

## **Secured Promissory Note**

(Secured by Deed of Trust)

### **City Second Loan Program (CSLP) Funding Source:**

**Loan Number:**

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

**Principal Amount:**

**Share Appreciation: %**

**Borrower(s) Name:**

**Property Address:** \_\_\_\_\_, San Francisco, CA

1. **Borrower's Promise to Pay.** For value received, the undersigned ("Borrower") hereby promises to pay to the City and County of San Francisco, a municipal corporation, acting by and through the Mayor's Office of Housing and Community Development ("Lender"), the principal amount of U.S. **Dollars ( )** (the "Principal Amount") plus a "Share of Appreciation" in the value of the Property as defined in Section 6 below and as provided in this Secured Promissory Note (the "Note"). The interest rate on the principal amount is 0%.
2. **City Second Loan Program (CSLP) Requirements.** Borrower acknowledges that the loan in the Principal Amount made to Borrower by Lender as of the date of this Note was made pursuant to the CSLP regulations as described in the Downpayment Assistance Loan Program Manual ("DALP Manual"), and therefore Borrower hereby agrees to comply with the DALP Manual, as amended from time to time, until this Note is full repaid. Borrower represents that Borrower's combined household income does not exceed 120% of the area median income for the San Francisco Metropolitan Statistical Area, as published by the U.S. Department of Housing and Urban Development as of the date of this Note.
3. **Use of Principal Amount.** The Lender has provided the Principal Amount to Borrower to finance a portion of Borrower's down payment or closing cost for the purchase of a single-family residence located at \_\_\_\_\_ **San Francisco, CA** (the "Property") as Borrower's Primary Residence. The purchase price of the Property is \_\_\_\_\_ (**\$XXX,XXX**) (the "Purchase Price").
4. **Security.** The Borrower's obligations under this Note are secured by a Deed of Trust and Assignment of Rents executed by Borrower, as Trustor, for the benefit of Lender, as Beneficiary (the "Deed of Trust").
5. **Time and Place of Payments.**
  - a. The Principal Amount of this Note, together with the Share of Appreciation as defined in Section 6 below, shall be due and payable in full on the Maturity Date to the City and County of San Francisco at the Mayor's Office of Housing and Community Development, One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103 or at such other place as the City may from time to time designate.
  - b. The Maturity Date shall be the earliest to occur of the following:
    - (i) An acceleration by Lender of this Note in the event of a default hereunder or under the City Deed of Trust; or
    - (ii) A sale of the Property through a judicial foreclosure, a trustee's sale of the Property (regardless of whether initiated by the Lender) through a non-judicial foreclosure, or any other legal process of foreclosure under California law; or

- (iii) The date of the first sale or transfer of the Property to occur after the date of this Note without the prior written consent of Lender. For the purposes of this Note, "sale or transfer" shall mean any voluntary or involuntary sale, assignment, rental of the property as required by the CSLP regulations set forth in the DALP Manual, or any transfer of title in the Property, including entering into any installment sales contract giving the purchaser or a third party a right to possess the Property or any portion of the Property before transfer of title; provided, however, that "transfer" does not include either of the following:
  - (A) a transfer resulting from death of a Borrower where the transfer is to a co-Borrower;
  - (B) a transfer by Borrower into an inter vivo trust as set forth in the DALP Manual;
  - (C) a transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incidental to such a decree in which one of the Borrowers becomes the sole owner of the Property; or
  - (D) a transfer between co-Borrowers.

Notwithstanding the forgoing, Borrower must comply with the Transfer restrictions as set forth in the DALP Manual.

c. All payments must be made in currency of the United States of America then lawful for payment of public and private debts. All payments must be made payable to the "City and County of San Francisco" of the Mayor's Office of Housing and Community Development, One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103 or at such other place as the City may from time to time designate.

6. Share of Appreciation. On the Maturity Date or on the date of any prepayment under Section 7, the Borrower agrees to repay to Lender the Principal Amount plus the "Share of Appreciation" calculated under this Section 6. The Share of Appreciation is defined as the amount equal to **(0.15%)** of the increase in the Fair Market Value of the Property, if any, from the date of Borrower's purchase of the Property through the Maturity Date. The Share of Appreciation has been determined by dividing the Principal Amount by the Fair Market Value of the Property as of the date of this Note, as defined in this Section.
- (i) The Fair Market Value of the Property at the time of the Borrower's purchase of the Property is the lesser of the Purchase Price or the Appraised Value of the Property at the time of purchase.
  - (ii) The Fair Market Value of the Property as of the Maturity Date is the greater of the Borrower's sales price of the Property (if applicable) or the Appraised Value of the Property as of the Maturity Date.
  - (iii) The Lender and Borrower may determine the Fair Market Value by mutual agreement, without obtaining an appraisal.
  - (iv) If the Lender and Borrower are unable to agree on a Fair Market Value under Subsection (iii), then the "Appraised Value" of the Property is defined as the value that would be agreed to by a seller who is willing to sell but under no particular or urgent necessity or obligation to sell, and a buyer who is ready, willing and able to buy but under no particular or urgent necessity to buy, each dealing with the other with full knowledge of all the uses and purposes for which the Property is reasonably adaptable and available. For purposes of determining the Appraised Value, the Borrower shall select an appraiser who is an "MAI" member of the American Institute of Real Estate Appraisers or an "SRPA" member of the Society of Real Estate Appraisers (or any such equivalent designations). Lender has the option, at Lender's sole expense, to select an appraiser to conduct an additional appraisal of the Property. If the two appraisals are not in agreement as to the Appraised Value of the Property, the amounts determined by the appraisals will be averaged to determine the Appraised Value of the Property for purposes of this Subsection (iv).

7. Borrower's Right to Prepay. The Borrower may repay the Principal Amount, together with the Share of Appreciation as of the date of such prepayment, calculated under Section 6 above, provided that such prepayment is in full and not in part. No prepayment charge will be imposed by the Lender.
8. Loan Charges. If any law which applies to this loan and which sets maximum loan charges is finally interpreted so that any amounts collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. The Lender may choose to make this refund by making a direct payment to Borrower or by another method determined by Lender.
9. Occupancy, Preservation, Maintenance and Protection of Property; Borrower's Loan Application.
  - a. Borrower shall occupy, establish, and use the Property as Borrower's principal residence commencing within sixty days after the execution of this Note and ending on the Maturity Date. Borrower shall not destroy, damage or impair the Property, allows the Property to deteriorate, or commit waste on the Property. Borrower shall be in default under this Note if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's reasonable judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Note. Borrower may cure such a default and reinstate Borrower's obligations, by causing the action or proceeding to be dismissed with a ruling that, in Lender's reasonable determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Note or Lender's security interest.
  - b. Borrower shall also be in default under this Note if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the Loan evidenced by the Note, including, but not limited to, representations concerning (1) Borrower's intent to occupy the Property as a principal residence; (2) Borrower's income and liquid assets; (3) Borrower's eligibility under the applicable requirements for a loan under the DALP Manual (including, but not limited to, eligibility as a First-Time Homebuyer); (4) Borrower's completion of the approved Homebuyer Education Course; and (5) Borrowers household size and composition.
10. Default; Remedies; Default Interest.
  - a. Default. Any of the following will constitute an "Event of Default" under this Note:
    - (i) If Borrower fails to pay the Principal Amount plus the Share of Appreciation on the Maturity Date, Borrower will be in default under this Note, or
    - (ii) If Borrower fails to comply with the DALP Manual, or
    - (iii) the occurrence of any other default under this Note or default under an instrument securing the obligations of Borrower under this Note.
  - b. Notice of Default. Upon a default by Borrower, Lender shall provide written notice of such default to Borrower. Borrower shall have thirty (30) days from the effective date of such notice to cure the default.
  - c. Default Interest Rate. Upon the occurrence of an Event of Default under any City document, interest will be deemed to have accrued on the outstanding Principal Amount at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date of the Event of Default through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under this Note are paid to Lender. Borrower acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the



- d. The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.
13. Subordination. After the date of this Note, the Lender's prior written approval, in its sole and absolute discretion, is required of any subordination of this Note to financing secured by a mortgage, deed of trust, lien, or other instrument on the Property.
14. Miscellaneous Provisions.
- a. The Borrower understands that under Section 67.24(e) of San Francisco Administrative Code, applications for financing and all other records of communications between the City and the Borrower must be open to public inspection immediately after a contract has been awarded. All information provided by Borrower which is covered by that ordinance (as it may be amended) will be made available to the public upon appropriate request.
- b. If more than one-person signs this Note, each person is jointly and severally liable for the obligations under this Note. This means that each such person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed, and Lender may require any one person to pay all amounts owed under this Note. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Lender may enforce its rights under this Note against each person individually or against all of us together.
- c. If any legal action is commenced by Lender to enforce any of the terms of this Note, the Deed of Trust, or rights arising from the Borrower's actions in connection with this Note, the Lender will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Note, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.
- d. This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
- e. This Note shall be governed by and construed in accordance with the laws of the State of California.
- f. Time is of the essence for the performance of all obligations of Borrower hereunder.

**BORROWER(S):**

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**Applicant 1**

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**Applicant 2**

(ALL SIGNATURES MUST BE NOTARIZED)