

CONTAINS RESALE AND REFINANCING RESTRICTIONS

RECORDING REQUESTED/
AFTER RECORDING RETURN TO:

City Clerk
City of Pleasanton
123 Main Street
P.O. Box 520
Pleasanton, CA 94566

RESTRICTIVE COVENANTS, RESALE RESTRICTIONS, AND OPTION TO DESIGNATE ELIGIBLE PURCHASERS

“DEVELOPMENT NAME” SUBDIVISION

TRACT TR OR PM #, LOT LO #

These Restrictive Covenants, Resale Restrictions, and Option to Designate Eligible Purchasers (collectively 'Restrictive Covenants') are executed this _____ day of _____, 20____, by the CITY OF PLEASANTON (“City”), and by OWNER NAME, as owner (“Owner”) of the real property located in the City of Pleasanton, County of Alameda, State of California, described as follows ('the Property'):

Lot LOT#, Tract No. TRACT# and FILE#, DATE, Map Book BOOK#, Pages PAGE# through PAGE#, inclusive, in Alameda County Records (the “Property”).

APN: 000 -0000-000000

RECITALS

WHEREAS, one of the components of the City of Pleasanton’s Homeownership Assistance Program (PHAP) is to provide below market rate affordable housing opportunities for low and moderate income households, and

WHEREAS, in order to further assist in the development of below market rate affordable housing, City and Owner have agreed to adopt these Restrictive Covenants to be a covenant and equitable servitude running with the land with respect to the Property, and

WHEREAS, the purpose of these Restrictive Covenants is to (i) establish resale, refinancing and occupancy restrictions for the residential unit on the Property, and (ii) reserve to the City an option to designate eligible purchasers, as hereafter defined, to acquire the Property.

NOW, THEREFORE, City and Owner hereby declare and restrict the Property as follows:

- 1) Acknowledgment and Certification. Any purchaser of the Property from Owner and any subsequent purchaser from such purchaser or successors (hereinafter referred to as 'Purchaser') shall certify his/her acknowledgment of these Restrictive Covenants and all the provisions and restrictions contained herein. The Purchaser shall certify his/her acknowledgment by executing a form substantially the same as Exhibit "A."
- 2) Residency. The Purchaser certifies that he/she will occupy the Property as his/her principal place of residence. The Purchaser shall be considered as occupying the Property as a principal place of residence if the Purchaser is living on the Property for at least ten (10) months out of each calendar year. The neither the property or any room or portions of the Property may be subleased or rented. Any rent or lease of the Property or any portion of the Property is prohibited and shall be a default under these Restrictive Covenants. In the event the Owners rent or lease the Property or any portion thereof to a third party in violation of this Section 2, any excess rents ("Excess Rental Proceeds") paid to the Owners by the lessee over the rent determined by the City to be affordable to a low income household in accordance with the Inclusionary Housing Ordinance of Pleasanton Municipal Code chapter 17.44 (the "Affordable Rent" shall be due and payable to the City immediately upon receipt thereof by the Owners. Such Excess Rental Proceeds shall be considered a recourse debt of the Owners to the City evidenced by the Promissory Note for Excess Proceeds executed by Owners in favor of City which the City may collect by legal action against the Owners, including by foreclosure under the Deed of Trust Securing Excess Proceeds.
- 3) Restrictions on Transfer.
 - a) From the date the Purchaser obtains ownership or any interest in the property, and in perpetuity, any transfer of the Property shall be subject to the provisions of these Restrictive Covenants. Any subsequent transfer from the Purchaser to a subsequent purchaser shall be subject to the provisions of these Restrictive Covenants for each subsequent purchaser.
 - b) 'Transfer' shall mean any voluntary or involuntary sale, assignment or transfer of ownership of the Property or of any interest in the Property, including, but not limited to,

a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred but title is retained by the transferor, but 'transfer' shall not mean any of the following:

- i) As to any Purchaser who at the time of the purchase took title to the Property by him/herself but subsequently marries or files a Declaration of Domestic Partnership
 - (1) a transfer of the Property without consideration from the Purchaser to the Purchaser and the Purchaser's spouse/domestic partner (as domestic partner is defined in Section 297 of the California Family Code) whereby title to the Property is then held by the Purchaser and Purchaser's spouse/domestic partner,
 - (2) a devise or inheritance of the Property to the Purchaser's spouse/domestic partner, whether as a surviving joint tenant or otherwise, or
 - (3) as part of dissolution of marriage/termination of domestic partnership proceedings, the transfer of the Property from the Purchaser to the Purchaser's spouse/domestic partner provided, however, that the spouse/domestic partner qualifies, at the time of the transfer, as subsequent purchaser under these Restrictive Covenants;
- ii) As to any Purchaser(s) who at the time of the purchase took title jointly (whether as joint tenants, tenants in common, as community property, or otherwise),
 - (1) a devise or inheritance of the Property to the surviving Purchaser, or
 - (2) as part of dissolution of marriage or other legal proceedings (such as a termination of domestic partnership) the transfer of the Property from one Purchaser to the other Purchaser.
- c) If the Owners sell the Property at a price in excess of the Maximum Sales Price set forth in Section 8, or the Owners make a Transfer in violation of this Section 3, the Owners shall pay any Excess Sales Proceeds to the City. "Excess Sales Proceeds" shall mean the amount by which the gross sales proceeds received by the Owners from the new purchaser exceed the Maximum Sales Price for the Property (in the amount calculation pursuant to Section 8). This amount shall be a debt of the Owners to the City, further evidenced by the Promissory Note for Excess Proceeds and secured by the Deed of Trust Securing Excess Proceeds. The Owners acknowledge that the City shall have no obligation to cause reconveyance of these Restrictive Covenants, as amended, or of the Deed of Trust Securing Excess Proceeds until the Excess Sales Proceeds are paid to the City. The City shall utilize the Excess Sales Proceeds solely for City affordable housing programs. The Owners and the City acknowledge that the formula for calculation of the amount of Excess Sales Proceeds due from the Owners to the City is intended to cause the Owners to receive the same or fewer net sales proceeds from sale of the Property at

an unrestricted price to a market purchaser as the Owners would receive from sale of the Property to the City or to an Eligible Purchaser at the Maximum Sale Price.

- 4) Maintenance and Inspection of, and Insurance For, Property. The Purchaser shall maintain the Property and improvements thereon in good condition and repair throughout the Purchaser's period of ownership of the Property. Purchaser shall not make any additions to the Property involving additional square footage without written approval from the City. In addition, upon City's receipt of a notice of intent to transfer as detailed in Section 5 below, the City shall be given the right to enter and to inspect the Property to determine whether any violations of applicable building, plumbing, electric, fire, housing or other applicable codes exist and whether the Property has been maintained in good condition. The City shall notify the Purchaser with regard to any noted code violations and maintenance deficiencies (collectively, the 'Deficiencies'), and the Purchaser shall cure the Deficiencies in a reasonable manner acceptable to the City within sixty (60) days of being notified in writing of the result of the inspections. Should the Purchaser fail to cure all the Deficiencies prior to the scheduled date for the close of escrow, at the option of the City or an Eligible Purchaser as defined in Section 7 below, escrow may be closed, title passed and money paid to the Purchaser subject to the condition that such funds as are necessary to pay for curing the Deficiencies, based upon written estimates obtained by the City, shall be withheld from the money due the Purchaser and held by the escrow holder for the purpose of curing the Deficiencies. The City and/or the Eligible Purchaser shall cause the Deficiencies to be cured and, upon certification of completion of work by the City, the escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the Purchaser. The Purchaser shall maintain a standard all risk insurance policy equal to the replacement value of the Property, naming the City as an additional insured and loss payee.
- 5) Transfer or Refinancing

- a) In the event the Purchaser intends to transfer or to refinance the Property, the Purchaser shall promptly notify the City in writing of such intent, and must receive prior approval from the City in writing.
- b) For purposes of these Restrictive Covenants, refinance includes a home equity loan or similar line of credit by which an additional mortgage or deed of trust against the Property secures an additional mortgage or promissory note for the loan/line of credit.
- i) At no time shall the total principle amount of all the debt secured by the Property exceed:

- (1) as of the date of the Purchaser's request to the City for approval of the Purchaser's refinance; or
 - (2) the outstanding balance of the existing purchase money loan, as described in Section 13, below, as of the date of the Purchaser's request to the City for approval of the Purchaser's refinance.
- ii) The City shall permit and approve a prepayment and refinance of the existing purchase money loan, as described in Section 13, below, and shall provide for the subordination of these Restrictive Covenants to the refinanced purchase money loan only if such refinance does not cause the total debt secured by the Property, including junior mortgage loan and equity lines of credit, to exceed ninety percent (90%) of the "Maximum Sales Price" as defined in Section 8, below; and if the refinanced purchase money loan is fully amortized with a fixed rate of interest for a minimum five (5)-year period, permits no negative amortization, and requires no balloon payments.
 - iii) Mortgage loans or equity lines of credit junior in lien priority to these Restrictive Covenants are not permitted, except as expressly approved by the City in writing. The City shall only approve junior mortgage loans or equity lines of credit which will not cause the total of all debt secured by the Property (calculated assuming a maximum permitted draw on any equity line of credit) to exceed ninety percent (90%) of the "Maximum Sales Price" as defined in Section 8, below. The City will not approve any mortgage loan or equity line of credit which includes negative amortization.
- c) Prior to executing any documents affecting a transfer or refinancing, the Purchaser shall send the notice (hereinafter referred to as the 'Notice of Intent to Transfer or Refinance') by certified mail return receipt requested, to the City Manager, City of Pleasanton, 123 Main Street, Pleasanton, California 94566. The Purchaser has the right to withdraw the Notice of Intent to Transfer or Refinance prior to the opening of an escrow to purchase the Property or prior to the recording of any financing documents.
 - d) Any time a Purchaser enters into a new mortgage loan, including junior mortgage loans and equity lines of credit, the Purchaser shall cause to be recorded against the Property a request for notice of default, providing for notice of default under such loan to be delivered to the City.
- 6) City's Option to Designate an Eligible Purchaser. Upon receipt of the Notice of the Intent to Transfer, the City shall have the option to designate an Eligible Purchaser to purchase the Property in the manner set forth hereunder. Within thirty (30) days of receipt by the City of the Notice of Intent to Transfer, the City shall: (1) notify the Purchaser of the Maximum

Sales Price, as defined in Section 8 herein, to be paid for the Property; (2) inspect the Property as described in Section 4, above; and (3) notify the Purchaser regarding whether or not the City intends to exercise its option to designate an Eligible Purchaser. The notification to the Purchaser regarding the option to designate an eligible Purchaser shall be sent by certified mail return receipt requested. If the City exercises this option, it shall cause an escrow to purchase the Property to be opened within thirty (30) days following such notification to the Purchaser, and it shall cause the Property to be purchased by its designated Eligible Purchaser within the ninety (90) days following the receipt by the City of the Purchaser's notice of the intent to transfer; unless the City, in its reasonable discretion, extends this period by an additional thirty to sixty (30-60) days.

- 7) Transfer to Eligible Purchaser and City's Option to Purchase Property. In the event the City does not exercise its option to designate an Eligible Purchaser, the transfer of the property by the Purchaser must be to an Eligible Purchaser. An Eligible Purchaser shall be defined as:
- a) The City of Pleasanton;
 - b) A household with an annual income that does not exceed _____% of the median income for the Oakland Primary Metropolitan Statistical Area (PMSA) based on the applicable household size. Income is subject to verification by City, which shall establish a definition of income.
 - c) A first-time owner defined as a household where not more than one member of the household has held an interest in residential property provided no member of the household has been the sole owner of residential property. For a single head of household, the homebuyer must not have been a sole owner of residential property. The definition of first time owner is subject to change by the City to be consistent with the PHAP.
- 8) Determination of Maximum Sales Price. The amount of money the Purchaser may receive for any transfer of the Property shall be called the "Maximum Sales Price." The Maximum Sales Price shall be the price the Purchaser paid for the Property, (which at the time of document recording is \$_____) adjusted by the percentage increase or decrease of the median income of a four-person household in the Oakland Primary Metropolitan Statistical Area (PMSA) as published annually by the U.S. Department of Housing and Urban Development, or its successor, from the purchase date to the date of the Notice of Intent to Transfer plus reasonable closing costs and marketing expenses as determined periodically by the City. At the time of document recording, the PMSA median income for a family of four is \$_____.

- 9) Determination of Maximum Refinancing Amount. The maximum amount of any refinancing, shall be 90% of the Maximum Sales Price, whether refinancing is a new first deed of trust, a second (or other) deed of trust, a home equity loan, or similar line of credit by which the property secures the promissory note for the deed of first/loan/line of credit.
- 10) Defaults and Remedies. The following events shall constitute a default by the Owner or the Purchaser under this Agreement:
- a) City determines that the Purchaser has made a misrepresentation to obtain the benefits of purchase of the Property or in connection with its obligations under these Restrictive Covenants;
 - b) Purchaser fails to owner-occupy the Property, as required by Section 2 above, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice;
 - c) Purchaser rents or leases the Property, and such failure continues following written notice by the City and thirty (30) days' opportunity to cure following the date of such notice;
 - d) Purchaser fails to provide information to the City necessary to determine Purchaser's compliance with the requirements of these Restrictive Covenants;
 - e) Purchaser makes a transfer, or attempts to transfer, the Property in violation of Section 3 above, and City's rights to exercise its option to purchase described in Section 7 above shall survive any transfer of the Property by the Purchaser in violation of these Restrictive Covenants, as long as the City's option to purchase has not been expressly abandoned, any actual or attempted Transfer of the Property in violation of the terms and conditions of this option to purchase shall be voidable at the election of the City;
 - f) An Inheriting Purchaser fails to comply with Section 3 above;
 - g) Purchaser otherwise fails to comply with the requirements of these Restrictive Covenants and such violation is not corrected to the satisfaction of the City within thirty (30) days after the date of written notice by the City to the Purchaser of such violation;
 - h) A notice of default is issued under the purchase money loans or other financing secured by the Property, or the City receives any other notice of default pursuant to Civil Code Section 2924b;
 - i) A lien is recorded against the Property other than the lien of a bona fide mortgage loan permitted pursuant to 5 above;
 - j) Purchaser places a mortgage on the Property in violation of Section 5 above;
 - k) Purchaser declares bankruptcy or makes an assignment of assets for the benefit of creditors;
 - l) Judicial foreclosure proceedings are commenced regarding the Property; (13) Purchaser executes any deed in lieu of foreclosure transferring ownership of the Property.

The City retains the right to declare a default for any other violations of these Restrictive Covenants not specified herein. Upon a violation of any of the provisions of these Restrictive Covenants, the City shall give written notice to the Purchaser by certified mail return receipt requested, specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as the City determines is necessary to correct the violation, the City may declare a default under these Restrictive Covenants. Upon the declaration of a default, the City may apply to a court of competent jurisdiction for specific performance of the obligations of these Restrictive Covenants, for an injunction prohibiting a proposed transfer in violation of these Restrictive Covenants, for a declaration that a transfer in violation of the provisions of these Restrictive Covenants is void, or for any such other relief at law or in equity as may be appropriate. In the event of default by the Purchaser, and/or by the Purchaser's transferee in those circumstances where a transfer has occurred in violation of these Restrictive Covenants, the Purchaser and/or the Purchaser's transferee shall hold the City and the owner and their respective employees or other agents harmless and reimburse the City for the expenses, legal fees and costs for any action the City takes in enforcing the provisions of these Restrictive Covenants.

- 11) City's Option to Purchase Upon Default. In addition to the remedies provided the City in Section 10 above, City has the option to purchase the Property effective upon the declaration of a default. The City's option to purchase may be exercised upon a default under these Restrictive Covenants. The City shall have sixty (60) days after a default is declared to notify the Purchaser of its decision to exercise its option to purchase.
- 12) Non-liability of the City. In no event shall the City become in any way liable or obligated to the Purchaser or to any successor-in-interest of the Purchaser by reason of its option to purchase under either Section 6 or Section 11 herein nor shall the City be in any way obligated or liable to the Purchaser or any successor-in-interest of the Purchaser for City's failure to exercise such option to purchase.
- 13) Subordination. These Restrictive Covenants are subordinate to all purchase money loans secured by deeds of trust executed by the Purchaser in favor of the lenders of such purchase money loans. For subsequent refinance of such purchase money loans or other subordinate loans, the City will subordinate if such subsequent loans meet the requirements of Section 5, above. Notwithstanding any other provision in these Restrictive Covenants to the contrary, these Restrictive Covenants shall not diminish or affect the rights of the California Housing Finance Agency ("CalHFA"), California Department of Housing and Community

Development ("HUD"), the Federal National Mortgage Association ("FNMA"), or the Veterans Administration ("VA") under all purchase money loans or any subsequent purchase money deeds of trust hereafter recorded against the Property in compliance with Section 5, above. Notwithstanding other provisions of these Restrictive Covenants, the City's option to purchase upon default, defined in Section 11, above, shall not be exercised by the City when a deed of trust insured by HUD is secured by the Property, and (i) the Purchaser is undergoing consideration by HUD for assignment forbearance relief, or (ii) the Purchaser is undergoing consideration for relief under HUD's Temporary Mortgage Assistance Payment (TMAP) program.

- 14) Invalid Provisions. If any one or more of the provisions contained in these Restrictive Covenants shall for any reason be held to be invalid, illegal or unenforceable in any respect then such provision or provisions shall be deemed severable from the remaining provisions contained in these Restrictive Covenants, and these Restrictive Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 15) Controlling Law. The terms of these Restrictive Covenants shall be interpreted under the laws of the State of California.
- 16) Notices. All notices required herein shall be sent to the City by certified mail return receipt requested, as follows: City Manager, City of Pleasanton, 123 Main Street, Pleasanton, CA 94566, or such other address that the City may subsequently request in writing. Notices to the Purchaser shall be sent by certified mail return receipt requested to the Property address.
- 17) Interpretation of Restrictive Covenants. The terms of these Restrictive Covenants shall be interpreted to encourage to the extent possible that the purchase price of and mortgage payments for the Property remain affordable to low and moderate-income households.
- 18) Notice of Default. In accordance with Civil Code §2924b, request is hereby made that a copy of any notice of default and a copy of any notice of sale under any deed of trust (or mortgage) recorded in records of Alameda County, California, executed by Owner(s) as trustor(s) (or mortgagor(s)) be mailed to:

City of Pleasanton
123 Main Street
P.O. Box 520
Pleasanton, CA 94566-0802
Attn: Housing Division

IN WITNESS WHEREOF, the parties have executed these Restrictive Covenants on or as of the date first written above.

CITY OF PLEASANTON

By: _____
Brian Dolan
Assistant City Manager
(Attach Notary Acknowledgement)

APPROVED AS TO FORM:

ATTEST:

Jonathan Lowell
City Attorney

Karen Diaz
City Clerk

OWNER NAME

By: _____

(Attach Notary Acknowledgement)

SAMPLE

EXHIBIT A:

**City of Pleasanton
Homeownership Assistance Program (PHAP)**

**ACKNOWLEDGMENT OF
RESTRICTIVE COVENANTS, RESALE RESTRICTIONS AND OPTION TO
DESIGNATE ELIGIBLE PURCHASERS**

The undersigned acknowledges as follows:

1. I/We am/are purchasing the property at _____, Pleasanton, California, designated as Residential Unit _____, Parcel Map _____.
2. There is recorded against this property certain Restrictive Covenants, Resale Restrictions, and Option to Designate Eligible Purchasers which runs with the land for perpetuity.
3. I/We meet the current requirements established by the City of Pleasanton to be deemed an "Eligible Purchaser" as defined in Section 7. Restrictive Covenants, Resale Restrictions, and Option to Designate Eligible Purchasers.
4. I/We have read and fully understand these Restrictive Covenants, Resale Restrictions, and Option to Designate Eligible Purchasers and understand that this, in part, sets forth limitations regarding the transfer of the Property, establishes a maximum sales price for which the Property may be resold based on adjustments to the Oakland Primary Metropolitan Statistical Area (PMSA) for the applicable household size; establishes the maximum amount for which the Property may be refinanced and establishes a definition of an Eligible Purchaser.
5. I/We have had the opportunity to ask City staff any questions I/we have about the document.
6. The original sales price paid for the property is \$_____. The current Area Median Income (AMI) for a family of _____ for the Oakland Primary Metropolitan Statistical Area (PMSA) is \$_____.
6. I/We understand that this document runs with the land and is binding on us when we decide to transfer or refinance the Property, and we agree to comply fully with its terms.

OWNER(S):

Name: _____

Name: _____

Name: _____

**NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS RESTRICTING
RESALES AND ASSUMPTIONS.**

**PROMISSORY NOTE
Secured by City Deed of Trust for Excess Proceeds (E. P.)**

CITY OF PLEASANTON INCLUSIONARY HOUSING PROGRAM

Pleasanton, California

_____, 2015

FOR VALUE RECEIVED, the undersigned _____
(collectively "Borrower") promise to pay to the City of Pleasanton, a municipal corporation
(the "City"), at 123 Main Street, Pleasanton, California 94566-0502, Attn: Housing
Division, or such other place as City may designate in writing, any amounts due the City as
Excess Rental Proceeds pursuant to Section 2 of the Restrictive Covenants, plus any
amounts due the City as Excess Sales Proceeds pursuant to Section 3 of the Restrictive
Covenants.

1. Purpose of City Note E. P. Borrower is purchasing the Property located at
ADDRESS, in the City of Pleasanton, Alameda County, California (the "Property")
pursuant to the City of Pleasanton Inclusionary Housing Ordinance (as defined in the
Restrictive Covenants), which provides for the purchase of homes by moderate, low, or
very low income households at affordable prices. Pursuant to the Inclusionary Housing
Ordinance, the purchase price of the Property has been set substantially below the market
value so that the Property will be available for purchase by moderate, low, or very low
income households. Because the purchase price has been set below the market value,
the Owner is required and has agreed to execute a Restrictive Covenants that restricts the
price of the Property for resale and requires the Borrower to pay any Excess Sales
Proceeds at resale to the City. In addition, the Restrictive Covenants prohibit the Borrower
from renting or leasing the Property and requires the Borrower to pay any Excess Rental
Proceeds to the City. This promissory note (the "City Note E. P.") evidences both (a) the
obligation of the Borrower to pay any Excess Rental Proceeds to the City pursuant to
Section 2 of the Restrictive Covenants, and (b) the obligation of the Borrower to pay any
Excess Sales Proceeds to the City pursuant to Section 3 of the Restrictive Covenants.

2. Definitions. The terms set forth in this section shall have the following
meanings in this City Note E. P.

(a) "Excess Rental Proceeds" shall have the meaning set forth in Section
2 of the Restrictive Covenants.

(b) "Excess Sales Proceeds" shall have the meaning set forth in Section 3
of the Restrictive Covenants.

(c) "First Lender Loan" shall mean that loan evidenced by a deed of trust (collectively the "First Lender Deed of Trust") executed by Borrower to secure the promissory note (collectively the "First Lender Note") executed by Borrower to assist in the purchase of the Property.

(d) "Property" shall mean the dwelling and the real property on which the dwelling is located, which secure the deed of trust executed in connection with this City Note E. P. of even date herewith, and as defined the Restrictive Covenants.

(e) "Restrictive Covenants" shall mean the Restrictive Covenants, Resale Restrictions, and Option to Designate Eligible Purchasers, "Canyon Oaks" Subdivision, Tract 7374, Lot 107, executed by City and KB HOME South Bay on September 4, 2003 and recorded in the Alameda County Records as Series No. 2003590901, as amended by the Amendment of Restrictive Covenants.

(f) "Transfer" shall have the meaning set forth in Section 3 of the Restrictive Covenants.

3. Payments. In the event any Excess Rental Proceeds or Excess Sales Proceeds become due and payable under Section 2 or Section 3 of the Restrictive Covenants, such amounts shall be immediately due and payable hereunder. Any amounts due under this City Note E. P. shall be due and payable in full on the date of any Transfer of the Property. Failure to declare such amounts due shall not constitute a waiver on the part of the City.

4. Security. This City Note E. P. is secured by a deed of trust dated the same date as this City Note E. P. (the "City Deed of Trust E. P."). Borrower and City have also executed the Restrictive Covenants.

5. No Assumption of City Note E. P. by Subsequent Buyers. Borrower acknowledges that this City Note E. P. is given in connection with the purchase of the Property as part of a program of the City to assist in the purchase of homes by moderate, low, or very low income households. Any Excess Rental Proceeds and/or Excess Sales Proceeds due under this City Note E. P. and under Section 2 and Section 3 of the Restrictive Covenants are due and payable at Transfer. Consequently, this City Note E. P. shall not be assumable by subsequent purchasers nor by the successors and assigns of the Borrower.

6. Default and Acceleration. The Borrower shall be in default under this City Note E. P. if he or she is in default under the Restrictive Covenants. Upon the occurrence of a default under this City Note E. P., the full amount of any Excess Rental Proceeds or Excess Sales Proceeds due under the Restrictive Covenants shall be immediately due and payable.

7. Indemnity. Borrower agrees to defend, indemnify, and hold City, the City of Pleasanton, and their employees, agents, officers, board members and/or council members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that City may incur as a direct or indirect consequence of:

(a) Borrower's failure to perform any obligations as and when required by this City Note E. P., the City Deed of Trust E. P., and the Restrictive Covenants; or

(b) the failure at any time of any of Borrower's representations or warranties to be true and correct.

8. No Waiver by City. Any failure by the City to pursue its legal and equitable remedies upon Borrower's default shall not constitute a waiver of the City's right to declare a default and exercise all of its rights under this City Note E. P., the City Deed of Trust E. P. and the Restrictive Covenants. Nor shall acceptance by City of any payment provided for herein constitute a waiver of the City's right to require prompt payment of any remaining payments owed. A waiver of any term of the City Note E. P. must be made in writing and shall be limited to the express written terms of such waiver.

9. Attorney's Fees and Costs. Borrower agrees that if any amounts due under this City Note E. P. are not paid when due, to pay in addition to all Excess Rental Proceeds and Excess Sales Proceeds, all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this City Note E. P., whether or not suit is filed.

10. Joint and Several Obligations. This City Note E. P. is the joint and several obligation of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

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

12. Waiver. Borrower and any endorsers or guarantors of this City Note E. P., for themselves, their heirs, legal representatives, successors and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of nonpayment of this City Note E. P., and expressly waive 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 waive the right to plead any and all statutes of limitations as a defense to any demand on this City Note E. P. or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

13. Notices. All notices required in this City Note E. P. shall be sent by certified mail, return receipt requested, express delivery service with a delivery receipt, or personal delivery with a delivery receipt and shall be deemed to be effective as of the date received, the date delivery was refused, or the date returned as undeliverable as indicated on the return receipt as follows:

To the Borrower: At the address of the Property.

To the City 123 Main Street
Pleasanton, CA 94566-0802
Attn: City Manager

To the First Lender: _____

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section.

14. Controlling Law. This City Note E. P. shall be construed in accordance with and be governed by the laws of the State of California. The venue for any legal action pertaining to this City Note E. P. shall be Alameda County, California.

15. Severability. Any provision of this City Note E. P. 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.

16. Entire Agreement. This City Note E. P. along with the Restrictive Covenants and City Deed of Trust E. P. sets forth the entire understanding and agreement of the City and the Borrower and any amendment, alteration or interpretation of this City Note E. P. must be in writing signed by both the City and the Borrower.

BORROWER:

NAME

NAME

Recording requested by and
after recording return to:

City of Pleasanton
City Clerk's Office
P. O. Box 520
Pleasanton, CA 94566-0802

No fee for recording pursuant to
Government Code § 27383

DEED OF TRUST SECURING EXCESS PROCEEDS

THIS DEED OF TRUST SECURING EXCESS PROCEEDS (City Deed of Trust E. P.) made this _____ day of _____, 2015, among the trustor, **NAME(S)** (collectively "Borrower"), **XXX Title Company** ("Trustee"), and the City of Pleasanton, a municipal corporation ("City"), as Beneficiary.

The Borrower, in consideration of the purposes herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, the property located in the City of Pleasanton, County of Alameda, State of California, and more particularly described as:

Lot 107, Tract 7374, filed December 18, 2002, Map Book 267, Pages 83 through 90, inclusive, in Alameda County Records (the "Property").

TOGETHER with the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances, and all fixtures attached to the Property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by this City Deed of Trust E. P., is herein referred to as the "Security"; and

TO SECURE to the City the performance of the covenants and agreements of Borrower contained in the **Restrictive Covenants, Resale Restrictions, and Option to Designate Eligible Purchasers, "Canyon Oaks" Subdivision, Tract 7374, Lot 107, dated September 4, 2003 and recorded in the Alameda County Records as Series No. 2003590901, as amended pursuant to the Amendment of Restriction Covenants (collectively the "Restrictive Covenants")**;

TO SECURE to the City the payment of Excess Sales Proceeds (as defined in Section 3 (C) of the Restrictive Covenants) and Excess Rental Proceeds (as defined in Section 2 of the Restrictive Covenants) that may become due by Borrower to City,

which payment obligation is further evidenced by a promissory note executed by the Borrower to the City of even date herewith (the "City Note E. P."); and

TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this City Deed of Trust E.P.; and the performance of the covenants and agreements of Borrower herein contained.

BORROWER AND CITY COVENANT AND AGREE AS FOLLOWS:

1. Borrower's Estate. That Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security, that other than this City Deed of Trust E. P., the Security is encumbered only by (a) the Restrictive Covenants; (b) that deed of trust (collectively the "First Lender Deed of Trust") executed by Borrower to secure the promissory note (collectively the "First Lender Note") executed by Borrower to assist in the purchase of the Property; and (c) that deed of trust executed by Borrower to secure the promissory note for the Down Payment Assistance Program loan from the City (the "DPAP Note").

Borrower agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, covenants, or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City's interest in the Security. (As used in this City Deed of Trust E. P., the term "First Lender" shall include all successors and assigns of the First Lender.)

2. Payment of Excess Proceeds and/or Excess Rental Proceeds. Borrower will promptly pay to the City, when and if due pursuant to the Restrictive Covenants, and City Note E. P., Excess Sales Proceeds (as defined in the Restrictive Covenants) and Excess Rental Proceeds (as defined in the Restrictive Covenants). The City Note for E. P. prohibits assumption by subsequent purchasers nor by the successors and assigns of the Borrower.

3. Restrictive Covenant. Borrower will observe and perform all of the covenants and agreements of the Restrictive Covenant, City Note E. P., and this City Deed of Trust E. P.

4. Senior Loans. Borrower will observe and perform all of the covenants and agreements of the First Lender Note, First Lender Deed of Trust, and related First Lender loan documents, as well as the DPAP Note and loan documents.

5. Charges; Liens. Borrower will pay all taxes, assessments, and other charges, fines, and impositions attributable to the Security which may attain a priority over this City Deed of Trust E. P., by Borrower making any payment, when due, directly to the payee thereof. Upon request by the City, Borrower will promptly furnish to the City all notices of amounts due under this paragraph. In the event Borrower makes payment directly, Borrower will promptly discharge any lien which has priority over this City Deed of Trust E. P.; provided, that Borrower will not be required to discharge the

lien of the Deed of Trust securing the First Lender Note (the "First Lender Deed of Trust"), or the DPAP Note, or any other lien described in this paragraph so long as Borrower will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the City, or will, in good faith, contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

6. Hazard Insurance.

(a) Borrower will keep the Security insured by a standard all risk property insurance policy equal to the replacement value of the Security (adjusted every five (5) years by appraisal, if requested by the City). The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Borrower subject to approval by the City.

(b) All insurance policies and renewals thereof will be in a form acceptable to the City, and will include a standard mortgage clause with standard lender's endorsement in favor of the holder of the First Lender Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Borrower shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Borrower will give prompt notice to the insurance carrier and the City or its designated agent. The City or its designated agent, may make proof of loss if not made promptly by Borrower. The City shall receive thirty (30) days advance notice of cancellation of any insurance policies required under this section.

Unless the City and Borrower otherwise agree in writing, insurance proceeds, subject to the rights of the First Lender, will be applied to restoration or repair of the Security damaged, provided such restoration or repair is economically feasible, and the security of this City Deed of Trust E. P. is not thereby impaired. If the Security is abandoned by Borrower, or if Borrower fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Borrower that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's option either to restoration or repair of the Security or to pay amounts due under the Restrictive Covenants and the City Note E. P.

If the Security is acquired by the City, all right, title and interest of Borrower in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this City Deed of Trust E. P. immediate prior to such sale or acquisition, subject to the rights of the First Lender.

7. Preservation and Maintenance of Security. Borrower will keep the Security in good repair and in a neat, clean, and orderly condition and will not commit

waste or permit impairment or deterioration of the Security. If there arises a condition in contravention of this Section 7, and if the Borrower has not cured such condition within thirty (30) days after receiving an City notice of such a condition, then in addition to any other rights available to the City, the City shall have the right (but not the obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Security to recover its cost of curing.

8. Protection of the City's Security. If Borrower fails to perform the covenants and agreements contained in this City Deed of Trust E. P. or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under the First Lender Deed of Trust or DPAP Note, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the City, at the City's option, upon notice to Borrower, may make such appearances, disburse such sums, and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorney's fees and entry upon the Security to make repairs.

Any amounts disbursed by the City pursuant to this paragraph, with interest thereon, will become an indebtedness of Borrower secured by this City Deed of Trust E. P. Unless Borrower and City agree to other terms of payment, such amount will be payable upon notice from the City to Borrower requesting payment thereof, and will bear interest from the date of disbursement at the rate of (i) ten percent (10%); or (ii) the highest rate permissible under applicable law. Nothing contained in this paragraph will require the City to incur any expense or take any action hereunder.

9. Inspection. The City may, in its discretion, or cause to be made reasonable entries upon and inspections of the Security; provided that the City will give Borrower reasonable notice of inspection.

10. Forbearance by the City Not a Waiver. Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy, nor shall acceptance by the City of any payment provided for in the City Note E. P. constitute a waiver of the City's right to require prompt payment of any remaining principal and interest owed. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to require payment of any amounts secured by this City Deed of Trust E. P. or performance of any covenants secured by this City Deed of Trust E. P.

11. Remedies Cumulative. All remedies provided in this City Deed of Trust E. P. are distinct and cumulative to any other right or remedy under this City Deed of Trust E. P. or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. Successors and Assigns Bound. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors

and assigns of the City and Borrower subject to the provisions of this City Deed of Trust E. P.

13. Joint and Several Liability. All covenants and agreements of Borrower shall be joint and several.

14. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this City Deed of Trust E. P. will be given by certified mail, return receipt requested, addressed to Borrower at the address of the Security, and (b) any notice to the City will be given by certified mail, return receipt requested, to the City of Pleasanton, 123 Main Street, Pleasanton, CA 94566-0802, Attn: Housing Division, or to such other address as the City may designate by notice to Borrower as provided above. Notice shall be effective as of the date received by City or Borrower as shown on the return receipt.

15. Governing Law. This City Deed of Trust E. P. shall be governed by the laws of the State of California. The venue for any legal action pertaining to this Agreement shall be Alameda County, California.

16. Severability. In the event that any provision or clause of this City Deed of Trust E. P. or the Restrictive Covenants conflicts with applicable law, such conflict will not affect other provisions of this City Deed of Trust E. P. or the Restrictive Covenants which can be given effect without the conflicting provision, and to this end the provisions of the City Deed of Trust E. P. and the Restrictive Covenants are declared to be severable.

17. Captions. The captions and headings in this City Deed of Trust E. P. are for convenience only and are not to be used to interpret or define the provisions hereof.

18. Nonliability for Negligence, Loss, or Damage. Borrower acknowledges, understands and agrees that the relationship between Borrower and the City is solely that of an owner and an administrator of a City inclusionary housing program, and that the City 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 Security or any other matter. The City owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction or any condition of the Security and Borrower agrees that neither Borrower, or Borrower's heirs, successors or assigns shall ever claim, have or assert any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Security and will hold City harmless from any liability, loss or damage for these things.

19. Indemnity. Borrower agrees to defend, indemnify, and hold the City and its officers, employees, agents, board members, and/or council members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the City may incur as a direct or indirect consequence of:

(a) Borrower's failure to perform any obligations as and when required by the City Note E. P., Restrictive Covenants, and this City Deed of Trust E. P.; or

(b) the failure at any time of any of Borrower's representations or warranties to be true and correct.

20. Acceleration; Remedies.

(a) Upon Borrower's breach of any covenant or agreement of Borrower in the City Note E. P., Restrictive Covenants, or this City Deed of Trust E. P., including, but not limited to, the covenants to pay, when due, any sums secured by this City Deed of Trust E. P., the City, prior to acceleration, will mail by certified mail with return receipt requested, notice to Borrower specifying; (i) the breach; (ii) the action required to cure such breach; (iii) a date, not less than thirty (30) days from the date the notice is received by Borrower as shown on the return receipt, by which such breach is to be cured; and (iv) if the breach is curable, that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this City Deed of Trust E. P. and sale of the Security. The notice will also inform Borrower of Borrower's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense to Borrower to acceleration and sale.

(b) Notwithstanding subsection (a) of this Section, in the event of a default by the Borrower under the City Note E. P. and this City Deed of Trust, no notice to Borrower shall be required prior to acceleration.

(c) If the breach is not cured on or before the date specified in the notice, the City, at the City's option, may: (i) declare all of the sums secured by this City Deed of Trust E. P. to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law; (ii) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this City Deed of Trust E. P., or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (iii) commence an action to foreclose this City Deed of Trust E. P. as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (iv) deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924 et seq., as amended from time to time; or

(v) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

(d) The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorney's fees.

21. Borrower's Right to Reinstate. Notwithstanding the City's acceleration of the sums secured by this City Deed of Trust E. P., Borrower will have the right to have any proceedings begun by the City to enforce this City Deed of Trust E. P. discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this City Deed of Trust E. P. or at any time prior to entry of a judgment enforcing this City Deed of Trust E. P. if: (a) Borrower pays to City all sums which would be then due under this City Deed of Trust E. P. and no acceleration under this City Deed of Trust E. P., the City Note E. P., or the Restrictive Covenant has occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in the City Note E. P., Restrictive Covenant, or this City Deed of Trust E. P.; (c) Borrower pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Borrower contained in the City Note E. P., Restrictive Covenant, or this City Deed of Trust E. P., and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as City may reasonably require to assure that the lien of this City Deed of Trust E. P., City's interest in the Security and Borrower's obligation to comply with the Restrictive Covenants secured by this City Deed of Trust E. P. and to pay the sums secured by this City Deed of Trust E. P. shall continue unimpaired. Upon such payment and cure by Borrower, this City Deed of Trust E. P. and the obligations secured hereby will remain in full force and effect as if no acceleration or declaration of default had occurred.

22. Due on Transfer of the Property. Upon a Transfer (as defined in the Restrictive Covenants) of the Property or any interest in it, the City shall require immediate payment in full of all sums secured by this City Deed of Trust E. P.

23. Reconveyance. Upon performance of all obligations of the Restrictive Covenants secured by this City Deed of Trust E. P. and payment of all sums secured by this City Deed of Trust E. P., the City will request Trustee to reconvey the Security and will surrender this City Deed of Trust E. P. to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

24. Substitute Trustee. The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

25. Superiority of First Lender Documents. Notwithstanding any provision herein, this City Deed of Trust E. P. shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Security in compliance with the requirements of the Restrictive Covenants.

Notwithstanding any other provision hereof, the provisions of this City Deed of Trust E. P. shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Borrower. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this City Deed of Trust E. P. shall be forever terminated and shall have no further effect as to the Property or any transferee thereof. Notwithstanding, however, if the holder of such First Lender Deed of Trust acquired title to the Property pursuant to a deed or assignment in lieu of foreclosure and no notice of default was recorded against the Property in connection therewith, this City Deed of Trust E. P. shall automatically terminate upon such acquisition of title only if (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period (which requirement shall be satisfied by recordation of a notice of default under California Civil Code Section 2924) and (ii) the City or its designee shall not have cured the default within such sixty (60)-day period.

26. Request for Notice. City requests that copies of the notice of default and notice of sale be sent to City at the address set forth in Section 14 above.

IN WITNESS WHEREOF, Borrower has executed this City Deed of Trust E. P. as of the date first written above.

NAME, Borrower

NAME, Borrower