

PROMISSORY NOTE  
CITY OF GILROY

LOW AND/OR MODERATE-INCOME OWNER

ADMINISTRATIVE COVER SHEET

(Remove Upon Completion)

**BLANK LINES: CHECKLIST**

- \_\_\_\_\_ Amount of Development Subsidy, p. 1, upper left
- \_\_\_\_\_ Date of Document, p. 1, upper right
- \_\_\_\_\_ Borrower's Name, p. 1, first paragraph
- \_\_\_\_\_ Street Address of Home, p. 1, Section 1
- \_\_\_\_\_ Original Purchase Price of Home , p. 1, Section 2(c)
- \_\_\_\_\_ Signatures, p. 7

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS  
RESTRICTING ASSUMPTIONS.

PROMISSORY NOTE  
Secured by Deed of Trust

Gilroy, California

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_  
("Borrower") promises to pay to City of Gilroy, a municipal corporation ("City"), at 7351  
Rosanna Street, Gilroy, California 95020, or such other place as City may designate in writing,  
a share of the appreciation when the Home is resold, in an amount as calculated in accordance  
with Section 3, Equity Share.

- 1) Purpose of Loan. Borrower is purchasing the Home located at \_\_\_\_\_ in  
the City of Gilroy, Santa Clara County, California (the "Home"). This Promissory Note  
("Note") evidences the fact that the Borrower was able to purchase the Home with the  
assistance of Below Market Financing and Price Discount made available to the Borrower by  
City. The combined Below Market Financing and Price Discount represent  
\_\_\_\_\_ Percent (\_\_\_\_%) of the Original Market Value of the Home. In  
connection with this Note, Borrower and the City have executed the Property Restriction  
Agreement and Option to Purchase ("Property Restriction Agreement"). This Note evidences  
the obligation of Borrower to repay the City's Equity Share.
- 2) Definitions. The terms set forth in this section shall have the following meanings in this  
Note. Any capitalized term not defined in this Note shall have the meaning set forth in the  
Property Restriction Agreement.
  - a) "Administrator" shall mean the entity designated by City to administer the Below Market  
Rate Program.
  - b) "Administrative Services Agreement" shall mean the Agreement For Services, dated  
**April 1, 2017**, and executed by and between City and Administrator, as such agreement  
may be amended or replaced from time to time. Owner is not a Party to such agreement  
and shall have no liability or responsibility thereunder.
  - c) "Appreciation Amount" shall mean the amount calculated by subtracting  
\_\_\_\_\_ Thousand \_\_\_\_\_ Dollars

(\$417,343.00), which is the Original Purchase Price of the Home paid by the Owner, from one of the following amounts, as applicable:

i) in the event of a sale of the Home, the amount received by the Owner as the gross sale price of the Home, as evidenced by escrow instructions or a settlement statement related to the sale, and as certified by the Owner under penalty of perjury;

ii) upon the occurrence of :

- (1) a Repayment Transfer (other than sale of the Home or Other Transfer); or
- (2) default triggering repayment pursuant to Section 14 of the Property Restriction; or
- (3) the end of the Term;

the Market Value of the Home as determined at the time of the above triggering event; or

iii) in the event a creditor acquires title to the Home through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Home at a creditor's sale of the Home.

d) "BMR Percentage" shall mean the percentage resulting from dividing the amount of the Below Market Financing and Price Discount by the Original Market Value of the Home, which amount is \_\_\_\_\_ Percent (\_\_\_\_%).

e) "Below Market Financing" shall mean financing with below market interest rates and/or terms provided or secured by City for the benefit of Borrower.

f) "Below Market Rate Program" shall mean the City of Gilroy Below Market Rate (BMR) Ownership Program, including the guidelines, policies, fee schedules, and agreements, as modified from time to time, that provide affordable purchase, rental, and financing opportunities to low and moderate-income households.

g) "Close of Escrow" or "Closing" shall mean the close of escrow on the transaction through which Borrower purchases the Home from the City.

h) "Deed of Trust" shall mean the deed of trust which secures the obligations under the Property Restriction Agreement and evidenced by this Promissory Note, which is to be executed by Owner in favor of City and recorded at the time of purchase against the title of the Residence in the Recorder's Office of the County of Santa Clara, California.

i) "Home" shall mean the real property, more particularly described in Section 2 and **Attachment 1** of this Agreement, consisting of one unit in the Alexander Place Project, which serves as security for the Deed of Trust executed in connection with this Agreement.

- j) "Market Value" shall mean the unrestricted value of the Home at a specified time. The Market Value shall be determined in accordance with Section 8 of the Property Restriction Agreement.
- k) "Original Purchase Price" shall mean the price being paid for the Home by the Borrower, more particularly described in Section 2 of the Property Restriction Agreement.
- l) "Original Market Value" shall mean the unrestricted value of the Home at the time it was purchased by the Owner.
- m) "Other Transfer" shall mean a transfer in whole or in part: (i) to an existing spouse or domestic partner who is also an obligor under the Promissory Note; (ii) by a Borrower to a spouse or domestic partner where the spouse or domestic partner either inherits the Home from the Owner or becomes the co-owner of the Home and holds partial title to the home; (iii) between spouses as part of a marriage dissolution proceeding; (iv) by Borrower into a inter vivos revocable trust in which Borrower is the beneficiary; or (v) by recordation of an Other Deed of Trust. Other Transfers are subject to the terms and conditions of Section 6 in the Property Restriction Agreement. For purposes of this section, "domestic partner" shall mean two unmarried people, at least eighteen (18) years of age, who have lived together continuously for at least one (1) year and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of California.
- n) "Price Discount" shall mean the additional amount above the Original Purchase Price that the City would have received, had it sold the Home at its Original Market Value, but chose to forego in order to make the Home affordable for the Owner. That amount is calculated by subtracting the Original Purchase Price from the Original Market Value.
- o) "Repayment Transfer" shall mean any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest of more than two (2) months in any twelve (12) month period, an interest evidenced by a land contract by which possession of the Home is transferred and Borrower retains title, or a deed of trust. Any Transfer without satisfaction of the provisions of this Note is prohibited. A Repayment Transfer shall not include an Other Transfer.
- p) "Property Restriction Agreement" shall mean the Property Restriction Agreement and Option to Purchase executed by the Borrower and the City in connection with this Note.
- q) "Senior Lender Loan" shall mean any purchase money loan that is secured by a deed of trust senior to the Deed of Trust, other than the City of Gilroy First-Time Homebuyer Deed of Trust.

1     Equity Share. The City will share in a portion of the Gross Sale Proceeds upon Repayment Transfer of the Home in the first twenty (20) years after Close of Escrow, which

portion shall be equal to One Hundred Percent (100%) of the BMR Percentage multiplied by the sum of the Price Discount and the Appreciation Amount calculated at the time of repayment. Beginning on the day after the twentieth (20<sup>th</sup>) anniversary after the close through the thirtieth (30<sup>th</sup>) anniversary of close, the Equity Share percentage paid to City shall be Fifty Percent (50%) of the BMR Percentage multiplied by the sum of the Price Discount and the Appreciation Amount calculated at the time of repayment. After the thirtieth (30<sup>th</sup>) anniversary of the Closing, the City shall not be entitled to any Equity Share upon the occurrence of a Repayment Transfer.

3) Term. The term of this Note is thirty (30) years from the date of this Note.

4) Repayment.

a) Deferral. Repayment of the Equity Share amount of this Note shall be deferred for the Term of the Note, except as provided in subsection (b) below.

b) Repayment in Full. The total amount of any Equity Share owed under this Note shall immediately become due and payable (i) in the event of a default by the Borrower under this Note, the Property Restriction Agreement, the Deed of Trust, the Senior Lender Loan, or the City's First-Time Homebuyer's Promissory Note (assuming default occurs prior to end of the Term of this Note) (ii) on the date Repayment Transfer is made, whether voluntarily, involuntarily, or by operation of law and whether by deed, contract of sale, gift, devise, bequest or otherwise, and/or (iii) in the event Borrower ceases to occupy the Home as his or her principal place of residence. 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 Repayment Transfer.

c) Inheriting Owner. If during the Term, an Inheriting Owner inherits the Home, the Inheriting Owner shall succeed to all the obligations of the Borrower under this Note.

5) Security. This Note is secured by a deed of trust dated the same date as this Note (the "Deed of Trust"). Borrower and City have also executed the Property Restriction Agreement.

6) Assumption of Note by Subsequent Buyers. Borrower(s) acknowledge(s) that this Promissory Note is given in connection with the purchase of the Home as part of an effort by the City to assist in the purchase of homes by low or moderate-income households. Consequently, this Note is assumable only by the spouse or domestic partner of Owner who inherits the Home from Owner (and who occupies the Home), Inheriting Owners, and Non-Relative Inheriting Owners pursuant to Section 6 of the Property Restriction Agreement. The Equity Share shall be due from Borrower upon notice from the City. The Promissory Note is due in full upon all Repayment Transfers.

In order to evidence the assumption of the Owner's obligations under the Promissory Note, Deed of Trust and the Agreement, the City may, at its sole discretion and authority, require the Inheriting Owner or Non-Relative Inheriting Owner that assumes this Note to execute (i) a new note, which shall be in an amount equal to the Equity Share owed by Borrower, (ii) a new deed of trust to be recorded in the same position as the existing Deed of Trust and (iii) a

new Property Restriction Agreement with a new thirty (30) year term in forms provided by the City.

Similarly before a spouse or domestic partner of Borrower who inherits the Home from Borrower (and who occupies the Home) assumes this Promissory Note, the City may in its sole and absolute discretion require such persons to execute (i) a new note, which shall be in an amount equal to the Equity Share owed by Borrower, (ii) a new deed of trust to be recorded in the same position as the existing Deed of Trust and (iii) a new Property Restriction Agreement and Option to Purchase with a term that is equal to the remaining number of years in the term of the Borrower's Property Restriction Agreement.

- 7) Refinance of Senior Lender Loan. The outstanding Equity Share owed to the City under this Note shall not be due upon prepayment and refinance of the Senior Lender Loan and the Deed of Trust and Property Restriction Agreement shall be subordinated to the deed of trust securing the new Senior Lender Loan provided that such refinancing meets the requirements of Section 11 of the Property Restriction Agreement.
- 8) Default. The Borrower shall be in default under this Note if he or she is in default under any mortgage loan on the Home (including the Senior Lender Loan), following the expiration of applicable cure periods, or if, after the notice and cure period provided by the City to the Borrower pursuant to the notice and cure provisions of the Deed of Trust, the Borrower (i) fails to pay any money when due under this Note; (ii) breaches any representation or covenant made in this Note or the Property Restriction Agreement in any material respect; or (iii) breaches any provision of the Deed of Trust.
- 9) Acceleration. Upon the occurrence of a default under this Note, the Property Restriction Agreement, the Deed of Trust, or the Senior Lender Loan, the City shall have the right to declare the full amount of the City's Equity Share due under this Note immediately due and payable. Any failure by the City to pursue its legal and equitable remedies upon default shall not constitute a waiver of the City's right to declare a default and exercise all of its rights under this Note, the Property Restriction Agreement, and the Deed of Trust. Nor shall acceptance by the City of any payment provided for herein constitute a waiver of the City's right to require prompt payment of any remaining principal and interest owed.
- 10) 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.

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

- a) the making of the Below Market Financing and Price Discount available to Borrower;
- b) Borrower's failure to perform any obligations as and when required by this Note, the Deed of Trust, and the Property Restriction Agreement; or
- c) the failure at any time of any of Borrower's representations or warranties to be true and correct.

12) No Waiver by City. Failure by the 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 Note, the Deed of Trust and the Property Restriction Agreement. Failure to declare amounts due shall not constitute a waiver on the part of City of the right to declare them due in the event of any subsequent Transfer. 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 Note must be made in writing and shall be limited to the express written terms of such waiver.

13) Attorney's Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition to principal and accrued interest, all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

14) 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.

15) 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 Note.

16) Waiver. Borrower and any endorsers or guarantors of this 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 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 Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

17) Controlling Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

18) Assignment by City. The City may assign its right to receive the proceeds under this Note to any person and upon notice to the Borrower by the City all payments shall be made to the assignee. The City may not transfer or assign the Note to a profit-making entity without first obtaining approval of the lender of the Senior Lender Loan. The City may transfer or assign this Note to a government agency or non-profit entity without obtaining approval of the lender of the Senior Lender Loan.

19) Severability. Any provision of this Note shall 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.

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

BORROWER:

\_\_\_\_\_  
(insert names)

\_\_\_\_\_  
(insert names)