

City of Livermore Loan #

NOTICE TO BORROWER:

This document contains provisions restricting assumptions

PROMISSORY NOTE

Secured by a Deed of Trust (Amortized Payment)

Livermore, California

Principal Amount

\$ _____

, 2009

FOR VALUE RECEIVED, the undersigned _____ ("Borrower") whose address is _____, Livermore, California 9455 _____, hereby promise(s) to pay to the order of the City of Livermore, a municipal corporation ("City"), whose address is 1052 South Livermore Avenue, Livermore, California 94550, the principal amount of _____ dollars (\$_____), together with interest accrued thereon, as set forth in this Promissory Note ("Note").

The City's Mortgage Assistance Program provides loans to assist low and moderate income first time homebuyers purchase homes to occupy as their primary personal residences. This Note is made and delivered pursuant to and in conjunction with the City's Note to Borrower through the Mortgage Assistance Program for the purchase of that certain real property commonly known as _____, (APN _____) more fully described in the Deed of Trust ("Property").

The Borrower's obligations with respect to this Note are secured by that certain Deed of Trust ("Deed of Trust") executed by the Borrower concurrently herewith.

1. Borrower's Obligation. This Note evidences the Borrowers' obligation to pay the City the principal amount loaned to the Borrower by the City to finance the Property's purchase. As a condition of receiving the principal amount, the Borrower promises and agrees to comply will all terms and conditions of this Note.

2. Occupancy. At all times during the term of this Note, the Borrower shall occupy the Property as the Borrower's primary place of residence. The Borrower shall not transfer the Property in violation of section 12 below.

3. Principal. The principal amount of this Note is \$ _____ ("Principal Amount") for the funds loaned to the Borrower by the City to finance acquisition of the Property.

4. Interest. Simple interest shall accrue on the unpaid and outstanding balance of the Principal Amount at the rate of three percent (3%) per annum, commencing upon the close of escrow and continuing thereafter until the repayment of this Note in full.

5. Term. The Borrower shall repay the Principal Amount, and all interest accrued thereon, in equal installment payments as provided in section 6. The entire indebtedness evidenced by this Note shall be repaid to the City within thirty (30) years from the close of escrow.

6. Repayment. All payments by the Borrower shall be paid to the City in currency of the United States of America, which at the time of the payment is lawful for the payment of public and private debts. Commencing the first day of the second month following the close of escrow, and continuing the first day of each month thereafter until the Principal Amount and interest accrued thereon is paid in full, the Borrower shall make monthly payments to the City in the amount of \$_____ a month.

All payments on this Note shall be made payable to the City of Livermore, and shall be delivered to the City at 1052 South Livermore Avenue, Livermore, California, 94550, or to such other place as the City may from time-to-time designate.

All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses incurred in connection with the payment.

The City shall apply each monthly payment to its scheduled due date and will apply the payment to interest before principal.

7. Late Payments - Penalties. In the event the City does not receive the full amount of the monthly payment within sixteen (16) days of its due date, the Borrower will be assessed a late payment penalty in the amount of five percent (5%) of the overdue monthly payment. In the event the Borrower fails to pay the overdue payment and penalty prior to the date when the next regular monthly payment is due, the Borrower shall be assessed an additional two-percent (2%) late payment penalty on the overdue amount. The late payment penalties will continue to accrue in that manner until the City receives the full amount of the overdue payment and all related penalties from the Borrower.

8. Prepayment. At its option and without any premium or penalty, Borrower may pay all or a portion of the outstanding Principal Amount prior to the amount becoming due. The Borrower may make such prepayments at any time, or from time-to-time, before the prepaid amount is due. However, to exercise the prepayment option, the installment payments must be current and all outstanding penalties must have been paid. All prepayments shall be applied by the City to reduce the amount of the outstanding Principal Amount owed under this Note. If the Borrower makes a partial prepayment (that is, the Borrower does not prepay the full amount of payment coming due), there will be no change in the due date.

9. Encumbrances. The Borrower shall not encumber the Property, permit the covenant, transfer, or encumbrance of the Property, allow the placement of any liens, notes or deeds on the Property, or use the Property as security for any note or loan, without the City's prior written approval. The City shall not approve any encumbrances to the Property other than to allow the Borrower to refinance a first mortgage previously approved by the City, and shall only approve refinancing when the loan amount of such refinancing does not exceed the then outstanding balance of the first mortgage previously approved by the City. Furthermore, the City shall not approve any refinancing of a first mortgage with a loan that contains any provisions for a reverse mortgage, negative amortization, or balloon payments. Any written approval by the City shall be consistent with the requirements of section 14 below.

10. Payment Acceleration. The Principal Amount of this Note, together with all accrued interest and other outstanding payments and penalties, shall become immediately due and payable upon the occurrence of any of the following events:

- A. The Borrower fails to occupy the Property as his or her primary place of residence;
- B. The Borrower fails to cure a default consistent with the requirements of section 11 below;
- C. The transfer of the Property or this Note in violation of section 12, and without the City's written approval consistent with the requirements of sections 13, 14, and 22 below;
- D. The encumbrance of the Property in violation of section 9, without the City's written approval consistent with the requirements of sections 9 and 14; or
- E. The satisfaction or payment in full of the first mortgage for the Property secured by a lien or deed of trust that is senior to the Deed of Trust for this Note, without the City's prior written approval consistent with the requirements of section 14 below.

11. Default – Notice & Opportunity to Cure. If, in the City's sole discretion, the Borrower fails to observe or perform any condition contained herein for a period of thirty (30) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default and the City shall be entitled, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Borrower of its obligations under this Note. The accumulation of more than three (3) late payment penalties for a single overdue monthly payment, and the Borrower's outstanding obligation to pay more than four (4) late payment penalties related to two or more monthly payments during any six (6) month period, shall each constitute a separate and independent default event.

12. Prohibited Transfers. The Borrower is prohibited from transferring by sale, lease, trade, exchange, rental, gift, assignment, conveyance, the Property or any part thereof, or any trust or power, or any transfer in any other mode or form, of the Property or any part thereof or any interest therein.

13. Permitted Transfers. Under the following limited circumstances, the City may give its prior written approval for the transfer of the Property:

- A. The Property is to be transferred to another qualified borrower under the City of Livermore's Mortgage Assistance Program, and the other qualified borrower agrees to assume the Borrower's rights and obligations under the Deed of Trust, this Note, and any related Loan Agreement.
- B. Upon the Borrower's death or demise:
 - 1. The Property is transferred to a surviving co-Borrower under this Note by will, probate, or operation of the law;

2. The Property is transferred to the Borrower's spouse or domestic partner, provided that status was established prior to the Borrower's death or demise by will, probate, or operation of law; or,
 3. The Property is transferred to a Borrower's minor child, whether adopted or direct issue, who resided with the Borrower at the time of his or her death or demise.
- C. The Property is transferred involuntarily, or by operation of law, as a result of a property dissolution order or decree of dissolution of marriage, to the Borrower's former spouse or domestic partner, provided the beneficiary of the transfer takes the Property subject to the terms and conditions of this Note.

14. Prior Written Approval. The City shall not unreasonably withhold its written approval of permitted transfers, encumbrances and refinancing by the Borrower. However, the City may only give written approval of those transfers, encumbrances, and refinancing authorized by this Note. The Borrower must request the City's written approval prior to pursuing any transfer, encumbrance, or refinancing. If not approved, or in violation of this Note, any unapproved transfer, encumbrance, or refinancing shall be null and void and the Borrower must deliver to the City any profits or benefit received from the transaction consistent with the requirements of section 24.

15. Certification. Upon the City's written request, the Borrower shall execute a certification under penalty of perjury, and deliver same to the City, certifying that the Borrower has not allowed or placed any encumbrances on the Property, is currently occupying the Property as the Borrower's principal place of residence, has not leased the Property or any or portion thereof, and is not otherwise in violation of any term or condition of this Note.

16. Audit and Inspection. To the extent permissible under laws and regulations protecting individual confidentiality, the City shall have access to, and is hereby authorized by the Borrower to inspect, make copies or photographs of, the Property, books, utility accounts, and records of the Borrower pertaining to this Note and the Borrower's occupancy of the Property.

17. Notices. Any demand or notice which either party desires to deliver to the other, shall be in writing and shall be delivered by hand, sent by a recognized overnight courier, deposited in the United States mail with a first class prepaid postage and a return receipt requested, to ensure timely and complete delivery to the other party at the addresses noted above.

18. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

19. Severability. Every provision of this Note is intended to be severable. If any provision is held by a court of competent jurisdiction to be invalid, illegal, and unenforceable, the validity, legality, and enforceability, of the remaining provisions shall not in any way be affected or impaired.

20. Interpretation. The provisions of this Note have been arrived at through negotiation and each party had a full and fair opportunity to revise the provisions and have them reviewed by legal counsel. The parties agree that any ambiguities in construing or interpreting this Note

shall not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language of this Note and a written loan agreement for the Borrower's acquisition of the Property through the City's Mortgage Assistance Program, the language of the loan agreement shall control.

20. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

21. Negotiability. This Note is non-negotiable and not transferable by the Borrower. The City, in its sole discretion, may negotiate a transfer, assignment, or assumption of this Note to any person and upon notice to the Borrower by the City.

22. Binding Upon Successors. All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the City, respectively.

23. Restrictions on Foreclosure Proceeds. If a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Borrower shall not be entitled to the proceeds of sale to the extent that such proceeds, when added to the amount paid or credited to the creditor, exceed the amount the Borrower would have received by a sale in accordance with the Mortgage Assistance Program Guidelines. The Borrower hereby agrees and acknowledges that the Borrower forfeits such funds and shall instruct the holder of such excess proceeds to them to the City as repayment for, and in consideration of, the assistance provided by the City in the acquisition of the Property.

Dated:

BORROWER

CO-BORROWER:
