

**SHARED APPRECIATION SECURED
PROMISSORY NOTE**

(City of Campbell – Affordable Housing Density Bonus/Inclusionary Program)

\$_____ (Initial Subsidy)

Campbell, California

Plus Shared Appreciation

_____, 20__

FOR VALUE RECEIVED, the undersigned _____ and _____ (collectively, the “**Borrower**”) promise to pay immediately when due to the order of the City of Campbell, a municipal corporation (“**City**”), at 70 North First Street, Campbell, California 95008 or at any other place that may be designated in writing by the City, all sums payable to City pursuant to the Affordable Housing Resale and Refinancing Restriction Agreement with Equity Sharing and Option to Purchase (“**Resale Restriction Agreement**”) (defined below), including without limitation, the sum of _____ Dollars (\$_____) as repayment of the Initial Subsidy pursuant to Section 10 of the Resale Restriction Agreement, (ii) the City’s Share of Appreciation pursuant to Section 10 of the Resale Restriction Agreement, and (iii) Excess Rental Proceeds, if any, pursuant to Section 5.3 of the Resale Restriction Agreement. All sums due hereunder shall be payable in lawful money of the United States of America.

1. **Definitions.** As used herein, the following terms shall have the meanings set forth in this Section. Capitalized terms used without definition in this Note shall have the meanings ascribed to such terms in the Resale Restriction Agreement.

“**Appreciation Amount**” means the difference between (a) the resale price of the Property (or, if applicable, the fair market value of the Property at the time of any Prohibited Transfer if the Property is not sold, or the sale price of the Property at any foreclosure sale), and (b) the Initial Market Value, minus the appraised value of any Eligible Capital Improvements.

“**City Deed of Trust**” means that certain Deed of Trust, Assignment of Rents and Security Agreement dated as of the date hereof, executed by Borrower as Trustor for the benefit of the City and recorded against the Property to secure repayment of this Note and performance under the Resale Restriction Agreement.

“**City Documents**” means collectively this Note, the City Deed of Trust, and the Resale Restriction Agreement.

“**City’s Equity Share Percentage**” means the percentage equal to the Initial Subsidy divided by the Initial Market Value. The City’s Equity Share Percentage is _____ percent (____ %), except as otherwise provided in the Resale Restriction Agreement.

“**City’s Share of Appreciation**” means the amount calculated by multiplying the City’s

Equity Share Percentage by the Appreciation Amount.

“Eligible Capital Improvements” is defined in Section 11 of the Resale Restriction Agreement.

“Event of Default” is defined in Section 9 of this Note.

“Excess Rental Proceeds” is defined in Section 5.3 of the Resale Restriction Agreement.

“Initial Market Value” means the fair market value of the Property at the time of Borrower’s acquisition of the Property. The Initial Market Value of the Property is _____ Dollars (\$ _____).

“Initial Purchase Price” means _____ Dollars (\$ _____) which is the below market-rate purchase price that Borrower paid or will pay to acquire the Property. In accordance with the Density Bonus Ordinance and the Density Bonus Statute, the Initial Purchase Price was set at a price resulting in Affordable Ownership Cost (as defined in the Density Bonus Statute).

“Initial Subsidy” means the amount equal to the Initial Market Value minus the Initial Purchase Price plus the amount of any down payment assistance or mortgage assistance provided to Borrower by the City. The amount of the Initial Subsidy is stated in the first paragraph of this Note, subject to the qualifications contained in the Resale Restriction Agreement.

“Note” means this Shared Appreciation Promissory Note, as it may be amended, modified or supplemented from time to time.

“Permitted Transfer” means a Transfer permitted in accordance with Section 7(c) of the Resale Restriction Agreement.

“Prohibited Transfer” is defined in Section 7(b) of the Resale Restriction Agreement.

“Property” means the property located at _____ Street in the City of Campbell together with the improvements located thereon, as more particularly described in Exhibit A attached to the City Deed of Trust.

“Resale Restriction Agreement” means that certain Affordable Housing Resale and Refinancing Restriction Agreement with Equity Sharing and Option to Purchase executed by and between City and Borrower, dated as of the date of this Note and recorded in the Official Records of Santa Clara County.

“Security” is defined in the City Deed of Trust.

“Transfer” means any voluntary or involuntary sale, assignment or transfer of ownership or any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, tenancy in common, a life estate or other limited estate, a leasehold interest (unless

approved pursuant to Section 5 of the Resale Restriction Agreement), an interest evidenced by a land contract by which possession of the Property is transferred, and the granting of a security interest pursuant to a mortgage or deed of trust.

2. Financing Pursuant to City's Affordable Housing Program; Borrower's Obligation to Comply with Program Regulations and Repay Initial Subsidy, Shared Appreciation, and Excess Rental Proceeds. This Note is made and delivered pursuant to, and in implementation of, the City's Affordable Housing Density Bonus Program and Inclusionary Housing Ordinance, pursuant to which, the City, in order to assist Borrower to purchase the Property, has arranged for the sale of the Property to Borrower at a below market price. Borrower acknowledges Borrower's obligation to comply with the requirements of the City Documents and the City's Program Guidelines. Concurrently with the execution of this Note, Borrower shall execute the City Deed of Trust and the Resale Restriction Agreement, each of which shall be recorded against the Property. The Resale Restriction Agreement requires the Property to be owner-occupied, and obligates Borrower to pay to the City Excess Rental Proceeds in connection with any rental or lease of the Property in violation of the Resale Restriction Agreement.. Pursuant to the Resale Restriction Agreement, upon the sale, Prohibited Transfer, foreclosure, or any other Transfer of the Property other than a Permitted Transfer, Borrower is obligated to repay to City the Initial Subsidy, City's Share of Appreciation, and any unpaid balance of Excess Rental Proceeds. If the Appreciation Amount is determined to be zero or less than zero, only the Initial Subsidy and any unpaid Excess Rental Proceeds shall be due and payable.

3. Repayment. The Initial Subsidy, any unpaid balance of Excess Rental Proceeds, and City's Share of Appreciation, calculated in accordance with the Resale Restriction Agreement, shall be immediately due and payable in full upon the occurrence of a sale, Prohibited Transfer, foreclosure, or any other Transfer of the Property other than a Permitted Transfer or upon the occurrence of a default by Borrower under any City Document that remains uncured beyond the applicable cure period. City's failure to declare such amounts due in any instance shall not constitute a waiver on the part of the City to declare them due in the future. Borrower will pay to City all sums owing under this Note without deduction, offset, or counterclaim of any kind.

4. Default Rate of Interest. If any sum payable to City pursuant to the Resale Restriction Agreement or this Note is not paid to City within ten (10) days of the due date thereof, then interest shall accrue on such sum at a rate equal to the lesser of ten percent (10%) interest per annum, compounded annually, or the maximum rate permitted by law.

5. Prepayment. This Note may not be prepaid in whole or in part. [*Allow prepayment in full after _____ years?*]

6. Due on Sale or Transfer; No Assumption. This Note is not assumable except in accordance with Section 7 of the Resale Restriction Agreement in connection with a Permitted Transfer.

7. Security. This Note is secured by the City Deed of Trust. The holder of this Note will be entitled to the benefits of the security provided by the City Deed of Trust and will have the right to enforce the covenants and agreements of Borrower contained therein and in the Resale Restriction Agreement.

8. Transfer. Borrower shall not Transfer, lease, sell, assign, refinance, encumber or convey any interest in the Property without complying with all requirements of the Resale Restriction Agreement. The Resale Restriction Agreement places restrictions on the sale and transfer of the property and grants the City the option to purchase. Any Transfer during the Affordability Restriction Period is restricted to the Affordable Ownership Cost and restricted to buyers who qualify as Eligible Households. Borrower's failure to comply with the requirements of this paragraph shall be a Default under this Note.

9. Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default hereunder:

- (1) The City determines that the Borrower has made a misrepresentation to obtain the benefits of purchasing the Property or in connection with its obligations under the City Documents;
- (2) The Borrower fails to occupy the Property as Borrower's principal residence, as required pursuant to the Resale Restriction Agreement, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;
- (3) The Borrower rents or leases the Property, in violation of the Resale Restriction Agreement, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;
- (4) The Borrower fails to provide information to the City necessary to determine Borrower's compliance with the requirements of the Resale Restriction Agreement, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;
- (5) The Borrower fails to pay property taxes or maintain the insurance coverage required for the Property pursuant to the Resale Restriction Agreement and the City Deed of Trust;
- (6) The Borrower fails to maintain the Property pursuant to adopted City codes and standards, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;
- (7) The Borrower places a mortgage or encumbrance on the Property in violation of the Resale Restriction Agreement;
- (8) The occurrence of any actual, attempted, or pending Prohibited Transfer of the Property or any estate or interest therein, including any Transfer during the Affordability Restriction Period for greater than the Affordable Ownership Cost or to buyers who do not qualify as Eligible Households;

- (9) Recordation of a notice of default and/or notice of sale pursuant to California Civil Code Section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;
- (10) Commencement of a judicial or nonjudicial foreclosure proceeding regarding the Property;
- (11) Execution by Borrower of a deed in lieu of foreclosure transferring ownership of the Property;
- (12) Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Borrower;
- (13) Any other default or breach of any covenant, warranty, promise or representation under the City Documents, and such default or breach continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice.

10. Remedies. Upon the occurrence of an Event of Default, the giving of any required notice thereof, and the expiration of any applicable cure period, City may, at its option, exercise any one or more of the following remedies:

a. Declare all of the sums payable under this Note to be immediately due and payable without further demand.

b. Pursue the exercise of the power of sale provided under the City Deed of Trust.

c. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Property and take possession thereof (or any part thereof) and of any of the Security in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach, and notwithstanding the continuance in possession of the Property, the City shall be entitled to exercise every remedy provided by the City Documents or by law, upon the occurrence of any uncured breach.

d. Commence an action to foreclose the City Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants set forth in the City Documents.

e. Exercise its option to purchase the Property pursuant to the Resale Restriction Agreement.

f. Exercise all other rights and remedies provided herein or in any other City Document.

g. Exercise any other remedy provided by law or in equity.

The rights and remedies of the City hereunder are cumulative, and the City's exercise or failure to exercise one or more of such rights or remedies shall not preclude City's exercise, at the same time or different times, of any other right or remedy for the same default or any other default.

11. Borrower's Personal Liability. Borrower will be fully and personally liable for all loss, cost, liability, damage and expense (including without limitation attorneys' fees) suffered or incurred by City arising from any of the following:

a. Failure to pay taxes, assessments, and any other charges that could result in liens against any portion of the Property or any other Security.

b. Failure to pay and discharge any mechanics' liens, materialmen's liens, or other unpermitted liens against any portion of the Property or any other Security.

c. Borrower's fraud or intentional misrepresentation with respect to any representations, warranties, or certifications made in or pursuant to the City Documents or in connection with Borrower's application to participate in the City's affordable housing program.

d. Borrower's retention or use of insurance proceeds, condemnation awards, or other similar funds or payments attributable to the Property or any other Security that pursuant to the City Documents should have been paid to City or used for another purpose.

e. Waste of the Property, or any other failure to maintain, repair, or restore any portion of the Property or any other Security in accordance with the requirements of the City Documents.

f. The failure of the City Documents to constitute a lien or security interest, as applicable, on the Property or any other Security, subject only to those exceptions, if any, permitted by the City Documents or otherwise approved in writing by City.

Nothing in this paragraph will affect or limit the rights of City to enforce any of City's rights or remedies with respect to any portion of the Property or any other Security.

12. Borrower's Waivers. Borrower hereby expressly waives diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of nonpayment of this Note, and expressly waives 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 waives the right to plead any and all statutes of limitation as a defense to any demand on this Note.

13. Notices. All notices, requests, demands, reports or other communications regarding this Note shall be in writing and delivered: (i) personally; or (ii) by independent, reputable,

overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested; addressed as follows, or to such other address as specified in written notice delivered to the parties pursuant to this Section:

To Borrower: At the Property address.

To City: City of Campbell
70 North First Street
Campbell, CA 95008-1436
Attention: Community Development Department

Any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of delivery thereof.

14. Assignment by Lender; Successors and Assigns. This Note shall be binding upon Borrower and Borrower's heirs, successors and assigns; provided however, Borrower may not assign this Note without City's prior written consent except as may be permitted in accordance with the Resale Restriction Agreement. City may assign its rights to receive the proceeds under this Note to any person or entity without the consent of Borrower, and upon notice to Borrower of such assignment, all payments shall be made to the assignee. The acceptance of any deed or other written instrument of conveyance shall constitute acceptance of the terms, conditions, and restrictions contained herein. Any successor in interest to Owner, including, without limitation, any purchaser, transferee, or lessee of a portion of the Property, shall be subject to all the duties and obligations imposed hereby.

15. No Joint Venture. The relationship of Borrower and City under this Note is solely that of a participant and administrator of an affordable housing program, and in no manner are the City and the Borrower partners or joint venturers, nor do any of the City Documents establish a principal and agent relationship between City and Borrower.

16. Attorneys' Fees and Costs. If any legal action is filed to interpret or enforce this Note, the prevailing party shall be entitled to an award of its reasonable attorneys' fees, costs and expenses incurred therein. Borrower agrees to pay all costs and expenses (including reasonable attorneys' fees) that City may incur in connection with enforcement of this Note and collection of sums payable hereunder whether or not suit is filed.

17. No Third-Party Beneficiaries. This Note shall not benefit or be enforceable by any person or entity except the City and the Borrower and their respective successors and assigns.

18. Entire Agreement; Amendments. This Note, together with the Resale Restriction Agreement and the City Deed of Trust, sets forth the entire understanding between Borrower and the City with respect to the subject matter hereof. Any previous representations, warranties, agreements, and understandings among the parties regarding the subject matter of the Resale Restriction Agreement, this Note and City Deed of Trust whether written or oral, are superseded

by the terms of the Resale Restriction Agreement, this Note and the City Deed of Trust. This Note may be modified or amended only by a written instrument duly executed by City and Borrower.

19. No Waiver. Any waiver of any term or provision of this Note must be in writing. No waiver of any breach, default or failure of condition under this Note or any other City Document shall be implied from City's failure or delay in declaring a default or exercising any of City's rights or remedies with respect to such breach, default or failure, or from any previous waiver of any similar or unrelated breach, default or failure, nor shall acceptance by City of any payment hereunder constitute a waiver of City's right to require prompt payment of any remaining amounts owed. Without limiting the generality of the foregoing, City's failure or delay in declaring any amount due hereunder shall not constitute a waiver of City's right to declare such sum due for the same or any subsequent event that triggers Borrower's payment obligations hereunder.

20. Severability. If any provision of this Note shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Note shall not be affected or impaired thereby.

21. Controlling Law and Venue. The terms of this Note shall be interpreted under the laws of the State of California without regard to principles of conflicts of law. This Note was entered into and is to be performed in the County of Santa Clara, California which is the exclusive venue for any action or dispute arising hereunder.

22. Captions. All captions and headings in this Note are for the purposes of reference and convenience and shall be disregarded for all other purposes, including the construction or enforcement of any of the provisions of this Note.

23. Joint and Several. The obligations of each signatory to this Note shall be joint and several.

24. Time of the Essence. Time is of the essence with regard to all matters contained in this Note.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

BORROWER:

By: _____

Print Name: _____

By: _____

Print Name: _____