

REAL ESTATE PROMISSORY NOTE

DATE: August 16, 2016

BORROWER(S): Alice L. Taylor
2303 Staunton Dr.
Bryan, Texas 77803

LENDER: CITY OF BRYAN, TEXAS
Community Development Services Department
405 W. 28th Street
Bryan, Texas 77803

PRINCIPAL AMOUNT: **ONE HUNDRED NINE THOUSAND SIX AND 79/100 DOLLARS (\$109,006.79)**

ANNUAL INTEREST RATE: 0% per annum for \$74,006.79 repayment loan for a period of Thirty (30) years; 0% per annum for \$35,000.00 deferred subsidy loan

PROPERTY: Being all those certain lots, tracts or parcels of land lying and being situated in Brazos County, Texas and being all of Lot Seven (7) and the adjoining 1/2 of Lot Eight (8), Block Thirteen (13), MARGARET WALLACE SUBDIVISION, an addition to the City of Bryan, Texas, according to plat recorded in Volume 138, page 574, Deed Records of Brazos County, Texas., also known as 2303 Staunton Drive.

I. PURPOSE

- A. This Note implements requirements applicable to assistance furnished by the City of Bryan, Community Development Services Department (Lender) to Alice L. Taylor, (Borrower) under a Housing Rehabilitation Assistance Program (Program) to help eligible individuals and families. Lender, using Community Development Block Grant (CDBG) Program funds furnished by the United States Department of Housing and Urban Development (HUD), is carrying out this Program, as authorized by 42 USC 12703.
- B. The Lender has assisted the Borrower in improving the Property for use as the Borrowers' principal residence. The Lender or any authorized party who takes this Note by assignment and is entitled to receive amounts due under this Note is called the Note Holder.

II. BORROWERS PROMISE TO PAY

- A. Obligation to Repay Principal (**\$74,006.79**).
- 1) In return for the reconstruction assistance that is part and parcel of the purchase money for the Property and its improvements, which the undersigned Borrower has received pursuant to the Program for the rehabilitation/ reconstruction of the Property, Borrower hereby promises to pay the principal amount of SEVENTY FOUR THOUSAND SIX AND 79/100 DOLLARS (\$74,006.79) ("Principal") to the order of Lender. Payment of Principal and zero

interest under this Note will be made in equal monthly payments for the period specified.

- 2) Borrower agrees that no interest is will be paid except in the event of a default on this note by Borrower, in which case interest shall accrue from the date of the event of breach until paid at the rate of ten percent (10%) per annum.
- 3) Principal and interest on the **\$74,006.79** in the amount of **\$205.57** shall be payable in **360** monthly installments beginning on the **5th day of January, 2017**. A like installment shall be payable on or before the same day of each succeeding month until the note has been paid. Notwithstanding the foregoing, this Note may not be pre-paid during the Affordability Period, defined below.
- 4) In the event of a change in the scope of the work requiring a change order, the Principal may be amended accordingly, provided that Borrower and Lender agree in writing. In such a case, if the change order is for less than \$25,000 and is equivalent to less than twenty-five percent of the original Principal amount, Lender delegates approval authority for such a change order to the City Manager, or his or her designee, as allowed by state law and city ordinances.

B. **Obligation to pay Deferred Subsidy (\$35,000.00)**

- 1) The **THIRTY-FIVE THOUSAND AND 00/100 DOLLARS (\$35,000.00)** remainder of this note is in the form of a zero interest, deferred loan (“Subsidy”). The Subsidy shall be deferred and will not be payable until the end of the Affordability Period, defined below. The Subsidy shall not become due until the Borrower is deceased, or in the event the Borrower sells, refinances, or transfers the Property, or any interest therein (including a beneficial interest) to any other person or entity.
- 2) If the Borrower sells, refinances or transfers the property or any interest therein (including a beneficial interest) from Borrower to any other person or entity, during the Affordability Period as defined in Paragraph III.A., a prepayment penalty shall become due and payable in the amount of 3% interest per annum for the period between the date of the sale and the end of the Affordability Period. The prepayment penalty is waivable at the option of the Lender if the transfer is due to the death of the Borrower.
- 3) Borrower acknowledges and understands that the Subsidy is deferred in accordance with the Program requirements, so long as those requirements are being met. In the event that Borrower is in default, as stated in Paragraph V, the Subsidy becomes due and payable, all sums due shall accrue interest at the rate of 10% per annum until paid.

III. AFFORDABILITY PERIOD

- A. In accordance with the terms of the Program, during the ten year affordability period (“Affordability Period”) the Borrower must continue to make the Property his or her primary residence, and the property may not be sold, transferred, or assigned by Borrower, including without limitation a change of ownership due to death, divorce, legal separation, or legal incapacity of Borrower, without first obtaining Lender’s written permission. The terms of this Note may be assigned in the event of a change in ownership of the property that results from the death, divorce, legal separation, or legal incapacity of Borrower, provided that the new owner of the Property meets the requirements of the Program.
- B. If the Property is sold, transferred, or assigned to a new owner that does not meet the

requirements of the Program within the Affordability Period, the Borrower is in breach of the terms of this Note. In addition to other remedies at law and otherwise set forth herein, the Subsidy shall become due and payable, along with the prepayment penalty and any outstanding Principal and interest.

- C. If the Property is sold, transferred, or assigned to a new owner that does not meet the requirements of the Program after the end of the Affordability period, the Subsidy shall become due and payable, along with any outstanding Principal and interest.

IV. RELEASE AND SATISFACTION

- A. If the Borrower meets all the requirements of the promise to pay, including the payment of Principal and interest as well as payment of the Subsidy, Borrower shall be entitled to release and satisfaction of this Note.
- B. If Borrower sells, transfers, or assigns the Property after the end of the Affordability Period, and meets all the requirements related to repayment of the Principal and interest, as well as repayment of the Subsidy, Borrower shall be entitled to release and satisfaction of this Note.
- C. Lender will release the Deed of Trust upon payment of a reasonable fee, as determined by Lender, to recoup the cost of preparing and recording the release of the Deed of Trust.

V. DEFAULT

- A. Events of Default. Any of the following events shall constitute a Default under this Note:
 - 1) If the Borrower rents or leases (including an oral lease) the Property, to any person or entity during the Affordability Period, except that the Borrower may rent limited space, such as a room or basement, in a single-unit Property, to the extent permitted by the law of the jurisdiction, provided that the Borrower continues to occupy the unit as his or her Principal Residence.
 - 2) If the Borrower fails to occupy Property as principal residence. If all Borrowers are continuously absent from the Property for a period of more than thirty days, or move substantially all their personal possessions out of the Property, without the written consent of the Lender, Borrowers shall be deemed not to be occupying the Property as their Principal Residence.
 - 3) Any default under the Deed of Trust.
 - 4) Any breach of the terms of this Note.
 - 5) Any willful misstatement of, or failure to disclose, a material fact by Borrower relating to his or her eligibility for assistance with respect to the Property under the Lenders' Program is a Default under this Paragraph. Recovery against the Borrower responsible for the fraud or misrepresentation is not limited to the proceeds of fraud or sale of the Property but may include personal judgment and execution thereon to the full extent authorized by law.
 - 6) If the Borrower is convicted of a felony (including a state jail felony) arising out of conduct that occurred during the Affordability Period. If the Borrower allows a person to use the Property as a residence during the Affordability Period, and that person is convicted of a

felony arising out of conduct that took place while the person was using the Property as a residence.

- 7) If the Borrower is cited for violations of City Ordinances relating to the Property (e.g. Building Code, Nuisances, Health and Safety, etc.) three or more times within a twelve month span during the Affordability Period.
- B. Notice of Default and Amount Due. If Borrower is in Default, the Lender may send Borrower a written Notice of Default stating the reason Borrower is in Default and demanding immediate payment of the following:
- 1) The full amount of Subsidy and Principal then due on this Note, including interest from the date of the Notice of Default until paid.
 - 2) All of the Note Holders' costs and expenses reimbursable under Paragraph 5.D. This Notice shall be sent to Borrower at the above address, certified mail, return receipt requested.
- C. Right of Foreclosure. In the event of any default of the Borrower, Note Holder has the right of foreclosure against this property and its improvements, according to the terms of the Deed of Trust of executed of even date.
- D. Payment of Note Holders' Costs and Expenses. If the Note Holder has provided Borrower with a Notice of Default, the Note Holder has the right to be repaid from the proceeds of foreclosure for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include for example, reasonable attorney fees.
- E. No Waiver by Note Holder. Even if, at any time when Borrower is in Default, the Note Holder does not require Borrower to pay immediately in full under Paragraph 5.B., the Note Holder will still have the right to do so if Borrower is in Default for the same reason, or for another reason, at any later time.

VI. GIVING OF NOTICES

Any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by certified mail, return receipt requested to Borrower at the Property Address above, or at a different address if Borrower gives the Note Holder a written notice of a different address.

VII. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed from the proceeds of a Sale of the Property. Any person who is a guarantor, surety or endorser of this Note is also obligated to the same extent. Any person who takes over these obligations including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all signers, successors, guarantors, sureties, or endorsers together.

VIII. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of Presentment and Notice of dishonor. **Presentment** means the right to require that the Note Holder formally demand payment of amounts due. **Notice of dishonor** means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

IX. COMPLIANCE WITH ENVIRONMENTAL LAWS

Borrower agrees to comply with all applicable environmental laws and authorities.

X. MAINTENANCE OF PROPERTY

The Property must be maintained to meet all applicable City codes, including community appearance standards and code enforcement ordinances.

XI. GOVERNING LAW

The law of the State of Texas shall govern this Note and the Deed of Trust. Venue shall lie with a court of competent jurisdiction in Brazos County, Texas.

BORROWER

LENDER--CITY OF BRYAN

Alice L. Taylor

Jason P. Bienski, Mayor

APPROVED AS TO FORM

ATTEST

Janis K. Hampton, City Attorney

Mary Lynne Stratta, City Secretary

STATE OF TEXAS

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ACKNOWLEDGMENT

COUNTY OF BRAZOS

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This instrument was acknowledged before me on the _____ day of _____, 2016, by **Alice L. Taylor** as BORROWER for the reconstruction of the property described herein.

Notary Public, State of Texas

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

STATE OF TEXAS §

COUNTY OF BRAZOS §

DEED OF TRUST

DATE: August 16, 2016

GRANTOR(s): Alice L. Taylor
2303 Staunton Dr.
Bryan, Texas 77803

TRUSTEE: Mayor of the City of Bryan
Post Office Box 1000
Bryan, Texas 77805

BENEFICIARY: City of Bryan
Community Development Services Department
405 W. 28th Street
Bryan, Texas 77803

NOTE DATE: August 16, 2016

PRINCIPAL AMOUNT: **ONE HUNDRED NINE THOUSAND SIX AND 79/100 DOLLARS (\$109,006.79)**

BORROWER(s): Alice L. Taylor

LENDER: City of Bryan, Texas

FINAL MATURITY DATE: As provided in the note.

PROPERTY: Being all those certain lots, tracts or parcels of land lying and being situated in Brazos County, Texas and being all of Lot Seven (7) and the adjoining 1/2 of Lot Eight (8), Block Thirteen (13), MARGARET WALLACE SUBDIVISION, an addition to the City of Bryan, Texas, according to plat recorded in Volume 138, page 574, Deed Records of Brazos County, Texas., also known as 2303 Staunton Drive.

A. PURPOSE:

1. This Deed of Trust implements requirements applicable to assistance furnished by the City of Bryan, Community Development Services Department GRANTOR, under a Housing Rehabilitation Assistance Program (Program) to help eligible individuals and families.

Beneficiary, using CDBG and/or HOME Program funds furnished by the United States Department of Housing and Urban Development (HUD), is carrying out this Program, as authorized by 42 USC 12703.

2. The Beneficiary has assisted the Grantor in improving the Property for use as the Grantor's principal residence.

B. CONVEYANCE, WARRANTY, & EXCEPTIONS:

3. For value received and to secure payment of the above referenced note, Grantor grants, sells, and conveys the property to Trustee in trust for the benefit of the Beneficiary. Grantor warrants and agrees to defend the title to the property. This Deed of Trust is executed to secure the Note executed on this same date for the same above mentioned property for the construction funding for the property listed above. If Grantor performs all the covenants and pays the Note according to its terms, this Deed of Trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.
4. This conveyance is subject to all valid and subsisting easements, restrictions, rights-of-way, conditions, exceptions, reservations, and covenants of record of whatever nature, if any, and also the zoning laws and other restrictions, regulations, ordinances and statutes of municipal or other government authorities applicable to and enforceable against the described premises.

C. GRANTOR'S OBLIGATIONS:

Grantor agrees to fulfill the obligations listed below.

5. Keep the property in good repair and condition, and in compliance with all city codes.
6. Pay all taxes and assessments on the property when due, and furnish to Beneficiary, on request, satisfactory evidence of same.
7. Obtain and at all times maintain, in a form acceptable to Beneficiary, an insurance policy that:
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
 - b. contains an 80% coinsurance clause;
 - c. provides fire and extended coverage, including windstorm coverage;
 - d. protects Beneficiary with a standard mortgage clause;
 - e. provides flood insurance (if the Property is in a flood hazard area); and
 - f. contains such other terms, conditions, and coverage as Beneficiary may reasonably require.
8. Deliver copies of the insurance policy, and subsequent renewals, to Beneficiary within ten (10) business days of execution.
9. Comply with all provisions of the Note.
10. If the property is sold under this Deed of Trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.

D. BENEFICIARY'S RIGHTS:

11. Beneficiary, acting through the City Council, may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
12. Beneficiary may apply any proceeds received under the insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy.
13. If Grantor fails to perform any of Grantors obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this Deed of Trust.
14. In addition to any other remedies provided in this document or by law, if Grantor defaults on the note or fails to perform any of Grantors obligations, Beneficiary may:
 - a. provide notice of intent to accelerate the note, including the Subsidy (as that term is defined by the Note) and the prepayment penalty (if applicable), along with the notice of default;
 - b. declare the Subsidy, prepayment penalty (if applicable), unpaid principal balance, and earned interest on the Note immediately due;
 - c. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
 - d. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

E. TRUSTEE'S DUTIES:

Trustee hereby designates responsibility for any necessary action regarding modifications to the amount, terms, or conditions of the Note or actions to be taken regarding this Deed of Trust to the office of the City Manager of the City of Bryan, Texas, or his designee. If requested by Beneficiary to foreclose for payment of the note, Trustee shall:

15. Either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
16. Sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to other exceptions to conveyance and warranty; and
17. From the proceeds of the sale, pay, in this order:
 - a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;
 - b. the full amount of subsidy, principal, interest, attorney's fees, other costs collection or foreclosure, and other charges due and unpaid to Beneficiary;

- c. any amounts required by law to be paid before payment to Grantor; and
- d. any balance to Grantor.

F. TRANSFER, RESALE, & RECOUPMENT:

- 18. **TRANSFER OF THE PROPERTY:** Except where otherwise required or permitted by the Beneficiary in connection with a transfer on death, divorce, legal separation, or legal incapacity of a Grantor, the Property may not be transferred or sold during the affordability period, except where agreed to by Beneficiary in writing. This prohibition applies to any sale, transfer, or conveyance of all or part of the Property, or of any interest therein (including a beneficial interest).
- 19. **PROCEEDS OF SALE:** In the event of a proposed sale or transfer of all or any part of the Property or an interest in it (including a beneficial interest) by the Grantor, the Property will be sold subject to this Deed of Trust unless the proceeds of the sale are used to repay all amounts due on the Note to the extent proceeds are available. The Beneficiary may agree to a sale of all or a part of the Property, subject to this Deed of Trust, if the purchaser executes a new promissory note payable to the Beneficiary.

G. MISCELLANEOUS:

- 20. **RECITALS:** Recitals in any Trustees deed conveying the property will be presumed to be true.
- 21. **FORECLOSURE PROCEEDING:** Proceeding under this Deed of Trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
- 22. **SUPERIORITY:** This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
- 23. **APPLICATION:** If any portion of the note cannot be lawfully secured by this Deed of Trust, payments shall be applied first to discharge that portion.
- 24. **ASSIGNMENT:** Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorneys' fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
- 25. **GOVERNING LAW:** This Deed of Trust and the Note implement requirements applicable to the City of Bryan Community Development Housing Rehabilitation/ Reconstruction Assistance Program (the Program) using CDBG Program funding furnished by the United States Department of Housing and Urban Development (HUD) and shall be construed in accordance therewith. To the extent not inconsistent therewith, the laws of the State of Texas and the local jurisdiction in which the Property is located shall govern these documents.
- 26. **SUBORDINATION:** NONE, except at Beneficiary's sole option.
- 27. **CONTEXT:** When the context requires, singular nouns and pronouns include the plural.

