

Return To:

City of Palm Coast
Community Development Department
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

**PURCHASE ASSISTANCE
SUBORDINATE MORTGAGE**

THIS MORTGAGE ("Mortgage") is made this _____ day of _____, 20__ between Mortgagor, (Insert Borrower Name) _____ (hereinafter "Borrower"), and the Mortgagee, the City of Palm Coast (hereinafter "Lender"), a political subdivision of the State of Florida, whose address is the Community Development Department, 160 Cypress Point Parkway, Suite B-106, Palm Coast, FL 32164.

WHEREAS, Borrower is indebted to Lender in the principal sum of \$000,000.00 (Insert in words Dollars and 0/00ths Dollars), which indebtedness is evidenced by Borrower's Mortgage Note (hereinafter "Note") of even date herewith, attached hereto as Exhibit "A" and incorporated by reference herein; and

IN CONSIDERATION of the aggregate sum named in the Note, and the payment of all other sums advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby grant, convey, and mortgage unto Lender, in fee simple, all those certain lands, situate, lying and being in the City of Palm Coast, Flagler County, Florida, described as follows:

(Insert Legal Description of Property)

which has the address of _____ (the "Property"); and

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property are herein referred to as the "Property," whether now owned or hereafter acquired by Borrower; and

BORROWER covenants that Borrower is lawfully seized of the Property hereby conveyed and has full power and lawful right to mortgage, grant, and convey the Property, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements, or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property;

CONDITIONED, HOWEVER, that if Borrower shall pay or cause to be paid to Lender, its successors or assigns, together with such interest as may be provided for in the Note or by this Mortgage, prior to maturity, the principal sum, as stated in that certain Note, and if Borrower shall fully perform all the covenants, conditions and terms of this Mortgage, then this Mortgage shall be void, otherwise this Mortgage shall remain in full force and effect until the Note is paid in full.

NOW, THEREFORE, Borrower and Lender covenant and agree as follows:

1. **Payment of Indebtedness.** Borrower shall pay all principal and interest and other sums of money payable according to the terms of the Note and this Mortgage.

2. **Term.** The term of this Mortgage shall be for a period of 10 years, commencing on (insert date)_____, 20___, and ending on (insert date)_____, 20___.

3. **Loan Intended as a Neighborhood Stabilization Program Benefit.** The loan (also referred to as a “Deferred Payment Loan” or “DPL”) secured by this Mortgage, evidenced by the Note, was made by Lender to Borrower pursuant to Lender’s Affordable Housing Program. The loan, therefore, is made at an interest rate and upon terms generally more favorable to the Borrower than would otherwise be available to the public at large. Accordingly, Borrower understands that this loan is intended to be a Neighborhood Stabilization Program (NSP) benefit and not solely as an instrument to increase the value of this property.. Therefore, the Borrower agrees to maintain and own the Property for the entire term of the Mortgage. Further, the Borrower shall occupy the Property as the Borrower’s primary residence, and shall not rent or lease the Property to any other party. As long as the Borrower remains in compliance with all of the covenants, conditions, and terms of the Mortgage, no repayment of the Note is required and the Mortgage will expire at the end of its term. Should the Borrower fail to be in compliance with any covenant, condition or term of the Mortgage and Note, or otherwise transfers, assigns, sells, refinances, mortgages, leases, rents, or in any manner disposes of all or a portion of the Property, or any interest therein, then repayment of the Note secured by this Mortgage shall be required as set forth in Section 10 herein. Additionally, Borrower consents to this Mortgage being amended and restated, or modified, or an additional mortgage being filed to secure the cost of any NSP-funded rehabilitation construction work performed on the Property.

4. **Prohibition of Additional Financing; Liens.** An important component of the consideration for the extension of credit evidenced by the Note secured by this Mortgage is Borrower’s equity in the Property and the maintenance of such equity (as increased through future appreciation, if any) during the term of the Mortgage. Borrower will not, without the written consent of the Lender, obtain additional financing of any kind relating to the Property encumbered by this Mortgage or cause or permit any other lien of any kind to be imposed on the Property. The Lender shall only be the subordinate mortgagee to the primary lender until the end of the term of the Mortgage.

5. **Restriction on Transfer and Assumption.** The obligation of the Borrower under this Mortgage and the Note secured hereby shall not be transferred to, assumed by, or performed by any other person or entity, and any such transfer, assumption, or attempted performance, or any conveyance of the property encumbered by this Mortgage without the written consent of Lender shall, at the option of the Mortgagee, constitute a failure of performance under this Mortgage and the Note secured by this Mortgage. Acceptance of payments following a violation of such restriction shall not constitute a waiver of the option of the Lender to accelerate repayment of the entire aggregate balance.

6. **Taxes and Assessments.** Borrower shall pay, before they become delinquent, all taxes and assessments of every nature affecting the Property, and all other charges and encumbrances

which now or hereafter are a lien upon the Property or any part thereof. Notwithstanding the foregoing, Borrower shall have the right to contest any tax or assessment made against the Property provided that Borrower shall comply with the appropriate procedures for such contest established by law, ordinance or otherwise.

7. **No Waste.** Borrower will permit, commit or suffer no waste, impairment or deterioration of the Property and will keep and maintain all improvements now or hereafter on the Property in sound condition and good repair.

8. **Insurance.** Borrower shall keep the Property and all improvements insured for their full insurable value against loss by fire, flood if so required, and other losses normally covered by an extended coverage endorsement. All policies of insurance which insure against any loss or damage to the Property shall provide for loss payable to Lender, without contribution by Lender, pursuant to Lender clauses satisfactory to Lender.

9. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including but not limited to, eminent domain, insolvency, code enforcement, delinquent taxes, lack of or inadequate insurance, or arrangements or proceedings involving a bankruptcy or decedent, then Lender at Lender's option, after at least ten (10) days notice to Borrower, may make such appearances, disburse such sums, and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Any amounts disbursed by Lender shall become additional indebtedness of Borrower secured by this Mortgage and shall bear interest at the rate of five percent (5%) per annum.

10. **Acceleration.** The whole of the indebtedness hereby secured shall become due and payable, at the option of Lender, (i) after failure in the performance of any covenant herein, which nonperformance remains uncured for fifteen (15) days after notice to Borrower of said nonperformance or noncompliance or (ii) upon institution of foreclosure proceedings of any other mortgage or lien affecting the Property which is not dismissed within fifteen (15) days thereafter, and this Mortgage may be foreclosed, and all costs and expenses of collection by foreclosure or otherwise, including attorney's fees, shall be paid by Borrower and same are secured hereby.

Should the Borrower become deceased during the term of the Mortgage, the repayment requirement shall be tolled upon the death of the Borrower until the Property is probated, deeded, or otherwise transferred.

One hundred percent (100%) of the outstanding principal shall become due immediately and payable in the event of fraud or deception on the part of the Borrower.

11. **Receiver.** In the event suit is instituted to foreclose this Mortgage or to enforce payment of the Note, or the 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 of the jurisdiction thereof as a matter 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 indebtedness hereby secured with the right on the part of Lender at any time after nonperformance or noncompliance hereunder, which nonperformance/noncompliance remains uncured upon the expiration of any applicable curative period, to demand and receive the same and apply the same on the indebtedness hereby secured.

12. Maintenance of Properties. The Property must be maintained and operated in a Code compliant and safe, healthy manner throughout the life of this Mortgage. The Property shall be repaired to Code standards and the Property shall be maintained in good condition, including but not limited to lawn maintenance, removal of debris and nuisances in the yard, noise management and other appropriate measures to keep the Property compliant with all Code requirements as a part of a stable, attractive neighborhood.

13. Condemnation. In the event the Property, or any part thereof, shall be condemned or taken for public use under powers of eminent domain, Lender shall have the right to demand that all money awarded for the appropriation thereof, or damage to the Property, whether by reason of such condemnation or by agreement of the parties in lieu thereof shall be paid to Lender up to the amount of the outstanding indebtedness of the obligation secured hereby. Such condemnation or application shall not otherwise affect or vary the obligation of Borrower to pay the indebtedness.

14. Mortgage Subject to Net Proceeds Limit: The Property must be used for an eligible NSP activity as defined herein for a period of ten (10) years from the effective date of this Mortgage. If the Property is sold, transferred, leased, rented, or ceases to be used for an eligible NSP activity within a period of ten (10) years after the effective date of this Mortgage, the Borrower shall repay to Lender a sum equal to the full amount of this Mortgage, subject to the maximum amount available based on net proceeds. Net proceeds are defined as the amount available from the sale less non-NSP debt recorded prior to the date of this Mortgage and closing costs. If the amount of net proceeds is not sufficient to repay the entire DPL amount, then the amount to be repaid shall be as follows:

DPL repayment amount = $DPL \text{ amount} \div (DPL \text{ amount} + \text{amount of any Owner's capital investment})$
multiplied by the net sale proceeds.

15. Notice. Except for any notice required under applicable law to be given in another manner: a) any notice to Borrower provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein; and b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address state herein or to such other address as Lender may designate by notice to Borrower as provided herein.

16. Persons Bound. All covenants and stipulations in these presents contained shall bind the heirs, executors and administrators, successors and assigns of Borrower and Lender, and shall inure to the benefit of and be available to the successors and assigns of Borrower and Lender, as appropriate.

17. Usage. The use of any gender herein shall include all genders, and the word "Borrower," if it appears that there is more than one, shall, whenever herein used, be construed in the plural; and all the covenants, agreements and undertakings herein set forth shall be joint and several.

18. Severability. If any provision of this Mortgage shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained, nor the application of the provision to other persons, entities or circumstances, shall be affected thereby, but instead shall be enforceable to the maximum extent permitted by law.

19. Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Mortgage.

20. Insolvency. Should a receiver be appointed for Borrower or should Borrower become unable to pay its debts as they mature, then this Mortgage and the Note shall become immediately due and payable and Lender shall have the right at its option to immediately foreclose this Mortgage without notice.

21. Applicable Law. This Mortgage shall be governed by, and construed in accordance with, the laws of the State of Florida.

22. Compliance with Laws. Borrower warrants and represents that Borrower has complied, and shall hereafter comply, with all valid laws, rules, ordinances and regulations of the Federal, state and local government, and all agencies and subdivisions thereof which laws, rules, ordinances and regulations apply or relate to the Property.

23. Remedies Cumulative. In the event Borrower fails to make payments due under the Note which failure remains uncured for fifteen (15) days after the due date, or in the event of any other nonperformance or noncompliance hereunder which remains uncured for fifteen (15) days after notice from Borrower to Lender, Lender shall have, in addition to the rights and remedies specified herein, all other rights and remedies provided by law, in equity, or in the Note. The remedies of Lender, as provided herein or in the Note, shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Lender, and may be exercised as often as occasion therefore may arise. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of any subsequent right, remedy or recourse as to a subsequent event.

24. Release. Upon payment of all sums secured by this Mortgage, or upon expiration of the term of this Mortgage with all covenants, conditions and terms having been met by the Borrower, the Lender shall release this Mortgage without charge to Borrower and a Satisfaction of Mortgage shall be filed in the Public Records of Flagler County. Borrower shall pay all costs of recordation, if any.

(THIS SPACE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, this Mortgage has been duly executed by the undersigned, as of the above date.

Witness Signature

Borrower Signature

Witness Name Printed

Borrower Name Printed

Witness Signature

Witness Name Printed

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, who is/are personally known to me or produced _____ as identification.

Signature Notary Public
Print Name: _____
My Commission Expires: _____

Return To:

City of Palm Coast
Community Development Department
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

EXHIBIT A - MORTGAGE NOTE

NOTE NO.: NSP- _____

Date: _____

NOTE AMOUNT: _____

FOR VALUE RECEIVED, (Insert Borrower Name) with an address of (Insert Property Address) (hereinafter "Maker") promises to pay to the order of the City of Palm Coast (hereinafter called "Holder"), at its office located at the Community Development Department 160 Cypress Point Parkway, Suite B-106 Palm Coast, FL 32164, or such other place as Holder may hereafter designate in writing, the principal sum of Insert Dollars and 0/100ths Dollars (\$Insert), at zero percent (0%) interest on the unpaid principal balance for ten (10) years, except as set forth herein.

This Mortgage Note (hereinafter "Note") is secured by a Purchase Assistance Subordinate Mortgage (hereinafter called the "Mortgage") of even date herewith, which is a lien on certain fee simple estate in real property described therein (hereinafter the "Property"), executed by the Maker in favor of the Holder.

Principal and interest shall be payable as follows:

- 1) Interest on this Note shall be zero percent (0%) per annum.
- 2) In the event the Maker ceases to own the Property under the terms of the Mortgage, or otherwise transfers, assigns, sells, refinances, mortgages, or in any manner disposes of all or a portion of the Property, or any interest therein, then at the Holder's option, the indebtedness secured hereby shall become immediately due and should the outstanding indebtedness not be satisfied on the date of such transfer, assignment, sale, refinance, mortgage or other conveyance, all costs and expenses of collections, including attorneys' fees, shall be paid by Maker and secured hereby.

For purposes of this Note, a complete year of ownership shall consist of three hundred sixty-five (365) calendar days from the date of this Note.

Holder shall have the option to declare the entire unpaid balance hereunder to be due and payable upon Maker's failure to perform in accordance with any of the terms and conditions of the Mortgage, this Note, or any other document executed in connection with this indebtedness, or if a judgment is entered against Maker. Upon exercise of this option by Holder, the entire unpaid balance of principal shall bear interest at the rate specified herein. Forbearance to exercise this option shall be without notice to Maker, notice of such exercise being hereby expressly waived.

The Maker is notified that this Note is subject to being amended and restated to include the cost of any NSP-funded rehabilitation construction work performed on the Property. The Maker consents to this Note being amended and restated to include the additional cost incurred. The Holder requires the Property to be maintained and operated in a Code-compliant and safe, healthy manner throughout the life of the Mortgage. The Property shall be maintained in good condition, including but not limited to lawn maintenance, removal of debris and nuisances in the yard, noise management and other appropriate measures to keep the Property compliant with all Code requirements as a part of a stable, attractive neighborhood.

In the event an attorney is employed by Holder to enforce or defend any provisions of this Note, the Mortgage, or to otherwise preserve or protect the collateral therefore (whether or not upon Maker's nonperformance or noncompliance), Maker agrees to pay all reasonable attorney's fees incurred thereby along with such fees and expenses and other costs related thereto, whether incurred in or out of court, in trial, on appeal, or in bankruptcy proceedings.

The remedies of Holder as provided herein or in any Mortgage or other document executed in connection with this indebtedness, shall be cumulative and concurrent, and may be pursued singularly, successively, or together, at the sole discretion of Holder, and may be exercised as often as occasions therefore shall arise. No act or omission of Holder, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of such right, remedy or recourse and any waiver or release may be effected only through a written document executed by 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 bar to, or as a waiver or release of, any subsequent right, remedy, or recourse as to a subsequent event.

All persons or corporations 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 (1) expressly waive presentment, demand for payment, notice of dishonor, protest, notice of non-payment or protest, and diligence in collection, and (2) further consent that the real or personal property securing this Note or any part of such security may be released, exchanged, or substituted by Holder hereof, without modifying, altering, releasing, affecting or limiting their respective liability or the lien of any Security Instrument, and (3) agree that Holder shall not be required first to institute any suit, or to exhaust any of its remedies against Maker or any other person or party to become liable hereunder, in order to enforce payment of this Note, and (4) agree that Maker may be released by Holder from any or all liability under this instrument and such release shall in no way affect or modify the liability of the remaining parties hereto.

Except to the extent allowed or required by applicable federal law, the validity and interpretation of this Note and the instruments securing it, and their terms and provisions, are to be construed in accordance with and governed by the laws of the State of Florida.

IN WITNESS WHEREOF, Maker has executed this Note on the day and year first above written.

Maker Signature

Maker Printed Name

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, who is/are personally known to me or produced _____ as identification.

Signature Notary Public
Print Name: _____
My Commission Expires: _____