Third-Party Beneficiaries.** This Note shall not benefit or be enforceable by any person or entity except City and Maker and their respective successors and assigns.

17. **Entire Agreement; Amendments.** This Note, together with the Resale Restriction Agreement and the City Deed of Trust, sets forth the entire understanding between Maker and the City with respect to the subject matter hereof. Any previous representations, warranties, agreements, and understandings among the Parties regarding the subject matter of the Resale Restriction Agreement, this Note, and City Deed of Trust, whether written or oral, are superseded by the terms of the Resale Restriction Agreement, this Note, and the City Deed of Trust. This Note may be modified or amended only by a written instrument duly executed by City and Maker.

18. **No Waiver.** Any waiver of any term or provision of this Note must be in writing. No waiver of any breach, default, or failure of condition under this Note or any other City Document shall be implied from City's failure or delay in declaring a default or exercising any of City's rights or remedies with respect to such breach, default, or failure, or from any previous waiver of any similar or unrelated breach, default, or failure, nor shall acceptance by City of any payment hereunder constitute a waiver of City's right to require prompt payment of any remaining amounts owed. Without limiting the generality of the foregoing, City's failure or delay in declaring any amount due hereunder shall not constitute a waiver of City's right to declare such sum due for the same or any subsequent event that triggers Maker's payment obligations hereunder.

19. **Severability.** If any provision of this Note shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Note shall not be affected or impaired thereby.

20. **Controlling Law and Venue.** The terms of this Note shall be interpreted under the laws of the State of California without regard to principles of conflicts of law. This Note was entered into and is to be performed in the County of Santa Clara, which is the exclusive venue for any action or dispute arising hereunder.

21. **Captions.** All captions and headings in this Note are for the purposes of reference and convenience and shall be disregarded for all other purposes, including the construction or enforcement of any of the provisions of this Note.

22. **Joint and Several.** The obligations of each signatory to this Note shall be joint and several.

23. **Time of the Essence.** Time is of the essence with regard to all matters contained in this Note.

24. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which in the aggregate shall constitute one and the same instrument, and the Parties agree that signatures on this Agreement shall be sufficient to bind the Parties.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of the date first written above.

“MAKER”:

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____