

RD: MDC  
3/4/2011

DO NOT DESTROY THIS NOTE: When paid, 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

### Building Equity and Growth in Neighborhoods (BEGIN) BEGIN 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 SUCCESSORY IN INTEREST, OF PRESCRIBED INFORMATION AT LEAST 90 AND NOT MORE THAN 150 DAYS BEFORE ANY BALLOON PAYMENT IS DUE.

**\$30,000.00** \_\_\_\_\_, 20\_\_

**FOR VALUE RECEIVED**, the undersigned, \_\_\_\_\_ (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 **Thirty Thousand Dollars (\$30,000)** together with interest (the "Loan") at the rate of **Three Percent per annum (3%)** on the unpaid principal balance from the date of this promissory note (the "Note"), until paid. The obligation of the Borrower with respect to this Note is secured by that certain BEGIN Deed of Trust Loan No. \_\_\_\_\_ (the "Deed of Trust"), and executed by the Borrower concurrently herewith.

- Borrower's Obligation.** This Note evidences the obligation of the Borrower to Lender for the repayment of the Loan to finance the purchase of that certain real property (the "Property") which has the address of \_\_\_\_\_ and as more fully described in Exhibit A of the Deed of Trust.
- Borrower(s) Acknowledge(s) and Agrees:** The Loan is subject to the terms, conditions, and restrictions of the State of California as set forth in Health and Safety Code Section 50860 et seq. (the "BEGIN Program Statutes"), Begin Implementing Guidelines (the "BEGIN Guidelines") and except as provided in the BEGIN Program Statutes, the CalHOME Statutes at Health and Safety Code Section 50650 et. seq. (the "CalHOME Statutes") and the CalHOME Regulations at California Code of Regulations, Title 25, Section 7715 et seq. (the "CalHOME Regulations"), all of which are hereby incorporated by reference.
- Repayment of Loan Principal and Interest.** No periodic payments are required hereunder. Borrower agrees to pay the unpaid principal balance, unpaid accrued interest, and any other amounts due under this Note upon the earlier of:

- A.
- Thirty (30) years from the date of this Note; or

(ii) Upon sale, transfer, or encumbrance of all or any interest in the Property without Lender's prior written consent, except for a transfer permitted in Paragraph 4; or

(iii) The maturity date, or full repayment of any debt that is secured by a lien on the Property that is senior to the Deed of Trust; or

(iv) Upon Borrower's failure to occupy the Property as Borrower's principal place of residence during the first five (5) years after the recordation of the Deed of Trust.

B. If, at the maturity date, Lender, in its sole and absolute discretion, determines that the repayment of the BEGIN Loan causes a hardship for Borrower, then Lender may either:

(i) Make a one time amendment to the Note and Deed of Trust to defer payment of the amount due at the maturity date that includes the original principal and any accrued interest, for up to an additional thirty (30) years at zero percent (0%) additional interest; or

(ii) Convert the Loan at loan maturity including the original principal balance and any accrued interest, to an amortized loan, repayable in fifteen (15) years at zero percent (0%) interest.

#### 4. **Permitted Transfers.**

The BEGIN Loan is not assumable except under the following limited circumstances:

- (a) The transfer of the Property to the 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 becomes an owner of the Property;
- (c) A transfer of the Property resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes an owner of the Property.
- (d) A transfer to an inter vivos trust in which the Borrower is and remains the beneficiary and occupant of the property.
- (e) The Loan may be assumed by a person who is eligible for assistance under the City of San José BEGIN Homebuyer Program after Five (5) Years from the date of the Recording of the Deed of Trust. The assumption is subject to prior approval by the City.

5. **Acceleration of Payment.** The principal amount of this Loan, together with any then outstanding interest shall become immediately due and payable, at the option of Lender and without demand or notice, upon the occurrence of any of the following events:

- (a) In the event of a default under the terms of this Note or the Deed of Trust;
- (b) In the event that the Borrower shall cease to occupy the Property as Borrower's principal place of residence during the first five (5) years after the recordation of the Deed of Trust; or
- (c) In the event of any sale, transfer, or encumbrance of the Property without Lender's prior written consent in violation of Paragraph 4 of this Promissory Note.

6. **Effect of Due-on Sale Clause.** Failure of the Lender to exercise the option to accelerate payment as provided in Paragraph 5 of this Note will not constitute waiver of the right to exercise this option in the event of subsequent cause for acceleration. Failure by Borrower to occupy the Property as Borrower's principal place of residence during the first five (5) years after the recordation of the Deed of Trust shall be considered an ongoing event of default under this Note.

7. **Place and Manner of Payment.** All amounts due and payable under this Note are payable at the principal office of Lender set forth above, or at such other place or places as Lender may designate to the Borrower in writing from time-to-time.
8. **Application of Payments.** All payments received on account of this Note shall be first applied to interest, if any, and the remainder shall be applied to the reduction of principal.
9. **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.
10. **Default.** In the event that Borrower is declared in default of this Note or the Deed of Trust securing this Note, the principal amount of this Loan, together with any outstanding interest shall be immediately due and payable, and thereafter until paid shall bear interest at 3% per annum. All covenants, conditions and agreements contained in the Deed of Trust are hereby made a part of this Note.
11. **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 above. Mailed notices shall be deemed delivered and received five (5) working days after deposit in the United States mails in accordance with this provision.
12. **Prepayment Policy.** Borrower may prepay this Note at any time. Upon any prepayment, interest as calculated above shall be due and payable without penalty
13. **Governing Law.** This Note shall be construed in accordance with and be governed by the laws of the State of California.
14. **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.
15. **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.
16. **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.
17. **Interest.** Upon the occurrence of any event requiring repayment as set forth above, or upon prepayment as set forth above, the full amount of interest calculated at 3% simple interest per annum shall be due and payable.
18. **Event of Default.** The occurrence of any of the following shall constitute an event of default ("Event of Default") under this Note:
  - (a) Failure of Borrower to pay any amount due hereunder within fifteen (15) days of its due date.
  - (b) Any default by Borrower under this Note or the Deed of Trust securing this Note.

- (c) Failure of Borrower to maintain insurance, pay taxes and assessments, or maintain and repair the property.
- (d) Failure of Borrower to occupy the Property as Borrower's principal place of residence during the first five (5) years of the loan.
- (e) Failure of Borrower to submit an Annual Compliance Report to Lender, or its designee Amerinational.
- (f) The occurrence of any event (whether termed default, event of default or similar term) which under the terms of the Deed of Trust, shall entitle Lender to exercise rights or remedies thereunder.

**19. Annual Compliance Report.** Borrower shall provide Lender with an Annual Compliance Report no later than thirty (30) days from the end of the calendar year, or as reasonably requested by 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 and the State of California.

**20. 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 Annual Compliance Report to Lender.
- (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. City shall obtain a judgment for any amounts expended by City under this section and shall record a judgment lien against the Property.

**21. 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.

**22. Borrower Waivers.** No failure or delay on the part of Borrower to exercise any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Borrower of any right hereunder preclude any other exercise of any other right. The rights and remedies hereunder are cumulative and not exclusive of any remedies or rights provided by law.

**23. Costs.** Borrower agrees to pay immediately upon demand all costs and expenses of City including reasonable attorneys' fees if:

- (a) After default this Notice is placed in the hands of any attorney or attorneys for collection;
- (b) After default hereunder or under the Deed of Trust, Lender finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Borrower, any guarantor or any other party liable therefore or to the protection of its rights under this Note, the Deed of Trust or other loan document;
- (c) Borrower seeks to have the Property abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note or prohibiting the enforcement of Lender's Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court;
- (d) Lender shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental entity, affecting the Property or the title thereto or the interest of Lender under Lender's Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding. Borrower shall reimburse lender immediately upon demand for all costs, charges and attorneys' fees incurred by Lender in any such case, and the same shall be secured by Lender Deed of Trust as a further charge and lien upon the Property.

**24. Assignment.** Borrower may not assign Borrower's rights and obligations under this Note without the express written consent of Lender.

**25. 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.

**26. 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) shall not exceed 90%.
- (b) CLTV includes all proposed non-City debt plus the outstanding principal of the City's 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 method acceptable to Lender with Lender's prior approval.
- (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 prior 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 its Loan to cash-out refinancings no more than once every 5 years..

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

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

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Borrower

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Borrower

**Mailing Address for Notices:**

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