Book 2006 Page 1362
Document 2006 1362 Type 04 ~~001~~ 006 Pages 5
Date 4/12/2006 Time 11:13 AM
Rec Amt $27.00

DEBORAH L. PEYTON, RECORDER/REGISTRA
DELAWARE COUNTY IOWA

Prepared by: Matthew J. Specht: 3999 Pennsylvania Ave. Suite 200; Dubuque, IA 52002: 563-556-4166

2005-4026

RECORDATION REQUESTED BY:
City of Manchester: 208 East Main Street; Manchester, IA 52057

WHEN RECORDED MAIL TO:
City of Manchester: 208 East Main Street; Manchester, IA 52057

For Recorder's Use only

FORGIVABLE MORTGAGE

Notice: This Mortgage secures a loan ("Loan") in the amount of $ 31,126.00 This Loan is senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens, unless the Lender enters into a written subordination agreement.

Grant of Mortgage. For valuable consideration, Neola Zehr ("Grantor") hereby grants, mortgages and conveys to City of Manchester ("Lender") a security interest in all of Grantor's right, title, and interest in and to the following described real property ("Mortgaged Property") located in the County of Delaware:

The North one half of the West one-half of lot Twenty one, A.R. Loomis Addition, City of Manchester, Delaware County, Iowa.

The Mortgaged Property or its address is commonly known as 420 South Tama Street.

The security interest in the Mortgaged Property includes all existing or subsequently erected or affixed buildings, improvements, and fixtures.

This Mortgage is given to secure the Grantor's performance of any and all obligations under the Forgivable Loan Promissory Note ("Note") executed by the Grantor on this date and payable to the Lender.

Performance. Except as otherwise provided in this Mortgage or the Note, the Grantor shall strictly perform all of Grantor's obligations under this Mortgage and the Note.

Terms and Conditions

1. Affordability Period. The Grantor shall comply with the terms of this Forgivable Loan Promissory Note for a term of 10 years ("Affordability Period") beginning on the date of this Forgivable Loan Promissory Note. The Loan shall be forgiven $1/10^{th}$ on each anniversary of the date the Grantor executed this Forgivable Mortgage for each year during the Affordability Period.

2. Principal Residence Requirement: Notice of Sale and Recapture.

The Grantor shall own and occupy the Mortgaged Property as the Grantor's principal residence. The Grantor shall notify the Lender if the Grantor no longer occupies the Mortgaged Property as the Grantor's principal residence or if the Grantor sells or transfers for any reason, the Mortgaged Property during the Affordability Period. If the Grantor sells or transfers the Mortgaged Property during the Affordability Period, the Grantor shall pay the Lender the un-forgiven balance of the Loan, unless the Net Proceeds (defined as the sale price minus the payoff on the first mortgage lien on the property and any usual and customary sellers' closing costs) of the sale are not sufficient to cover the un-forgiven balance of the Loan. If the Net Proceeds are not sufficient to cover the un-forgiven balance of the Loan, the amount of the Loan subject to recapture shall be determined in accordance with the provisions of paragraph 3, below.

3. Insufficient Proceeds. If the Net Proceeds are insufficient to repay the un-forgiven balance of the Loan, any Net Proceeds that are available shall be distributed to the Grantor and the Lender based on a ratio of the Original Loan Amount ("OLA") to the sum of the OLA and the Grantor's Investment ("GI" – defined as any out-of-pocket down payment paid by the Grantor plus any verified capital improvements made by the Grantor), as follows:

$$\frac{OLA}{OLA + GI} \times \text{Net Proceeds} = \text{Recapture Amount payable to Lender}$$

$$\frac{GI}{OLA + GI} \times \text{Net Proceeds} = \text{Proceeds payable to Grantor}$$

If there are no Net Proceeds to distribute, the recapture amount payable to the Lender shall be zero.

4. Refinance. If the Grantor refinances the first lien on the Mortgaged Property with a lender approved by the Iowa Department of Economic Development for participation in the Department's homeownership assistance program during the Affordability Period, the Lender may, in its sole discretion, agree to sign a subordination agreement subordinating the mortgage securing this debt to the new mortgage held by the IDED-approved lender. If the

Grantor refinances both the first mortgage and this mortgage during the Affordability Period, then the Grantor shall pay the Lender the entire un-forgiven balance of the Loan.

5. Duty to Maintain. Grantor shall maintain the Mortgaged Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value and shall not cause or suffer waste on or to the Mortgaged Property.

6. Taxes and Liens. Grantor shall pay all taxes and special assessments before the taxes or special assessments become delinquent. Grantor shall maintain the Mortgaged Property free of any liens having priority over the interest of the Lender, except as specifically agreed to in writing by the Lender.

7. Insurance. Grantor shall keep in force homeowners insurance with a standard mortgagee clause in favor of the Lender covering all improvements on the Mortgaged Property against loss by fire, tornado and other hazards in an amount not less than the total combined mortgages and liens on the Mortgaged Property. Grantor shall provide proof of insurance and appropriate riders to the Lender and shall pay all premiums on the insurance when due.

8. Lender's Expenses. If the Grantor fails to (a) pay all taxes, (b) maintain required insurance coverage on the Mortgaged Property, or (c) maintain the Mortgaged Property in good condition, the Lender may do so, at the Lender's sole discretion. The Grantor shall be obligated to repay all expenses incurred or paid by Lender for such purposes and any amounts owed to the Lender for such purposes will accrue interest at 5.375%. The rights provided in this paragraph shall be in addition to any other rights or any remedies to which the Lender may be entitled as a result of any default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

9. Acceleration of Maturity and Receivership. If the Grantor defaults on this Forgivable Mortgage and the Note, the Lender may declare the Grantor in default and the entire un-forgiven amount of the Loan plus any payments made by the Lender for taxes, assessments, insurance premiums, or repairs shall become due and owing and the entire amount shall be collectable by foreclosure or otherwise. At any time after the commencement of any action in foreclosure, or during the period of redemption, and upon the request of the Lender, the court shall appoint a receiver to take immediate possession of the Mortgaged Property.

10. Default Events. At Lender's option, Grantor will be in default under this Mortgage if any of the following happens:

a. The Grantor fails to occupy the Mortgaged Property as Grantor's principal residence for a period of two consecutive months.

b. The Grantor sells, transfers, or conveys the Mortgaged Property.

c. The Grantor fails to pay all taxes, to pay the insurance, or to maintain the property in good condition.

11. Attorneys Fees. If Lender institutes any suit to enforce this Forgivable Mortgage and the Note and to foreclose on the Forgivable Mortgage, the Grantors shall pay all costs of the action, including reasonable attorneys fees, court costs, and abstracting fees.

12. Governing Law. This Forgivable Mortgage and the Note shall be construed in accordance with the laws of the State of Iowa and the federal laws and regulations governing the HOME Investment Partnership Program.

13. Warranty of Title. The Grantor warrants that Grantor holds good and marketable title of record to the Mortgaged Property in fee simple, clear of all liens and encumbrances other than the first mortgage lien held by a lender approved by the Iowa Department of Economic Development for participation in the Department's homeownership assistance program and agreed to by the Lender.

14. Eminent Domain. If the Mortgaged Property is subject to eminent domain proceedings, the transfer shall constitute a sale of the Mortgaged Property and the proceeds shall be subject to the recapture provisions described above.

15. Nonjudicial Foreclosure. Lender may exercise the right to non-judicial foreclosure pursuant to Iowa Code section 654.18 and Chapter 655A as currently enacted or hereafter modified, amended or replaced.

16. Shortened Redemption. Grantor hereby agrees that, in the event of foreclosure of this Forgivable Mortgage, Lender may, at Lender's sole option, elect to reduce the period of redemption pursuant to Iowa Code sections 628.26, 628.27, or 628.28, or any other Iowa Code section, to such time as may then be applicable and provided by law.

17. Notices. Any notice provided for under this Forgivable Mortgage shall be given in writing by registered or certified mail, by receipted hand delivery, or by courier and addressed to the Grantor at the Mortgaged Property's address. Notice shall be effective at the earliest of (a) the time it is actually received, (b) within one day if it is delivered using an overnight courier service, or (c) within five days after it is deposited in the U.S. mail if it is delivered using registered or certified mail.

18. Successors and Assigns. Subject to any limitations stated in this Forgivable Mortgage, this Forgivable Mortgage shall be binding on and inure to the benefit of the parties' successors and assigns.

19. Time is of the Essence. Time is of the essence in the performance of this Forgivable Mortgage and the Note.

20. Release of Rights of Dower, Homestead and Distributive Share. Each of the undersigned Grantors hereby relinquishes all rights of dower, homestead and distributive share in and to the Mortgaged Property and waives all rights of exemption as to any of the Mortgaged Property. If a Grantor is not an owner of the Property, that Grantor executes this Mortgage for the sole purpose of relinquishing and waiving such rights.

21. Impact on Real Property. All of the terms and conditions herein shall run with and encumber the Mortgaged Property and the improvements thereon, and be binding upon the Grantor and the Grantor's successors and/or assigns during the Affordability Period.

EACH GRANTOR ACKNOWLEDGES HAVING READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS FORGIVABLE MORTAGE, AND EACH AGREES ITS TERMS.

GRANTOR ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS FORGIVABLE MORTGAGE AND ALL OTHER DOCUMENTS RELATING TO THIS DEBT.

GRANTOR:

Neola Zehr
Neola Zehr, Individually

_____
Individually

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF IOWA)
) **SS**
COUNTY OF Delaware)

On this October 25 day of 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Neola Zehr, to me known to be the persons named in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her voluntary act and deed.

Matthew J Specht
Notary Public in and for the State of Iowa

Commission Expires: 7-29-06

