

**Note:** The following is intended to be a sample only, and does not take the place of consulting with qualified legal and tax professionals. Protect the legal rights of each party to an inter-family loan agreement. Consult with a lawyer and tax professional to draft a contract that reflects your unique situation.

## Sample Secured Promissory Note Agreement

This SECURED PROMISSORY NOTE AGREEMENT (Agreement), is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_ by and between the Owner(s) \_\_\_\_\_, \_\_\_\_\_, of real property located at \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_.

1. **Purpose.** The purpose of this Agreement is to set forth the understanding between \_\_\_\_\_, the Owner(s) of real property located at \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, hereinafter collectively referred to as "Contributors" with respect to their future interest, rights in the aforementioned real property located at \_\_\_\_\_

(more particularly described on Exhibit "A" attached hereto and incorporated herein and hereinafter referred to as the "Property").

The parties to this agreement hereby establish an Open-End Mortgage. The total amount of Principal (exclusive of interest) that may be outstanding at any time is \$\_\_\_\_\_.

### 2. Term of Agreement.

2.1 The term of this Agreement shall commence on the date hereof and shall continue until one of the following occurs, whichever happens first:

- 2.1.1 The sale or transfer of the Property by the Owner(s);
- 2.1.2 The sale or transfer of the Property by the Legal Representative of the Owner(s);
- 2.1.3 The sale or transfer of the Property by the Estate Executor of the Owner(s);
- 2.1.4 A court order.

3. **Contributions.** All contributions shall be made in lawful money of the United States of America. For purposes of this agreement, contributions made to the Owner(s) shall be deemed as Contributor Principal.

### 3.1 Initial Contributions. [Add or subtract the number of contributors, as needed]

- The initial contribution of Contributor \_\_\_\_\_ is Dollars (\$\_\_\_\_\_).
- The initial contribution of Contributor \_\_\_\_\_ is Dollars (\$\_\_\_\_\_).
- The initial contribution of Contributor \_\_\_\_\_ is Dollars (\$\_\_\_\_\_).
- The initial contribution of Contributor \_\_\_\_\_ is Dollars (\$\_\_\_\_\_).

**3.2 Additional Contributions.** It may be necessary for each Contributor to make such additional capital contributions as may be necessary to maintain, own, operate and manage the Property. No Contributor shall be obligated to make any additional contribution.

**3.2.1. Additional Contributions.** If a Contributor makes additional contributions to the Owner(s), the Owner(s) shall credit that contribution to the Contributor's Designated Account.

**3.2.2 Open-End Mortgage. Maximum Contributions.** The amount of total contributions (exclusive of Interest) secured by the Property at any time shall be capped at \$\_\_\_\_\_.

**3.2.3. Designated Accountant.** The Owner(s) or the Legal Representative of the Owner(s) shall designate \_\_\_\_\_ as the Designated Accountant and establish compensation for services rendered by the Designated Accountant to be \_\_\_\_\_. The Designated Accountant shall keep track of all contributions made to the Owner(s) and shall make reports on a \_\_\_\_\_ basis to each Contributor on the total amounts of the contributions received by the Owner from each Contributor. The Designated Accountant shall notify all Contributors when the amount of contributions is within twenty-five percent of the Maximum Contributions amount designated in Section 3.2.2. and at each increase of five percent towards the Maximum Contributions amount thereafter.

**3.3 Interest.** Interest at the rate of \_\_\_\_\_ shall accrue on all contributions Contributor(s) make to the Owner(s) beginning on the date the contribution is made. Repayment of the Contributor's Principal balance and accrued interest is due when any of the events in Section 2.1 of this Agreement occur.

**4 Management.** The Owner(s), or the Legal Representative of the Owner(s), and Contributor(s) shall designate \_\_\_\_\_ as the Manager of the Property and establish compensation for services rendered by the Manager of the Property to be \_\_\_\_\_.

4.1 The Manager, \_\_\_\_\_ is hereby designated to maintain the books and records for the Property, and such records shall be open at all reasonable times to Contributors for examination.

4.2 \_\_\_\_\_ shall supervise the day-to-day operations of the Property; provided, however, all decisions of a substantial or material nature shall require the approval the Owner(s) and a majority in numbers of the Contributors.

4.3 Except as specifically provided in this Agreement, no Contributor shall incur any debt or obligation that would affect the Property or any other Contributor's interest (defined below). Should any Contributor violate the terms of this Paragraph 4.3, such Contributor shall indemnify and hold each and all of the other Contributors harmless from and against any loss, claim or liability (including but not limited to attorneys' fees) arising out of or relating to such violation of this Paragraph 4.3. Notwithstanding the foregoing, Owner(s) may incur

non-emergency repair, maintenance and related costs in an amount not exceeding \_\_\_\_\_ Dollars (\$\_\_\_\_\_), in any twelve-month period from the commencement of this Agreement, without prior written approval of Contributors.

4.4 All rental income and other income or profits earned, accrued or acquired by virtue of ownership of the Property shall be profits of the Owner(s).

#### 5. Assignment of Ownership Interests; Transfer on Death.

5.1 Other than as specifically provided in this Agreement, no Contributor shall voluntarily, involuntarily or by operation of law, assign, encumber, sell or otherwise transfer or hypothecate its Principal and Interest, or any part thereof, nor enter into any agreement as a result of which any person, firm or corporation may own an interest in the Property, except upon the prior written consent of the Owner(s) and all of the other Contributors.

5.2 In the event that the transfer of a Contributor's Principal and Interest is permitted under this Agreement, the transferee shall be required to assume in writing all of the terms, covenants, conditions and obligations of the transferor contained in this Agreement. Any attempt to transfer by a Contributor in violation of this Paragraph 5.2 shall be deemed void and shall be deemed to allow the transferee to take only the right of the transferor Contributor's Principal and Interest, but such transferee shall not acquire any right or legal interest in the Property nor the right to exercise any power granted to a Contributor under this Agreement.

5.3 A Contributor may choose to sell Contributor's Principal and Interest. If the Owner(s) and all the remaining Contributors choose to purchase the selling Contributor's Principal and Interest, that Principal and Interest shall be offered first to all non-selling Contributors in a pro-rata portion. The payment for the selling Contributor's Principal and interest shall be made to the selling Contributor or the selling Contributor's designated representative. The value of the Principal and Interest for purposes of this Paragraph 5.3 shall be that which the Owner(s) and purchasing Contributors agree upon within \_\_\_\_\_ (\_\_\_\_\_) days. However, if the Owner(s) and purchasing Contributors and the selling Contributor cannot agree upon the value of the Property within said time period, the value of the Principal and Interest shall be determined by a Certified Public Accountant (CPA). If the CPA's appraisal is objected to by the Owner(s) or any Contributor or the selling Contributor, then the appraisals from three additional local CPAs shall be sought and obtained and the value of the selling Contributor Principal and Interest shall be determined as the average amount of all four appraisals. The average shall be derived at by adding all four appraisals together then dividing them by four.

5.4 In the event that a Contributor elects not to purchase a pro-rata portion of the selling Contributor's Principal and Interest, the other Contributors hereby have the right to purchase the selling Contributor's Principal and Interest in a pro-rata portion amongst themselves.

Contributors may wish to forgo their right to a pro-rata proportional purchase or the selling Contributor's Principal and Interest and instead elect to negotiate among themselves a different proportional purchase. The payment for the selling Contributor's Principal and Interest shall be made to the selling Contributor or the selling Contributors representative. The value of the Principal and Interest for purposes of this Paragraph 5.3 shall be that which the purchasing Contributors or and the selling Contributor agree upon within \_\_\_\_\_ (\_\_\_\_\_) days. However, if the purchasing Contributors and the selling Contributor cannot agree upon the value of the Property within said time period, the value of the Principal and Interest shall be determined by a local Certified Public Account (CPA). If the CPA's appraisal is objected to by any Contributor or the selling Contributor, then the appraisals from three additional local CPAs shall be sought and obtained and the value of the Principal and Interest of the Selling Contributor shall be determined as the average amount of all four appraisals. The average shall be derived at by adding all four appraisals together then dividing them four.

5.5 In the event of the death of a Contributor, the Owner(s) and remaining Contributors shall have the choice of approving and accepting the heir (or heirs) of the Deceased Contributor as a substitute Contributor for such Deceased Contributor, terminating this agreement, or purchasing the Deceased Contributor's Principal and Interest. Acceptance of either a substitute Contributor, or termination of this agreement, or purchase of the Deceased Contributor's Principal and Interest shall require a majority vote, calculated on a pro-rata contribution amount, of the surviving Contributors and the Owner(s) to accept a substitute Contributor, terminate this agreement, or purchase the Deceased Contributor's Principal and Interest. If the Owner(s) and remaining Contributors, by a majority vote, based upon each Contributor's pro-rata contribution amount, choose to purchase the Deceased Contributor's Principal and Interest, it shall be a pro-rata purchase of the Principal and Interest of the Deceased Contributor amongst the surviving Contributors. A surviving Contributor may choose to forego the right to purchase a pro-rata portion of the Deceased Contributor's Principal and Interest. If a surviving Contributor elects not to purchase the Deceased Contributor's Principal and Interest, the other surviving Contributors may purchase the Deceased Contributor's Principal and Interest in a pro-rata portion. The payment for the Deceased Contributor's Principal and Interest shall be made to the heir or heirs of the Deceased Contributor. The value of the Principal and Interest for purposes of this Paragraph 5.3 shall be that which the Owner(s) and remaining Contributors and the representative of the Deceased Contributor agree upon within \_\_\_\_\_ (\_\_\_\_\_) days after the death of the Deceased Contributor. However, if the Owner(s) and Contributors and the representative of the Deceased Contributor cannot agree upon the value of the Principal and Interest within said time period, the value of the Principal and Interest shall be determined by a Certified Public Accountant (CPA). If the CPA's appraisal is objected to by the Owner(s) and any Contributor or representative of the Deceased Contributor, then the appraisals from three additional CPAs shall be sought and obtained and the value of the Deceased Contributor's Principal and Interest shall be determined as the average amount of all four appraisals. The average shall be derived at by adding all four appraisals together then dividing them four.

6. Termination of Agreement and Distribution of Proceeds.

6.1 When, pursuant to this Agreement, the Property is to be sold, the Contributors shall by a majority to agree upon the following within twenty (20) days thereafter:

- (i) The real estate broker who shall list the Property for sale;
- (ii) The selling price at which the Property will be listed for sale; and
- (iii) The minimum purchase price which the Contributors will accept for the sale of the Property.

6.2 Upon the sale or transfer of the Property, the net proceeds shall be used to pay to the Contributors in accordance with their respective Principals and Interest.

7. **Notices.**

7.1 Any and all notices of demands permitted or required to be made under this Agreement shall be in writing.

7.2 **Entire Agreement.** This Agreement contains the entire understanding between the Owner(s) and Contributors and supersedes any prior understanding and agreements between them with respect to the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Owner(s) and or Contributors hereto relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may only be amended upon the written agreement by the Owner(s) and a majority in numbers of the Contributors.

8. **Binding on Successors.** Except as otherwise hereinabove provided, this Agreement shall be binding upon and inure to the benefit of the Contributors hereto, their respective heirs, administrators, successors and assigns.

9. **Governing Law.**

The laws of the state of California shall govern this Agreement. All parties consent to the personal jurisdiction of the state of California and federal courts in \_\_\_\_\_.

10. **Collection Costs and Attorneys Fees**

The Owner(s) and Contributor(s) are responsible for their own attorneys' fees and court costs in addition to any other legal fee arising out of this agreement, except as noted in 4.3.

11. **Severability**

If any one or more of the provisions contained in this agreement is for any reason held to be unenforceable, invalid or illegal that will not affect any provision in this agreement that is not unenforceable, invalid or illegal. This agreement will be construed as if the unenforceable, invalid or illegal provisions had never been written into the agreement, unless the absence of those provisions would result in a substantial material change such as would reasonably obviate the purpose of this agreement.

**12. Waiver**

No waiver of any right or remedy contained in this agreement will be effective unless it is in writing and signed by the party waiving the right and that writing specifies the right being waived.

**13. Notices**

(a) Addresses: Notices to parties of the agreement shall be addressed as follows:

(i) If to the Owner(s)

Name(s)

U.S. Postal Address (Mailing Address, City, State, Zip Code)

or Owner(s) E-Mail

(ii) If to the Contributor(s)

Name(s)

U.S. Postal Address (Mailing Address, City, State, Zip Code)

or Borrower(s) E-Mail

(b) Writing, Delivery and Effective Date of Receipt

As pertaining to this agreement, all notices shall be in writing and those writings shall be deemed effective on the date received. Delivery of the writing shall be either via personal delivery, registered or certified mail.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date indicated below.

\_\_\_\_\_ Date \_\_\_\_\_

(Print Name)

\_\_\_\_\_ Date \_\_\_\_\_

(Print Name)