

# Fresno County Affordable Housing Programs

## HOMEBUYER ASSISTANCE PROGRAM PROMISSORY NOTE

### NOTICE TO BORROWER THIS DOCUMENT CONTAINS PROVISIONS RESTRICTING ASSUMPTIONS AND IS SECURED BY A DEED OF TRUST ON RESIDENTIAL PROPERTY

RRD Loan No. \_\_\_\_\_

\$ \_\_\_\_\_, 20\_\_\_\_

FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_  
(the "Borrower") hereby promises to pay to the order of County of Fresno, a political subdivision of the State of California  
(the "Lender") at the following address Revenue Reimbursement Division in the Hall of Records, 2281 Tulare Street, Fresno,  
California 93721 or at such other place as the holder may from time to time designate by written notice to Borrower, in  
lawful money of the United States, the sum of \_\_\_\_\_ Dollars and No/100  
(\$ \_\_\_\_\_) with simple interest at the rate of 0 (zero) percent per annum on the unpaid principal balance  
and any fees from the date of this Promissory Note ("the Note"), until paid in full. The obligation of the Borrower with  
respect to this Note is secured by that certain Deed of Trust Loan No. \_\_\_\_\_ (the "Deed of Trust"), and  
executed by the Borrower concurrently herewith.

#### 1. Borrower's Obligation.

- (a) This Note evidences the obligation of the Borrower to the Lender for the repayment of funds loaned  
(the "Loan") to finance the purchase of that certain real property (the "Property"), which has the  
address of

\_\_\_\_\_  
(Street) (City)  
California, \_\_\_\_\_ more fully described in Exhibit A of the Deed of Trust.  
(Zip Code)

- (b) Borrower(s) acknowledge(s) that this Note is given in connection with the purchase of the Property as  
part of the HOME Investment Partnerships Program (the "HOME Program") established and governed  
by Title II of Public Law No. 101-625, 104 Stat. 4079 (Nov. 28, 1990) as amended, (42 USC 12701),  
known as the Cranston-Gonzales National Affordable Housing Act of 1992, Public Law No. 102-550,  
as implemented by and subject to Title 24 Code of Federal Regulations Part 92 and as part of the  
American Dream Downpayment Initiative ("ADDI"). This Note is not automatically assumable and  
allows the County to accelerate all amounts due under this Note if any subsequent sale or transfer of the  
Property of any kind does not comply with the provisions of this Note, the Deed of Trust, or the  
HOME Regulations.

2. Affordability Period. The Department of Housing and Urban Development HOME / ADDI Program ("the  
Program") regulations require an Affordability Period. It is the intent of the Program that the property remains  
affordable to low to moderate - income households; therefore an Affordability Period is hereby established. The  
Affordability Period will ensure that the property receiving assistance will remain affordable to low to moderate-  
income households for a certain period of time or term. The term of the Affordability Period is determined by  
the dollar amount of the assistance received for the purchase of the property. The term of the Affordability  
Period shall be for a period of not less than \_\_\_\_\_ consecutive years. The Affordability Period will terminate  
on \_\_\_\_\_, 20\_\_\_\_.

3. **Maturity Date and Repayment.**

This loan is due and payable in full \_\_\_\_\_ years from the date of this Note on \_\_\_\_\_, 20\_\_\_\_. The Borrower agrees to pay the unpaid principal balance, unpaid accrued interest, and any other amounts due under this Note in full by \_\_\_\_\_, 20\_\_\_\_.

4. **Loan Terms.**

Borrower agrees to pay the indebtedness as follows:

- (a) No periodic payments are required hereunder.
- (b) Borrower may repay any or the entire Loan amount at any time without penalty.
- (c) This loan shall accrue interest at the rate of 0 per cent per annum.

5. **Maintenance of Property and Insurance.**

- (a) Borrower is responsible for performing all maintenance and keeping the property in a reasonable and satisfactory state of repair. The County may make cursory inspections, with prior notice being given to the Borrower, to insure that the home is maintained in good repair.
- (b) Borrower is responsible for providing Hazard Insurance during the term of the County loan. Borrower agrees to deposit with the County of Fresno a copy of their Hazard Insurance Policy with a Loss Payable Endorsement in favor of the County of Fresno. Evidence of Insurance will be required prior to close of escrow. The Borrower may obtain Hazard Insurance through any person or agency of his/her choice, although County may, for reasonable cause, refuse to accept a particular insurer.

6. **Default / Acceleration of Payment.** Except for permitted transfers under Paragraph 8, each of the following occurrences shall constitute an event of default. Upon the occurrence of any of the following events, the principal amount of this loan, together with any then outstanding accrued interest thereon shall become immediately due and payable, at the option of the holder and without demand or notice;

- (a) Breach of any of the terms of this Note, the Deed of Trust or the Program Regulations;
- (b) Misrepresentation or misstatement of any facts upon which Borrower's eligibility for the Loan is based;
- (c) Upon refinancing of any debt that is secured by a lien on the Property that requests "cash out" in the form of other debt repayment and/or cash paid to borrower;
- (d) Upon sale, transfer, lease, or encumbrance of all or any interest in the Property,
- (e) Upon the maturity date of any debt that is secured by a lien on the Property that is senior to the Deed of Trust that secures this promissory note;
- (f) Upon Borrower's failure to occupy the Property as Borrower's principal place of residence for reasons other than medical treatment or disability which require a temporary alternate residence.

7. **Recapture of Loan Amount.** In the event that a sale, foreclosure or change of title (except those permitted under Paragraph 8) shall occur prior to the expiration of the Affordability Period, the County's loan shall be repaid/recaptured from the net proceeds available from the sale. The net proceeds are the sales price minus the repayment of all other mortgage debt senior to County's loan (other than the County funds) and closing costs. The net proceeds will be recaptured as set forth in the following example:

EXAMPLE --Resale of property by owner of record:

Sales price	= \$250,000
Superior mortgage debt	= \$150,000
Closing Costs and/or Fees incurred for resale of property	= \$5,000
Owner's original contribution	= \$10,000
County Assistance	= \$30,000

\$250,000 (sales price) - \$155,000 (superior mortgage debt + fees +closing costs) = \$95,000 (net proceeds)

\$95,000 (net proceeds) - \$30,000 (County Assistance) = \$65,000 (owner's proceeds)

8. **Permitted Transfers.** The Loan is not assumable except under the following limited circumstances and with the County's written approval:

- (a) The transfer of the Property to the surviving joint tenant by devise, descent or operation of the law, or the death of a joint tenant.
- (b) A transfer of the Property where the spouse becomes an owner of the property;
- (c) A transfer of the Property resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes an owner of the Property.
- (d) A transfer to an inter vivos trust in which the Borrower is and remains the beneficiary and occupant of the property.

9. **Borrower Warranties.**

Borrower acknowledges and understands that this Note evidences a Loan being made pursuant to the terms, conditions, and restrictions of the Program. Further, Borrower understands that Borrower must meet the income eligibility restrictions of the Program, and that single family residences must meet the requirements of the Program with regard to occupancy, purchase price, value, and inspection standards. Borrower hereby warrants to the County that all information concerning the Borrower's income is true and correct, and to the best of Borrower's knowledge and belief that Borrower meets the eligibility criteria of the Program. Borrower hereby acknowledges that Borrower is making certain representations to the County with regard to the Borrower's and the Property's eligibility to receive a Loan funded from the Program.

10. **Acceleration of Default.** All of the unpaid principal, accrued interest, and other sums due under the Note secured by this Deed of Trust shall immediately become due and payable and the County may proceed at once without further notice to enforce the Note according to law upon the occurrence of any event of default under the Note which remains uncured beyond the deadline set forth in a written notice of said default mailed to Borrower, which deadline for cure shall not be more than 90 days from the date of recordation of the notice of default.
11. **Application of Payments.** All payments received on account of this Note shall be first applied to any fees due, accrued interest, if any, and the remainder shall be applied to the reduction of principal.
12. **Notices.** Except as may be otherwise specified herein, any approval, notice, direction, consent, request or other action by the Lender shall be in writing and must be communicated to the Borrower at the address of the Property, or at such other place or places as the Borrower shall designate to the Lender in writing, from time to time, for the receipt of communications from the Lender. Mailed notices shall be deemed delivered and received five (5) working days after deposit in the United States mails in accordance with this provision

13. **Prepayment Policy.** Borrower may prepay this Note at any time without penalty.
14. **Costs of Enforcement.** Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which the holder of this Note may pay or incur in the enforcement of this Note, the Deed of Trust, or any term or provision thereof.
15. **Governing Law.** This Note shall be construed in accordance with and be governed by the laws of the State of California. Should either party institute suit or arbitration for enforcement or interpretation of any provision contained herein, the venue of such action shall be in Fresno County, California.
16. **Severability.** If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless, in the sole discretion of the County, the invalidity, illegality, or unenforceability of the provision negates the Program purpose and/or threatens the security of the County.
17. **Waiver of Presentment.** Each maker, endorser, surety and guarantor of this Note hereby jointly and severally waives demand, protest, presentment, notice of nonpayment, notice of protest, notice of dishonor and diligence in bringing suit against any party and does hereby consent that time of payment of all or any part of said amount may be extended from time to time by the holder hereof without notice. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors.
18. **No Waiver by the Lender.** No waiver of any breach, default or failure of condition under the terms of the Note or Deed of Trust shall thereby be implied from any failure of the Lender to take, or any delay by the Lender in taking action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of the Note, Deed of Trust, or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.
19. **Successors and Assigns.** The promises and agreements herein contained shall bind and inure to the benefit of, as applicable, the respective heirs, executors, administrators, successors and assigns of the parties.
20. **Certification.** The Borrower hereby certifies to the County that this is the Promissory Note of even date herewith described in and secured by the Trust Deed covering the real property therein described.

Executed as of the date set forth above at \_\_\_\_\_, California  
City

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

EXHIBIT A

PROPERTY DESCRIPTION

Free recording in accordance with CA Gov.  
Code Sections 6103 and 27383:

Escrow No.  
Title Order No.

When Recorded Mail Document To:  
County of Fresno (**Stop 213**)  
Department of Public Works and Planning  
Community Development Division  
2220 Tulare Street/6th Floor  
Fresno, CA 93721

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**Fresno County Affordable Housing Programs**

**HOMEBUYER ASSISTANCE PROGRAM**

**DEED OF TRUST**

**NOTICE TO BORROWER  
THIS DEED OF TRUST CONTAINS PROVISIONS  
RESTRICTING ASSUMPTIONS**

**RRD Loan No.** \_\_\_\_\_

This Deed of Trust is made on \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_ (the "Borrower") and \_\_\_\_\_

(the "Trustee"), whose business address is \_\_\_\_\_

in favor of County of Fresno, a political subdivision of the State of California ("Lender"); at the Revenue Reimbursement Division in the Hall of Records, 2281 Tulare Street, Fresno, California 93721.

**1. BORROWER, IN CONSIDERATION OF THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED, HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS** to Trustee in trust, with power of sale and right of entry and possession, all of Borrower's right, title and interest now held or hereafter acquired in and to the following: (a) all of that certain real property (the "Property") located at \_\_\_\_\_

(Street)

\_\_\_\_\_ in the County of Fresno, and the State of California,  
(City and Zip Code)

which is more particularly described in Exhibit A (attached) which is incorporated herein by this reference; and (b) all buildings, improvements and fixtures now or hereafter erected thereon, and all appurtenances, easements, and articles of property now or hereafter affixed to, placed upon or used in connection with the Property, together with all additions to, substitutions for, changes in or replacements of the whole or any part of said articles of property; all of which are hereby pledged and assigned, transferred, and set over onto Trustee, and for purposes of this Deed of Trust (hereafter, "Deed of Trust") declared to be part of the realty; provided, however, that furniture and other personal property of Borrower now or hereafter situated on said real property are not intended to be included as part of the Property.

2. **FOR THE PURPOSE OF SECURING:**

2.1. Repayment of the indebtedness evidenced by that certain Promissory Note of the Borrower dated \_\_\_\_\_, 20\_\_\_\_\_, and entitled **Fresno County Affordable Housing Programs** Homebuyer Assistance Program Promissory Note "Loan No. \_\_\_\_\_" (the "Note") of the Borrower in the principal amount of \_\_\_\_\_ Dollars and No/100 (\$\_\_\_\_\_), according to the terms of the Note, and any and all amendments, modifications, extensions or renewals of the Note.

2.2. Performance of each obligation, covenant, and agreement of Borrower contained in this Deed of Trust, the Note, or any other document executed by Borrower in connection with the loan(s) secured by this Deed of Trust, and all amendments to these documents whether set forth in this Deed of Trust or incorporated in this Deed of Trust by reference.

3. **BORROWER COVENANTS:**

Borrower hereby covenants to maintain and protect the security of this Deed of Trust, to secure the full and timely performance by Borrower of each and every obligation, covenant, and agreement of Borrower under the Note and this Deed of Trust, and as additional consideration for the obligation(s) evidenced by the Note, Borrower covenants as follows:

3.1. **Title.** That Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that Borrower will warrant and defend generally the title of the Property against all claims and demands subject to any declarations, easements, or restrictions listed in the schedule of exemptions to coverage in any title insurance policy insuring Lender's interest in the Property.

3.2. **Payment of Principal, Interest and Fees.** That Borrower shall promptly pay, when due, any fees, the principal and interest on the Note, and such other charges as are provided in the Note, and such other amounts as are provided under this Deed of Trust.

3.3. **Maintenance of the Property.** (a) To keep the Property in a decent, safe, sanitary, habitable condition and repair and permit no waste thereof; (b) not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable; (c) remove, demolish or structurally alter any buildings and improvements now or hereinafter located on the Property; (d) to repair, restore or rebuild promptly any buildings or improvements on the Property that may become damaged or be destroyed while subject to the lien of this Deed of Trust; (e) to comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property; (f) not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without the Lender's written consent; and (g) not to alter the use of all or any part of the Property without the prior written consent of the Lender.

3.4. **Appear and Defend.** Borrower shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Lender or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which the Lender or Trustee may appear, and in any suit brought by the Lender to foreclose this deed.

3.5. **Payment of Taxes and Utility Charges.** Borrower shall pay when due, all taxes and assessments affecting the Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, fines and impositions attributable to the Property, leasehold payments or ground rents, if any, and any interest on the Property or any part thereof; all costs, fees and expenses of this trust. Borrower shall make such payments when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph and Borrower shall promptly furnish to Lender receipts evidencing all such payments made.

3.6. **Insurance.** To keep the Property insured with loss payable to the Lender, against loss or damage by fire and such other hazards, casualties and contingencies and by such companies on such forms and in the amount of the replacement cost of the Property, and to deliver the original of all such policies to the Lender, together with receipts satisfactory to the Lender evidencing payment of the premiums. All such policies provide that the Lender shall be given thirty (30) days advance written notice of the cancellation, expiration or termination of any such policy or any material change in the coverage afforded by it. Renewal policies and any replacement policies, together with premium receipts satisfactory to the Lender, shall be delivered to the

Lender at least thirty (30) days prior to the expiration of existing policies. Neither Trustee nor the Lender shall by reason of accepting, rejecting, approving or obtaining insurance incur any liability for the existence, nonexistence, form or legal sufficiency of such insurance, or solvency of any insurer for payment of losses. All insurance proceeds for such losses must be utilized for the repair or restoration of the insured property.

**3.7. Payments and Discharge of Liens.** Borrower will pay, when due, all claims of every kind and nature which might or could become a lien on the Property or any part thereof; provided, however, that the following are excepted from this prohibition: (a) liens for taxes and assessments which are not delinquent although by law are given the status of a lien, and (b) such of the above claims as are, and only during the time they are, being contested by Borrower in good faith and by appropriate legal proceedings, and Borrower shall post security for the payment of these contested claims as may be requested by the Lender. Borrower shall not default in the payment or performance of any obligation secured by a lien, mortgage or deed of trust which is superior to this Deed of Trust.

**4. IT IS MUTUALLY AGREED THAT:**

**4.1. Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and Section 2.1 shall be applied by Lender first to any fees due, then to interest payable on the Note and then to the principal due on the Note.

**4.2. Disbursements to Protect Lender's Security.** All sums disbursed by Lender to protect and preserve the Property, this Deed of Trust, or Lender's security for the performance of Borrower's obligations under the Note shall be deemed to be an indebtedness of Borrower secured by this Deed of Trust.

**4.3. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, 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, arrangements or proceedings involving a bankrupt or decedent, foreclosure of any mortgage secured by the Property or sale of the Property under a power of sale of any instrument secured by the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearance, 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 pursuant to this Section 4.3, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the highest rate permissible under applicable law. Nothing contained in this Section 4.3 shall require Lender to incur any expense or take any action hereunder.

**4.4. Inspection.** Lender or its agent may make or cause to be made reasonable entries upon and inspections of the Property. Lender shall give Borrower a 24 hour notice prior to any such inspection specifying reasonable cause for the inspection.

**4.5. Awards and Damages.** All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any damage to or destruction of the Property or any part thereof by insured casualty, and (c) any other injury or damage to all or any part of the Property, are hereby assigned to and shall be paid to the Lender. The Lender is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Lender shall determine at its option. The Lender shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Lender may be released to Borrower upon such conditions as the Lender may impose for its disposition. Application of all or any part of the amounts collected and received by the Lender or the release thereof shall not cure or waive any default under this Deed of Trust. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sum secured by this Deed of Trust.



**4.6. Prohibition on Transfers of Interest.** With the exception of the transfers permitted in Section 4.9 below, if all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, Lender may, at Lender's option, declare all the sums secured by this Security Instrument to be immediately due and payable. If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with Section 6.9 hereof. Such notices shall provide a period of not less than **30 days** from the date the notice is mailed within which Borrower may pay the sums declared due. If borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by Section 5.2(a) hereof.

**4.7. Sale or Forbearance.** No sale of the Property, forbearances on the part of the Lender or extension of the time for payment of the indebtedness hereby secured shall operate to release, discharge, waive, modify, change or affect the liability of Borrower either in whole or in part.

**4.8. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing indebtedness secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

**4.9. Requirement of Owner-occupancy and Permitted Transfers.** Borrower shall occupy the Property as Borrower's principal place of residence during the term of the Note. Notwithstanding any other provision of the Note or this Deed of Trust, the following transfers shall not be deemed to be a default under the Note or this Deed of Trust:

- (a) The transfer of the Property to the surviving joint tenant by devise, descent or operation of the law, on the death of a joint tenant;
- (b) A transfer of the Property where the spouse becomes an owner of the property;
- (c) A transfer of the Property resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes an owner of the Property;
- (d) A transfer to an inter vivos trust in which the Borrower is and remains the beneficiary and occupant of the property.

## **5. EVENTS OF DEFAULT**

**5.1. Events of Default.** Any one or more of the following events shall constitute a default under this Deed of Trust (a) failure of the Borrower to pay the indebtedness secured hereby or any installment thereof, whether principal, interest or otherwise, when and as the same become due and payable, whether at maturity or by acceleration or otherwise; or (b) failure of Borrower to observe or to perform any covenant, condition or agreement to be observed or performed by Borrower pursuant to the Note or this Deed of Trust including but not limited to the occupancy of property by Borrower provision; or (c) the occurrence of any event which, under the terms of the Note, shall entitle the Lender to exercise the rights or remedies thereunder;

### **5.2. Acceleration and Sale.**

(a) **Acceleration.** Except as provided in Section 4.6, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, upon Borrower's failure to make any payment or to perform any of its obligations, covenants and agreements pursuant to the Note, Lender shall mail notice to Borrower as provided in Section 6.9 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, no more than 60 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and 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, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect from the Borrower, or sale proceeds, if any, all reasonable

costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorney's fees.

(b) **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower will have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of the judgment enforcing this Deed of Trust if: (1) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note, had no acceleration occurred; (2) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, remedies including, but not limited to, reasonable attorneys' fees; and (3) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

(c) **Sale.** After delivery to Trustee of a Notice of Default and Demand for Sale and after the expiration of such time and the giving of such notice of default and sale as may then be required by law, and without demand on Borrower, Trustee shall sell the Property at the time and place of sale fixed by it in said notice of sale, at public auction to the highest bidder for cash in lawful money of the United States of America, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Any person, including Borrower, Trustee or the Lender, may purchase at such sale. Upon such sale by Trustee it shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of their truthfulness. Upon sale by Trustee and after deducting all costs, expenses and fees of Trustee and of this Deed of Trust, Trustee shall apply the proceeds of sale to the payment of the principal indebtedness hereby secured, whether evidenced by the Note or otherwise, or representing advances made or costs or expenses paid or incurred by the Lender under this Deed of Trust, or the secured obligations or any other instrument evidencing or securing any indebtedness hereby secured and to the payment of all other sums then secured thereby, including interest as provided in this Deed of Trust, the secured obligations or any other such instrument, in such order as the Lender shall direct; and then the remainder, if any, shall be paid to the person or persons legally entitled thereto.

(d) **Assignment of Rents; Appointment of Receiver; Lender in Possession.** Upon acceleration under paragraph (a) of Section 5.2 hereof or abandonment 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 (if any) including those past due. All 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 on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Security Instrument. Lender and the Receiver shall be liable to account only for those rents actually received. The provisions of this paragraph and paragraph (a) of Section 5.2 shall operate subject to the claims of prior lien holders.

**5.3. Exercise of Remedies; Delay.** No exercise of any right or remedy by the Lender or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law, and no delay by the Lender or Trustee in exercising any such right or remedy hereunder shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

**5.4. Trustee Substitution.** The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to the Lender, to be exercised at any time hereafter, without specifying any reason therefore by filing for record in the office where this Deed of Trust is recorded a deed of appointment, and said power of appointment of successor trustee or trustees may be exercised as often as and whenever the Lender deems advisable. The exercise of said power of appointment, no matter how often, shall not be deemed an exhaustion thereof, and upon recording of such deed or deeds of appointment, the trustee or trustees so appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of the predecessor in the trust hereunder, with the like effect as if originally named as trustee or as one of the trustees.

**5.5. Remedies Cumulative.** No remedy herein contained or conferred upon the Lender or Trustee is intended to be exclusive of any other remedy or remedies afforded by law or by the terms hereof to the Lender or Trustee but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

## 6. MISCELLANEOUS PROVISIONS

6.1. **Successors, Assigns, Gender, Number.** The covenants and agreements contained in this Deed or Trust shall bind, and the benefit and advantages under it shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

6.2. **Headings.** The headings are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof.

6.3. **Actions on Behalf of the Lender.** Except as otherwise specifically provided herein, whenever any approval, notice, direction, consent, request or other action by the Lender is required or permitted under this Deed of Trust, such action shall be in writing.

6.4. **Terms.** The words "the Lender" means the present Lender, or any future owner or holder, including pledgee of the indebtedness secured hereby.

6.5. **Obligations of Borrower.** If more than one person has executed this Deed of Trust as "Borrower," the obligations of all such persons hereunder shall be joint and several.

6.6. **Incorporation by Reference.** The provisions of the Fresno County Affordable Housing Program security instruments and the documents relating to that program are incorporated by reference as though set forth in full.

6.7. **Severability.** If any provision of this Deed of Trust shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

6.8. **Indemnification.** Borrower will indemnify and hold the Lender, its officers and agents harmless against any and all losses, claims, demands, penalties and liabilities which the Lender, its officers or agents may sustain or suffer by reason of anything done or omitted in good faith pursuant to or in connection with this Deed of Trust and not assert any claim against the Lender, its officers or agents by reason of any action so taken or omitted. Borrower shall, at Borrower's expense, defend, indemnify, save and hold the Lender, its officers and agents harmless from any and all claims, demands, losses, expenses, damages (general, punitive or otherwise), causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation or other entity arising out of this Deed of Trust and Borrower shall pay the Lender upon demand all claims, judgments, damages, losses or expenses (including reasonable legal expense) incurred by the Lender as a result of any legal action arising out of this Deed of Trust.

6.9. **Notice.** Except for any notice required under applicable law to be given in another manner (a) any notice to Borrower provided for in this Deed of Trust shall be given by mailing such notice by certified mail directed to the Property Address or any other address Borrower designates 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 mailing address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

6.10. **Statement of Obligation.** Lender may collect a fee for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

6.11. **Use of Property.** Borrower shall not permit or suffer the use of any of the Property for any purpose other than as a single family residential dwelling.

**IN WITNESS WHEREOF**, Borrower has executed this Deed of Trust on the day and year set forth above. By signing below, Borrower agrees to the terms and conditions as set forth above.

**SIGNATURE OF BORROWER(s):**

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

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
(Here Insert name and title of the officer)

personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY UNDER THE LAWS OF THE State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
Signature of Notary Public (Notary Seal)