

**COUNTY OF VOLUSIA
NSP HOMEBUYER ASSISTANCE
NOTE**

\$ _____

DeLand, Florida _____, 2009

Property Address: _____
_____ (the "Property")

Parcel ID#: _____

1. BORROWER'S PROMISE TO PAY

For value received, the undersigned ("Borrower") promises to pay the sum of _____

(\$ _____) in U.S. dollars (hereinafter "Principal") to the order of the Lender. The Lender is the County of Volusia, a Political Subdivision organized and existing under the laws of the State of Florida and located at 110 W. Rich Avenue, DeLand, Florida 32720. The Lender, or anyone who takes this Note by transfer and who is entitled to receive the value as evidenced by this Note may be referred to as the "Lender" or "Note Holder."

2. INTEREST

There will be no interest charged during the life of this loan. However, upon a Borrower Default, any remaining unpaid principal will accrue interest and become due and payable as provided for herein.

3. PAYMENTS

The payments on this loan shall be deferred for so long as the undersigned remains fee simple owner and resides in the Property described herein and maintains the Property in accordance with the terms of this Note and the Subordinate Security Instrument executed of even date herewith ("Subordinate Security Instrument"). The deferred principal amount owing to this obligation shall be forgiven in full on the fifteenth (15th) anniversary date of this Note, DATE _____ ("Maturity Date"), provided, at such time there exists no un-cured default.

The entire principal amount of this Note shall be due and payable if the Borrower sells, rents, refinances (including equity financing)(subject to the County of Volusia's NSP Guidelines in effect as of the effective date hereof) or if the Property ceases to be the principal/homestead Property of Borrower during the fifteen (15) year term of this Note, or upon a Default as described herein.

The Note Holder shall have the optional right to declare the amount of the total balance hereunder due and forthwith payable in advance of the Maturity Date upon the occurrence of any Event of Default or failure to perform in accordance with any of the terms and conditions set forth in the Subordinate Security Instrument described below.

The indebtedness evidenced by this Note, and any other financial obligations which may hereafter be imposed on the Borrower by the Lender is subordinate to the indebtedness evidenced by a Note payable to a senior lender (if any), which Note may be secured by a first mortgage on the Property.

In the event the Property is sold and there are insufficient proceeds to pay off the full amount of the Lender's original loan to the Borrower (as set forth in this Note), the proceeds that are available after deducting applicable closing costs, sales commissions and Borrower's first Mortgage lien will be considered an accord and satisfaction and the Lender will release the obligation of the Borrower set forth in this Note.

4. FUTURE APPRECIATION/SHARED EQUITY.

The parties acknowledge and agree that the Lender acquired and rehabilitated the Property with funds provided for the federal Neighborhood Stabilization Program ("NSP") authorized by the 2008 Housing and Economic Recovery Act as set forth in 73 FR 58330, and further amended by NSP Bridge Notice set forth in FR 5255-N-02 for the purpose of selling the Property as affordable homeowner housing for households whose incomes do not exceed one hundred twenty percent (120%) of the area median income ("AMI"). The parties further acknowledge and agree that the Lender's commitment to lend the amounts set forth in this Note was conditioned upon the placement of a deed restriction on the Property that runs with the land for a term of ten (10) years that provides for the sharing of future appreciation in the value of the Property between the Borrower and the Lender, said appreciation being "Program Income" as that term is defined in the NSP rules and regulations. As such, in addition to payment of the Principal and interest as set forth elsewhere herein, the parties agree to the following shared equity provisions.

- a. For the purpose of determining future appreciation, the amount of shared equity due to the County, and application of this Paragraph 4, the following definitions shall apply:
 - i. Transfer - Any sale, conveyance, assignment or transfer, voluntary, involuntary, or by operation of law or judicial decree, whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, court order, bankruptcy proceedings, mortgage, lien foreclosure, or otherwise, of any interest in the Property, including, but not limited to that which may be secured by a lien or mortgage, a fee simple interest, a joint tenancy, a tenancy in common, a life estate, or a leasehold interest.
 - ii. Approved Final Value – The value of the Property that will be used by the parties to establish the Net Appreciation will be as determined by an arms-length negotiated contract sales price, in the event of a sale, or as determined by a certified appraisal, in the case of a payoff, refinance, equity loan, or any other non-sale transaction. The Lender reserves the right to hire its own independent appraiser, at the Borrower's cost, in the event the Lender deems the appraisal furnished by the Borrower does not accurately reflect the market price, or for any other legitimate concern the Lender may have.
 - iii. Eligible Improvements – Improvements in excess of Two Thousand and no/100 Dollars (\$2,000.00) that increase the value of the Property and require a government permit for construction and/or installation. Eligible Improvements do not include maintenance costs.
 - iv. Eligible Closing Costs – Those costs that are customarily charged to the seller as part of a real estate sales process. Such items may include, but are not limited to, real estate sales commission, owner's title insurance policy, documentary stamps on the deed, and prorated property taxes.
 - v. Outstanding Liens – Lien for payment of any loan that the Borrower used to acquire and/or improve the Property, but specifically excluding any lien securing the payment of any loan that the Borrower used to draw equity from the Property.
 - vi. Net Appreciation – The amount of Net Appreciation shall be determined by taking the Approved Final Value, less Eligible Closing Costs, less Borrower's

- initial investment in acquisition of the Property, less any valid Outstanding Liens (including the Lender's lien for payment of the loan from Lender evidenced by this Note), less Eligible Improvements to the Property.
- b. Throughout the shared equity period until the tenth (10th) anniversary of this Note, if the Borrower should transfer the Property, or any interest therein, or if the Property ceases to be the principal homestead residence of the Borrower, the Net Appreciation shall be due and payable to the Lender in accordance with the following schedule:
- | | |
|--|--------------------------|
| i. Year 1 until end of 2 nd year | 100% of Net Appreciation |
| ii. Year 3 until end of 5 th year | 50% of Net Appreciation |
| iii. Year 6 until end of 10 th year | 20% of Net Appreciation |
- c. The shared equity provisions of Paragraph 4 herein shall terminate on the tenth (10th) anniversary date of this Loan, which date shall be _____.

5. **BORROWER'S RIGHT TO PREPAY**

The Borrower has the right to prepay the balance due on this Note but any such prepayment made prior to the Maturity Date shall not relieve the Borrower of the shared equity provisions referenced herein. A payment of Principal only is known as a "Prepayment." When a Prepayment is made, the undersigned must notify the Note Holder, in writing, that they are doing so. Full Prepayment or partial Prepayments may be made without paying any Prepayment charge. The Note Holder will use all Prepayments to reduce the amount of Principal that is owed under this Note. If a partial Prepayment is made, there will be no change in the Due Date, unless the Note Holder agrees, in writing, to this change.

6. **LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected in connection with this loan exceed the permitted limit, then any sum already collected which exceeded permitted limits shall be credited as a payment of Principal unless the undersigned shall notify the Note Holder, in writing, that the undersigned elects to have such excess sum returned to it forthwith.

7. **BORROWER'S FAILURE TO PAY AS REQUIRED**

(A) Default

Should the Borrower sell, refinance, rent or otherwise transfer title to the Property, or any interest therein, or if the Property should cease to be the Borrower's principal residence, Borrower shall be considered in default of this Note and the full amount of the Note will be due to the Note Holder and shall bear interest at the rate of seven percent (7%) per annum from the date of such transfer assignment, sale, refinance, mortgage or other conveyance until paid in full. The Subordinate Security Instrument executed concurrent herewith to secure payment of all sums due on this Note shall remain a lien upon the Property until all amounts due hereunder are paid in full (including any shared appreciation which is or may become due in the future).

(B) No Waiver By Note Holder

The remedies of the Note Holder, as provided herein or in the Subordinate Security Instrument shall be cumulative and concurrent and may be pursued regularly, successively or together, at the sole discretion of the Note Holder, and may be exercised as often as occasion therefore shall arise. No

act of omission or commission of the Note Holder, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by the Note Holder, and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing as a waiver or release of any subsequent right, remedy or recourse as to a subsequent event. Even if, at a time when the undersigned is in default, the Note Holder does not require immediate payment in full, as described above, the Note Holder will still have the right to do so if a default occurs at a later time.

(C) Payment of Note Holder's Costs and Expenses

In the event the Note is collected by law or through an attorney at law, or under advice therefrom, the Borrower shall pay the Note Holder all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees, which are defined to include, without limitation, all fees incurred in all matters of collection and enforcement, construction and interpretations, before, during and after trial, proceedings and appeals, as well as appearances in reorganization or similar proceedings, and the cost of paraprofessional personnel working under supervision of an attorney.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to the Borrower under this Note will be given and effective by delivering it or by mailing it by first class mail to the undersigned at the Property address noted above.

Any notice that must be given to the Note Holder under this Note will be given and effective by delivering it or by mailing it by first class mail to the Note Holder, at the address stated in Section 1 (or at a different address if the Borrower is given a notice of that different address).

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to perform all of the Borrower's obligations under the Note. Any person, who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of them together. This means that any one of them may be required to pay all of the amounts owed under this Note.

10. WAIVERS

All persons now or at any time liable, whether primarily or secondarily, for the payment of the indebtedness hereby evidenced, for themselves, their heirs, legal representatives, successors and assigns respectively, hereby (a) expressly waive the rights of presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, and diligence in collection ("Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give Notice to other persons that amounts due have not been paid); (b) consent that the time of all payments or any part thereof may be extended, rearranged, renewed or postponed by the Note Holder and further consent that the collateral security or any part thereof may be released, exchanged, added to or substituted for by the Note Holder, without in any way modifying, altering, releasing, affecting or limiting their

respective liability or the lien of any security instrument; (c) agree that the Note Holder, in order to enforce payment of this Note, shall not be required first to institute any suit or to exhaust any of its remedies against the undersigned or any other person or party to become liable hereunder. This Note and the instruments securing it have been executed and delivered in, and their terms and provisions are to be governed and construed by the laws of the State of Florida.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Subordinate Mortgage (the "Subordinate Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if the undersigned does not keep the promises which are made in this Note. The Subordinate Security Instrument is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage (if any). The Subordinate Security Instrument further describes how and under what conditions the undersigned may be required to make immediate payment in full of all amounts owed under this Note. The Note Holder may, at its option, require immediate payment in full of all sums secured by the Subordinate Security Instrument. However, this option shall not be exercised by the Note Holder if exercise is prohibited by federal law as of the date of this Instrument. If the Note Holder exercises this option, the Note Holder shall give the Borrower 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 the Borrower must pay all sums secured by this Subordinate Security Instrument (sixty (60) days for the First Lien Holder). If neither the Borrower nor the First Lien Holder pays these sums prior to expiration of this period, the Note Holder may invoke any remedies permitted by this Note and the Security Instrument without further notice or demand on the Borrower or First Lien Holder.

12. If more than one party shall execute this Note, the term "undersigned," as used herein, shall mean all parties signing this Note and each of them, who shall be jointly and severally obligated hereunder.

In this Note, whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural.

13. COPY RECEIVED

Borrower hereby acknowledges receipt of a copy of this instrument.

- Remainder of Page Intentionally Left Blank -

NOTICE TO BORROWER

**Do not sign this Note if it contains blank spaces.
All spaces should be completed before you sign.**

The undersigned have executed this Note on the day and year first above mentioned.

_____ (seal) _____
Borrower Date

_____ (seal) _____
Borrower Date

This mortgage is given to Volusia County and is exempt from payment of intangible personal property tax pursuant to section 199.183 (1), Florida Statutes.

This instrument prepared by:
County of Volusia County
Community Assistance Division
110 West Rich Avenue
DeLand, Florida 32720-4611

When recorded, MAIL TO:

**COUNTY OF VOLUSIA
NSP HOMEBUYER ASSISTANCE
SUBORDINATE MORTGAGE**

THIS SUBORDINATE MORTGAGE ("Subordinate Security Instrument") is made this day of ____ of 20___. The grantor is _____("Borrower"). This Subordinate Security Instrument is given to the **County of Volusia**, organized and existing under the laws of the State of Florida whose address is 110 West Rich Avenue, DeLand, Florida 32720 ("Lender"). In this Subordinate Security Instrument, whenever the context so requires, the terms "Lender" and "Borrower" shall include heirs, legal representatives, successors and assigns of such parties.

WITNESSETH:

Borrower owes Lender the principal sum of _____Dollars (U.S. \$_____). This debt is evidenced by Borrower's Note dated the same date as this Subordinate Security Instrument ("Note"), which provides for no payments if the Borrower complies with the terms of the Note and this Subordinate Security Instrument. The Note provides that the full debt, if not paid earlier, shall be due and payable if the Borrower sells, rents, refinances (including equity financing), or if the Property ceases to be the principal/homestead property of Borrower prior to the Maturity date. The Note has a maturity date of fifteen (15) years. The deferred principal amount owing to such obligation will be forgiven in full on the fifteenth (15th) anniversary date of this Subordinate Security Instrument, _____ (maturity date), provided no default has occurred and remains uncured at such time.

In addition to the Note secured by this Subordinate Security Instrument, the Borrower obtained a mortgage loan (the "First Mortgage Loan" from _____, _____(the "Senior Lien Holder"), which loan is secured by a first mortgage lien on the Property (the "First Mortgage"). The documents evidencing or securing the first mortgage loan are collectively referred to herein as the First Mortgage Loan Documents. Notwithstanding any of the provisions of this Subordinate Security Instrument, the requirements of the Lender hereunder shall be subordinate to the requirements of the Senior Lien Holder of the First Mortgage executed by Borrower, in favor of _____executed on _____, _____, which is recorded simultaneously herewith in the Public Records of Volusia County in the State of Florida.

This Subordinate Security Instrument secures to Lender (a) the repayment of the debt evidenced by the Note, with interest, if applicable, as provided in the Note, and all renewals, extensions and Modifications of the Note; and (b) the performance of Borrower's covenants and

agreements under the Note and this Subordinate Security Instrument. For this purpose, Borrower irrevocably mortgages, grants and conveys to Lender and Lender's successors and assigns with power of sale, subject to the rights of the Senior Lien Holder under the First Mortgage, the Property located in Volusia County, Florida, which has the address of:

and is further described as:

(LEGAL DESCRIPTION INSERTED)

TO HAVE AND TO HOLD this Property unto Lender and Lender's successors and assigns, forever, all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Subordinate Security Instrument. All of the foregoing is referred to in this Subordinate Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and, except for the First Mortgage and other encumbrances of record acceptable to the Senior Lien Holder, the Property is unencumbered. The Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to such encumbrances of record.

BORROWER FURTHER COVENANTS and warrants that the Borrower's total household income at the time of its application for the Loan was at or below the guidelines for the the federal Neighborhood Stabilization Program ("NSP") authorized by the 2008 Housing and Economic Recovery act as set forth in 73 FR 58330, and further amended by NSP Bridge Notice set forth in FR-5255-N-02 for the Borrower's household size, and the Borrower is eligible to participate in the County of Volusia's First Time Home Buyer Program.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Indebtedness.** Borrower shall promptly pay, when due, the principal, and interest (if applicable) on the debt evidenced by the Note upon the occurrence of any event set forth in the Note, the basis of which triggers Borrower's repayment obligation.

2. **Funds for Taxes, Insurance and Assessments.** Subject to applicable law, Borrower shall pay to Lender, until the Note is paid in full, a sum "Funds" for: (a) yearly taxes and assessments which may attain priority over this Subordinate Security Instrument as a lien on the property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any other charges and encumbrances which now or hereafter are or may become a lien upon the Property or any part thereof. The Borrower shall not be obligated to make such payments of Funds to the Lender to the extent that the Borrower makes such payments to the Senior Lien Holder in accordance with the First Mortgage and Borrower provides written evidence of such to Lender in form satisfactory to Lender.

3. **Prior Mortgages; Charges; Liens.** The Borrower shall perform all of the Borrower's obligations under the First Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property that may attain priority over this Subordinate Security Instrument, and leasehold payments

or ground rents, if any. Borrower shall pay these obligations in the manner provided in Paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payments. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Except for the lien of the First Mortgage, Borrower shall promptly discharge any other lien which shall have attained priority over this Subordinate Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien or defends against enforcement of the lien by legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Subordinate Security Instrument. Except for the lien of the First Mortgage, if Lender determines that any part of the Property is subject to a lien that may attain priority over this Subordinate Security Agreement, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy such lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

4. Subordination. Lender and Borrower acknowledge and agree that this Subordinate Security Instrument is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage and to all advances heretofore made or which may hereafter be made pursuant to the First Mortgage including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Mortgage, curing defaults by the Borrower under the First Mortgage or for any other purpose expressly permitted by the First Mortgage or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Property. The terms and provisions of the First Mortgage are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Mortgage, other than the repayment obligations set forth in the Note, any provisions 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 Borrower's ability to sell the Property shall have no further force or effect on subsequent owners or purchasers of the Property. Any person, including his successors or assigns (other than the Borrower or a related entity of the Borrower), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Mortgage shall receive title to the Property free and clear from such restrictions.

5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by the Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with Paragraph 7 herein.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. All requirements hereof pertaining to insurance shall be deemed satisfied if the Borrower complies with the insurance requirements under the First Mortgage. All original policies of insurance required pursuant to the First Mortgage shall be held by the Senior Lien Holder; provided, however, that Lender shall be named as a loss payee as its interest may appear, that Lender shall be named as an additional insured, and provided that Lender shall be notified by the insurance carrier of termination or cancellation of the Policy. If Lender requires, Borrower shall promptly give to Lender copies of all receipts of paid premiums and renewal notices.

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In the event of loss, Borrower shall give prompt notice to the insurance carrier, the Senior Lien Holder and Lender. Lender may make proof of loss if not made promptly by the Senior Lien Holder or the Borrower.

If the restoration or repair is economically feasible and the Lender's security is not lessened, unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Subordinate Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within thirty (30) days a written notice from Lender that the insurance carrier has offered to settle a claim, the Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by the Subordinate Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the Note or change the amount of the payments. If under Paragraph 17 herein the Property is acquired by the Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Subordinate Security Instrument immediately prior to the acquisition by Lender.

Notwithstanding the above, Lender's rights to collect and apply the insurance proceeds hereunder shall be subject and subordinate to the rights of the Senior Lien Holder to collect and apply such proceeds in accordance with the First Mortgage.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Hazardous Substances; Borrower's Loan Application. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty (60) days after the execution of this Subordinate Security Instrument. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Subordinate Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in Paragraph 16 herein, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Subordinate Security Instrument.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and maintenance of the Property.

Borrower shall not destroy, damage, or impair the Property, allow the Property to deteriorate,

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or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deterioration or decrease in value due to its condition. Borrower shall comply with all City and/or County Codes relating to maintenance of the Property and shall repair or restore the Property upon Notice by the City and/or County, as the case may be. Failure to comply with this provision may result in Borrower's loan being placed in default.

As used in this Paragraph, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Prior to taking any such remedial action, however, the Borrower shall notify the Senior Lien Holder that such remedial action is necessary and shall obtain the Senior Lien Holder's prior written consent for such remedial action.

Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning (a) Borrower's occupancy of the Property as a principal residence, (b) Borrower's income and (c) other parties who will be occupying the Property.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Subordinate Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Subordinate Security Instrument (including sums secured by the First Mortgage), appearing in court, paying reasonable attorney's fees and entering upon the Property to make repairs. Although Lender may take action under this Paragraph, Lender does not have to do so.

Any amounts disbursed by Lender under this Paragraph shall become additional debt of Borrower secured by this Subordinate Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the rate of seven percent (7%) per annum and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

Prior to taking any actions under this Paragraph, however, Lender shall notify the Senior Lien Holder of such default in the manner provided in Paragraph 17 of this Subordinate Security

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Instrument, and shall provide the Senior Lien Holder with the opportunity to cure any such default under this Subordinate Security Instrument. In addition, the Lender 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. Any action by Lender hereunder to foreclose or accept a deed in lieu of foreclosure shall be subject to the "due on sale" provisions of the First Mortgage.

Lender and Borrower further agree that a default hereunder may constitute a default under the First Mortgage. In the event of a default hereunder, the Senior Lien Holder may have the right to exercise rights and remedies under the First Mortgage.

8. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of the First Mortgage.

In the event the Property, or any part thereof, shall be condemned or taken, the Lender shall have the right to demand that all money awarded for the appropriation thereof, or damage to the Property, shall be paid to Lender up to the amount of the sums secured by this Subordinate Security Instrument, whether or not the sums are then due, with any excess paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemner offers to make an award of settlement of a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property, or to the sums secured by this Subordinate Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the Note or change the amount of such payment.

10. Forbearance by Lender Not A Waiver. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right of remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Subordinate Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 15 herein. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Subordinate Security Instrument only to mortgage, grant and convey the Borrower's interest in the Property under the terms of this Subordinate Security Instrument; (b) is not personally obligated to pay the sums secured by this Subordinate Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forebear or make any other accommodations with regard to

the terms of this Subordinate Security Instrument or the Note without that Borrower's consent; provided, however, that such modification or accommodation shall not be made without the prior written consent of the Senior Lien Holder.

12. **Notices.** Any notice to Borrower provided for in this Subordinate Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice required to be given to the Senior Lien Holder shall be given by first class mail to the following address:

_____ or such other address the Senior Lien Holder designates by notice to the Borrower. Any notice provided for in this Subordinate Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this Paragraph.

13. **Governing Law; Severability.** This Subordinate Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Subordinate Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Subordinate Security Instrument or the Note which can be given effect without the conflicting provision. To this end, the provisions of this Subordinate Security Instrument and the Note are declared to be severable.

14. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Subordinate Security Instrument.

15. **Transfer of the Property or a Beneficial Interest in Borrower.** In addition to those amounts due as set forth in the shared equity provisions set forth in Paragraph 19 herein, if the Borrower transfers, assigns, sells, refinances (including any equity loan), or in any manner disposes of all or a portion of the Property, or any interest therein, then the sums secured by this Subordinate Security Instrument will become immediately due and payable, and such outstanding indebtedness shall bear interest at the rate of seven percent (7%) per annum from the date of such transfer, assignment, sale, refinance, mortgage or other conveyance until paid in full. The lien on the Property established by this Subordinate Security Instrument shall remain a lien on the Property until all amounts secured hereunder are paid in full.

If Borrower fails to pay these sums when due, Lender may foreclose and invoke any other remedies permitted by this Subordinate Security Instrument without further notice or demand on the Borrower. In the event the sums are collected by law or through an attorney at law, or under advice therefrom, the Lender will have the right to be paid back for all of its costs and expenses in enforcing the Note and this Subordinate Security Instrument, to the extent not prohibited by applicable law.

In the event suit is instituted to foreclose or to enforce payment of the sums secured by this Subordinate Security Instrument, or to enforce performance of any covenant or obligation hereunder, Lender shall be entitled to the appointment of a Receiver to take charge of the Property, to collect the rents, issues and profits therefrom, and to complete any construction and care for the Property, and such appointment shall be made by the court having jurisdiction thereof as a matter

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of right to the Lender, and all rents, profits, incomes, issues and revenues of the Property are hereby assigned and pledged as further security for payment of the sums hereby secured.

Notwithstanding Lender's right to invoke any remedies hereunder, as provided in Paragraph 7 above, Lender 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.

16. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Subordinate Security Instrument discontinued at any time. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Subordinate Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants and agreements; (c) pays all expenses incurred in enforcing this Subordinate Security Instrument, including, but not limited to, reasonable attorney's fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Subordinate Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Subordinate Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Subordinate Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Paragraph 15.

17. Acceleration; Remedies. Except as set forth in Paragraph 15 herein, Lender shall give notice to Borrower and the Senior Lien Holder prior to acceleration following Borrower's breach of any covenant or agreement in this Subordinate Security Instrument. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is given to Borrower (and with respect to the Senior Lien Holder, sixty (60) days from the date the notice is given to the Senior Lien Holder), by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Subordinate Security Instrument, foreclosure, and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration. If the default is not cured by the Borrower on or before the date specified in the notice and the Senior Lien Holder has not exercised its right to cure the default, then Lender, at its option may require immediate payment in full of all sums secured by this Subordinate Security Instrument without further demand and may foreclose by judicial proceeding and may invoke the power of sale and any other remedies permitted by applicable law. Except as set forth in Paragraph 15 herein, notwithstanding Lender's right to invoke any remedies hereunder, as provided in Paragraph 7 above, the Lender 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. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph, including, but not limited to, reasonable attorney's fees and the cost of title evidence.

18. Release. Upon payment of all sums secured by this Subordinate Security Instrument, Lender shall release this Subordinate Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

19. Future Appreciation/Shared Equity. The parties acknowledge and agree that the Lender acquired and rehabilitated the Property with funds provided in the federal Neighborhood Stabilization Program ("NSP") authorized by the 2008 Housing and Economic Recovery Act as set forth in 73 FR 58330, and further amended by NSP Bridge Notice set forth in FR 5255-N-02 for the purpose of selling the Property as affordable homeowner housing for households whose incomes do not exceed one hundred twenty percent (120%) of the area median income ("AMI"). The parties further acknowledge and agree that the Lender's commitment to lend the amounts secured by this Subordinate Security Instrument was conditioned upon the placement of a deed restriction on the Property that runs with the land for a term of ten (10) years that provides for the sharing of future

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appreciation in the value of the Property between the Borrower and the Lender, said appreciation being "Program Income" as that term is defined in the NSP rules and regulations. As such, in addition to payment of the Principal and interest as set forth elsewhere herein, the parties agree to the following shared equity provisions.

- a. For the purpose of determining future appreciation, the amount of shared equity due to the County, and application of this Paragraph 4, the following definitions shall apply:
 - i. Transfer - Any sale, conveyance, assignment or transfer, voluntary, involuntary, or by operation of law or judicial decree, whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, court order, bankruptcy proceedings, mortgage, lien foreclosure, or otherwise, of any interest in the Property, including, but not limited to that which may be secured by a lien or mortgage, a fee simple interest, a joint tenancy, a tenancy in common, a life estate, or a leasehold interest.
 - ii. Approved Final Value – The value of the Property that will be used by the parties to establish the Net Appreciation will be as determined by an arms-length negotiated contract sales price, in the event of a sale, or as determined by a certified appraisal, in the case of a payoff, refinance, equity loan, or any other non-sale transaction. The Lender reserves the right to hire its own independent appraiser, at the Borrower's cost, in the event the Lender deems the appraisal furnished by the Borrower does not accurately reflect the market price, or for any other legitimate concern the Lender may have.
 - iii. Eligible Improvements – Improvements in excess of Two Thousand and no/100 Dollars (\$2,000.00) that increase the value of the Property and require a government permit for construction and/or installation. Eligible Improvements do not include maintenance costs.
 - iv. Eligible Closing Costs – Those costs that are customarily charged to the seller as part of a real estate sales process. Such items may include, but are not limited to, real estate sales commission, owner's title insurance policy, documentary stamps on the deed, and prorated property taxes.
 - v. Outstanding Liens – Lien for payment of any loan that the Borrower used to acquire and/or improve the Property, but specifically excluding any lien securing the payment of any loan that the Borrower used to draw equity from the Property.
 - vi. Net Appreciation – The amount of Net Appreciation shall be determined by taking the Approved Final Value, less Eligible Closing Costs, less Borrower's initial investment in acquisition of the Property, less any valid Outstanding Liens (including the Lender's lien for payment of the loan from Lender evidenced by this Subordinate Security Instrument), less Eligible Improvements to the Property.
- b. Throughout the shared equity period until the tenth (10th) anniversary of this Note, if the Borrower should transfer the Property, or if the Property ceases to be the principal homestead residence of the Borrower, the Net Appreciation shall be due and payable to the Lender in accordance with the following schedule:
 - i. Year 1 until end of 2nd year 100% of Net Appreciation
 - ii. Year 3 until end of 5th year 50% of Net Appreciation

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iii. Year 6 until end of 10th year 20% of Net Appreciation

c. The shared equity provisions of Paragraph 19 herein shall terminate on the tenth (10th) anniversary date of this Subordinate Security Instrument, which date shall be _____.

20. The indebtedness evidenced by this Subordinate Security Instrument, and any other financial obligations which may hereafter be imposed on the Borrower by the Lender is subordinate to the indebtedness evidenced by a Note payable to a senior lender (if any), which Note may be secured by a first mortgage on the Property. In the event the property is sold and there are insufficient proceeds to pay off the full amount of the Lender's original loan to the Borrower (as secured by this Subordinate Security Instrument), the proceeds that are available after deducting applicable closing costs, sales commissions and Borrower's first Mortgage lien will be considered an accord and satisfaction and the Lender will release the obligation of the Borrower set forth in this Subordinate Security Instrument.

21. **Notice to Borrower.** Do not sign this Subordinate Security Instrument if it contains blank spaces. All spaces should be completed before you sign.

- Remainder of Page Intentionally Left Blank -

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BY SIGNING BELOW, the Borrower accepts and agrees to the terms and covenants contained in this Subordinate Security Instrument.

Signed, sealed and delivered in the presence of:

Witness Signature (as to Borrower)

Signature

Printed Name

Printed Name

Witness Signature (as to Borrower)

Post Office Address

Printed Name

Witness Signature (as to Co-Borrower, if applicable)

Co-Signer Signature

Printed Name

Printed Name

Witness Signature (as to Co-Borrower, if applicable)

Post Office Address

Printed Name

STATE OF FLORIDA
COUNTY OF VOLUSIA

I hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgements, personally appeared _____ to me to be the person(s) described in and who executed the foregoing instrument, who acknowledged before me that he/she/they executed the same, that I relied upon the following form of identification of the above-named person(s), **driver's license**, and that an oath was was not taken.

Witness my hand and official seal in the County and State last aforesaid this _____ day of _____
-year-.

Notary Rubber Stamp Seal

Notary Signature

Printed Notary Signature