

PROMISSORY NOTE
Secured by Deed of Trust

\$600,000.00

Los Gatos, California
, 2020

FOR VALUE RECEIVED, _____, a California limited liability company ("Borrower"), promises to pay, or cause to be paid, to the Town of Los Gatos ("Town"), the principal sum of six hundred thousand Dollars (\$600,000).

1. Borrower's Obligation. This promissory note (the "Note") evidences the Borrower's obligation to pay the Town the principal amount of Six Hundred Thousand Dollars (\$600,000) (the "Project Loan"), which Project Loan is related to the sale and development of rental housing affordable to low and moderate income households, located at 20 Dittos Lane in Los Gatos, California.

2. Loan Agreement. This Promissory Note is made and delivered pursuant to and in implementation of the Affordable Housing Agreement entered into by and between the Town and Borrower. Borrower acknowledges but for the execution of this Promissory Note, the Town would not have entered into the Affordable Housing Agreement or made the loan contemplated therein.

3. Interest. There shall be no interest.

4. Term. The term of this Note ("the Term") shall begin on the date of execution of this Note and shall terminate upon the earlier of (i) repayment in full of the debt evidenced by this Note or (ii) by January 1, 2031. at which time all unpaid principal remaining will be due and payable.

5. Repayment. Beginning at the end of Borrower's first fiscal year following the issuance of a certificate of occupancy for the Affordable Housing Project, Borrower shall make annual payments of principal to the Town in an amount amortized over fifty-five (55) years.

6. Principal Due. All principal owed under this Note is due on the earlier to occur of: (i) the date of any Default, or (ii) the expiration of the Term, (iii) any sale, transfer, or assignment of any interest of the borrower or any sale, transfer, or assignment of any interest in the property located at 20 Dittos Lane CA.

7. Security. This Note shall be secured by a Deed of Trust and Security Agreement (the "Deed of Trust"), wherein the Borrower is the Trustor and the Town is the Beneficiary, which shall be recorded against the Borrower's fee interest in the Property and at such time as the Borrower acquires the fee interest in the Property.

8. Terms of Payment.

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

(b) The Project Loan is nonrecourse to the Borrower and to any of its partners. Except as provided below, Borrower and its partners shall not have any direct or indirect personal liability for payment of the Project Loan or the performance of the covenants of Borrower under this Note and the Deed of Trust. The sole recourse of the Town with respect to the Project Loan and defaults by Borrower in the performance of its covenants under this Note and the Deed of Trust is to the Security. Borrower may prepay the Project Loan at any time without premium or penalty.

9. Default.

(a) Any of the following constitutes an event of default under this Note ("Default"):

(i) Any failure to pay, in full, any payment required under this Note within thirty (60) days of written notice that such payment is due;

(ii) Other than the failure addressed above in subsection (i), failure of Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Note and such failure having continued uncured for ninety (90) days after receipt of written notice thereof from the Town to Borrower;

(iii) The occurrence of any Event of Default under the Affordable Housing Agreement by and between the Borrower and the Town (the "Affordable Housing Agreement"), or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the Town, subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of a Default, the entire unpaid principal balance, and together with all other sums then payable under this Note shall at the option of the Town become immediately due and payable upon written notice by the Town to the Borrower without further demand.

(c) The failure to exercise the remedy set forth in Section 7(b) of this Note or any other remedy provided by law upon the occurrence of one or more of the foregoing events of Default does 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 of any payment which is less than the total of all amounts due and payable at the time of such payment does 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.

10. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and

that the Town may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

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

(c) The obligations of the Borrower under this Note are absolute, and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

11. Miscellaneous Provisions.

(a) All notices to the Town or the Borrower shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:

Town:

Town of Los Gatos
Attn: Town Manager
110 E. Main
Los Gatos, CA 94403

Borrower:

193 Smith Ranch Court
Los Gatos, CA 95032

(b) The Borrower promises to pay all costs and expenses, including reasonable attorneys' fees, incurred by the Town in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

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

(e) The times for the performance of any obligations hereunder are strictly construed, time being of the essence.

(f) The Town shall not assign this Note (or any interest therein) without the consent of the Borrower.

(g) This Note contains the entire agreement between the Town and Borrower as to the Loan evidenced by this Note. It may not be modified except upon written consent of the parties.

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and delivered on the date set forth above.

BORROWER:

By: _____
Sarah Chaffin, President

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