

THIS NOTE IS SUBJECT TO SECTION 2966 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES THAT THE HOLDER OF THIS NOTE SHALL GIVE WRITTEN NOTICE TO THE TRUSTOR, OR HIS SUCCESSOR IN INTEREST, OF PRESCRIBED INFORMATION AT LEAST NINETY (90) DAYS AND NOT MORE THAN ONE HUNDRED FIFTY (150) DAYS BEFORE ANY BALLOON PAYMENT IS DUE.

**SJSU FACULTY AND STAFF HOMEBUYER PROGRAM
PROMISSORY NOTE**

\$xx,xxx

(Street Address)
San Jose California

Date

FOR VALUE RECEIVED, the undersigned, _____ ("Borrower") promise(s) to pay to the CITY OF SAN JOSE, a municipal corporation, (the "City"), or order, at P.O. Box 1837, San Jose, California 95109-1837, or such other place as the City may from time to time designate in writing, the principal sum of _____ Thousand and 00/100 (\$__,000) ("City Loan"). This Note evidences the obligation to repay the City Loan made by the City to Borrower for the acquisition of a single family housing unit on certain real property (the "Property") in the City of San Jose, Santa Clara County, California, which Property is encumbered by a deed of trust of even date herewith with Borrower as Trustor, _____ as Trustee, and the City as Beneficiary (the "City Deed of Trust") to secure the obligations of this Note. The Borrower has also executed Affordability Restrictions to be recorded concurrently with the City Deed of Trust in the Official Records of Santa Clara County ("Restrictions").

1. **Interest.** Interest shall not accrue on this Note.
2. **Maturity/Payment.** All sums due hereunder, including without limitation, the entire unpaid balance of principal, the Equity Share (if before the Maturity Date, as defined below), (collectively referred to as the "Amounts Due") shall be due and payable in full on the forty-fifth (45th) anniversary of the recordation of the City Deed of Trust ("Recording Date"), unless due and payable sooner according to the terms of this Note (the "Maturity Date"). "Equity Share" shall be defined as the share of the equity from the Assisted Unit in the same percentage as the percentage of the City's Loan to the Sales Price of the Property at the time of the Loan. Equity subject to sharing shall be calculated by subtracting the Sales Price of the Property at the time of the City's Loan from the sales price (less

Owner's Closing Costs and "capital improvements" as such terms are defined in the Restriction and approved by the City) for a sale to a Person or Family who is not an Eligible Person or Family. (See Equity Sharing Illustration attached hereto as **EXHIBIT A**). Borrower acknowledges and agrees that payment of this Note shall not release Borrower or its successors or assigns from the "Restrictions" before the end of the specified term of such Restrictions. After the Maturity Date no Equity Share shall be due.

3. Late Payment Charge. Borrower promises to pay City on demand a delinquency charge equal to five percent (5%) of any payment unpaid for more than fifteen (15) calendar days.

4. Acceleration of Obligation.

4.1 All unpaid principal then outstanding, plus any applicable charges set forth herein, and the Equity Share as calculated in Paragraph 16 of this Note, shall, at the option of the City, be immediately due and payable if during the term of this Note there occurs any of the following:

(a) Default or breach by Borrower of any covenant required to be performed by Borrower under the terms of this Note, the Restrictions, the City Deed of Trust, the Errors and Omissions/Compliance Agreement entered into concurrently herewith; or any documents made in connection with this City Loan.

(b) Except as permitted in Paragraph 16 of this Note and in the Restrictions, sale, transfer, hypothecation, assignment or encumbrance by Borrower of the Property, or any interest therein, other than a devise or transfer by intestate succession to a surviving spouse, and other than an allowable transfer, if any;

(c) The Borrower fails to occupy the Property as the Borrower's principal residence during the term of the Restrictions.

4.2 For purposes of determining the Equity Share under this paragraph 4, the City shall select the Appraiser whose determination of Fair Market Value shall be final and conclusive.

5. Waiver. Borrower, any endorser of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note hereby severally waive demand, presentment for payment, demand and protest, notice of protest, demand and of dishonor and non-payment and consent to any number of renewals or extensions of time hereof. Any such renewals or extensions may be made without notice to any of said parties and without affecting their liability.

6. Disposition of Insurance Proceeds. Provided Borrower is not then in default under this Note, Borrower shall have the right to require that the City disburse any insurance proceeds paid to the City to or for the benefit or account of Borrower to repair, or restore the Property; provided the insurance proceeds, combined with any other funds of Borrower, are adequate to pay the cost of repair or restoration of the Property. Except as otherwise required by a senior lender and approved by City, any remaining proceeds, or all proceeds, if Borrower does not undertake repair or restoration of the Property, shall be applied to payment of any unpaid principal and accrued interest under the terms of this Note. Any remaining balance of proceeds shall be disbursed to Borrower.

7. Other Encumbrances.

7.1 Borrower shall not further encumber, mortgage, or subject the Property or any interest therein to a deed of trust without the prior written consent of the City.

7.2 Any amounts expended by the City to cure a default under any mortgage or deed of trust recorded on the Property, shall be reimbursed by Borrower upon demand of the Borrower therefore, and, in any event, shall bear interest at the maximum rate permitted by Section 1(2) of Article XV of the California Constitution from the date advanced by the City until paid in full. All such amounts shall be added to the principal of this Note. The approval by Borrower of any mortgage or deed of trust documents, and the placing of a security interest therefor on the Property or any portion thereof, not containing the provisions required by this Section 7 shall constitute a default under this Note.

8. Integration. This Note and the Restrictions together embody the agreement between the City and Borrower for the City loan and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of the City prior to the execution of this Note shall effect or modify any of the terms or obligations of the Borrower. Any such verbal agreement shall be considered unofficial information and in no way binding the City.

9. Time. Time is of the essence herein.

10. Gender. In construing the provisions of this Note, where the circumstances so indicate, the singular shall include the plural and vice versa, and any pronoun shall be read in the masculine, feminine and neutral, as appropriate.

11. 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.

12. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of California.

13. No Prepayment Penalty. Except for the Equity Share which may be due in whole or in part if partial prepayments have been made, this Note may be paid in whole or in part with no prepayment penalty.

14. Refinance of Property. Borrower may, with prior notice and written City approval, refinance the senior loan on the Property at any time during the term of the City Loan, subject to the following requirements:

- a. The combined loan-to-value ratio (CLTV) as supported by a property value referred to in (d) below, shall not exceed 90%.
- b. CLTV includes all proposed non-City debt plus the outstanding principal of the City Loan, accrued interest (if any), and Equity Share (as applicable) at the time of the subordination.
- c. Property value at time of subordination will be determined by RealQuest, or another source acceptable to City.
- d. If the cash-out mechanism is a line of credit ("LOC"), the subordination agreement will include Borrower's acknowledgement that the LOC cannot be increased without the City's approval.
- e. In no event shall the City subordinate to an adjustable-rate mortgage (ARM) with the potential to accrue deferred interest (negative amortization).
- f. Except in extraordinary circumstances, City shall subordinate to cash-out refinancings no more than once every 5 years.

15. Assumption. The City Loan may be assumed only by a person who is eligible for assistance under a City of San Jose Homebuyer Program. The assumption is subject to prior approval by the City.

16. Equity Share/Additional Charge. In the event there does not exist an uncured Event of Default, and the Borrower, wishes to transfer the Assisted Unit to a Person or Family who is not an Eligible Person or Family, and, subject to the provisions contained in the Restriction, then Borrower can Transfer the Assisted Unit only if the City receives the lesser of (i) an amount equal to the Equity Share as

determined below, or (ii) eight percent (8%) per annum on the full face amount of the Note commencing on the date of the recording of the deed of trust on the Property ("Additional Charge"). After payment of the Additional Charge, the City then shall remove or cause to be removed the Restriction as a lien for the Assisted Unit and this Restriction will cease to be a covenant running with the land for the Assisted Unit. Borrower's Closing Costs shall have the same meaning as contained in the Restrictions. Capitalized terms used in this sub-paragraph are defined in the Restrictions.

17. Notice of Default. Borrower shall provide notice to City of any notice of default ("Notice") sent by any lender with a security interest in the Property within three (3) days of receiving the Notice.

18. Definitions. All terms not defined in this Note shall have the same definitions as set forth in the Restrictions.

Executed by Borrower on the date first hereinabove written.

BORROWER(S):

Name of Borrower #1

Name of Borrower #2

EXHIBIT A: EQUITY SHARING AND 8% SIMPLE INTEREST ILLUSTRATION

Equity Sharing Ratio Calculation:

Original Sales Price of the unit\$240,000
 Total City of San Jose's Second Mortgage Loan Balance (initially).....\$ 40,000

Equity Sharing Ratio = \$40,000 / \$240,000 = 16.67%

"Equity Subject to Sharing" Calculation:

Equity Subject to Sharing =

(Sales Price to Non-Eligible Person) - (Original Sales Price [if first sale] or Subsequent Purchase Price [if subsequent sale]) - (reasonable capital Improvement(s)) - (Seller's Closing Costs)

Steps in Equity Sharing Process:

- Step 1: The Original Sales Price [if first sale] or Subsequent Purchase Price [if subsequent sale], is subtracted from Sales Price to Non-Eligible Person, yielding accrued equity.
- Step 2: From accrued equity, reasonable Capital Improvement(s), once approved by the Department of Housing, are deducted;
- Step 3: From this ensuing total, Borrower's Selling Costs are subtracted, yielding:
 *"Equity Subject to Sharing".

Equity Sharing Scenario Illustration (only an estimation):

**One possible sales price, 2009 (Sales Price to Non-Eligible Person.....\$280,000
Original Sales Price (approximate), 2004.....\$240,000
 Accrued equity.....\$ 40,000
 Less: Reasonable Capital Improvement(s) (as approved by City of San Jose).....\$ 2,000
 Less: Borrower's Selling Costs on sale (approximate).....\$ 19,600
Equity Subject to Sharing.....\$ 18,400

City of San Jose Equity Ratio (comprised of \$40,000/\$240,000 in this example).....16.67%
 Seller's share of Equity Subject to Sharing.....83.33%

City of San Jose's Total Equity (16.67% of \$18,400).....\$ 3,067
 Seller's Share of Equity Subject to Sharing 83.33% of \$17,800).....\$ 15,333

Given the above assumptions as an example, the seller would receive approximately \$15,333 on the sale of his/her unit after paying off the City of San Jose Housing Department's second mortgage. The City of San Jose would receive \$3,067 in addition to its loan balance of \$40,000.

**it is assumed that no further encumbrancing of the property has occurred since the initial sale. Further encumbrancing of the unit is prohibited without the official written permission of the City of San Jose Housing Department.*

*****The City offers no assurance 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.***

8% Simple Interest Illustration (only an estimation):

Original Loan Amount, 2004.....\$40,000
 Multiply by .08 (8% simple interest).....\$ 3,200
 Multiply by 5 (5 years).....\$16,000

The seller would pay the lesser of the equity share payment or 8% simple interest.