

**Dakota County Community Development Agency**  
**2010 First Time Homebuyer Program DOWNPAYMENT ASSISTANCE LOAN MORTGAGE**

THIS MORTGAGE is given on \_\_\_\_\_.

The Mortgagor is \_\_\_\_\_ (herein "Borrower").

This Mortgage is given to Dakota County Community Development Agency, which is a public body corporate and politic organized and existing under the laws of Minnesota, and whose address is 1228 Town Centre Drive, Eagan, MN 55123 (herein "Lender"). Borrower owes Lender the principal sum of \_\_\_\_\_ Dollars (U.S. \$\_\_\_\_\_ ) consisting of funding provided by the Dakota County Housing Opportunities Enhancement (HOPE) Program or Dakota County CDA Reserve Funds.

This debt is evidenced by Borrower's Note dated the same date as this Mortgage ("Note"), with the full debt, if not paid earlier, due and payable on the Maturity Date as defined in the Note, but in no event later than \_\_\_\_\_. This Mortgage secures to Lender (a) the repayment of the debt evidenced by the Note, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and (c) the performance of the covenants and agreements of Borrower under this Mortgage and the Note. For this purpose, Borrower does hereby grant and convey to Lender, with power of sale, the following described property located in the City of \_\_\_\_\_, County of Dakota, State of Minnesota:

With the address of \_\_\_\_\_ (herein "Property Address").

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 stock, and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage 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 that the Property is unencumbered, except for encumbrances of record Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

1. Payment of Principal. Borrower shall promptly pay when due the principal balance of the debt evidenced by the Note, and any prepayment due under the Note.

In transactions where the result is zero net proceeds, or where net proceeds are not sufficient to repay the 2010 First Time Homebuyer Program Downpayment Assistance loan, the Lender can only recapture the net proceeds available.

2. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under paragraph 1 hereof shall be applied first to prepayment charges due under the Note; second, to principal balance due.

3. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any, Borrower shall pay these obligations by making payment, when due, directly to the person owed

payment. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and receipts evidencing such payments.

Borrower shall promptly discharge any lien which has priority over this Mortgage unless Borrower: (a) agrees in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender; (b) contests in good faith such lien by, or defends against enforcement of such lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any law of the Property; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Mortgage. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Mortgage, Lender may give Borrower a notice identifying the lien.

Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property measured against loss by fire, hazards included within the term "extended coverage," and such other hazards for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods the Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

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 economically feasible and the Lender's security is not lessened. If such 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 Mortgage, whether due or not, with any excess paid to Borrower. If Borrower abandons the Property or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Mortgage, 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 payment referred to in paragraph 1 or change the amount of the payments. If under paragraph 17 the Property is acquired by 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 Mortgage immediately prior to the acquisition.

If under paragraph 18 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition. The right of Lender to insurance proceeds is subject to the rights therein of the Mortgagee under the First Mortgage.

5. Preservation and Maintenance of Property; Leaseholds. Borrower shall not destroy, damage or substantially change the Property, allow the Property to deteriorate or commit waste. If this Mortgage is on a leasehold, Borrower shall comply with the provisions of the lease, and if Borrower acquires fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.

6. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's interest in the Property (such as a proceeding in bankruptcy, probate, for condemnation 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 Mortgage, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 6, Lender does not have to do so. Any amounts disbursed by Lender under this paragraph 6 shall become additional debt of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the highest rate permissible under applicable law, and shall be payable with interest, upon notice from Lender to Borrower requesting payment.

7. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to any inspection specifying reasonable cause for the inspection.

8. 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.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, the sums secured by this Mortgage shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured by this Mortgage immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be 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 or settle a claim for damages, Borrower fails to respond to Lender within 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 Mortgage, 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 payments referred to in paragraph 1 hereof or change the amount of such payments.

The right of the Lender to condemnation proceeds is subject to the rights of the Mortgagee under the First Mortgage.

9. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of the time for payment of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor or refuse to extend time for payment of the sums secured by this Mortgage by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or shall not be a waiver of or preclude the exercise of any such right or remedy.

10. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements herein contained shall bind and benefit the successors and assigns of Lender and Borrower. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Mortgage but does not execute the Note: (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Mortgage, (b) is not personally obligated to pay the sums secured by this Mortgage; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent.

11. Loan Charges. If the loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be

collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

12. Legislation Affecting Lender's Rights. If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Mortgage unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Mortgage and may invoke any remedies permitted by paragraph 18. If Lender exercises this option, Lender shall take the steps specified in the second paragraph of paragraph 16.

13. Notice. Any notice to Borrower provided for in this Mortgage 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 or any other address Borrower designates by notice to Lender. 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 provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Mortgage 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 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 that conflicting provision. To this end the provisions of this Mortgage and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Mortgage.

16. Transfer of the Property. If all or any part of the Property or an interest therein whether by lease, deed or contract for deed or otherwise, whether for consideration or by gift or in the event of death or otherwise, and whether voluntarily, involuntarily or by operation of law, is sold or transferred, all sums secured by this Mortgage shall be immediately due and payable. Notwithstanding the foregoing, (a) if the Borrower owns the Property as co-tenants, a transfer of the Property or any interest therein from one co-tenant to another co-tenant shall not be considered a transfer; (b) a taking by eminent domain shall not be considered a transfer unless it is a total taking in the sense that payment is made for the full value of the Property; (c) the creation of a lien or encumbrance subordinate to this Mortgage shall not be considered a transfer; (d) the creation of a purchase money security interest for household appliances shall not be considered a transfer.

Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower may pay all sums secured by this Mortgage. If Borrower fails to pay such sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

17. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Mortgage discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before the sale of the Property pursuant to any power of sale contained in this Mortgage; or (b) entry of judgment enforcing this Mortgage. Those conditions are that Borrower: (i) pays Lender all sums which then would be due under this Mortgage and the Note had no acceleration occurred, (ii) cures any default of any other covenants, or agreements; (iii) pays all expenses incurred in enforcing this Mortgage, including, but not limited to, reasonable attorneys' fees; and (iv) takes such action as Lender may reasonably require to assure that the lien of this mortgage, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unchanged. Upon reinstatement by Borrower, this Mortgage 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 acceleration under paragraph 12 or 16.

NON-UNIFORM COVENANTS. Borrower and Lender further convent and agree as follows:

18. Acceleration; Remedies. Unless the "Maturity Date", as defined in the Note, has occurred, Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Mortgage (but not prior to acceleration under paragraphs 12 and 16 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default, (c) a date, not less than 30 days from the date the notice is given to Borrower, 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 Mortgage and the sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, or if the "Maturity Date" as defined in the Note has occurred, Lender at its option may require immediate payment in full of all sums secured by this Mortgage without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees. Notwithstanding any other provision of this Mortgage, Lender may not foreclose this Mortgage or accept a deed-in-lieu of foreclosure unless the Lender has provided prior written notice to the mortgagee of the first mortgage described in paragraph 22 hereof.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this mortgage; and (c) any excess to the person or persons legally entitled thereto.

19. Lender in Possession. Upon acceleration under paragraph 18 or abandonment of the Property, and at any time prior to the expiration of any period of redemption following sale of the Property, Lender (in person, by agent or by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums of receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage.

20. Release. Upon payment of all sums secured by this Mortgage, Lender shall discharge this Mortgage without charge to Borrower. Borrower shall pay any costs of recordation.

21. Waiver of Homestead. Borrower hereby waives all right of homestead exemption in the Property.

22. Subject to First Mortgage. This Mortgage is subject and subordinate to that certain mortgage lien created by a mortgage of even date herewith from Borrower to \_\_\_\_\_

in an original principal amount of \$\_\_\_\_\_ (the "First Mortgage").

23. Interest on Advances. The interest rate on advances made by Lender under paragraph 6 shall not exceed the maximum rate allowable by applicable law.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Witnesses:

Borrowers:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF MINNESOTA     )  
  )ss.  
COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me appeared \_\_\_\_\_  
to me personally known to be the person(s) described in and who executed the foregoing instrument and  
acknowledged that he/she the \_\_\_\_\_ executed the same as his/her free act and  
deed.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

STATE OF MINNESOTA     )  
  )ss.  
COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me appeared \_\_\_\_\_  
to me personally known to be the person(s) described in and who executed the foregoing instrument and  
acknowledged that he/she the \_\_\_\_\_ executed the same as his/her free act and  
deed.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

This instrument was prepared by the Dakota County Community Development Agency of Eagan,  
Minnesota.

Space Below This Line Reserved for Recorder.

\_\_\_\_\_