

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS PROHIBITING ASSUMPTIONS. THIS DOCUMENT INVOLVES A SHARED APPRECIATION LOAN WHICH ENTITLES THE CITY TO A PERCENTAGE OF THE APPRECIATION OF YOUR PROPERTY.

**PROMISSORY NOTE**  
**Secured by Deed of Trust**  
(Shared Equity Purchase Program)

\$ \_\_\_\_\_

Date: \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ ("Borrower") promises to pay to the City of San Luis Obispo, a charter city and municipal corporation ("City"), at 919 Palm Street, San Luis Obispo, CA 93401, Attention: Community Development Director, or such other place as the City may designate in writing, the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "Below Market Benefit"), plus contingent interest in the form of any Equity Share and Equity Recapture Fee due as set forth in Section 2 below, plus any amounts due to the City as Excess Rents pursuant to Section 1 of the Occupancy, Use, Refinancing, and Shared Equity Agreement executed by Borrower and City of even date herewith (the "Shared Equity Agreement"). All capitalized terms used but not defined in this City Note have the meanings set forth in the Shared Equity Agreement.

Section 1. Purpose. The Borrower is acquiring a Property located at \_\_\_\_\_, in the City of San Luis Obispo, San Luis Obispo County (the "Property"). The Borrower is voluntarily participating in the City's Shared Equity Purchase Program (the "Shared Equity Program"). The Shared Equity Program has enabled the Borrower to purchase a home at a price which is affordable to very low, low, moderate, or workforce-income households (the "Affordable Price"). The Affordable Price is lower than the unrestricted fair market value of the Property (the "Initial Appraised Value"). The Affordable Price for the Property is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The Initial Appraised Value is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The difference between the Affordable Price and the Initial Appraised Value is the Below Market Benefit which is the principal amount of this City Note (\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)).

Section 2. Shared Equity Contingent Interest – Equity Share.

(a) Contingent Interest. Upon Transfer to a purchaser who does not qualify as a Below Market Rate (BMR) Purchaser under the Shared Equity Agreement ("Non-BMR Purchaser") or a Default, the Borrower shall pay the City contingent interest equal to the Shared Equity Percentage (as defined below) of the Net Proceeds of Appreciation ("Equity Share") which includes the Below Market Benefit and may also include an Equity Recapture Fee (ERF) if the Property is Transferred less than seven (7) years after purchase. The Shared Equity Percentage is calculated as a decimal

percentage equaling the difference between the property’s Initial Appraised Value and the Affordable Price paid by the homeowner at purchase, divided by the market value at purchase. The ERF is calculated as a percentage of the Net Proceeds of Appreciation, as defined below, the percentage being determined as set forth in the table below.

Table 8-2: Percent of Equity Build-up Recaptured

<b>YEAR</b>	<b>% OF EQUITY BUILD-UP RECAPTURED</b>
0-3	<b>100% + City’s Equity Share</b>
4	<b>75% + City’s Equity Share</b>
5	<b>50% + City’s Equity Share</b>
6	<b>25% + City’s Equity Share</b>
7 and after	<b>0% + City’s Equity Share</b>

(b) Net Proceeds of Appreciation. The "Net Proceeds of Appreciation" are equal to the Resale Price for the Property, as defined below, minus (i) the property’s market value at time of Transfer; and (ii) brokerage commissions not exceeding six percent (6%) of the Resale Price and reasonable closing costs, as evidenced by a HUD-1 or similar settlement statement and other documents provided to the City and certified by the Borrower and Purchaser under penalty of perjury. The Net Proceeds of Appreciation cannot be less than zero.

(c) Resale Price. "Resale Price" means either: (i) the purchase price paid to Borrower by a Purchaser upon a Transfer of the Property; (ii) in the event a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the amount paid for the Property at a creditor's sale of the Property, or (iii) if the purchase price paid to Borrower is less than ninety-five percent (95%) of the Fair Market Value of the Property, as determined under Section 5C of Shared Equity Agreement, the City in its sole and absolute discretion may determine the Resale Price to be the Fair Market Value of the Property, unless Borrower provides sufficient information to the City to justify any reduction in the Resale Price. The City's determination shall be final and non-appealable.

(d) No Other Interest. No interest other than the Equity Share and Equity Recapture Fee shall be due under this Note. The Equity Share and any applicable Equity Recapture Fee shall be paid to the City at the time and as described in subsection (e) below.

(e) Payments. Borrower shall pay to City the Below Market Benefit as principal, plus the Equity Share and the Equity Recapture Fee, if any, as contingent interest (together the "Repayment Amount") upon the earlier of the following: (1) on the date any Transfer to a non-BMR Purchaser is made; or (2) in the event of a Default by the Borrower.

(f) Repayment Amount. The Repayment Amount shall be calculated as follows: If the Property is Transferred pursuant to this Section seven (7) years or more after the date of the City Note, the Repayment Amount is equal to the sum of the Below Market Benefit plus the Equity Share. If the Property is Transferred pursuant to this Section less than seven (7) years after the date of the City Note, the Repayment Amount is equal to the sum of the Below Market Benefit, the Equity Share and the Equity Recapture fee, if any.

(g) Limit on Repayment Amount. Notwithstanding any other provision of this Section, the Repayment Amount shall not exceed that permitted by Civil Code Section 1917.006. If the payment of any sums by Borrower as required by the terms of this City Note would result in the payment of interest that exceeds the amount that City may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate will automatically be deducted from the amount owing on this City Note, so that in no event is Borrower obligated under the terms of this City Note to pay any interest that would exceed the lawful rate.

Section 3. Term. The Term of this City Note commences on the date of this City Note and expires forty-five (45) years from the date of this City Note, or the date of Transfer of the Property to a Purchaser and payment of all amounts pursuant to the terms of the City Note.

Section 4. Prepayments. Borrower may not prepay the principal and interest due under this City Note because such amounts are determined based on factors related to the Transfer of the Property.

Section 5. No Assumption. Borrower acknowledges that this City Note is given in connection with the purchase of the Property as part of the City's Shared Equity Program to assist in the purchase of homes by very low, low, moderate or workforce-income households. The entirety of the principal and interest due under this City Note is due at Transfer. Consequently, this City Note is not assumable by subsequent purchasers nor by the successors and assigns of the Borrower.

Section 6. Security. This City Note, including the contingent interest Equity Share, Equity Recapture Fee and Excess Rents, is secured by the City Deed of Trust dated the same date as this City Note. The term "Property" as used in this City Note shall have the same meaning as the term "Security" used in the City Deed of Trust and includes both the real property and all improvements now or hereafter erected on the Property, and all easements, rights, appurtenances and all fixtures now or hereafter attached to the Property.

Section 7. Refinance of First Mortgage Loan. Upon prepayment and refinance of the First Lender Loan, the City Deed of Trust shall be subordinated, provided that such refinancing meets the requirements of Section 10 of the Shared Equity Agreement.

Section 8. Default. The Borrower shall be in default under this City Note if: (a) the Borrower is in default under any mortgage loan on the Property (including the First Mortgage Loan) following the expiration of applicable cure periods; or (b) if the Borrower: (i) fails to pay any money when due under this City Note; (ii) breaches any representation or covenant made in this City Note in any material respect; or (iii) is in Default on the City Deed of Trust or the Shared Equity Agreement.

Section 9. Acceleration. Upon the occurrence of a default under this City Note, the City Deed of Trust, the Shared Equity Agreement, or any mortgage loan on the Property, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this City Note and the City Deed of Trust shall, at the option of City, become immediately due and payable without further demand. In addition to the right to accelerate the payment of this Note upon the occurrence of a Default, City shall have all rights and remedies described in the City Deed of Trust and the Shared Equity Agreement.

Section 10. 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 the City's right to declare a default and exercise all of its rights under this City Note and the City Deed of Trust. 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 the City of any payment provided for by this City Note constitute a waiver of City's right to require prompt payment of any remaining amounts owed. A waiver of any term of the City Note must be made in writing and shall be limited to the express written terms of such waiver.

Section 11. Miscellaneous Provisions.

(a) Costs of Enforcement. Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by City in the enforcement of the provisions of this City Note, regardless of whether suit is filed to seek enforcement.

(b) Joint and Several Obligations. This City 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.

(c) 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 in accordance with the terms of this City Note.

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

(e) Controlling Law. This City Note is governed by the laws of the State of California.

(f) Notices. All notices required in this City Note shall be sent by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personally delivered with a delivery receipt obtained and shall be deemed to be effective as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable as follows:

To the Borrower: **[At the Address of the Property]**

To the City: City of San Luis Obispo  
919 Palm Street  
San Luis Obispo, CA 93401  
Attn: Community Development Department

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section 12.

(g) Assignment by City. The City may assign its right to receive the proceeds under this City Note to any person or entity. Upon notice to the Borrower by the City all payments shall be made to the assignee.

(h) Action by the City. Whenever any approval, notice, consent, request, extension of time, declaration of Default, or other action by the City is required or permitted under this City Note, such action may be taken by the Community Development Director without further approval by the City Council. Any such action shall be in writing.

(i) Time Is of the Essence. The times for the performance of any obligations required by this City Note are to be strictly construed, time being of the essence.

(j) Severability. If any provision of this City 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.

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

BORROWER:

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

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

Its: \_\_\_\_\_

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

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

Its: \_\_\_\_\_