

**PROMISSORY NOTE**  
**Secured by Deed of Trust**

DEFERRING THE PAYMENT OF  
CITY DEVELOPMENT IMPACT FEES

Pleasanton, California  
\_\_\_\_\_, 201\_\_

FOR VALUE RECEIVED, the undersigned       {state name(s) of borrower and type of entity, if applicable}       ("Borrower") promises to pay to the City of Pleasanton, a municipal corporation (the "City"), at 123 Main Street, Pleasanton, California 94566-0802, Attn: Finance Department, the following amounts:

Amount	City Fee Being Deferred
	Public Facilities
	Traffic Development
	Lower Income Housing
	Water Connection and Meter
	Sewer Connection
	<b>TOTAL</b>

1. Payment. Any amounts due under this Promissory Note shall be due and payable in full on the date of the earlier of:

- (a) The final inspection by the City of Pleasanton's Building Division for the       {Describe type of residential development}       located at       {address}       (the "Residence");
- (b) The issuance of a Certificate of Occupancy by the City of Pleasanton's Building Division for the Residence; or
- (c) The close of escrow for the sale of the Residence.

The Borrower shall provide the City with at least five (5) business days notice of a potential sale of the Residence and information about the title company and escrow number for such transaction.

Failure to declare the amounts due shall not constitute a waiver on the part of the City.

2. Interest. No interest shall be payable on the amount due for twenty-four (24) months from the date of this Promissory Note. If payment is not received within twenty-four (24) months of the date of this Promissory Note, even if one of the actions

triggering payment set forth in Section 1, above, has not occurred, interest shall accrue and compound at the Bank of America Reference Rate, subject to adjustment every six months. In addition to the waiver provisions in Section 10, below, Borrower waives any requirement that the City notify Borrower of any interest accruing or any changes in the interest rate.

3. Recalculation of Fees. If during the time the amounts due under this Promissory Note are not paid, and the City undertakes a recalculation of the City's Development Impact Fees pursuant to a Government Code §§ 66000 nexus study, which are the fees being deferred pursuant to this Promissory Note, if the City adopts an ordinance raising such fees, the City shall provide Borrower written notice of such fee increases, and the Borrower shall have ninety (90) days to make full payment of the amounts due under this Promissory Note, plus interest, if any, and not be subject to such fee recalculation increases.

However, if the Borrower does not make full payment, then ninety (90) days after the effective date of this ordinance raising such fees, the amount due under this Promissory Note shall increase by the increment of such fee increases, and those increased fees shall be the new amounts due, plus interest, if any. The City will provide Borrower written notice of such fee increases when they take effect.

The City specifically acknowledges that routine adjustments to the fees pursuant to the Engineering News Records Construction Costs Index to account for inflation are not a recalculation of fees.

4. Security. This Promissory Note is secured by a deed of trust dated the same date as this Promissory Note (the " Deed of Trust").

5. 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 Promissory Note and the Deed of Trust; or

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

6. 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 Promissory Note and the Deed of Trust. 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 Promissory Note must be made in writing and shall be limited to the express written terms of such waiver.

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

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

9. 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 Promissory Note.

10. Waiver. Borrower and any endorsers or guarantors of this Promissory 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 Promissory 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 Promissory 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. Notices. All notices required in this Promissory Note 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the City:

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

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

12. Controlling Law. This Promissory Note 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 Promissory Note shall be Alameda County, California.

13. Severability. Any provision of this Promissory 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.

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

BORROWER:

\_\_\_\_\_  
\_\_\_\_\_

(Print Name)

\_\_\_\_\_  
\_\_\_\_\_

(Print Name)

Approved as to form:

\_\_\_\_\_  
Jonathan Lowell, City Attorney

//  
Rev. 9/10