

**NOTICE TO BORROWER:**

THIS DOCUMENT CONTAINS PROVISIONS  
RESTRICTING TRANSFERS AND ASSUMPTIONS

**PROMISSORY NOTE**  
Secured by a Deed of Trust  
(Partially Deferred)

Principal Amount \$ \_\_\_\_\_

(address of property)  
Livermore, California

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ ("Borrower") whose address is \_\_\_\_\_, Livermore, California 9455\_\_\_\_\_, hereby promise(s) to pay to the order of the City of Livermore, a municipal corporation ("City"), at 1052 South Livermore Avenue, Livermore, California 94550, the principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), together with interest accrued thereon, as set forth in this Promissory Note ("Note").

This Note is made through the Mortgage Assistance Program for the purchase of that certain real property commonly known as \_\_\_\_\_, (APN \_\_\_\_\_) more fully described in the Deed of Trust ("Property"). The City's Mortgage Assistance Program provides loans to assist low and moderate income first time homebuyers purchase homes to occupy as their primary personal residences.

The Borrower's obligations with respect to this Note are secured by that certain Deed of Trust ("Deed of Trust") executed by the Borrower concurrently herewith.

1. Borrower's Obligation. This Note evidences the Borrowers' obligation to pay the City the Principal Amount loaned to the Borrower by the City to finance the Property's purchase. As a condition of receiving the Principal Amount, the Borrower promises and agrees to comply will all terms and conditions of this Note.
2. Occupancy. At all times during the term of this Note, the Borrower shall occupy the Property as the Borrower's primary place of residence which is defined as occupying the Property for a minimum period of ten (10) months out of a calendar year. The Borrower shall not transfer the Property in violation of section 13 below.
3. Principal. The principal amount of this Note is \$\_\_\_\_\_ ("Principal Amount") for the funds loaned to the Borrower by the City to finance acquisition of the Property.

4. Interest. Simple interest shall accrue on the unpaid and outstanding balance of the Principal Amount at the rate of three percent (3%) per annum, commencing upon the close of escrow and continuing thereafter until the repayment of this Note in full.

If all terms and conditions of this Note are satisfied upon the completion of the tenth (10th) year of this Note, the accrued interest due under this Note until that date shall be forgiven. Commencing in the eleventh (11th) year of this Note and continuing thereafter, interest shall continue to accrue and shall be due and payable according to section 6.

5. Term. The Borrower shall repay the Principal Amount, and all interest accrued thereon, in equal installment payments as provided in section 6 below. The entire indebtedness evidenced by this Note shall be repaid to the City within twenty (20) years from the close of escrow.

6. Repayment. All payments by the Borrower shall be paid to the City in currency of the United States of America, which at the time of the payment is lawful for the payment of public and private debts. Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on (insert the date - ten years after the first payment is due on amortized note). Any principal and interest remaining on the first day of \_\_\_\_\_, 20\_\_\_\_\_, will be due on that date. The Borrower shall make monthly payments to the City in the amount of \$\_\_\_\_\_.

All payments on this Note shall be made payable to the City of Livermore, and shall be delivered to the City at 1052 South Livermore Avenue, Livermore, California, 94550, or to such other place as the City may from time-to-time designate.

All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses incurred in connection with the Loan and payment.

The City shall apply each monthly payment to its scheduled due date and will apply the payment to interest before principal.

7. Late Payments - Penalties. In the event the City does not receive the full amount of the monthly payment due under this Note within seven (7) days of its due date, the Borrower will be assessed a late payment penalty ("Late Penalty") in an amount which is the greater of five percent (5%) of the overdue monthly payment or fifty dollars (\$50.00). In the event the Borrower fails to pay the overdue payment and Late Penalty prior to the date when the next regular monthly payment is due under this Note, the Borrower shall be assessed an additional Late Penalty on the overdue amount. Penalties for late payment will continue to accrue in this manner until the City receives the full amount of the overdue payment and all related penalties from the Borrower in accordance with section 13 below.

8. Prepayment. Borrower has the option, without any premium or penalty, to pay all or a portion of the outstanding Principal Amount prior to the amount becoming due. The Borrower may make such prepayments at any time, or from time-to-time, before the prepaid amount is due. However, to exercise the prepayment option, the installment payments must be current and all outstanding penalties must have been paid. All prepayments shall be applied by the City to reduce the amount of the outstanding Principal Amount owed under this Note. If the Borrower makes a partial prepayment (that is

prepayment that is less than the full amount of the payment coming due), there will be no change in the due date.

9. Encumbrances. The Borrower shall not encumber the Property, permit the conveyance, transfer, or encumbrance of the Property, allow the placement of any liens, notes or deeds on the Property, or use the Property as security for any note or loan, without the City's prior written approval. The City shall not approve any encumbrances to the Property other than to allow the Borrower to refinance a first mortgage previously approved by the City, and shall only approve refinancing when the loan amount of such refinancing does not exceed the then outstanding balance of the first mortgage previously approved by the City. Furthermore, the City shall not approve any refinancing of a first mortgage with a loan that contains any provisions for a reverse mortgage, negative amortization, or balloon payments. Any written approval by the City shall be consistent with the requirements of section 15 below.

10. No Criminal Activity. Owner agrees that no resident residing on the Property, their guests or persons under their control shall permit, engage in, or facilitate criminal activity on the Property, in any building on the Property, or in the streets bordering the Property. This includes, without limitation the foregoing: (i) the illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute or use a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802); (ii) the unlawful discharge of firearms; and (iii) all acts or threats of violence, harming, or intending to harm a person or property.

11. Payment Acceleration. The Principal Amount of this Note, together with all accrued interest and other outstanding payments and penalties, shall become immediately due and payable upon the occurrence of any of the following events:

- A. The Borrower fails to occupy the Property as his or her primary place of residence;
- B. The Borrower engages in or allows another on the Property to engage in criminal activity in violation of Section 10 of this Note;
- C. The Borrower fails to cure a default of any lien or deed of trust for the Property that is senior to the Deed of Trust for this Note.
- D. The Borrower fails to cure a default consistent with the requirements of section 13 below;
- E. The transfer of the Property or this Note in violation of section 14 below, and without the City's written approval consistent with the requirements of sections 15, 16, and 25 below;
- F. The encumbrance of the Property in violation of section 9 above, without the City's written approval consistent with the requirements of sections 9 and 15 below; or
- F. The satisfaction or payment in full of the first mortgage for the Property secured by a lien or deed of trust that is senior to the Deed of Trust for this

Note, without the City's prior written approval consistent with the requirements of section 15 below.

12. Monitoring. Borrower agrees to certify owner occupancy annually to the City and provide sufficient documentation as requested by City to demonstrate compliance under the terms of the Note.

13. Default – Notice & Opportunity to Cure. If, in the City's sole discretion, the Borrower fails to observe or perform any condition contained herein for a period of thirty (30) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default and the City shall be entitled, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Borrower of its obligations under this Note. The accumulation of more than three (3) late payment penalties for a single overdue monthly payment, and the Borrower's outstanding obligation to pay more than four (4) late payment penalties related to two or more monthly payments during any six (6) month period, shall each constitute a separate and independent default event.

14. Prohibited Transfers. The Borrower is prohibited from transferring by sale, lease, trade, exchange, rental, gift, assignment, conveyance, the Property or any part thereof, or any trust or power, or any transfer in any other mode or form, of the Property or any part thereof or any interest therein.

15. Permitted Transfers. Under the following limited circumstances, the City may give its prior written approval for the transfer of the Property:

- A. The Property is to be transferred to another qualified borrower under the City of Livermore's Mortgage Assistance Program, and the other qualified borrower agrees to assume the Borrower's rights and obligations under the Deed of Trust, this Note, and any related Loan Agreement.
- B. Upon the Borrower's death or demise:
  - 1. The Property is transferred to a surviving co-Borrower under this Note by will, probate, or operation of the law;
  - 2. The Property is transferred to the Borrower's spouse or domestic partner, provided that status was established prior to the Borrower's death or demise by will, probate, or operation of law; or,
  - 3. The Property is transferred to a Borrower's child, whether adopted or direct issue.
- C. The Property is transferred involuntarily, or by operation of law, as a result of a property dissolution order or decree of dissolution of marriage, to the Borrower's former spouse or domestic partner, provided the beneficiary of the transfer takes the Property subject to the terms and conditions of this Note.

16. Prior Written Approval. The City shall not unreasonably withhold its written approval of permitted transfers, encumbrances and refinancing by the Borrower. However, the City

may only give written approval of those transfers, encumbrances, and refinancing authorized by this Note. The Borrower must request the City's written approval prior to pursuing any transfer, encumbrance, or refinancing. If not approved, or in violation of this Note, any unapproved transfer, encumbrance, or refinancing shall be null and void and the Borrower must deliver to the City any profits or benefit received from the transaction consistent with the requirements of section 26.

17. Certification. Upon the City's written request, the Borrower shall execute a certification under penalty of perjury, and deliver same to the City, certifying that the Borrower has not allowed or placed any encumbrances on the Property, is currently occupying the Property as the Borrower's principal place of residence, has not leased the Property or any or portion thereof, and is not otherwise in violation of any term or condition of this Note.

18. Audit and Inspection. To the extent permissible under laws and regulations protecting individual confidentiality, the City shall have access to, and is hereby authorized by the Borrower to inspect, make copies or photographs of, the Property, books, utility accounts, and records of the Borrower pertaining to this Note and the Borrower's occupancy of the Property.

19. Notices. Any demand or notice which either party desires to deliver to the other, shall be in writing and shall be delivered by hand, sent by a recognized overnight courier, deposited in the United States mail with a first class prepaid postage and a return receipt requested, to ensure timely and complete delivery to the other party at the addresses noted above.

20. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay 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.

21. Severability. Every provision of this Note is intended to be severable. If any provision is held by a court of competent jurisdiction to be invalid, illegal, and unenforceable, the validity, legality, and enforceability, of the remaining provisions shall not in any way be affected or impaired.

22. Interpretation. The provisions of this Note have been arrived at through negotiation and each party had a full and fair opportunity to revise the provisions and have them reviewed by legal counsel. The parties agree that any ambiguities in construing or interpreting this Note shall not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language of this Note and a written loan agreement for the Borrower's acquisition of the Property through the City's Mortgage Assistance Program, the language of the Loan Agreement shall control.

23. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

24. Negotiability. This Note is non-negotiable and not transferable by the Borrower. The City, in its sole discretion, may negotiate a transfer, assignment, or assumption of this Note to any person and upon notice to the Borrower by the City.

25. Binding Upon Successors. All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the City, respectively.

26. Restrictions on Foreclosure Proceeds. If a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Borrower shall not be entitled to the proceeds of sale to the extent that such proceeds, when added to the amount paid or credited to the creditor, exceed the amount the Borrower would have received by a sale in accordance with the Mortgage Assistance Program Guidelines. The Borrower hereby agrees and acknowledges that the Borrower forfeits such funds and shall instruct the holder of such excess proceeds to them to the City as repayment for, and in consideration of, the assistance provided by the City in the acquisition of the Property.

DATE:

BORROWER

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DATE:

CO-BORROWER:

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