

**MODERATE INCOME PURCHASE ASSISTANCE PROGRAM
PURCHASE MONEY PROMISSORY NOTE**

\$ _____

Effective: _____, 20____

FOR VALUE RECEIVED, the undersigned [**NAME(s) OF THE BORROWER(s)**], resident(s) of Arlington County whose address is _____, Arlington, Virginia 222____ (hereinafter **collectively**) called the "**Borrower**") promises to pay to the order of **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic (hereinafter called the "**County**"), having an address at 2100 Clarendon Blvd, Suite 300, Arlington, Virginia 22201, in lawful money of the United States of America, the principal sum of _____ **DOLLARS AND** ____/100 (\$_____) or so much thereof as may be advanced by the County pursuant to the Moderate Income Purchase Assistance Program CDBG Loan Agreement, dated of even date herewith and executed by and between the Borrower and the County (the "**MIPAP Loan Agreement**"), together with the amount equal to the County's "**Shared Appreciation**" in accordance with the terms and conditions described herein. Interest shall not accrue on the outstanding principal balance of this Moderate Income Purchase Assistance Program Promissory Note (this "**Promissory Note**"). This Promissory Note has been executed and delivered pursuant to and in accordance with the County's Moderate Income Purchase Assistance Program (the "**MIPAP Program**") and the MIPAP Loan Agreement, and is subject to the terms and conditions of the MIPAP Program and the MIPAP Loan Agreement, which are by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the MIPAP Loan Agreement.

This Promissory Note is secured by that certain Moderate Income Purchase Assistance Program Deed of Trust and Security Agreement (the "**Deed of Trust**") conveying the Borrower's interest in that certain ____-bedroom [**single-family home / condominium unit**] located at [**Insert Street Address**] – RPC Number ____-____-____ – in Arlington County, Virginia (the "**Property**") as security for this Promissory Note, dated as of the date hereof and executed by the Borrower for the benefit of the County as described therein. The County shall be entitled to the benefits of the security provided by the Deed of Trust, and shall have the right to enforce the covenants and agreements contained herein and in the Deed of Trust.

Recitals

WHEREAS, the County established the MIPAP Program in order to provide deferred payment, zero percent (0%) interest rate loans to certain eligible first-time homebuyers in Arlington County for down payment and closing costs assistance, and the County Manager or her designee has determined that the Borrower is eligible to receive certain MIPAP Program loan funds pursuant to the terms of the MIPAP Loan Agreement; and

WHEREAS, Pursuant to the MIPAP Program and the terms of the MIPAP Loan Agreement, the County is making available to the Borrower a MIPAP Program loan ("**MIPAP Loan**") in the original sum of _____ Dollars and ____/100 (\$_____) (the "**MIPAP Loan Proceeds**") to assist the Borrower with the acquisition of the Property; and

WHEREAS, consistent with the MIPAP Program, the Borrower agrees to occupy and use the Property continuously as **his/her** primary residence beginning the date herewith and continuing for a period of thirty (30) years thereafter, ending on _____, 20____ (the "**MIPAP Loan Maturity Date**"); and

WHEREAS, pursuant to the terms of the MIPAP Program, the Borrower shall have no obligation to repay the MIPAP Loan until the MIPAP Loan Maturity Date, provided, however, that if at any time prior to the MIPAP Loan Maturity Date, the Borrower causes a Repayment Event as described below, then the Borrower shall be obligated to repay (i) the MIPAP Loan Proceeds advanced by the County to the Borrower, (ii) the County's Shared Appreciation (as defined below), and (iii) all other indebtedness of the Borrower to the County arising out of the Borrower's covenants hereunder, or otherwise, whether now existing or hereafter incurred (collectively, the indebtedness incurred in clauses (i), (ii), and (iii) shall hereinafter be referred to as the "**Indebtedness**") pursuant to the terms set forth herein.

NOW, THEREFORE, the Borrower agrees as follows:

1. INCORPORATION OF RECITALS. The foregoing recitals above are an integral part of this Promissory Note and set forth the intention of the Borrower and the premises on which the Borrower has decided to

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execute this Promissory Note. Accordingly, the foregoing recitals are fully incorporated into this Agreement by this reference as if fully set forth herein.

2. SPECIFIC DEFINED TERMS. In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

“Fair Market Value Of The Property” means the fair market value of the Property determined as follows: (i) promptly following a Repayment Event, the County Manager (or her designee) and the Borrower shall attempt to agree on the fair market value of the Property; (ii) if the County Manager (or her designee) and the Borrower have not agreed on a fair market value of the Property within thirty (30) days of the Repayment Event, then Borrower and the County Manager (or her designee) shall select a mutually acceptable appraiser who shall determine the fair market value of the Property; (iii) if the Borrower and the County Manager (or her designee) are unable to agree upon an appraiser, the Borrower and the County Manager shall each select an appraiser.

If the difference between the two appraisals is less than or equal to ten percent (10%) of the lower of the two appraisals, then the Fair Market Value Of the Property shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two appraisers shall jointly select a third appraiser. If the two appraisers are unable jointly to select a third appraiser, then either the Borrower or the County Manager may, upon written notice to the other, apply to the Circuit Court of Arlington County to appoint a third appraiser.

If the third appraisal is less than either of the first two, then the Fair Market Value Of the Property shall be the average of the two lowest appraisals. If the third appraisal is greater than the first two, then the Fair Market Value Of the Property shall be the average of the two highest appraisals. If the third appraisal falls between the previous two appraisals, the Fair Market Value Of the Property shall be the value established by the third appraisal.

The Borrower and the County, subject to appropriation, shall share the cost equally of any appraiser jointly selected or shall pay the costs of the appraiser they each select and shall share the cost equally of any third appraiser. Any appraiser selected pursuant to the terms of this Agreement must be a licensed appraiser who has at least five years experience in Arlington County, Virginia, is a member of the Master Appraiser Institute (MAI), and who has substantial experience appraising affordable housing tax credit projects.

“Repayment Event” means and shall be deemed to have occurred if the Borrower (i) does not continuously occupy and use the Property as her primary residence in accordance with the MIPAP Program (to include the failure to so occupy and use the Property as a result of Borrower’s death), (ii) Transfers the Property or any part thereof, except as expressly permitted hereunder, (iii) fails to pay any of the Indebtedness, and such failure continues for ten (10) days after written notice from the County to the Borrower, (iv) fails to comply with any other obligation of the Borrower hereunder, and such failure continues for thirty (30) days after written notice from the County to the Borrower, or (v) defaults in the payment of any obligation to any parties who hold a security interest in the Property, whether superior or subordinate to the lien of the Deed of Trust, beyond the applicable cure period, if any.

“Shared Appreciation” means the quotient obtained by (i) dividing (a) the MIPAP Loan Proceeds advanced by the County to the Borrower by (b) the original purchase price of the Property paid by the Borrower; multiplied by (ii) the Fair Market Value Of The Property.

“Transfers” means (i) any total or partial sale, lease, assignment, or other conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Promissory Note or of any part of or interest in the Property, or any agreement to do any of the foregoing; and (ii) any total or partial sale, assignment, or other conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in the Borrower or any agreement to do any of the foregoing.

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3. PAYMENTS.

(a) **Payment Due on the MIPAP Loan Maturity Date.** The entire unpaid principal sum of the MIPAP Loan Proceeds, together with any other sums accrued hereunder shall be fully and finally due and payable in full on the date MIPAP Loan Maturity Date.

(b) **Payment Due Upon the Occurrence of a Repayment Event.**

(i) If a Repayment Event shall have occurred prior to the MIPAP Loan Maturity Date, the County shall have a right to require the Borrower to pay to County the Indebtedness and require Borrower to pay such outstanding Indebtedness on the terms set forth herein.

(ii) If the County elects to exercise its right to require repayment of the Indebtedness, the County shall give notice thereof to the Borrower. The notice shall specify: (A) the Repayment Event, (B) the action, if any is available, required to cure a default if a default precipitated the Repayment Event, and (C) that failure to take required action on or before the date specified in the notice may result in Borrower's obligation to make payment of the Indebtedness and sale of the Property in accordance with the terms of the Deed of Trust. If the cause of the Repayment Event is not cured on or before the date specified in this notice, the County at its option may require immediate payment in full of all outstanding Indebtedness hereunder without further demand and if necessary to secure repayment may invoke the power of sale of the Property pursuant to the terms of the Deed of Trust.

(c) Any amounts due hereunder from the Borrower which are not paid timely to the County shall accrue interest thereon from the date due until paid, at the prime rate of interest as published in the Wall Street Journal from time to time, plus four hundred basis points (the "**Default Rate**"), compounded monthly, all of which accrued interest shall be deemed additional Indebtedness hereunder.

(d) Without limiting the generality of the foregoing, this Promissory Note shall not be assumable without the County's prior written consent, which consent may be granted or denied in County's sole discretion.

(e) **Manner of Payment.** All payments of principal and interest on this Promissory Note shall be made to the County at 2100 Clarendon Boulevard, Suite 700, Arlington, Virginia 22201, Attn: Marie Randall, or such other place as the County shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by the County in writing.

4. DEFAULTS AND REMEDIES.

(a) The occurrence of any one or more of the following events shall constitute an event of default hereunder (a "**Default**"):

(i) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(ii) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of such entity's assets, (iii) orders the liquidation of Borrower, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property, and in each case the order or decree is not released, vacated, stayed, dismissed or fully bonded within sixty (60) days after its issuance.

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(iii) The occurrence of a Transfer in violation of this Promissory Note.

(iv) A default arises under any debt instrument secured by a mortgage or deed of trust on the Property, and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

(v) Subject to Borrower's right to contest the following charges, if Borrower fails to pay taxes or assessments due on the Property or fails to pay any other charge that may result in a lien on the Property, and Borrower fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien.

(vi) If any representation or warranty contained in the MIPAP Loan Agreement, or any certificate furnished in connection therewith, the Deed of Trust, or in connection with any request for disbursement of the proceeds of the MIPAP Loan Proceeds proves to have been false or misleading in any material adverse respect when made and continues to be materially adverse to the County.

(vii) An Event of Default shall have been declared under the MIPAP Loan Agreement, the Deed of Trust or any other documents related to the Indebtedness and remains uncured beyond the expiration of the applicable cure period.

(b) **Remedies.** Upon the occurrence of an Event of Default hereunder, the County may, at its option (i) by written notice to Borrower, declare the Indebtedness immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to the County under this Promissory Note, the MIPAP Loan Agreement and the Deed of Trust, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of the County including, without limitation, reasonable attorneys' fees, incurred in connection with the County's enforcement of this Promissory Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the Indebtedness secured by the Deed of Trust. The rights and remedies of the County under this Promissory Note shall be cumulative and not alternative.

5. NOTICE, CURE PERIOD. Unless a shorter cure period is specified for a default in the performance of any term, provision, covenant or agreement contained in this Promissory Note, including the obligations enumerated in this Section 4, no default shall mature into an "Event of Default" and the County shall not exercise any right or remedy on account thereof unless the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which the County shall have given written notice of the default to the Borrower; provided, however, if the nonmonetary default is of a nature that cannot be cured within thirty (30) days, an Event of Default shall not arise hereunder if Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and complete the cure within ninety (90) days after receipt of notice of the default.

6. MISCELLANEOUS PROVISIONS

(a) **Waivers; Amendments; Borrower's Waivers.** No waiver by the County of any right or remedy under this Promissory Note shall be effective unless in writing signed by the County Manager. Neither the failure nor any delay in exercising any right, power or privilege under this Promissory Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by the County will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by the County will be applicable except in the specific instance for which it is given. No notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of the County to take further action without notice or demand as provided in this Promissory Note. There shall be no amendment to or modification of this Promissory Note except by written instrument executed by Borrower and the County.

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To the maximum extent permitted by applicable law Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Promissory Note, in whole or in part, whether before or after maturity and with or without notice.

(b) **Notices.** Any notice required or permitted to be given hereunder shall be given in accordance with Section V.A. of the MIPAP Loan Agreement.

(c) **Severability.** If any provision in this Promissory Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Promissory Note will remain in full force and effect. Any provision of this Promissory Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(d) **Governing Law; Venue.** This Promissory Note shall be governed by the laws of the Commonwealth of Virginia without regard to principles of conflicts of laws. Any legal action filed in connection with this Promissory Note shall be filed in the Arlington County Circuit Court or in the Federal District Court for the Eastern District of Virginia (Alexandria Division).

(e) **Parties in Interest.** This Promissory Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of the County and its successors and assigns.

(f) **Section Headings, Construction.** The headings of Sections in this Promissory Note are provided for convenience only and will not affect its construction or interpretation.

(g) **Relationship of the Parties.** The relationship of Borrower and the County under this Promissory Note is solely that of borrower and lender, and the loan evidenced by this Promissory Note and secured by the Deed of Trust will in no manner make the County the partner or joint venture of Borrower.

(h) **Time is of the Essence.** Time is of the essence with respect to every provision of this Promissory Note.

Signatures on Following Page

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IN WITNESS WHEREOF, Borrower has executed and delivered this Promissory Note as of the date first written above.

BORROWER

[NAME(s) OF THE BORROWER(s)]

By: _____

COMMONWEALTH OF VIRGINIA

COUNTY OF ARLINGTON

On this the ____ day of _____, 20____, before me, personally appeared [NAME(s) OF THE BORROWER(s)], the Borrower(s) in the above instrument, and that s/he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

