

**NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS
RESTRICTING REALES AND ASSUMPTIONS.**

**PROMISSORY NOTE
Secured by Deed of Trust**

(City of Sunnyvale – Below Market Rate (BMR) Ownership Housing Program)

**Excess Sales Proceeds
Excess Rents
Advances**

**«ADDRESS»
Sunnyvale, California**

«MONTH» «DAY», «YEAR»

FOR VALUE RECEIVED, the undersigned **«BUYER NAME» «BUYER NAME 2» «BUYER NAME 3»**, ("Borrower"), in accordance with this promissory note (the "City Note"), promises to pay to the City of Sunnyvale, a municipal corporation of the State of California ("City") at City of Sunnyvale, Housing Division, Attention: Housing Officer, P.O. Box 3707, Sunnyvale, CA 94088-3707, or such other place as City may designate in writing, any amounts due the City as Excess Rents, Excess Sales Proceeds, or Advances, as applicable.

1. Definitions. The capitalized terms set forth in this City Note shall have the same meanings as in the Resale Agreement.

2. Purpose of City Note. Borrower is purchasing the Home located at **«ADDRESS»** in the City of Sunnyvale, Santa Clara County, California (the "Home"), pursuant to the City's below market rate program, which makes homes available at a price affordable to low or moderate income households. Pursuant to the City's Below Market Rate Ordinance (Chapter 19.66 of the Sunnyvale Municipal Code), the purchase price of the Home has been set substantially below the market value so that the Home will be affordable for purchase by low or moderate income households. Because the purchase price has been set below the market value, the Borrower is required and has agreed to execute an Occupancy, Resale, and Refinancing Agreement with Option to Purchase at Restricted Price (the "Resale Agreement") that restricts the price of the Home upon resale and requires the Borrower to pay any Excess Sales Proceeds at resale to the City. In addition, the Resale Agreement prohibits the Borrower from renting or leasing the Home except with prior written approval by City and requires the Borrower to pay any Excess Rents to the City. The Resale Agreement also requires the Borrower to pay Advances. This City Note evidences the obligation of Borrower to pay any Excess Rents, Excess Sales Proceeds, and Advances to the City pursuant to the Resale Agreement.

3. Security. This City Note is secured by a deed of trust dated the same date as this City Note (the "City Deed of Trust"). Borrower and City have also executed the Resale Agreement. Borrower acknowledges that this City Note is given in connection with the Borrower's purchase of the Home as part of a program of the City to assist in the purchase of

residences by low and moderate income households. Said Home includes both the real property and all improvements now or hereafter erected on the property, and all easements, rights, appurtenances and all fixtures now or hereafter attached to the property. The term "Home," as used herein, shall have the same meaning as the term "Security" is used in the City Deed of Trust.

4. Term. The term of this City Note commences on the date of this City Note and expires thirty (30) years from the date of this City Note.

5. Payments. All Excess Sales Proceeds, Excess Rents, and Advances owed under this City Note or the Resale Agreement shall immediately become due and payable: (i) in the event of a Default by the Borrower under this City Note, the Resale Agreement, the Deed of Trust, or the First Lender Loan; or (ii) on the date Transfer is made, except for permitted transfers as described in the Resale Agreement. Failure to declare such amounts due shall not constitute a waiver on the part of the City to declare them due in the event of a subsequent Transfer.

6. No Assumption of City Note by Subsequent Buyers. Borrower acknowledges that this City Note is given in connection with the purchase of the Home as part of a program of the City to assist in the purchase of homes by low or moderate income households. Any Excess Rents, Excess Sales Proceeds, or Advances due under this City Note are due and payable at Transfer. Consequently, this City Note shall not be assumable by subsequent purchasers nor by the successors and assigns of the Borrower.

7. Default and Acceleration. The Borrower shall be in default under this City Note if: (i) he or she is in default under the Resale Agreement, the City Note, the City Deed of Trust, or the First Lender Loan, (ii) fails to pay any money when due under this City Note; or (iii) breaches any representation or covenant made in this City Note, the City Deed of Trust, or the Resale Agreement. Upon the occurrence of a default as defined in this Section, the City shall have the right to declare any Excess Sales Proceeds, Excess Rents, or Advances immediately due and payable.

8. Nonliability for Negligence, Loss, or Damage. Borrower acknowledges, understands and agrees that the relationship between Borrower and City is solely that of borrower and lender, and that City neither undertakes nor assumes any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality, adequacy or suitability of the Home or any other matter. City owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction or any condition of the Home and Borrower agrees that neither Borrower, or Borrower's heirs, successors or assigns shall ever claim, have or assert any right or action against City for any loss, damage or other matter arising out of or resulting from any condition of the Home and will hold City harmless from any liability, loss or damage for these things.

9. Indemnity. Borrower agrees to defend, indemnify, and hold City and its employees, agents, officers, and board members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that City may incur as a direct or indirect consequence of:

(a) Borrower's failure to perform any obligations as and when required by this City Note, the City Deed of Trust, and the Resale Agreement; or

(b) the failure at any time of any of Borrower's representations or warranties to be true and correct.

10. No Waiver by City. Failure by City to pursue its legal and equitable remedies upon Borrower's default shall not constitute a waiver of City's right to declare a default and exercise all of its rights under this City Note, the City Deed of Trust and the Resale Agreement. Nor shall acceptance by City of any payment provided for herein constitute a waiver of City's right to require prompt payment of any remaining principal owed. A waiver of any term of the City Note must be made in writing and shall be limited to the express written terms of such waiver.

11. Attorney's Fees and Costs. Borrower agrees that if any amounts due under this City Note are not paid when due, to pay in addition to all Excess Rents, Excess Sales Proceeds, and Advances, all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this City Note, whether or not suit is filed.

12. Joint and Several Obligations. This City 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.

13. No Offset. Borrower hereby waives any rights of offset it now has or may hereafter have against City, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this City Note.

14. Waiver. Borrower and any endorsers or guarantors of this City Note, for themselves, their heirs, legal representatives, successors and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of non-payment of this City Note, and expressly waive 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 waive the right to plead any and all statutes of limitations as a defense to any demand on this City Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

15. Notices. All notices required in this City Note shall be sent by certified mail, return receipt requested, express delivery service with a delivery receipt, or personal delivery with a delivery receipt and shall be deemed to be effective as of the date received, the date delivery was refused, or the date returned as undeliverable as indicated on the return receipt as follows:

To the Borrower:

«BUYER_NAME»
«BUYER_NAME_2» «BUYER_NAME_3»
«ADDRESS»
Sunnyvale, CA 9408«ZIP_CODE»

To the City:

City of Sunnyvale, Housing Division
P.O. Box 3707
Sunnyvale, CA 94088—3707
Attention: Housing Officer

To the First Lender:

«M_1st_LENDER»
«LENDER_STREET_ADDRESS»
«LENDER_CITYSTATEZIP»

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section.

16. Controlling Law. This City Note shall be construed in accordance with and be governed by the laws of the State of California. The venue for any legal action pertaining to this City Note shall be Santa Clara County, California.

17. Assignment by City. The City may assign its right to receive the proceeds under this City Note to any person and upon notice to the Borrower by the City all payments shall be made to the assignee.

18. Severability. Should any provision of this City Note be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

19. Entire Agreement. This City Note (along with the Resale Agreement and City Deed of Trust) sets forth the entire understanding and agreement of the City and the Borrower and any amendment, alteration or interpretation of this City Note must be in writing signed by both the City and the Borrower.

BORROWER:

«BUYER_NAME»

«BUYER_NAME_2»

«BUYER_NAME_3»