

**PROMISSORY NOTE SECURED BY DEED OF TRUST**

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

San Francisco, California

**THIS NOTE MAY NOT BE PREPAID**

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ (“Maker”), promises to pay to the City of the City and County of San Francisco, a municipal corporation, (“Holder” or “City”), at 1 South Van Ness Avenue, 5th Floor, San Francisco, California 94103, or any other place designated in writing by Holder to Maker, the amount calculated under the formula stated in this Promissory Note (“Note”).

1. Purchase of Property. Maker has purchased a unit commonly known as [Street No] [Street], Unit [Unit No], San Francisco, CA [Zip Code] (the "Property"). The Property is subject to the restrictions specified in Subdivision Code Section 1344 (the “Code”), the City and County of San Francisco Residential Inclusionary Affordable Housing Program Monitoring and Procedures Manual adopted by the San Francisco Planning Commission on June 28, 2007 and the Condominium Conversion BMR Program Addendum on file with the Clerk of the Board of Supervisors in File No. 080520 (the "Procedures Manual"), and in a Declaration of Restrictions and Option to Purchase Agreement made by \_\_\_\_\_, in favor of the City, dated the same date as this Note and to be recorded in the Official Records of San Francisco County concurrently herewith (the "Declaration").

The Procedures Manual, the Code and the Declaration shall be referred to collectively as the "Property Restrictions". Capitalized terms used herein and not defined shall have the meanings set forth in the Declaration, the Code or in the Procedures Manual, as applicable.

2. Principal Amount of Note. In the event that this Note is due and payable pursuant to Section 3 below, Maker shall pay to Holder the following amount:

- a. The difference between (1) the Fair Market Value of the Property as of the Trigger Date (as defined below) and (2) the Resale Price as of the Trigger Date, had such Transfer been executed in accordance with the Declaration; and
- b. Any amounts disbursed by Holder under Section 12.4 of the Declaration and Section 5 of the Deed of Trust to protect Holder’s rights in the real property described in the Declaration and Deed of Trust; and
- c. Commencing from the Trigger Date, interest on the amount due at a compounded annual rate equal to the lesser of (a) ten percent (10%) or (b) the maximum lawful rate of interest (the "Default Interest"); provided, however, that if the Property is being transferred through probate, and is otherwise in full compliance with the Agreement and all other senior lien documents on the Property, the Default Interest shall only begin to accrue one (1) year after the death of the Owner.

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For the purposes of this Note, Fair Market Value shall be determined in accordance with the Property Restrictions.

3. Repayment. Except as provided in Section 2(c), no interest shall accrue on the amount due under this Note. The entire amount of this Note (as set forth in Section 2 above) shall be due and payable on the date (the "Trigger Date") there is a Transfer of the Property (except as permitted under the Declaration), or upon an Event of Default pursuant to Section 4(b) of this Note, unless this Note is forgiven pursuant to Section 5.

4. Event of Default.

a. Maker's failure to comply with any provision contained in this Note or the Property Restrictions (subject to any applicable cure periods set forth in the Declaration), or upon a default under a Senior Lien, shall constitute an event of default under this Note (an "Event of Default").

b. Upon the occurrence of an Event of Default, the entire principal balance of this Note, together with any accrued interest, fees and costs, shall be immediately due and payable. In addition, Holder may pursue all rights and remedies available to it under this Note, the Declaration, and at law or in equity. Maker acknowledges and agrees that Holder's remedies include the right to accelerate the Note by declaring the outstanding principal balance of this Note, together with all accrued and unpaid interest, fees and costs, due and payable immediately.

5. Forgiveness. If Maker is selling its fee interest in the Property in compliance with the Property Restrictions and this Note, and such sale is at a sales price calculated pursuant to the Property Restrictions, any and all amounts otherwise due under this Note shall be forgiven, this Note shall be cancelled and returned to Maker and the Unit shall be released from the lien of the Declaration and Deed of Trust as of the date of such sale, provided that each of the following conditions is fully satisfied on such date:

a. Maker shall have complied in all respects with the terms of the Property Restrictions; and

b. The prospective purchaser shall (i) be a Qualifying Household, and (ii) duly execute, acknowledge (as applicable) and deliver to Holder a new declaration of restrictions and purchase option, a promissory note, a deed of trust, a Buyer Acknowledgment, and any other City documents related to the Property by which the proposed transferee shall assume the same rights and responsibilities with respect to those Property as Maker.

6. Security. Maker's obligations under this Note are secured by a deed of trust (the "Deed of Trust") made by Maker in favor of City, dated as of the date of this Note and recorded in the Official Records of San Francisco concurrently herewith, and Maker's ownership of the Property is further subject to the Property Restrictions.

7. Terms of Payment.

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a. All payments under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

b. All payments shall be made payable to Holder and mailed or delivered in person to Holder's office at 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103, or to such other place as Holder may from time to time designate.

c. Notwithstanding any other provisions of this Note, or any instrument securing the obligations of Maker under this Note, if, for any reason whatsoever, the payment of any sums by Maker pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that Holder may legally charge under the laws of the State of California, then amount by which payment exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall Maker be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

d. Maker waives the right to designate how payments will be applied pursuant to California Civil Code Sections 1479 and 2822. Holder will have the right in its sole discretion to determine the order and method of application of payments to obligations under this Note.

8. Waivers.

a. Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's written consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

b. No extension of time for payment of this Note or any installment hereof made by agreement by Holder with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

c. The obligations of Maker under this Note shall be absolute and Maker waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

a. All notices and consents required under this Note or the Property Restrictions shall be made in writing and shall be deemed communicated by personal delivery, by first-class United States Mail, postage prepaid, or by a nationally-recognized overnight courier service, provided that next-business day service is requested, to the following addresses:

To Maker: at the Property address

To Holder: Mayor's Office of Housing

1 South Van Ness Avenue, Fifth Floor

San Francisco, CA 94103

Attn: Condo Conversion BMR Program

Notices delivered personally shall be deemed delivered as of such date the notice is delivered or delivery thereof is rejected by the addressee, notices delivered by first-class United States Mail shall be deemed delivered three (3) business days after deposit with the United States Postal Service, and notices delivered by overnight courier shall be deemed delivered the next business day following deposit of such notice with the overnight courier, provided that next business day service is requested.

b. If there is any litigation arising from the enforcement of or a default under this Note, the Declaration or the Deed of Trust, the non-prevailing party shall pay all reasonable costs and expenses, including reasonable attorney's fees, incurred by the prevailing party in such litigation.

c. 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.

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

e. Time is of the essence for the performance of all obligations of Maker hereunder.

f. If more than one person signs this Note, each person is jointly and severally liable for the obligations hereunder, which 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. Any person who is a guarantor or surety of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor or surety of this Note, is also obligated to keep all of the promises made in this Note.

g. Maker and any other person who has obligations under this Note each waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Holder to give notice to other persons that amounts due have not been paid.

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Debtor – [Name]

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Mayor's Office of Housing of the  
City and County of San Francisco  
1 South Van Ness Avenue, Fifth Floor  
San Francisco, California 94103  
Attention: Condo Conversion BMR Program

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*Space Above This Line for Recorder's Use*

**DEED OF TRUST AND ASSIGNMENT OF RENTS**

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS (this "**Deed of Trust**") is made as of \_\_\_\_\_, by \_\_\_\_\_ ("**Trustor**"), whose address is \_\_\_\_\_, to \_\_\_\_\_ ("**Trustee**"), for the benefit of the City and County of San Francisco, a municipal corporation ("**Beneficiary**").

Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, that certain real property situated in the City and County of San Francisco, State of California, as described in Exhibit A attached hereto and made a part thereof, together with all improvements thereon, rights thereto, and the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

1. This Deed of Trust is given for the purpose of securing the following:

a. Trustor's performance of all of its present and future obligations under the following documents (collectively, the "**Homeowner Documents**"): Declaration of Restrictions and Option to Purchase Agreement entered into between Trustor and Beneficiary, dated the same date as the Deed of Trust and recorded concurrently with this Deed of Trust (as it may be amended from time to time, the "Declaration"), and a Secured Promissory Note, dated the same date as the Deed of Trust and made by Trustor to the order of Beneficiary (as it may be amended from time to time, the "**Note**").

b. Trustor's performance of each agreement incorporated by reference contained in, or entered into in connection with, the Homeowner Documents, and Trustor's performance of its obligations under this Deed of Trust and any additional agreements of Trustor incorporated by reference or contained herein.

c. Payment of the indebtedness evidenced by the Note in the amount described in the Note, all interest, fees and costs due under the Note, and any additional sums Trustor may

**SAMPLE CLOSING DOCUMENTS**

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borrow or receive from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

2. To protect the security of this Deed of Trust, Trustor agrees, by its execution and delivery of this Deed of Trust and the Note, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in the Official Records of the City and County of San Francisco on October 23, 1961 at Book A-332, Page 905, hereby are adopted, incorporated herein and made a part hereof as fully as though set forth herein at length. Trustor further agrees to observe and perform such provisions, and that the references to property, obligations, and parties in such provisions shall be construed to refer to the property, obligations, and parties specified in this Deed of Trust.

3. If there is an event of default by the Trustor under this Deed of Trust or any of the Homeowner Documents, or if the Property or any part thereof, or any interest therein is sold, conveyed, alienated or refinanced by the Trustor, or by the operation of law or otherwise, in violation of any of the Homeowner Documents or without the written consent of the Beneficiary, all obligations secured by this Deed of Trust, at Beneficiary's sole option and without demand or notice, shall immediately become due and payable.

4. Any notice to Trustor given by Beneficiary pursuant to this Deed of Trust shall be in writing and given by personal delivery, by first class mail United States Mail or by a nationally-recognized overnight courier service, provided that next-business day service is requested, unless applicable law requires use of another method. Such notice shall be directed to the address for Trustor specified above or otherwise designated by Trustor by written notice to Beneficiary. Notices given by personal delivery shall be deemed delivered on such delivery or on refusal of acceptance of such delivery. Notices given by first class mail shall be deemed delivered three (3) days after such notice is deposited with the United States Post Office. Notices delivered by overnight courier shall be deemed delivered the next business day following deposit of such notice with the overnight courier, provided that next business day service is requested.

5. Beneficiary may, in its sole discretion elect to subordinate the lien of this Deed of Trust to other financing secured by the Property (in each case, a "**Senior Lien**"), but only on condition that: (i) such financing complies with the Mayor's Office of Housing Subordination Policy as it exists at the time of the proposed subordination; and (ii) all of the following conditions are satisfied:

(a) Trustor demonstrates to the reasonable satisfaction of the City and County of San Francisco Mayor's Office of Housing ("**MOH**") that subordination of this Deed of Trust is necessary to secure the proposed Senior Lien.

(b) The terms of the proposed Senior Lien and any subordination agreement must be reviewed and approved by the MOH.

(c) The proposed lender (each, a "**Senior Lender**") must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Trustor or any of Trustor's affiliates, other than as a depositor or a lender.

#### SAMPLE CLOSING DOCUMENTS

MOH WILL PROVIDE INDIVIDUALIZED CLOSING DOCUMENTS FOR YOUR BMR UNIT AT ESCROW

(d) The subordination agreement(s) must be structured to minimize the risk that the Deed of Trust would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by Trustor, including: (i) providing MOH or its successor with copies of any notices of default at the same time and in the same manner as provided to Trustor; and (ii) providing the City with a cure period to cure any default under the loan documents between Trustor and the Senior Lender at least equal to that provided to Trustor under such loan documents.

(e) The subordination(s) described in this Section may be effective only during the original term of the Senior Lien, unless MOH approves of any extension of such original term in writing.

(f) No subordination may limit the effect of the Deed of Trust before a foreclosure.

(g) Following review and approval by MOH, the Director of MOH or his/her successor or designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

6. Trustor shall perform all of Trustor's obligations under the Senior Lien, including Trustor's covenants to make payments when due. Trustor shall pay on time and directly to the person owed payment all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Deed of Trust. Except for the Senior Lien, Trustor shall promptly discharge any other lien which shall have attained priority over this Deed of Trust unless Trustor: (a) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which, in the City's sole discretion, operate to prevent the enforcement of the lien; or (b) obtains from the holder of the lien an agreement satisfactory to the City in its sole discretion subordinating the lien to this Deed of Trust. Except for the Senior Lien, if the City determines that any part of the Property is subject to a lien which may attain priority over this Deed of Trust, the City may give Trustor a notice identifying the lien. Trustor shall satisfy such lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

7. Upon a Transfer of the Property in accordance with the Declaration, Trustor's obligations hereunder shall be cancelled, and the lien of this Deed of Trust shall be reconveyed.

8. The Note or a partial interest in the Note (together with this Deed of Trust) may be sold one or more times without prior notice to Trustor. If the Note is sold, Trustor will be given written notice of the sale in accordance with and containing any other information required by applicable law.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at the address for Trustor specified above.

TRUSTOR(S):

**SAMPLE CLOSING DOCUMENTS**

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Signature: \_\_\_\_\_  
[Applicant First Name] [Applicant Last Name]

Signature: \_\_\_\_\_  
[Applicant First Name] [Applicant Last Name]

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

(Please add additional lines if necessary)

*(THIS DOCUMENT MUST BE NOTARIZED)*



**EXHIBIT A**

Legal Description of the Land

THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF  
SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

**SAMPLE CLOSING DOCUMENTS**

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State of California                    )  
  ) ss  
County of San Francisco         )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature \_\_\_\_\_                    (Seal)