

**SANTA CLARA COUNTY
BELOW MARKET RATE PARTNERSHIP PROGRAM**

MORTGAGE ASSISTANCE

PROMISSORY NOTE

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

Loan No. [BMRP-__-__]

\$[_____]

[_____, 20__]

FOR VALUE RECEIVED, the undersigned, [_____] (the "Borrower") hereby promises to pay to the order of County of Santa Clara, a political subdivision of the State of California ("Lender") at the following address, 150 W. Tasman Drive, San Jose, California, 95134 or at such other place as the holder may from time to time designate by written notice to Borrower, in lawful money of the United States, the principal sum of [_____] Dollars [\$_____] with simple interest at the rate of [_____] percent per annum on the unpaid principal balance from the date of this Note, until paid. The obligation of the Borrower with respect to this Note is secured by that certain Below Market Rate Partnership Program Mortgage Assistance Deed of Trust Loan No. [_____] (the "Deed of Trust"), and executed by the Borrower concurrently herewith.

1. **Borrower's Obligation.** This Note evidences the obligation of the Borrower to the Lender for the repayment of funds loaned (the "BMRP Loan") to finance the acquisition of that certain real property (the "Property") which has the address of [_____] California, [_____] more fully described in Exhibit A of the Deed of Trust.

2. **Borrower(s) Acknowledge(s) and Agrees:** that the BMRP Loan is subject to the terms, conditions, and restrictions of the Below Market Rate Partnership Program and implementing guidelines or regulations adopted by the Santa Clara County Office of Supportive Housing, all of which are hereby incorporated by reference.

3. **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) 30 years from the date of this Note; or
 - (b) Upon sale, transfer, lease, 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
 - (c) Upon Borrower's failure to occupy the Property as Borrower's principal place of residence.

4. **Permitted Transfers.** The BMRP 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.
5. **Acceleration of Payment.** The principal amount of this loan, together with any then outstanding accrued interest thereon shall become immediately due and payable, at the option of the holder 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; or
 - (c) In the event of any sale, transfer, lease, 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 holder 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 shall be considered an on-going 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 the Lender set forth above, or at such other place or places as the 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 accrued 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 attorney's fees, which may be incurred by the Lender in the enforcement of this Note.
10. **Default and Acceleration.** All covenants, conditions and agreements contained in the Deed of Trust are hereby made a part of this Note. The Borrower agrees that the unpaid balance of the then principal amount of this Note, together with all accrued interest thereon and charges owing, shall, at the option of the Lender or, if so provided in this Note and Deed of Trust executed by the Borrower, shall automatically, become immediately due and payable, and thereafter until paid bear interest at the rate of 10% per annum, upon the failure of the Borrower to make any payment hereunder as and when due; upon the failure of the Borrower to perform or observe any other term or provision of this Note, or upon 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 the Lender to exercise rights or remedies thereunder.
11. **Notices.** Except as may be otherwise specified herein, any approval, notice, direction, consent, request or other action by the Lender shall be in writing and must be communicated to the Borrower at the address of the Property, or at such other place or places as the Borrower shall designate to the Lender in writing, from time to time, for the receipt of communications from the Lender. 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 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.

Executed as of the date set forth above at _____, **California**
City

Borrower

Borrower

Mailing Address for Notices:

