

DO NOT DESTROY THIS NOTE: When paid in full according to its terms, this note, with Deed of Trust securing the same, must be surrendered to Trustee for cancellation before reconveyance will be made.

**CITY OF SAN JOSE  
WELCOMEHOME PROGRAM (HOME FUNDS)**

**PROMISSORY NOTE  
(Secured by Deed of Trust)**

**NOTICE TO BORROWER  
THIS DOCUMENT CONTAINS PROVISIONS  
RESTRICTING ASSUMPTIONS AND IS SECURED BY  
A SUBORDINATE DEED OF TRUST ON RESIDENTIAL PROPERTY**

Loan No. \_\_\_\_\_

THIS NOTE IS SUBJECT TO SECTION 2966 OF THE 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 90 AND NOT MORE THAN 150 DAYS BEFORE ANY BALLOON PAYMENT IS DUE.

**\$ ,000.00** \_\_\_\_\_, 20\_\_

**FOR VALUE RECEIVED**, the undersigned, \_\_\_\_\_ [ *list all parties on title* ] (the "Borrower") promises to pay to the order of the City of San Jose, a California municipal corporation ("Lender" or "City") at the following address 200 East Santa Clara Street, 12<sup>th</sup> Floor, San Jose, CA, 95113 or at such other place as the Lender may from time to time designate by written notice to Borrower, in lawful money of the United States, the principal sum of \_\_\_\_\_ **Dollars (\$ \_\_\_\_\_)** (the "Loan") together with simple interest at the rate of **Three Percent per annum (3%)** on the unpaid principal balance from the date of this promissory note (the "Note"), until all sums due hereunder are repaid.

**1. Borrower's Obligations.** The Loan is made with HOME Investment Partnership ("HOME") funds in connection with the purchase of an eligible home located at \_\_\_\_\_, San Jose, California and more particularly described in described in Exhibit A to the Deed of Trust. The obligations of the Borrower with respect to this Note and the HOME agreement of even date herewith are secured by that certain subordinate deed of trust and assignment of rents (the "Deed of Trust") of even date herewith which shall be recorded in the official records of the County of Santa Clara.

**2. Regulatory Requirements. The Borrower acknowledges and agrees that:**

2.1 The Loan is made in connection with the purchase of an affordable home by an low income individual or family.

2.2 The Borrower affirms that the Borrower's family is a lower income family based on current annual income guidelines and regulations issued by HUD which regulations currently provide that low income families means families whose total income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

2.3 The Loan, this Note and the Deed of Trust are subject to the terms, conditions, and restrictions of the Federal Government and administering agencies as set forth in the applicable procedures of the Cranston

RD: SSG

Gonzalez Affordable Housing Act and the regulations adopted by the Department of Housing and Urban Development ("HUD") in Title 24 of the Code of Federal Regulations ("CFR") Part 92; and the City WelcomeHome program guidelines, all of which are hereby incorporated by reference.

3. **Warranties of the Borrower.** The Borrower further warrants and affirms that (a) the Borrower has completed at least 8 hours of homebuyer counseling from a HUD approved housing counseling agency and (b) the Borrower's family size and income are the same as was represented in the Borrower's application for the Loan.

4. **Interest.** Interest shall accrue on this Note at the rate of three percent (3%) simple interest per annum, except as may be provided for subsequent to acceleration.

5. **Maturity/Payment.** No periodic payments are required hereunder. All sums due hereunder, including without limitation, the entire unpaid balance of principal, accrued interest shall be due and payable in full on \_\_\_\_\_, 20\_\_\_\_ (the "Maturity Date") which is on or about the thirtieth (30<sup>th</sup>) anniversary of the date of the recording of the Deed of Trust, unless due and payable sooner according to the terms of this Note.

6. **Period of Affordability.** The period commencing on the date of the recording of the Deed of Trust and terminating on fifteenth (15<sup>th</sup>) anniversary thereof shall be the "period of affordability" for the Loan, consistent with the requirements of 24 CFR 92.254. All terms of this Note, the Deed of Trust, and the other documents executed by Borrower in connection with the Loan shall survive the expiration of the period of affordability, except where the document expressly provides otherwise.

7. **Acceleration.**

7.1 Subject to the requirements for notice and opportunity to cure under Section 5.2 of the Deed of Trust, all sums due hereunder, including but not limited to all unpaid principal and accrued interest, shall, at the option of the City, be immediately due and payable and thereafter until paid shall bear interest at the maximum rate permitted by Section 1(2) of Article XV of the California Constitution, if during the term of this Note there occurs any of the following:

- (a) The Borrower fails to occupy the Property as the Borrower's principal residence;
- (b) Default or breach by Borrower of any covenant required to be performed by Borrower under the terms of this Note, the Deed of Trust, the Errors and Omissions/Compliance Agreement entered into concurrently herewith, any other documents made in connection with this Loan, or other loans secured by the Property;
- (c) The sale, transfer, hypothecation, assignment or encumbrance by Borrower of the Property or any interest therein, other than as permitted in Section 13 of this Note;
- (d) Failure of Borrower to maintain insurance, pay taxes and assessments, or maintain and repair the Property; or
- (e) Failure of Borrower to timely submit any required compliance reports to Lender;
- (f) Failure of the Borrower to pay the indebtedness under this Note, whether principal, interest or otherwise, when and as the same becomes due and payable, whether at maturity or by acceleration or otherwise;
- (g) Until the first anniversary of the recording of the Deed of Trust, the failure of any person listed on the Borrower's application as a proposed resident to occupy the Property as his or her principal residence;

(h) The presence of any material misrepresentation on the Borrower's loan application or subsequent documents required by City of the intended or actual occupants of the Property; or

(i) The occurrence of any event which, under the terms of any deed of trust which is senior to the Deed of Trust or the note such deed of trust secures shall entitle the senior lender to exercise the rights or remedies thereunder.

7.2 Failure of the Lender to exercise the option to accelerate payment as provided in this Section will not constitute waiver of the right to exercise the option. Failure by Borrower to occupy the Property as Borrower's principal place of residence shall be considered an ongoing event of default under this Note.

7.3 Notwithstanding the above, in the event that the Property is foreclosed or sold pursuant to a short sale approved by the City, the Borrower's obligation to repay the City is limited to the share of the net proceeds, if any, from said foreclosure or sale calculated consistent with 24 CFR 92.254(a)(5)(ii)(A)(3) (2009).

**8. Default, Cure and Foreclosure.** Borrower shall provide notice to City of any notice of default pertaining to the Property within three (3) days of receiving such notice. The City shall have the right but not the obligation to cure any default under any mortgage or deed of trust recorded on the Property. Any amounts expended by the City to cure such a default shall be reimbursed by Borrower upon City's demand, 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.

**9. 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.

**10. 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 amounts due under the terms of this Note. Any remaining balance of proceeds shall be disbursed to Borrower.

**11. Other Encumbrances.**

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

11.2 Unless the City shall expressly agree otherwise in writing, all mortgage and deed of trust documents affecting the Property executed after the recording of the City Deed of Trust shall provide that in the event of any default or breach by the Borrower under any mortgage or deed of trust other than the a Deed of Trust entitling any party thereunder to accelerate the indebtedness secured thereby and foreclose upon the Property or any interest therein, the City may, at its option, (a) cure the default prior to the completion of any foreclosure and reinstate the mortgage deed of trust, or (b) pay the total unpaid indebtedness secured by such mortgage or deed of trust, in which event such mortgage or deed of trust shall be released. 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 shall constitute a default under this Note.

11.3 The provisions of Section 11.2 shall not apply to mortgage and deed of trust documents for the benefit of California Housing Finance Agency or its successors and assigns.

**12. 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 Loan, subject to the following requirements:

- a. The combined loan-to-value ratio ("CLTV") as supported by a property value referred to in (ii) below, shall not exceed 90%.
  - i. For purposes of calculating the CLTV, the combined loan includes the sum of all proposed non-City debt, any City debt other than the Loan, the outstanding principal of the Loan, accrued interest (if any), and any applicable additional charge at the time of the refinancing.
  - ii. For purposes of calculating the CLTV, property value at time of refinancing will be determined by RealQuest, or another source acceptable to City.
- b. 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.
- c. In no event shall the City subordinate to an adjustable-rate mortgage with the potential to accrue deferred interest (negative amortization).
- d. Except in extraordinary circumstances, City shall subordinate to cash-out refinancings no more than once every 5 years.

**13. Transfer/Assumption.** The HOME loan is not assumable except under the following circumstances:

- (a) The transfer to a surviving joint tenant by devise, descent or operation of the law, on the death of a joint tenant.
- (b) A transfer of the Property where the spouse or registered domestic partner becomes an owner of the property;
- (c) A transfer of the Property resulting from a decree of dissolution of marriage or domestic partnership, from a legal separation or from an incidental property settlement agreement by which the spouse or registered domestic partner becomes an owner of the Property.
- (d) A transfer to an inter vivos (living) trust in which the Borrower is and remains the beneficiary and occupant of the Property.

**14. No Prepayment Penalty.** This Note may be paid in whole or in part with no prepayment penalty.

**15. Compliance Reporting.** Borrower shall provide Lender with an annual compliance report upon request of Lender. Such report shall include the following:

- (a) Evidence of Borrower's occupancy of the Property as Borrower's principal place of residence.
- (b) Evidence of payment of property taxes and hazard insurance.
- (c) Other information reasonably required by Lender, or Lender's designee.

**16. Insurance, Taxes, Assessment, and Maintenance.**

- (a) Borrower shall, at Borrower's sole cost and expense, for the mutual benefit of Borrower and Lender, keep the Property adequately insured against losses from flood, fire and casualty risks as may be reasonably required by Lender, in an amount not less than one hundred percent (100%) of the then full replacement cost of improvements on the Property. All such policies of insurance shall name Lender as an additional loss payee and shall not be subject to cancellation without thirty (30) days prior written notice to Lender. Borrower shall provide Lender with satisfactory evidence of such insurance at close of escrow and with each submittal of Borrower's Compliance Report.

RD: SSG

- (b) Borrower shall pay all real property taxes and assessments as such taxes and assessments become due.
- (c) Borrower shall also adequately maintain and repair the Property throughout the term of this Note.
- (d) Lender, at its sole and absolute discretion, may obtain insurance on the Property, pay any lien, tax or assessment recorded against the Property or make any repair to the Property. Lender shall obtain a judgment for any amounts expended by Lender under this Section and shall record a judgment lien against the Property.

**17. Integration.** This Note, the Deed of Trust, the Home Agreement and the Errors and Omissions/Compliance Agreement embody the agreement between the City and Borrower for the 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 agreements shall be considered unofficial information and in no way binding on the City.

**18. 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.

**19. Severability.** If 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. No Waiver by the Lender.** No waiver of any breach, default or failure of condition under the terms of the Note or Deed of Trust shall thereby be implied from any failure of the Lender to take, or any delay by the Lender in taking action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of the Note, Deed of Trust, or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

**21. Successors and Assigns.** The promises and agreements herein contained shall bind and inure to the benefit of, as applicable, the respective heirs, executors, administrators, successors and assigns of the parties.

**22. No Assignment.** Neither Borrower nor Lender may assign this Note or the rights and obligations hereunder.

**23. Notices.** Except as may be otherwise specified herein, any approval, notice, direction, consent, request or other action by Lender shall be in writing and shall be communicated to the Borrower at the address of the Property, or at such other place or places as Borrower shall designate to Lender in writing for the receipt of communications from Lender. Any communication from Borrower shall be delivered in writing to Lender at Lender's principal office at the location designated below. Mailed notices shall be deemed delivered and received five (5) working days after deposit in the United States mails in accordance with this provision.

**24. No Offset.** Borrower hereby waives any rights of offset it now has or may hereinafter have against Lender, its successors and assigns, and agrees to make the payment called for herein in accordance with the terms of this Note.

**25. Attorney's Fees.** The Borrower hereby agrees to pay all costs and expenses, including reasonable attorneys' fees, which may be incurred by the Lender in the enforcement of this Note.

**26. Time.** Time is of the essence herein.

RD: SSG

**27. 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.

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

**29. Joint and Several.** The undersigned, if more than one, shall be jointly and severally liable hereunder.

**30. Notices.** Notices to City hereunder shall be sent to:

City of San José, Department of Housing  
200 East Santa Clara Street, 12<sup>th</sup> Floor  
San Jose, CA 95113  
Attention: Loan Management Division

**This document is continued on the following page.**

RD: SSG

**Executed as of the date first set forth above at San José, California**

**"Borrower"**

By: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_