

Second Mortgage Promissory Note
Kansas Housing Resources Corporation
FTHB HOME Investment Partnerships Program

\$ _____
Loan No. _____

Date: _____, 20__

FOR VALUE RECEIVED, the undersigned (hereinafter "**Borrower**") promises to pay to the order of the **Kansas Housing Resource Corporation** (hereinafter "**Note Holder**" or "**KHRC**"), with offices at 611 S. Kansas Avenue, Suite 300 Topeka, Kansas 66603, the principal sum of _____ Dollars (\$_____) with interest on such amount of Principal as may be advanced from time to time, computed at the rate of Zero Percent (0%) per annum (hereinafter "Loan Rate") for so long as the Principal, or any part thereto, shall remain outstanding (hereinafter "Loan Term"), from and after this date as hereinafter provided.

1. PAYMENTS

Borrower acknowledges that Note Holder is assisting Borrower in financing the purchase of Borrower's residence from funds made available to KHRC under the Home Investment Partnerships Program, (hereinafter the "HOME Program"), as described in Title II, the Cranston-Gonzalez National Affordable Housing Act, Public Law No. 101-625, 104 Stat. 4079 (1990), 24 C.F.R. Part 92, and pursuant to rules and regulations promulgated there under and requirements of KHRC.

Federal Recapture (hereinafter "Recapture") provisions require that KHRC 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 Note Holder, 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.

Principal and accrued interest, if any, shall be due and payable upon the happening of 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 Borrower is out of compliance with the program by: (1) converting the property to rental use; (2) refinancing the property without written approval by Note Holder; (3) failing to use the property as the Note Holder'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 Note Holder, the entire original subsidy amount shall be immediately due and owing Note Holder without any forgiveness.

If all of the terms and conditions of the Second Mortgage (hereinafter "Mortgage") and this Note have been truly fulfilled at the end of ten (10) years from the date of this Note, the loan evidenced by this Note will be forgiven, and the Note cancelled by KHRC.

Principal and interest, if any shall be due, shall be payable at 611 S. Kansas Avenue, Suite 300 Topeka, Kansas 66603 or such other place as the Note Holder may designate in the manner described below.

If Note Holder exercises its acceleration option as described under the Mortgage, Note Holder shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is mailed, as provided in Paragraph 4 in this Note, within which Borrower must pay all sums due under this Note and secured by the Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Borrower may invoke any remedies permitted by the Mortgage without further notice or demand on the Borrower.

2. NOTE SECURED BY SECOND MORTGAGE

The indebtedness evidenced by this Note is secured by a Second Mortgage, dated _____, 2____ and reference is made to the Mortgage for rights as to acceleration of the indebtedness evidenced by this Note.

3. BORROWER'S FAILURE TO PAY AS REQUIRED

In addition to the option to accelerate set forth above, if any payment under this Note is not paid when due and remains unpaid after a date specified by a notice to Borrower, the Note Holder may proceed with any remedy available at law or in equity, including foreclosure. The date specified shall not be less than thirty (30) days from the date such notice is mailed. If suit is brought to collect this Note, the Note Holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorneys' fees.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof.

4. GIVING OF NOTICES

Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address stated below, or to such other address as Borrower may designate by notice to the Note Holder. Any notice to the Note Holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note Holder at the address stated in this Note, or at such other address as may have been designated by notice to Borrower.

5. RESPONSIBILITIES OF PERSONS UNDER THIS NOTE

This Note shall be the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

Borrower _____ Borrower _____

Property Address _____

I (WE) ACKNOWLEDGE RECEIPT OF ONE COPY OF THE SECOND MORTGAGE PROMISSORY NOTE AT THE TIME OF ITS EXECUTION

Borrower _____ Borrower _____

USE BLUE INK