

## LOAN AGREEMENT (Down-Payment and Closing Cost Assistance)

This Agreement is made as of this \_\_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_

\_\_\_\_\_ ("Borrower"), and the BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY, Minnesota a public body corporate and politic under the laws of the State of Minnesota (the "Lender").

WHEREAS, the Lender has established the Owner-Occupied Home Improvement Loan Program (the "Program") for the purpose of providing down-payment and closing cost assistance to qualified homebuyers; and

WHEREAS, the Lender has retained the services of the Center for Energy and Environment to originate Program loans and disburse loan proceeds (the "Originating and Disbursing Agent"); and

WHEREAS, the Lender has also retained the services of Center for Energy and Environment to service the Program loans (the "Servicing Agent"); and

WHEREAS the Borrower will be the owner of that certain, owner-occupied residential property at \_\_\_\_\_, Brooklyn Park, MN, legally described as set forth on Exhibit A attached hereto (the "Property"); and

WHEREAS, the Borrower has made application to the Originating and Disbursing Agent for a Program loan (the "Loan") to purchase the Property (the "Purchase"); and

WHEREAS, the Originating and Disbursing Agent has approved the Loan, on behalf of the Lender, subject to execution and compliance with the terms of this Loan Agreement (the "Agreement") and the execution and recording of all documents described in and required by this agreement (the "Loan Documents").

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

### ARTICLE I Definitions

Section 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings set out respectively after each (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Draw" means an advance of loan proceeds by the Originating and Disbursing Agent to the Borrower pursuant to Article II hereof and the Disbursing Agreement.

"Acquisition Mortgage" means the Mortgage of even date herewith, from the Borrower, as mortgagor, to the Lender, as mortgagee, creating a \$\_\_\_\_\_ lien on the Property and a security interest in all of the personal property located thereon as security for payment of the Note, subject to Permitted Encumbrances, in the form attached hereto as Exhibit C.

"Borrower" means \_\_\_\_\_ who is a person that qualifies for the Program and is obligated to pay back the Loan.

"City" means the City of Brooklyn Park, Minnesota.

"Closing" or "Closing Date" means the event or time at which the Loan Proceeds are used to purchase the Property.

"Event of Default" means one of the events of default specified in Section 7.01 hereof.

"Lender" means the Brooklyn Park Economic Development Authority.

"Lender Commitment" means the commitment of the Lender to disburse up to \_\_\_\_\_ (\$X,XXX.00) to the Borrower as down-payment and closing cost assistance.

"Loan" means the loan to be provided to the Borrower by the Lender pursuant to this Loan Agreement.

"Loan Documents" means this Loan Agreement, the Note, the Mortgage and any additional document required by any of the aforesaid.

"Loan Proceeds" means the proceeds of the Loan.

"Note" means the Promissory Note of the Borrower in the form of Exhibit B attached hereto evidencing the Draws to be made hereunder.

"Originating and Disbursing Agent" means the Center for Energy and Environment, an agent of the Lender responsible for originating Loans and disbursing Loan Proceeds under the Program.

"Program" means the Lender's Owner-Occupied Home Improvement Loan Program.

"Program Guidelines" means the Program Overview and Guidelines, which are incorporated herein by reference.

"Property" means the owner-occupied residential property located at: \_\_\_\_\_ and legally description as set for on Exhibit A hereto.

"Purchase" means the purchase of a owner-occupied residential property in the City of Brooklyn Park.

"Residence" means the structure located upon the Property which is purchased to be occupied by the Borrower as a principal residence with Loan Proceeds.

"Senior Mortgage(s)" means any mortgage upon the Property to which the Acquisition Mortgage is subordinate.

"Senior Mortgage Loan" means the loan secured by a Senior Mortgage.

"Senior Mortgagee" means the holder of a Senior Mortgage.

"Servicing Agent" means Center for Energy and Environment and agent of the Lender responsible for collection Loan payments and otherwise services the Loans.

"Transfer" means any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Property or any part hereof, or any interest therein, or any contract or agreement to do any of the same.

"Unavoidable Delay" means delay by reason of acts of God, fire, storm, strikes, blackouts, labor difficulties, riots, inability to obtain materials, equipment or labor, governmental restrictions, or any similar cause over which the Borrower is unable to exercise control.

## **ARTICLE II**

### **Lender Commitment**

Section 2.01. Lender Commitment.

- (a) The Lender agrees, on the terms and subject to the conditions hereinafter set forth and set forth in the Disbursing Agreement, to authorize the Originating and Disbursing agent to disburse the principal amount of up to and including the maximum amount of its Lender Commitment for Down-Payment Assistance in connection with the Purchase.
- (b) The obligation of the Borrower to repay the Note dated the date of this Agreement, and containing the terms relating to maturity, interest rate, and other matters, as set forth in Exhibit B. The Note and Mortgage shall be recourse obligations of the Borrower.

Section 2.02. Deposit of Loan Proceeds. On the Closing Date, the Lender shall deposit or cut a check in the total amount of the Lender Commitment.

Section 2.05. Fees. Whether or not any Draw shall be made hereunder, the Borrower agrees to pay all recording, license and permit fees in connection with this Loan Agreement or in connection with the transactions contemplated by this Loan Agreement.

### **ARTICLE III**

#### **Conditions of Draws**

Section 3.01. Condition Precedent to Initial Draw. The obligation of the Originating and Disbursing Agent to make the Draw shall be subject to the condition precedent that the Borrower shall be in compliance with the conditions contained in Section 3.02 and the further condition precedent that the Lender shall have received on or before the date of the Draw hereunder the following:

- (a) The Note, duly executed by the Borrower.
- (b) The Mortgage, duly executed, constituting a valid and perfected lien in the Property, subject to Permitted Encumbrances.
- (c) A copy of the Draw, if any, in form and substance acceptable to the Originating and Disbursing Agent;

Section 3.02. Further Conditions Precedent to All Draws. The obligation of the Originating and Disbursing Agent to make the Draw shall be subject to the condition precedent that the Borrower shall be in compliance with all conditions set forth in Section 3.01, and the further conditions precedent that on the date of such Draw:

- (a) No Event of Default hereunder or event which would constitute such an Event of Default but for the requirement that notice be given or that a period of grace or time elapse, shall have occurred and be continuing and all representations and covenants made by the Borrower in Article IV shall continue to be true and correct as of the date of such Draw.
- (b) No event of default under any Senior Mortgage or related notes and security documents or event which would constitute such an event of default thereunder but for that notice to be given or that period of grace or time elapse, shall have occurred and be continuing.

Section 3.03. No Waiver. The making of any Draw by the Originating and Disbursing Agent prior to fulfillment of any condition thereof shall not be construed as a waiver of such condition, and the Lender reserves the right to require fulfillment of any and all such conditions prior to making the Draws.

### **ARTICLE IV**

#### **Borrower Representations and Covenants**

Section 4.01. Representations and Covenants. Borrower represents and covenants to the Lender as follows:

- (a) The Residence will be owned and occupied by the Borrower as of the date of this Loan agreement and is located in the City of Brooklyn Park, Hennepin County in the State of Minnesota. Prior to the Maturity Date of the Loan, the Borrower shall maintain the Residence as its principal residence and shall not to rent any part thereof.
- (b) The Borrower does not now and shall not use more than forty-nine percent (49%) of the total area of the Residence (or, if it contains more than one dwelling unit, then 49 percent of the total area of the dwelling unit occupied by the Borrower) primarily in a trade or business in a manner which would permit the Borrower to take a deduction for expenses incurred in connection with such trade or business use on the Borrower's Federal Income Tax Return (excluding at home daycare).
- (c) The Borrower does not now and, prior to the Maturity Date, shall not use the Residence as an investment property or as a recreational home.
- (d) No part of the Loan Proceeds shall be used to pay any existing loan or mortgage.
- (e) The Loan Proceeds shall be used as down-payment assistance.
- (f) The Borrower(s) will be the fee owner(s) of the Residence.
- (g) All information provided by the Borrower in connection with this Loan is true and accurate.

Section 4.02. Further Acknowledgments. The Borrower further acknowledges that:

- (a) Requests by the Borrower to subordinate the Acquisition Mortgage to other mortgages will not be considered, which may have consequences in the event the Borrower seeks to refinance existing mortgage loans.

## **ARTICLE V**

### **Insurance**

Section 5.01. Borrower Insurance. Borrower shall maintain insurance as follows:

- (a) Insurance on the Residence and other improvements, including leasehold improvements, now existing or hereafter erected on the Property and on the fixtures and personal property including in the Residence against loss by fire, and other hazards covered by the so-called "all-risk" form of policy for its full insurable value and in no event less than the outstanding principal balance of the Note.

## **ARTICLE VI**

### **Loan Repayment Obligations**

Section 6.01. Note and Mortgage. Borrower shall repay the Loan in accordance with the terms as are set forth in the Note attached hereto as Exhibit B. The Note shall be fully secured by the Mortgage attached hereto.

Section 6.02. Acceleration. The Loan shall be immediately due and payable upon the occurrence of any of the following events:

- (a) Any Transfer of the Property
- (b) Any refinancing of a Senior Mortgage without Lender consent.
- (c) Any prepayment of any Senior Mortgage Loan as a result of foreclosure or the granting of a deed in lieu of foreclosure; or

- (d) Any rental of the Property

**ARTICLE VII**  
**Events of Default and Rights and Remedies**

Section 7.01. Events of Default. Each of the following shall constitute an Event of Default.

- (a) The Borrower shall fail to pay, when due, interest on or principal of the Note and such failure shall continue for a period of thirty (30) days after the due date.
- (b) The occurrence of any event described in Section 6.02 hereof.
- (c) The Borrower shall fail duly to observe or perform, any of the other terms, conditions, covenants or agreements required to be observed or performed by the Borrower hereunder, and such failure shall continue for a period of 30 calendar days after written notice of such failure has been given by the Servicing Agent to the Borrower or, in the event of nonmonetary default only, such additional time as is reasonably necessary to cure the default, provided that Borrower commences the cure no later than 30 days after written notice and diligently pursues the same;
- (d) The Borrower shall be in default with respect to any term, condition, covenant or agreement required to be observed or performed by the Borrower under any Senior Mortgage or related notes or security documents, such defaulted not being cured by such acts and within such time as is permitted by such Senior Mortgage, related notes or security documents.
- (e) Any representation or warranty made by the Borrower herein or in any financial statement, certificate, report or Draw furnished pursuant to this Agreement, or the Mortgage or in order to induce the Originating and Disbursing Agent to make any Draw hereunder shall prove to have been untrue in any material respect or materially misleading as of the time such representation or warranty was made;
- (f) The Borrower shall be in default under or in breach of any of the covenants contained in the Mortgage and such default or breach shall not be cured or waived within the period or periods of grace, if any, applicable thereto.
- (g) The Property is materially damaged or destroyed by fire or other casualty and the loss, in the reasonable judgment of the Lender, is not adequately covered by insurance actually collected or in the process of collection; or
- (h) The Borrower shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts as they become due or shall file or have filed against it a petition under the United States Bankruptcy Code.

Section 7.02. Rights and Remedies. Upon the occurrence of an Event of Default the Lender or the Servicing Agent may, at its option, exercise any and all of the following rights and remedies (and any other rights and remedies available to it):

- (a) The Lender may terminate the Commitment and advise the Originating and Disbursing Agent to return all Loan Proceeds held by it to the Lender for application to any amounts owing hereunder.
- (b) The Lender or the Servicing Agent may, by written notice to the Borrower, declare immediately due and payable all unpaid principal of and accrued interest on the Note, together with all other sums payable hereunder, and the same shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are hereby expressly waived; provided, however, that upon the filing of a petition commencing a case naming the Borrower as debtor under the United States Bankruptcy

Code, the principal of and all accrued interest on the Note shall be automatically due and payable without any notice to or demand on the Borrower or any other party.

- (c) The Lender shall have the right, in addition to any other rights provided by law, to enforce its rights and remedies under the Mortgage.
- (d) No remedy herein conferred upon or reserved to the Lender or Servicing Agent is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. No waiver by the Lender or Servicing Agent of any default hereunder shall operate as a waiver of any other default or of the same default on a future occasion.

## **ARTICLE VIII**

### **Miscellaneous**

Section 8.01. Addresses for Notices. All notices to be given by either party to the other hereunder shall be in writing and deemed to have been given when delivered personally or when deposited in the United States mail, registered or certified postage prepaid, addressed as follows:

(a) To the Borrower at:

(b) To the Lender at:

Brooklyn Park Economic Development Authority  
5200 85th Avenue North  
Brooklyn Park, MN 55443  
Attention: Executive Director

(c) To the Originating and Disbursing Agent at:

Center for Energy and Environment  
212 3rd Avenue North, Suite 560  
Minneapolis, Minnesota 55401

or address to any such party at such other address as such party shall hereafter furnish by notice to the other party.

Section 8.02. Time of Essence. Time is of the essence in the performance of this Agreement.

Section 8.03. Binding Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns, except that the Borrower may not transfer or assign its rights hereunder without the prior written consent of the Lender.

Section 8.04. Governing Law and Entire Agreement. This Agreement and the Loan Documents hereunder shall be governed by the laws of the State of Minnesota and comprise the entire agreement of the parties on the matters covered therein. No other agreement, statement or promise made by any party or by any employee, officer, or agent of any party that is not in writing and signed by all the parties to this Agreement shall be binding.

Section 8.05. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 8.06. Inconsistency. In the event that any of the terms and provisions of this Agreement are inconsistent with any of the terms and provisions of the Note or Acquisition Mortgage, the terms and provisions of this Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**BORROWER**

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

**BROOKLYN PARK ECONOMIC  
DEVELOPMENT AUTHORITY**

By \_\_\_\_\_

This Instrument was prepared by:

Brooklyn Park Economic  
Development Authority  
5200 85<sup>th</sup> Ave N,  
Brooklyn Park, MN 55443  
763-424-8000 (tel)

**EXHIBIT A**  
**Legal Description**



**EXHIBIT B**  
**Form of Promissory Note**

**PROMISSORY NOTE**

\$ \_\_\_\_\_

Brooklyn Park, MN  
Date: \_\_\_\_\_

Date:

FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_  
("Borrower"), promises to pay to the order of the Brooklyn Park Economic Development Authority ("Lender"), the sum \_\_\_\_\_ (\$ \_\_\_\_\_) pursuant to the terms of that certain Loan Agreement between the Borrower and the Lender, dated (the "Loan Agreement"). Unless otherwise stated, the capitalized terms used herein shall have the meaning given by the Loan Agreement.

The Note is payable as follows:

**1. Interest**

No Interest shall accrue on this Note.

**2. Maturity Date**

Borrower shall pay 100% of the Loan Amount if the property has been sold, transferred or is no longer occupied as the primary residence within 10 years of the Loan Date. If the borrower has not sold or transferred the Property and has occupied the Property as the primary residence for 10 years from the Loan Date 100% of the loan shall be forgiven.

**3. Payments**

Any unpaid principal and interest shall be paid on the Maturity Date. Payments shall be made at the offices of the Servicing Agent: Community Reinvestment Fund, 801 Nicollet Avenue, Suite 1700 West, Minneapolis, MN 55402 or at such other location as Lender may direct in writing.

**4. Application of Payments**

All payments received by the Lender from the Borrower, or on its behalf, shall be applied against the outstanding amount due hereunder, first to interest and then to principal.

**5. Late Payments**

If the Servicing Agent has not received the full amount of the payment due on the Maturity Date within 15 days after the date thereof, Borrower shall pay to Lender a late charge equal to five percent (5%) of the overdue amount.

**6. Prepayment**

The principal amount of this Note may be prepaid on any date, in whole or in part, without the permission of the Servicing Agent or Lender, and without premium or penalty.

**7. Form of Liability**

To the extent this Note is executed by more than one person, each such person shall be fully jointly and severally liable for the obligations contained herein.

**8. Default**

It is expressly agreed that if (a) Borrower fails to make any payment, for a period of thirty (30) days after the date such payment was due, (b) Borrower violates the provisions of Section 6.02 (a) through (d) of the Loan Agreement or (c) there is an uncured Event of Default under Section 7.01 of the Loan Agreement, the Lender may, at its option, declare the entire unpaid principal balance, and any accrued interest thereon, immediately due and payable by providing Borrower with written notice thereof. Failure to exercise this option shall not constitute a waiver of the right to exercise the option at a later date.

**9. Presentment**

The Borrower hereby waives presentment for payment, notice of nonpayment, protest and notice of protest, consents to the extension or renewal of this Note without notice, and agrees to pay, in the event of default hereunder, the costs of collection, including reasonable attorney's fees.

This Note is executed together with Loan Agreement and is subject to the provisions and entitled to the benefits thereof.

This Note is secured by an Acquisition Mortgage on the Property legally described in the Loan Agreement.

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower