

Second Mortgage
Kansas Housing Resources Corporation
FTHB HOME Investment Program

This Second Mortgage (hereinafter referred to as "Second Mortgage") secures the payment of an indebtedness in the sum of \$_____.

THIS SECOND MORTGAGE is made this ____ day of _____, 20____ by and between _____, (hereinafter referred to as "Mortgagor"), and the **Kansas Housing Resources Corporation** (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of Kansas, whose address is, 200 SW 6th Ave, Topeka, Kansas 66603-3704.

MORTGAGOR, in consideration of the indebtedness herein recited and the Second Mortgage Promissory Note (hereinafter referred to as "Note"), subject to other rights of any prior lien holder under a prior Mortgage or mortgage, for the purpose of securing the prompt repayment by Mortgagor of said indebtedness and all other sums payable hereunder and under said Note, and also for the purpose of securing the performance of and compliance with all of the terms, covenants, conditions, and warranties herein contained and contained in the Note, the Mortgagor does hereby Mortgage unto the Mortgagee, its successors and assigns the following described property located in the County of, _____ State of Kansas:

(Insert Legal)

which has the address of _____ (herein "**Property Address**");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property covered by this Mortgage; and all the foregoing, together with said property are herein referred to as the "**Property**";

TO SECURE to Mortgagee the payment of the indebtedness evidenced by Mortgagor's Note dated _____, 20____, in the principal sum of _____ and No/100 Dollars, with no interest thereon, and the payments of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Second Mortgage; and the performance of the covenants and agreements of Mortgagor herein contained.

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed, that the Property is subject to a first Mortgage or mortgage and that Mortgagor will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed on a schedule of exceptions to coverage in any title insurance policy insuring Mortgagee's interest in the Property.

Mortgagor and Mortgagee covenant and agree as follows:

1. Payment of Principal and Interest. Mortgagor shall promptly pay when due the principal of and interest on indebtedness evidenced by the Note, prepayment and late charges as provided in the Note.

2. Application of Payments. Unless applicable law provides otherwise, all payments received by Mortgagee under the Note and Paragraph 1 hereof shall be applied by Mortgagee first in payment of interest payable on the Note, then to the principal of the Note.

3. Charges; Liens. Mortgagor shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage in accordance with the first mortgage. Mortgagor shall promptly furnish to Mortgagee receipts evidencing such payments upon request. Except for the first Mortgage or mortgage on the Property, Mortgagor shall promptly discharge any lien which has priority over this Mortgage; provided, that Mortgagor shall not be required to discharge any such lien so long as Mortgagor shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Mortgagee, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

4. Hazard Insurance. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, wind, and such other hazards as Mortgagee may require and in such amounts and for such periods as Mortgagee may require; provided, that Mortgagee shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to approval by Mortgagee; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Mortgagee and shall include a standard mortgage clause in favor of and in a form acceptable to Mortgagee. Mortgagee shall have the right to hold the policies and renewals thereof, and Mortgagor shall promptly furnish to Mortgagee all renewal notices and all receipts of paid premiums upon request.

In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor. Unless Mortgagee and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Mortgagor. If the Property is abandoned by Mortgagor, or if Mortgagor fails to respond to Mortgagee within thirty (30) days from the date notice is mailed by Mortgagee to Mortgagor that the insurance carrier offers to settle a claim for insurance benefits, Mortgagee is authorized to collect and apply the insurance proceeds at Mortgagee's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

5. Preservation and Maintenance of Property. Mortgagor shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property.

6. Protection of Mortgagee's Security. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Mortgagee's interest in Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option, upon notice to Mortgagor and any prior lien holder, may make such appearances, disburse such sums and take such action as is necessary to protect Mortgagee's interest, (including, but not limited to, disbursements of reasonable attorney's fees and entry upon the Property to make repairs). If the

Property is abandoned by the Mortgagor, Mortgagee may enter upon the Property to secure the premises to protect Mortgagee's interest in the Property.

Any amounts disbursed by Mortgagee pursuant to this Paragraph 6, with interest thereon, shall become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be payable upon notice from Mortgagee to Mortgagor requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph 6 shall require Mortgagee to incur any expense or take any action hereunder.

7. Inspection. Mortgagee may make or cause to be made reasonable entries upon and inspections of the Property, provided that Mortgagee shall give Mortgagor notice prior to any such inspection specifying reasonable cause therefore related to Mortgagee's interest in the Property.

8. Condemnation. Subject to the rights of any prior lien holder under a prior mortgage or Mortgage on the Property, the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Mortgagee.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Mortgagor. In the event of a partial taking of the Property, unless Mortgagor and Mortgagee otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Mortgagor.

If the Property is abandoned by Mortgagor, or if, after notice by Mortgagee to Mortgagor that the condemner offers to make an award or settle a claim for damages, Mortgagor fails to respond to Mortgagee within thirty (30) days after the date such notice is mailed, Mortgagee is authorized to collect and apply the proceeds, at Mortgagee's option, either to restoration or repair of the Property or to the sums secured by this Mortgage.

9. Mortgagor Not Released. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor and Mortgagor's successors in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest.

10. Forbearance by Mortgagee Not a Waiver. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage.

11. Remedies Cumulative. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors

and assigns of Mortgagee and Mortgagor, subject to the provisions of Paragraph 16 hereof. All covenants and agreements of Mortgagor shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

13. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Mortgagor provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to Mortgagor at the Property Address or at such other address as Mortgagor may designate by notice to Mortgagee as provided herein, and (b) any notice to Mortgagee shall be given by certified mail, return receipt requested, to Mortgagee's address stated herein or to such other address as Mortgagee may designate by notice to Mortgagor as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Mortgagor or Mortgagee when given in the manner designated herein.

14. Governing Law; Severability. This Mortgage shall be governed by the laws of the State of Kansas. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and the Note are declared to be severable.

15. Mortgagor's Copy. Mortgagor shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

16. Transfer of the Property or a Beneficial Interest in Mortgagor. Excluding a transfer to a prior lien holder under a prior mortgage or Mortgage, if all or any part of the Property or any interest in it is sold, foreclosed, or transferred (or if a beneficial interest in Mortgagor is sold or transferred and Mortgagor is not a natural person) without Mortgagee's prior written consent, Mortgagee may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Mortgagee if exercise is prohibited by federal law as of the date of this Security Instrument.

If Mortgagee exercises this option, Mortgagee shall give Mortgagor and the senior lien holder prior written notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Mortgagor must pay all sums secured by this Mortgage. If Mortgagor fails to pay these sums prior to the expiration of this period, Mortgagee may invoke any remedies permitted by this Mortgage without further notice or demand on Mortgagor.

Notwithstanding Mortgagee's right to invoke any remedies hereunder, Mortgagee agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the senior lien holder at least sixty (60) days prior written notice and the opportunity to cure any default hereunder.

17. Acceleration; Remedies. Except as provided in Paragraph 16 hereof, upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Mortgagee prior to acceleration shall mail notice to Mortgagor and to any prior lien holder as provided in Paragraph 13 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Mortgagor, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Mortgagor to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Mortgagee at Mortgagee's option may declare all of the sums secured by this Mortgage to be immediately due and payable without demand, and may invoke the power of sale and any other remedies permitted by applicable law. Mortgagee shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided herein, including, but not limited to, reasonable attorney's fees.

The Mortgagee's right to convey the property hereunder shall be subject and subordinate to the rights of any prior lien holder under a prior mortgage or Mortgage on the Property. A default under this Mortgage shall constitute a default under the First Mortgage and Second Mortgage, entitling the senior lien holder with the right to exercise all rights and remedies under the First Mortgage and Second Mortgage.

If the Mortgagor omits or misrepresents a material fact in an application for the loan evidenced by this Mortgage or any documents executed in connection with the loan, then Mortgagee may exercise any remedies available herein and permitted by law, including the acceleration of all payments due on the Note.

18. Mortgagor's Right to Reinstate. Notwithstanding Mortgagee's acceleration of the sums secured by this Mortgage, Mortgagor shall have the right to have any proceedings begun by Mortgagee to enforce this Mortgage discontinued at any time prior to the earlier to occur of (i) the fifth day before sale of the Property pursuant to the power of sale contained in this Mortgage or (ii) entry of a judgment enforcing this Mortgage if: (a) Mortgagor pays Mortgagee all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Mortgagor cures all breaches of any other covenants or agreements of Mortgagor contained in this Mortgage; (c) Mortgagor pays all reasonable expenses incurred by Mortgagee in enforcing the covenants and agreements of Mortgagor contained in this Mortgage and in enforcing Mortgagee's remedies as provided in Paragraph 17 hereof, including, but not limited to, reasonable attorney's fees; and (d) Mortgagor takes such action as Mortgagee may reasonably require to assure that the lien of this Mortgage, Mortgagee's interest in the Property and Mortgagor's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Mortgagor, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Release. Upon payment of all sums secured by this Mortgage or the end of the ten year compliance period described in Section 20, Mortgagee shall release this Mortgage. Mortgagor shall be responsible for the cost of recording said release.

20. HOME Investment Partnership Program: Mortgagee is assisting in the financing of the purchase of the Property with a loan from funds made available under the Home Investment Partnerships Program, (hereinafter referred to as the "HOME Program"), as described in Title II, the Cranston-Gonzalez National Affordable Housing Act, Public Law No. 101-625, 104 Stat. 4079 (1990), and 24 CFR Part 92, and pursuant to the rules and regulation promulgated thereunder and the requirements of the Mortgagee which administers the HOME Program. The loan is made without a charge for interest on the outstanding principal balance of said loan and is subject to principal reductions as provided in the Note and in Section 21.

21. Recapture. Federal Recapture provisions require that Mortgagee recoups all or a portion of the HOME assistance to the homebuyers if the housing subsidized does not continue to be the principal residence of the family for the duration of the period of affordability. The period of affordability is based upon the total amount of HOME funds subject to recapture described in 24 CFR 92.254 (a)(5)(ii)(A)(5). For Mortgagee, this period is ten (10) years for homebuyers assisted by the HOME Program. The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit.

In accordance with HUD regulations, Mortgagee shall calculate the amount of HOME assistance subject to recapture based on the following grounds for recapture:

- a. **Sale.** If Borrower sells the property during the 10 year period of affordability, Note Holder shall calculate the Recapture amount using the *Reduction method*. Under this method, the terms of forgiveness shall be as follows:

Principal amounts of less than fifteen thousand dollars (\$15,000) shall be reduced by a pro rata monthly reduction of one-half (1/2) of the principal balance over a period of sixty (60)

months and the remaining one-half (1/2) of principal shall be forgiven after one hundred twenty (120) months, *provided* all rules and regulations associated with the Program are complied with.

Principal amounts of fifteen thousand dollars (\$15,000) or greater shall be reduced on a pro rata monthly reduction for one-half (1/2) of the principal balance over a period of one hundred twenty (120) months and the remaining one-half (1/2) of principal shall be forgiven after one hundred twenty (120) months, *provided* that all rules and regulations associated with the Program are complied with.

However, should a property's appraised value be below the amount required for full repayment, or the property has been on the market for over 6 months without a contract, the *Shared Net Proceeds* method may be used. The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\text{HOME Investment} / (\text{HOME Investment} + \text{Homeowner investment}) = \text{HOME Percentage}$$

$$\text{Homeowner Investment} / (\text{HOME Investment} + \text{Homeowner investment}) = \text{Homeowner Percentage}$$

- b. **Foreclosure.** If the property goes into foreclosure or Borrower deeds the property in lieu of foreclosure, Note Holder shall calculate the Recapture amount using the *Shared Net Proceeds method*. Under this method, if there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, Note Holder will only Recapture the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\text{HOME Investment} / (\text{HOME Investment} + \text{Homeowner investment}) = \text{HOME Percentage}$$

$$\text{Homeowner Investment} / (\text{HOME Investment} + \text{Homeowner investment}) = \text{Homeowner Percentage}$$

- c. **Out of Compliance.** If the Mortgagor is out of compliance with the program by: (1) converting the property to rental use; (2) refinancing the property without written approval by Mortgagee; (3) failing to use the property as the Mortgagee's principal residence for the duration of the affordability period; or (4) failing to comply with any other regulation or requirement of HUD or the Mortgagee, the entire original subsidy amount shall be immediately due and owing Mortgagee without any forgiveness.

22. Subordination. Mortgagor and Mortgagee acknowledge and agree that the Note and this Mortgage is subject and subordinate in all respects to the lien, terms, covenants and conditions of the First Mortgage on the Property, including all sums advanced for the purpose of (i) protecting or further securing the lien of the First Mortgage, curing defaults by the Mortgagor under the First Mortgage or for any other purpose expressly permitted by the First Mortgage or (ii) constructing, renovating, preparing, or equipping the Property. The terms and provisions of the First Mortgage are paramount and controlling, and they supersede any other terms and provision hereof in conflict

therewith. In the event of a foreclosure of the First Mortgage, any provision herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting the Mortgagor's ability to sell the Property shall have no effect on subsequent owners or purchasers of the Property. Any person, including his or her successors or assigns (other than the Mortgagor or a related entity of the Mortgagor), receiving title to the Property through a foreclosure of the First Mortgage shall receive title to the Property free and clear from such restrictions.

This shall not be construed to indicate that Mortgagee must subordinate its interest in the property to any subsequent First Mortgage that shall come into being should the Buyer determine to refinance the property. Certain restrictions have been placed on the property through the covenants detailed in Section 20, and these covenants shall remain binding unless specifically waived in writing by Mortgagee.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written.

USE **BLUE** INK

(Print or type Mortgagor's Names Here)

(Sign Mortgagor's Names Here)

STATE OF KANSAS)
) ss
COUNTY OF _____)

On this ____ day of _____, 20____, before me personally appeared _____ and _____ to be known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that _____ executed the same for the purposes therein stated.

WITNESS, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission expires: _____

Notary Public in and for said County and State

(Print or type Notary's Name Here)