

PROMISSORY NOTE  
Secured by Deed of Trust

\$\_\_\_\_\_ [Insert dollar amount}

Clark County, Nevada

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ (“Borrower”), promises to pay to Clark County (“County”), the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), plus those amounts set forth in Section 3 below, plus any amounts due the County as Excess Rental or Excess Sales Proceeds pursuant to the Deed Restriction and Homebuyer Ground Lease, and as defined in Section 2 below.

1. Purpose of Loan. Borrower has purchased the house located at \_\_\_\_\_ (the “Residence”), not including the land upon which the house is situated. This promissory note (hereinafter “County Note” or “Note”) evidences the loan made by the County to Borrower (the “County Loan”) in connection with the purchase of a house as part of the County’s Welcome Home Community Land Trust (CLT) Program to assist in the purchase of homes by low- and moderate-income households. The purchase price of the Residence was set so that the Residence was affordable for purchase by low- and moderate-income households. Because the purchase price was set at an affordable price, the Borrower is required and has agreed to execute a Deed Restriction which restricts the price of the Residence upon resale, refinancing, and junior loans on the Residence and which requires the Borrower to pay any Excess Sales Proceeds upon resale to the County. This Note evidences both (a) the obligation of Borrower to repay the County Loan and other amounts due under this Note, and (b) the obligation of Borrower to pay any Excess Rental Proceeds and Excess Sales Proceeds to the County pursuant to the Deed Restriction and Homebuyer Ground Lease and as outlined in Section 2 below.

2. Definitions. The terms set forth in this Section 2 shall have the following meanings in this Note.

- a. “Eligible Purchaser” shall mean an Eligible Purchaser (as defined below in subsection e) of the Residence that has been approved by the County.
- b. “County Loan” shall mean the County’s loan to the Borrower as described in Section 1.
- c. “County Purchase Option” shall mean the County’s options to purchase the Residence pursuant to the Deed Restriction.

- d. “Deed Restriction” shall mean the Deed Restriction between County and Borrower, signed concurrently with this Promissory Note. Borrower will observe and perform all of the covenants and agreements of the Deed Restriction.
- e. “Eligible Purchaser” shall have the meaning set forth in the Deed Restriction and as set forth herein:
- 1) First-Time Homebuyer. The Proposed Purchaser shall certify that he or she qualifies as a “First-Time Homebuyer” as defined by the County at the time of homebuyer qualification.
  - 2) Intent to Owner-Occupy. The Proposed Purchaser shall certify that he or she will occupy the Residence as his or her principal place of residence throughout his or her ownership.
  - 3) Agree to sign Buyer Disclosure Agreement and Homebuyer Ground Lease and to Cooperate with County. The Proposed Purchaser shall agree to sign a Deed Restriction and Homebuyer Ground Lease restricting future resale of the Residence and shall agree to cooperate fully with the County in promptly providing all information requested by the County to assist the County in monitoring the Proposed Purchaser’s compliance with the Ground Lease and Deed Restriction.
  - 4) Agree to assume this Promissory Note and the County Deed of Trust. The Proposed Purchaser shall agree to sign the documents necessary to assume the County Promissory Note and Deed of Trust at the same terms.
  - 5) Income Eligibility. The combined maximum income for all household members of the Proposed Purchaser shall not exceed the income for a Designated Income Household, adjusted for the Proposed Purchaser’s household size. In the event such income determinations are no longer published by HUD, or are not updated for a period of at least eighteen (18) months, the County shall provide other income determinations which are reasonably similar with respect to method of calculation to those previously published by HUD.
- f. “Excess Rental Proceeds” shall have the meaning set forth in Section 4 of the Deed Restriction and shall mean any excess rents paid to the Borrower by the lessee over the Affordable Rent.
- g. “Excess Sales Proceeds” shall have the meaning set forth in Section 15 of the Deed Restriction and shall mean one hundred percent (100%) of the amount by which the gross sales proceeds received by the Borrower from the new purchaser exceeds the Maximum Restricted Resale Price for the Residence (in the amount that was stated in the County Response Notice).
- h. “Fair Market Value” shall be determined by a real estate appraisal as set forth in Section 13.2 of the Deed Restriction.

- i. “First Lender Loan” shall mean the promissory note and deed of trust evidencing and securing a First Lender Loan for the Residence.
- j. “Maximum Restricted Resale Price” shall have the same meaning as “Maximum Restricted Resale Price” set forth in Section 13 of the Deed Restriction.
- k. “Residence” shall mean the dwelling and improvements which secures the deed of trust executed in connection with this Note.

“Transfer” shall mean any sale, assignment or transfer, voluntary or involuntary, of any interest in the Residence, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest (except as permitted in Section 4 of the Deed Restriction), an interest evidenced by a contract by which possession of the Residence is transferred and Borrower retains title, or a mortgage or a deed of trust (other than a refinancing of the First Lender Loan or a Junior Loan permitted pursuant to Section 7.5 of the Deed Restriction). Any Transfer without satisfaction of the provisions of the Deed Restriction is prohibited and shall constitute a default under this Note. A Transfer shall not include a transfer: (i) to an existing spouse or domestic partner who is also an obligor under the Note; (ii) by Borrower to a spouse or domestic partner where the spouse or domestic partner becomes the co-owner of the Residence; (iii) between spouses as part of a marriage dissolution proceeding; (iv) to an existing spouse or domestic partner of Borrower by devise or inheritance following the death of Borrower; (v) by Borrower into an inter vivos revocable trust in which Borrower is the beneficiary; or (vi) by mortgage or deed of trust in connection with a refinance of the First Lender Loan or for a Junior Loan meeting the requirements of Section 7.5 of the Deed Restriction; provided, however, that Borrower shall provide written notice of all such transfers to County; and Borrower shall continue to occupy the Residence as his or her principal place of residence (except where the transfer occurs pursuant to subsections (iii) or (iv) above, in which event the transferee shall owner-occupy the Residence and affirmatively assume Borrower’s obligations under this Note, the Deed Restriction and the Deed of Trust). For the purposes of this section, an individual shall be considered to be a “domestic partner” of Borrower as that term is defined pursuant to Nevada Revised Statute Chapter 122A.

3. Interest. Simple interest on this Note shall be at the rate of zero percent (0%) per year. Interest shall accrue from the date of this Note and shall accrue on unpaid principal until paid when due in accordance with Section 5.b.

4. Term. The term of this Note commences on the date of this Note and expires ninety-nine (99) years from the date of this Note.

5. Repayment.

- a. Deferral. Repayment of the principal amount and any accrued interest of this Note shall be deferred for the Term of the Note, except as provided in subsection (c) below.
- b. Assumption. The County Promissory Note will be assumed by an Eligible

Purchaser, and no repayment will be required of Borrower if Borrower is not in default of this Note, upon sale of the Residence to an Eligible Purchaser in accordance with all of the requirements of the Deed Restriction, Homebuyer Ground Lease and County Loan.

- c. Repayment in Full. The total amount of the principal and any accrued interest owed under this Note (together with any Excess Rental and Excess Sales Proceeds due to the County pursuant to the Deed Restriction or any other fees) shall immediately become due and payable (i) in the event of a default by the Borrower under this Note, the Deed Restriction, the Homebuyer Ground Lease, the Deed of Trust, or the First Lender Loan, (ii) on the date Transfer is made whether voluntarily, involuntarily, or by operation of law, foreclosure, deed in lieu of foreclosure, and whether by deed, contract of sale, gift, devise, bequest or otherwise, if the Note is not assumed by an Eligible Purchaser as provided in Section 8 of this Note, (iii) in the event Borrower ceases to occupy the Residence as his or her principal place of residence, except as may be permitted by advance County written approval as provided in Section 4 of the Deed Restriction and Homebuyer Ground Lease; or (iv) at the end of the Term of this Note as described above in Section 4. Failure of the County 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.

6. Prepayments. Borrower may prepay all or part of the balance due under this Note without penalty. Notwithstanding any prepayment of amounts due under this Note, the Deed Restriction shall continue in full force and effect for the period of time set forth in the Deed Restriction.

7. Security. This Note is secured by a deed of trust dated the same date as this Note (the “Deed of Trust”) and which will be recorded in the Official Records of Clark County. Borrower and County have also executed the Deed Restriction, the Homebuyer Ground Lease, and the Buyer Disclosure Statement.

8. Assumption of Note by Eligible Purchaser. Borrower acknowledges that this Note is given in connection with the purchase of the Residence as part of a program of the County to assist in the purchase of homes by low- and moderate-income households. Consequently, this Note is assumable only by Eligible Purchasers of the Residence. The Note is due in full upon all other Transfers.

9. Refinance of First Lender Loan. The outstanding principal and interest on this Note shall not be due upon the refinance of the First Lender Loan, and the Deed of Trust securing this Note shall be subordinated, provided that such refinancing meets the requirements of Section 7.5 of the Deed Restriction.

10. Default. The Borrower shall be in default under this Note if he or she is in default under any mortgage loan on the Residence (including the First Lender Loan) following the expiration of applicable cure periods, or if, after the notice and cure period provided by the County to the Borrower pursuant to the notice and cure provisions of the Deed of Trust, the Borrower (i) fails to pay any money when due under this Note; (ii) is found to have made a false statement in applying for the County Loan, the First Loan, or for eligibility and participation in the

Homebuyer Ground Lease and Deed Restriction; (iii) breaches any representation or covenant made in this Note, the Deed Restriction, or the Homebuyer Ground Lease in any material respect; or (iv) breaches any provision of the Deed of Trust.

11. Acceleration. Upon the occurrence of a default under this Note, the Deed Restriction, the Homebuyer Ground Lease, the Deed of Trust, or the First Lender Loan, the County shall have the right to declare the full amount of the principal along with any accrued interest under this Note immediately due and payable plus any other fees. 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 Restriction, the Homebuyer Ground Lease and the Deed of Trust. 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.

12. Nonliability for Negligence, Loss, or Damage. Borrower acknowledges, understands and agrees that the relationship between Borrower and County 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 Residence 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 Residence and Borrower agrees that neither Borrower, or 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 Residence and will hold County harmless from any liability, loss or damage for these things.

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

- a. the making of the loan to Borrower;
- b. Borrower's failure to perform any obligations as and when required by this Note, the Deed of Trust, the Deed Restriction and the Homebuyer Ground Lease; or
- c. the failure at any time of any of Borrower's representations or warranties to be true and correct.

14. Interest Rates. Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the County may legally charge under the laws of the State of Nevada, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

15. No Waiver by County. Failure by County to pursue its legal and equitable remedies upon Borrower's default shall not constitute a waiver of County's right to declare a default and exercise all of its rights under this Note, the Deed of Trust and the Deed Restriction. Failure to declare amounts due shall not constitute a waiver on the part of County of the right to declare them due in the event of any subsequent Transfer. Nor shall acceptance by County of any payment provided for herein constitute a waiver of County's right to require prompt payment of any remaining principal owed. 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.

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

17. 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.

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

19. Waiver. Borrower and any endorsers or guarantors of this Note, for themselves, their heirs, legal representatives, successors and assigns, respectively, jointly or severally, waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of non-payment of this Note, 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 Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

20. Notices. All notices required in this Note shall be sent by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personally delivered with a delivery receipt obtained, and shall be deemed to be effective as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable, as follows:

To the Borrower:

At the address of the Residence.

To the County:

Community Housing Office  
Clark County  
500 S. Grand Central Parkway  
Las Vegas, NV 89155

The County may subsequently change address by providing written notice of the change in address to the Borrower in accordance with this section.

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

22. 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 all payments shall be made to the assignee (“Assignee”). The County may transfer or assign this Note to a government agency or non-profit entity without obtaining approval of the First Lender.

23. Severability. Should any provision of this Note 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.

24. Entire Agreement. This Note (along with the Deed Restriction, County Loan, and Deed of Trust) set 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.

BORROWER:

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