

PROMISSORY NOTE

(Town of Truckee Home Access Program (THAP))

ADMINISTRATIVE COVER SHEET

(Remove Upon Completion)

BLANK LINES: CHECKLIST

- _____ Amount of Town Loan, p. 1, upper left
- _____ Date of Document, p. 1, upper right
- _____ Declarant's Name, p. 1, first paragraph
- _____ Amount of Town Loan, p. 1 first paragraph
- _____ Amount of Town Loan, p. 2, Section 1(a)
- _____ Date of THAP Deed Restriction, p. 2, Section 1(d)
- _____ Signatures, p. 7

DRAFT

NOTICE TO DECLARANT:

THIS DOCUMENT CONTAINS PROVISIONS PROHIBITING ASSUMPTIONS

Promissory Note
Secured By Deed Of Trust
Town of Truckee Home Access Program (THAP)

§

Truckee, California

Dated:

FOR VALUE RECEIVED, the undersigned, ("Declarant(s)") promise to pay to the order of Town of Truckee ("Town") at 10183 Truckee Airport Road, Truckee, CA 96161, or such other place as the Town may designate in writing, the principal sum of _____ **dollars (\$)**. In the event of default the Town Loan shall bear interest that shall be the greater of: 1) The original Town Loan sum plus interest calculated at ten percent (10%) per annum from date of deed restriction recordation compounded annually; or 2) The original Town Loan sum plus interest calculated at the rate of appreciation on the fair market value of the house since the date of Deed Restriction recordation, whichever is greater. In addition, any amount due and owing to the Town shall bear interest at the rate of ten percent (10%) per annum compounded annually until paid in full. Principal and interest will only be due in the event of violation, non-performance, default, or breach of any term of the Deed Restriction by the Owner, in which case Town shall have the right to enforce Owner's obligations herein by an action for any equitable remedy, including injunction or specific performance, as well as pursue an action to recover damages.

This Note shall not require a principal or interest repayment unless a default, as herein defined below, has occurred. If a default occurs, the outstanding principal balance shall bear interest until paid at the rate charged by Town as described above.

The term, as defined in the Deed Restriction, shall be fifty-five (55) years which begins on the date of the recordation of the Deed of Trust securing the Property. The Loan will become immediately due and payable, and interest will accrue on the outstanding principal balance if, during the term of the Deed Restriction, a default occurs.

In the event that a default of the Deed Restriction does not occur during the 55-year period, this Note shall be cancelled and the Deed of Trust encumbering the Property shall be reconveyed.

Declarant shall give written notice to Town of any sale or refinancing of the Property occurring within the 55-year Period.

1. Definitions. The terms set forth in this section shall have the following meanings in this Note.

(a) "Deed of Trust" shall mean that certain deed of trust of same date herewith securing the Town Loan to be executed by the Declarant and to be recorded against the Property.

(a) "Deed Restriction " shall mean that certain Deed Restriction entered into by the Declarant and the Town on date herewith to be recorded against the Property.

(b)"Property" shall have the same meaning as the term "Security" as used in the Town Deed of Trust.

(c)"Town Deed of Trust" shall mean that certain deed of trust dated _____, 202__, executed by Declarant in favor of (Town) and to be recorded in the official records of the Town as a lien against the Property.

(d) "Town Loan" or "Loan" shall mean the loan of Town of Truckee Home Access Program ("THAP" or "Program") funds in the principal amount of _____ (\$) provided by the Town to the Declarant pursuant to the Town Loan Documents.

(e)"Town Loan" shall mean the loan secured by a Town Deed of Trust.

(f) "Town Loan Documents" shall mean, collectively, this Note, the Deed of Trust, and the Deed Restriction Agreement.

(g) "Transfer" shall mean any sale, assignment or transfer, voluntary or involuntary, of any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, a tenancy in common interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Declarant retains title. A transfer: (i) to an existing spouse or domestic partner who is also an obligor under the Note; (ii) by a Declarant to a spouse or domestic partner where the spouse becomes the co-owner of the Property; (iii) between spouses as part of a marriage dissolution proceeding; (iv) to an existing spouse, domestic partner, or child of the Declarant by devise or inheritance following death of the Declarant; (v) by the Declarant into an inter vivos trust in which the Declarant is the beneficiary; (vi) by refinance of the Town Loan provided that following such refinance, the principal amount of the refinanced Town Loan will not exceed the then outstanding balance (plus refinancing and closing costs) of the existing Town Loan and the lender making the refinanced loan is a bank, credit union or savings and loan association approved in advance by the Town as to rate and term; or (vii) by deed of trust or imposition of a lien subordinate to the Deed of Trust, shall not be considered a Transfer for the purposes of this Note; provided, however, that the Declarant or the transferee, if appropriate, shall continue to occupy the Property as his or her principal place of residence and the Declarant shall provide written notice of such transfer to the Town in the manner provided in Section 13 below.

2. Security. This promissory note (the "Note") is secured by the Deed of Trust. Declarant acknowledges that this Note is given in connection with the use of funds to assist in

the purchase of homes by income eligible homebuyers. Said property, including both the real property and all improvements now or hereafter erected on the property, and all easements, rights, appurtenances and all fixtures now or hereafter attached to the property shall be referred to in this Note as the Property. The term "Property," as used herein, shall have the same meaning as the term "Security" as used in the Deed of Trust.

3. Interest.

(a) The principal sum outstanding from time to time under this Note shall bear interest that shall be the greater of: 1) The original Town Loan sum plus interest calculated at ten percent (10%) per annum from date of deed restriction recordation compounded annually; or 2) The original Town Loan sum plus interest calculated at the rate of appreciation on the fair market value of the Property since the date of deed restriction recordation, whichever is greater. In addition, any amount due and owing to the Town shall bear interest at the rate of ten percent (10%) per annum compounded annually until paid in full.

(b) All principal and interest accrued on this note shall be forgiven provided the terms of the Deed Restriction are met.

4. Repayment.

(a) Deferral. Repayment of the amount due under this Note shall be deferred pursuant to the terms of the Deed Restriction and Deed of Trust.

(b) Repayment in Full. Subject to the terms of the Deed Restriction and Deed of Trust, the total amount of the principal and interest owed under this Note shall be repaid pursuant to the terms of the Deed Restriction and Deed of Trust in the event of default.

5. Maintenance; Taxes; Insurance. Declarant shall maintain the Property in good repair and in a neat, clean and orderly condition (and as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all federal, state, Town, municipal, and other government agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus and officials. Declarant shall not commit waste or permit deterioration of the Property and shall make all repairs and replacements necessary to keep the Property in good condition and repair.

6. Non-Discrimination. The Declarant covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin, or any other basis upon which discrimination or segregation is prohibited by California or federal law in the sale, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Declarant or any person claiming under or through the Declarant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy or transfer of the Property. The foregoing covenant shall run with the land.

7. Default. Any of the following shall constitute an Event of Default under this Note:

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

(b) Any failure in the performance by the Declarant of any term, condition, provision or covenant set forth in this Note;

(c) The occurrence of any event of default under the Deed of Trust, or other instrument securing the obligations of the Declarant under this Note or under any other promissory notes hereafter issued by the Declarant to the Town pursuant to the Deed of Trust, subject to notice and cure periods, if any, set forth therein;

(d) The occurrence of any event of default under the Deed Restriction, subject to the notice and cure periods, if any, set forth therein; and

(e) The occurrence of any event of default under the Town Deed of Trust, any other deeds of trust secured by the Property or any covenant recorded against the Property, subject to notice and cure periods, if any, set forth therein.

8. Acceleration. Upon the declaration by the Town of an Event of Default pursuant to Section 7, the entire unpaid principal balance, together with all interest, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the Town become immediately due and payable upon written notice by the Town to the Declarant without further demand. The failure to exercise the remedy set forth above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the Town hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the Town, except as and to the extent otherwise provided by law.

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

10. Waiver. Declarant and any endorsers or guarantors of this Note, 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 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.

11. Right of Entry by Town. Declarant hereby grants to the Town and its duly authorized representatives the right to enter the Property at reasonable times and in a reasonable manner for purposes of inspecting the Property to determine compliance with the Town Loan Documents.

12. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 12(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to the Town Loan Documents or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activities, or have any interest in any contract, subcontract or agreement with respect to such activities, or the proceeds under the contract, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Declarant shall exercise due diligence to ensure that the prohibition in this Section 12(a) is complied with.

(b) The conflict-of-interest provisions of Section 12(a) above apply to any person who is any employee, agent, consultant, or officer of the Town, or any immediate family member of such person, or any elected or appointed official of the Town, or any person related within the third (3rd) degree of such person.

13. Notices. Notices to the Town or the Declarant required hereunder shall be given in the manner described in Section 12 of the Deed of Trust.

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

15. Indemnity. Declarant agrees to defend, indemnify, and hold Town harmless from all losses, damages, liabilities, claims, actions, judgements, costs, and reasonable attorneys fees that Town may incur as a direct or indirect consequence of:

(a) the making of the Loan evidenced by the Note to Declarant;

(b) Declarant's failure to perform any obligations as and when required by the Town Loan Documents; or

(c) the failure at any time of any of Declarant's certifications, representations, or warranties to be true and correct.

16. Severability. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

17. No Waiver by the Town. No waiver of any breach, default or failure of condition under the terms of this Note shall be implied from any failure of the Town to take, or any delay by the Town in taking, action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of the Note must be made in writing and shall be limited to the express written terms of such waiver.

18. Foreclosure by First Mortgage Lender. In the event the First Mortgage Lender forecloses on the Property, the Declarant shall use the proceeds of any sale related to such foreclosure to repay the Town Loan.

19. Rights Of Beneficiaries Under Deeds of Trusts. This Agreement shall not diminish or affect the rights of the Town under the Deed of Trust. Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of HUD or the Veterans Administration ("VA") under the Town Deed of Trust or any subsequent Town deeds of trust hereafter recorded against the Property in compliance with this Agreement. Notwithstanding any other provisions in this Agreement to the contrary, all of the provisions of this Agreement shall terminate and have no further force in the event title is acquired by HUD or VA or another party upon foreclosure of a deed of trust insured by HUD or guaranteed by VA.

20. Release of Deed Restriction in Event of Foreclosure or Deed in Lieu

(a) An Owner shall notify the Town, in writing, of any notification received from a lender of past due payments or defaults in payments or other obligations within five (5) days of receipt of such notification.

(b) An Owner shall immediately notify the Town, in writing, of any notice of foreclosure under any Deed of Trust or any other security interest on the Property, or when any payment on any indebtedness encumbering the Property is required to avoid foreclosure of the first deed of trust or other subordinate security interest in the Property.

(c) Within sixty (60) days after receipt of any notice described herein, the Town may (but shall not be obligated) to proceed to make any payment required to avoid foreclosure. Upon making any such payment, the Town shall place a lien on the Property in the amount paid to cure the default and avoid foreclosure, including all fees and costs resulting from such foreclosure.

(d) Notwithstanding any other provision of this Promissory Note, (but subject to Section 12 of the Deed Restriction), in the event of a foreclosure, acceptance of a deed-in-lieu of foreclosure, or assignment, this Promissory Note shall remain in full force and effect.

(e) The Town shall have thirty (30) days after issuance of the public trustee's deed or the acceptance of a deed in lieu of foreclosure by the holder in which to purchase by tendering to the holder, in cash or certified funds, an amount equal to the bid price or the redemption price paid by the holder.

(f) Notwithstanding Section 20(d) above, in the event that the Property is encumbered by a mortgage or deed of trust insured by the U.S. Department of Housing and Urban Development ("HUD") and representing a purchase money first priority mortgage or deed of trust, this Deed Restriction shall automatically and permanently terminate upon foreclosure of such mortgage or deed of trust, upon acceptance of a deed in lieu of foreclosure of such mortgage or deed of trust or upon assignment of such mortgage or deed of trust to HUD.

21. Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Promissory Note, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

22. Governing Law. This Promissory Note shall be governed by the laws of the State of California. Any action to interpret or enforce this Promissory Note shall be brought in the Truckee branch of the Nevada County Superior Court.

Declarants:

By: _____ Printed Name

By: _____ Printed Name

EXHIBIT A

Form of Owner Occupancy Certification

To: The Town of Truckee ("Town")

From: _____ **[name of owner(s)]** ("Owner(s)")

Address of Property: _____ ("Property")

Mailing Address: _____

Phone Number: _____

Email Address: _____

Date: _____

By signature below, I/We _____ **[insert name or names of Owner]** hereby certify to the Town of Truckee under penalty of perjury that I/we occupy the Property located at _____ **[insert address]** (the "Property") as my/our principal place of residence and that I/we have occupied the Property for _____ **[insert number]** months of the calendar year _____ **[insert previous calendar year]**. Attached to this letter is a copy of my **utility bill** showing my place of residence.

This Owner Occupancy Certification is signed on _____, 20__, under penalty of perjury.

By: _____
Owner

By: _____
Owner

Attach copy of utility bill showing address of Property.