

## SECURED PROMISSORY NOTE

\_\_\_\_\_, 2014

Manhattan Beach, California

### **1. BORROWER'S PROMISE TO PAY; INITIAL COSTS; DISBURSEMENT**

Mark Danaj and Kate Danaj (collectively, "Borrower") hereby promise to pay One Million Seven Hundred Thousand Dollars (\$1,700,000) (the "Principal") to the order of the CITY OF MANHATTAN BEACH, a municipal corporation; provided, however, that as described in Section 7 below, recourse of the holder of this Secured Promissory Note ("Note Holder") for the obligations of Borrower is limited to the property securing this Secured Promissory Note (the "Note"). The loan evidenced by this Note is hereinafter referenced to as the "Loan"

The obligations under this Note are secured by a Deed of Trust and Fixture Filing executed by Borrower and City, as trustor, in favor of Lender, as beneficiary (the "Deed of Trust") dated substantially concurrently herewith encumbering the property more particularly described in said Deed of Trust (the "Home") purchased in part with proceeds of the loan evidenced by this Note.

Borrower agrees to pay to City, through the escrow for Borrower's purchase of the Home, costs incurred by city for an appraisal of the Home and, lender's title insurance for the Deed of Trust (in the amount of \$1,700,000).

City shall disburse the entire principal amount of the Loan into the escrow for the purchase of the Home, but not more than \$1,650,000 shall be used to pay the purchase price for the Home upon closing. The remaining \$50,000 of the Loan shall be disbursed upon closing to the Borrower to pay costs incurred by Borrower within one (1) year after the date of the Note for improvements (excluding a pool) to the Home that comply with all applicable laws, including any improvements necessary to make the Home comply with applicable building code requirements. Borrower shall deliver reasonable evidence of any such use of any of the \$50,000 to City within thirty (30) days after any such use (together with evidence of the construction costs).

### **2. INTEREST RATE**

Outstanding principal shall bear interest at the rate of .733% for the first 3 years after the date of this Note, and prior to the end of the third year after the date of this Note, City and Borrower shall attempt to negotiate a new interest rate for the period after such third year. Upon the occurrence of an Event of Default, the interest rate shall increase to the interest rate in effect as of the date of the Event of Default plus six percent (6%). **BORROWER SHOULD CONSULT WITH THEIR TAX ADVISOR(S) REGARDING ANY TAX EFFECTS ON BORROWER OF THE INTEREST RATE.**

### **3. MATURITY DATE; PAYMENTS**

#### **A. Maturity Date.**

All principal and accrued interest shall become due and payable on the earlier of: (i) the date that is twelve (12) calendar months after the conclusion for any reason of Mark Danaj's employment by the City (including retirement); (ii) the date that is thirty (30) years after the date of this Note; (iii) the sale or transfer or further encumbrance of Borrower's interest in the Home; (iv) Borrower's failure to occupy the Home as their primary residence ("Maturity Date"). However, Borrower may lease the Home to the Seller thereof until no later than July 30, 2014.

#### **B. Payments.**

1) Monthly payments shall be made in arrears on the last business day of each calendar month.

2) Monthly payments shall be sufficient to fully amortize principal and pay all interest over thirty years in equal monthly amounts. Upon a change in the interest rate, the monthly payment shall be appropriately adjusted.

3) Each payment will be applied to principal. Payments by Borrower will be made to the City at Manhattan Beach City Hall.

### **4. BORROWER'S RIGHT TO PREPAY**

Payments of all or any portion of the Principal may be made at any time before they are due (a "Prepayment") without additional charge. Borrower will notify the Note Holder in writing of any Prepayment, but may not designate a payment as a Prepayment if any payments then due under this Note are past due.

The Note Holder will use Prepayments to reduce the amount of Principal owed under this Note, and Borrower may elect in writing at the time a Prepayment is made to re-amortize the Loan over the then-remaining term of this Note. Unless Borrower makes such election, there will be no changes in the due date or in the amount of the monthly payment (unless the Note Holder expressly agrees in writing to such changes).

### **5. BORROWER'S FAILURE TO PAY AS REQUIRED**

#### **A. Late Charge for Overdue Payments.**

Subject to Note Holder's compliance with California Civil Code Section 2954.5, as amended or restated from time to time, if the Note Holder has not received the full amount of any payment due under Section 3(B)(ii) within ten (10) calendar days after the date it is due, the Note Holder may require the Borrower or City (as applicable) to pay a late charge to the Note Holder. The amount of the charge will be three percent (3%) of the overdue payment of principal and interest, and the late charge must be paid within ten (10) days after written demand.

B. Default.

If there is a failure to comply with the Note or the deed of trust securing this Note, and such default is not cured within ten (10) days after written notice from City (an “Event of Default”), then City may demand that Borrower pay all outstanding principal and accrued interest. Failure to pay accrued interest and outstanding principal on the Maturity Date shall also be an Event of Default. Upon the occurrence of an Event of Default, City may exercise its rights and remedies at law and in equity, including, without limitation, nonjudicial foreclosure.

C. No Waiver By Note Holder.

Even if, at a time when there is an Event of Default, Note Holder does not require payment immediately in full as described above, Note Holder will still have the right to require a full payment at a later time.

D. Payment of Note Holder’s Costs and Expenses.

If Note Holder has required payment immediately in full as described above, Note Holder will have the right to be paid by Borrower for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law (i.e., Borrower shall be responsible for collection costs with respect to collection from Borrower). Those expenses include, for example, attorneys’ fees actually incurred by the City in connection with enforcing this Note.

**6. GIVING OF NOTICES**

All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and personally delivered, sent by first class certified mail, postage prepaid, return receipt requested, or sent overnight by a nationally recognized courier service such as Federal Express, addressed to the parties as follows:

To City: City Clerk  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266

To Borrower: Mr. Mark Danaj  
at the most recent address on file in his  
personnel file held by City’s Human Resources Department

Delivery of any notice or other communication hereunder shall be deemed made on the date of actual delivery thereof to the address of the addressee, if personally delivered, and on the date indicated in the return receipt or courier’s records as the date of delivery or as the date of first attempted delivery, if sent by certified mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

**7. SECURED NONRECOURSE LOAN**

Notwithstanding anything to the contrary in this Note, the Deed of Trust or any other document relating to the Loan, Note Holder's recourse for repayment of the sums owed under this Note or under the Deed of Trust or any other document relating to the Loan shall be limited to the collateral described in the Deed of Trust and in no event shall the Note Holder seek or obtain a deficiency judgment against the Borrower.

**8. WAIVERS**

Borrower and any other person who has obligations under this Note hereby waive the rights of "presentment" and "notice of dishonor". "Presentment" means the right to require Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require Note Holder to give notice to other persons that amounts due have not been paid.

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Mark Danaj

\_\_\_\_\_  
Kate Danaj

**CITY OF MANHATTAN BEACH**

By: \_\_\_\_\_  
Amy Thomas Howorth  
Mayor

APPROVED AS TO FORM:

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Quinn M. Barrow,  
City Attorney