

**NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS LIMITING ASSUMPTIONS**

**Promissory Note – Shared Appreciation**

(AC Boost Down Payment Assistance Loan)

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

Hayward, California  
\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ ("Borrower") promises to pay to the COUNTY OF ALAMEDA, a political subdivision of the State of California (the "County") the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "Loan"), plus Shared Appreciation calculated pursuant to Section 2 of this Note.

1. Security. This promissory note (the "Note") is secured by a Deed of Trust dated the same date as this Note (the "Deed of Trust"). Borrower acknowledges that this Note is given in connection with the purchase of property by Borrower located at \_\_\_\_\_, \_\_\_\_\_, California as part of a program of the County to provide affordable homeownership opportunities for low and moderate income households (the "AC Boost Program"). Said property, including 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 shall be referred to in this Note as the "Property". The term "Property", as used in this Note, shall have the same meaning as the term "Security" as used in the Deed of Trust.

2. Shared Appreciation; Shared Appreciation Agreement. As a condition to the Loan, Borrower and County have executed an Occupancy, Shared Appreciation, and Refinancing Restriction Agreement with Option to Purchase on Default dated substantially concurrently herewith (the "Shared Appreciation Agreement"). The Borrower shall pay Shared Appreciation (as defined in Section 6(f)) equal to \_\_\_\_\_ percent ( \_\_ %) of the Appreciation Amount as set forth in Section 4 below. In the event the Appreciation Amount is zero, no Shared Appreciation payment shall be due, but the principal amount of this Note shall remain due and payable. The Shared Appreciation is contingent interest.

3. Limited Assumption of Note. Borrower(s) acknowledge(s) that this Note is given in connection with the Borrower's purchase of the Property as part of an effort by the County to assist in the purchase of homes by low and moderate income households. Consequently, this Note is only assumable if the following requirements are met: (i) Borrower is not in default under the Note, (ii) the subsequent borrower is a low or moderate income household, as

determined by the County in accordance with the AC Boost Program guidelines and policies, and (iii) such assignment is consented to by the County.

4. Repayment.

(a) Term. Unless sooner prepaid, the term of this Note (the "Term") commences on the date of this Note and terminates thirty (30) years from the date of this Note. Pursuant to Section 4(c)(iv) below, the amounts owing under this Note are due and payable on the date this is thirty (30) years from the date of this Note, except as otherwise provided herein.

(b) Deferral. Repayment of the principal amount of this Note and Shared Appreciation owed shall be deferred for the Term of the Note, except as provided in subsection (c) below.

(c) Repayment in Full. The total amount of the principal and any Shared Appreciation owed under this Note shall immediately become due and payable: (i) in the event of a default by the Borrower under this Note, the Deed of Trust, or the Shared Appreciation Agreement (ii) on the date of a Transfer that is not a Permitted Transfer (as such terms are defined in Section 5.A of the Shared Appreciation Agreement); (iii) in the event Borrower ceases to occupy the Property as his or her principal place of residence in accordance with Section 2 of the Shared Appreciation Agreement; (iv) thirty (30) years from the date of this Note; or (v) upon a refinance of the First Lender Loan that is not in compliance with Section 9 of the Shared Appreciation Agreement. Failure to declare such amounts due shall not constitute a waiver on the part of the County to declare them due in the event of a subsequent Transfer.

5. Prepayments. Borrower may prepay all or part of the balance due under this Note; provided however, any prepayment, including a partial prepayment, must include Shared Appreciation due at the time of prepayment. The amount of Shared Appreciation due upon prepayment shall be determined at the time of any partial or full prepayment based on the Fair Market Value of the Property. Partial prepayments shall be allocated between payment of Shared Appreciation and payment of principal in the same proportion as the ratio of each to the total amount due (principal and Shared Appreciation) at the time of prepayment. Following a prepayment, the percentage of Shared Appreciation due on the Loan shall be recalculated to reflect the paydown in principal owed under the Note. The recalculated Shared Appreciation shall equal the outstanding principal amount of the Note divided by the original purchase price of the Property.

6. Definitions. The terms set forth in this Section shall have the following meanings in this Note.

(a) "Appreciation Amount" shall mean the amount calculated by subtracting the original purchase price of the Property, which amount was [ ] Dollars (\$) from one of the following amounts, as applicable: (i) in the event of a sale of the Property at Fair Market Value, the amount received by the Borrower as the sales price of the Property, as certified by the Borrower under penalty of perjury, or (ii) in the event of

a Transfer other than sale of the Property at Fair Market Value, in the event of prepayment, or in the event of a default, the Fair Market Value of the Property; or (iii) 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. Borrower shall be responsible for all broker's fees and other closing costs. Such fees and closing costs shall not be deducted from the calculation of the Appreciation Amount.

(b) "Fair Market Value" shall be the fair market value of the Property determined by a certified MAI or other qualified real estate appraiser approved in advance by the County. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. The cost of the appraisal shall be paid by the Borrower.

(c) "First Deed of Trust" shall mean that certain deed of trust dated substantially concurrently herewith executed by Borrower in favor of \_\_\_\_\_ and to be recorded in the official records of the County on the same date of the Deed of Trust.

(d) "First Lender Loan" shall mean the loan secured by the First Deed of Trust.

(e) "Property" is defined in Section 1 of this Note and shall have the same meaning as the term "Security" as used in the Deed of Trust.

(f) "Shared Appreciation" shall mean the contingent interest, if any, due on the Loan, equal to the amount resulting from dividing the principal amount of the Loan by the original purchase price of the Property (as set forth in Section 6 (a)), then multiplying that percentage by the Appreciation Amount.

(g) "Transfer" is defined in Section 5.A of the Shared Appreciation Agreement.

7. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, 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.

8. Joint and Several Obligations. This 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.

9. Default. Any of the following shall constitute an event of default under this Note:

(a) Any failure to pay, in full, any payment required under this Note within ten (10) days of written notice that such payment is due;

(b) Any failure to occupy the Property as Borrower's principal place of residence or leasing of the Property in violation of this Note, subject to the notice and cure period set forth in the Shared Appreciation Agreement;

(c) Any failure in the performance by the Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in the Shared Appreciation Agreement;

(d) The occurrence of any event of default under the Shared Appreciation Agreement, Deed of Trust, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the County pursuant to the Deed of Trust; or

(e) The occurrence of any event of default under the First Deed of Trust, any other deeds of trust secured by the Property or any covenant recorded against the Property.

10. Acceleration. Upon the declaration of a default under this Note, the Deed of Trust, the Shared Appreciation Agreement or the First Lender Loan, the County shall have the right to declare the full amount of the principal along with any Shared Appreciation under this Note immediately due and payable. Any failure by the County to pursue its legal and equitable remedies upon default shall not constitute a waiver of the County's right to declare a default and exercise all of its rights under this Note, the Deed of Trust and the Shared Appreciation Agreement. Nor shall acceptance by the County of any payment provided for herein constitute a waiver of the County's right to require prompt payment of any remaining principal and interest owed.

11. No Offset. Borrower hereby waives any rights of offset Borrower now has or may hereafter have against the County, its successors and assigns, and agree to make the payments called for herein in accordance with the terms of this Note.

12. No Waiver by the County. No waiver of any breach, default or failure of condition under the terms of this Note shall be implied from any failure of the County to take, or any delay by the County 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 must be made in writing and shall be limited to the express written terms of such waiver.

13. Waiver. Borrower, for herself or himself, her or his 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 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 limitations as a defense to any demand on this Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

14. Notices. Notices to the County or the Borrower required hereunder shall be given in the manner described in Section 14 of the Deed of Trust.

15. Nonliability for Negligence, Loss, or Damage. Borrower acknowledges, understands and agrees that the relationship between Borrower and the County with respect to the Loan is solely that of borrower and lender, and that County neither undertakes nor assumes any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality adequacy or suitability of the Property or any other matter. County owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction or any condition of the Property and Borrower agrees that neither Borrower, nor Borrower's heirs, successors or assigns shall ever claim, have or assert any right or action against County for any loss, damage or other matter arising out of or resulting from any condition of the Property and will hold County harmless from any liability, loss or damage for these things.

16. Indemnity. Borrower agrees to defend, indemnify, and hold County harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys' fees that the County may incur as a direct or indirect consequence of:

- (a) the making of the loan evidenced by the Note to Borrower;
- (b) Borrower's default, performance, or failure to perform any obligations as and when required by the Note and Deed of Trust;
- (c) Borrower's purchase of the Property; or
- (d) the failure at any time of any of Borrower's certifications, representations, or warranties to be true and correct.

17. Controlling Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

18. Assignment by County. The County may assign its right to receive the proceeds under this Note to any person and upon notice to the Borrower by the County that all payments shall be made to the assignee.

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

20. 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.

BORROWER

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TEMPLATE