Recorded: 3/11/2014 at 12:11:19.0 PM
Fee Amount: $22.00
Revenue Tax:
Delaware County, Iowa
DEBORAH PEYTON, RECORDER
BK: 2014 PG: 562

lhg

SPACE ABOVE THIS LINE FOR RECORDER
PREPARED BY: Tim Crabb, 7600 Commerce Park, Dubuque, IA 52002 563-556-4166
AFTER RECORDING RETURN TO: Tim Crabb, ECIA, 7600 Commerce Park, Dubuque, IA 52002
FULL LEGAL DESCRIPTION LOCATED ON PAGE: Page 1 of this Document

2011-1982

10-HM-117 MANCHESTER HOMEBUYER ASSISTANCE ACTIVITY

FORGIVABLE MORTGAGE

THIS IS A PURCHASE MONEY MORTGAGE AS DEFINED BY IOWA CODE SECTION 654.12B.

THIS FORGIVABLE MORTGAGE ("Mortgage") between City of Manchester ("Lender"), and Scott A. Wulfekuhle, by himself, single, hereinafter called, (or if more than one party jointly and severally called) ("Borrower"), secures the payment of the loan made by Lender to Borrower evidenced by a Forgivable Loan Promissory Note on this date, in the principal amount of $11,479.00 ("Note"). This Mortgage secures to Lender: (a) the repayment of the debt as evidenced by the Note, and all renewals, extensions, modifications or refinancing thereof and any promissory note issued in substitution therefore; (b) all other obligations of Borrower to Lender, now existing or hereafter arising, whether direct or indirect, contingent or absolute and whether as maker or surety, including, but not limited to, future advances and amounts advanced and expenses incurred by Borrower pursuant to this Mortgage; and (c) the performance of Borrower's covenants and agreements under this Mortgage and the Note, as applicable. For this purpose, Borrower does hereby mortgage, grant a security interest in and convey to Lender the following described property including any after acquired title or reversion thereto (the "Land") located in Delaware County, Iowa:

Lot Two Hundred Eighty Six (286), Manchester, Iowa, according to plat recorded in Book I L.D., Page 284

Locally known as 106 West Howard Street, Manchester, Iowa

TOGETHER WITH:

(A) **Buildings.** All buildings, structures and improvements now standing or hereafter constructed or placed on the Land (the "Buildings"), and all easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the land.

(B) **Personal Property**. All fixtures and other personal property integrally belonging to, or hereafter becoming an integral part of the Land or Buildings, whether attached or detached, including but not limited to, light fixtures, shades, rods, blinds, venetian blinds, awnings, storm windows, screens, linoleum, water softeners, automatic heating and air conditioning equipment and all proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for the foregoing (the "Personal Property").

(C) **Revenues and Income**. All rents, issues, profits, leases, condemnation awards and insurance proceeds now or hereafter arising from the ownership, occupancy or use of the Land, Buildings and Personal Property, or any part thereof (the "Revenues and Income").

TO HAVE AND TO HOLD the Land, Buildings, Personal Property and Revenues and Income (collectively called the "Mortgaged Property"), together with all privileges, hereditaments thereunto now or hereafter belonging, or in any way appertaining, and the products and proceeds thereof, unto Lender, its successors and assigns.

AND, the Borrower further covenants and agrees with the Lender, as follows:

1. Affordability Period. **The Borrower shall comply with the terms of the Note and this Mortgage for a term of 5 years, commencing 30 days from the date of execution of this Mortgage ("Affordability Period").** The loan shall be forgiven during this Affordability Period in the amount of 1/5 of the total indebtedness provided for each full year in which the undersigned maintains ownership of the Mortgaged Property.

2. Principal Residence Requirement; Notice of Sale and Recapture. The Borrower shall own and occupy the Mortgaged Property as the Borrower's principal residence. The Borrower shall immediately notify the Lender if

the Borrower no longer occupies the Mortgaged Property as the Borrower's principal residence or if the Borrower sells or transfers for any reason, the Mortgaged Property during the Affordability Period. If the Borrower sells or transfers the Mortgaged Property with Lender's consent during the Affordability Period, the Borrower hereby agrees to 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 Land 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 Net Proceeds are insufficient to repay the un-forgiven balance of the loan, any Net Proceeds available shall be distributed to the Borrower and the Lender based on a ratio of the Original Loan Amount ("OLA") to the sum of the OLA and the Borrower's Investment ("BI" – defined as any out-of-pocket down payment paid by the Borrower plus any verified capital improvements made by the Borrower), as follows:

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

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

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

4. Warranty of Title. The Borrower warrants that Borrower 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 Finance Authority ("IFA") for participation in IFA's homebuyer program and agreed to by the Lender.

5. Refinance. The Borrower may refinance the first lien on the Mortgaged Property during the Affordability Period subject to IFA's notification and verification of compliance with IFA's loan subordination and responsible lending policies. If the Borrower refinances both the first mortgage and this Mortgage during the Affordability Period, the Borrower shall pay the Lender the entire un-forgiven balance of the loan.

6. Duty to Maintain. Borrower 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.

7. Taxes and Liens. Borrower shall pay all taxes and special assessments before the taxes or special assessments become delinquent. Borrower 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.

8. Insurance. Borrower shall keep in force homeowners insurance with a standard mortgagee clause in favor of the Lender covering 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. Borrower shall provide proof of insurance and appropriate riders to the Lender and shall pay all premiums on the insurance when due.

9. Lender's Expenses. If the Borrower 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 Borrower 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 zero (0) percent. 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.

10. Lender Inspections. Lender, and its agents, shall have the right at all reasonable times, to enter upon the Mortgaged Property for the purpose of inspecting the Mortgaged Property or any part thereof. Lender shall, however, have no duty to make such inspection. Any inspection of the Mortgaged Property by Lender shall be entirely for its benefit and Borrower shall in no way rely or claim reliance thereon.

11. Default Events. At Lender's option, Borrower will be in default under this Mortgage if (a) Borrower fails to perform any covenant, agreement, term or condition of this Mortgage, or of the Note (except as otherwise provided in this paragraph 11) or of any other agreement heretofore, herewith or hereafter made by the Borrower with the Lender in connection with this indebtedness, after the Borrower has been given due notice by the Lender of such nonperformance; (b) the Borrower fails to perform any covenant, agreement, term or condition in any instrument creating a lien upon the Mortgaged Property, or any part thereof, which shall have priority over the lien of this Mortgage; (c) the Lender's discovery of the Borrower's failure in any application of the Borrower to the Lender to disclose any fact deemed by the Lender to be material, or of the making therein or in any of the agreements entered into by the Borrower with the Lender (including but not limited to, the Note and this Mortgage) of any misrepresentation by, on behalf of, or for the benefit of the Borrower; (d) the Borrower fails to occupy the Mortgaged Property as Borrower's principal residence, or any part thereof, for a period of two consecutive months without the Lender's prior written consent; or (e) the Borrower sells, leases, rents, or

abandons, or transfers, whether voluntary or involuntary, the Mortgaged Property, or any part thereof, without the Lender's prior written consent.

The Lender's failure to exercise any of its rights hereunder shall not constitute a waiver thereof.

12. Acceleration of Maturity and Receivership. If the Borrower defaults on this Mortgage and/or the Note, the Lender may declare the Borrower in default and the entire principal amount of the Note 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.

13. Six Months and 60 Day Period for Redemption. It is agreed that if this mortgage covers less than ten acres of land, and in the event of the foreclosure of this Mortgage and sale of the Mortgaged Property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six months provided the Lender, in such action files an election to waive any deficiency judgment against the Borrower which may arise out of the foreclosure proceedings; this redemption period shall be reduced to 60 days if all of the three following contingencies develop: (a) The Mortgaged Property herein is less than ten acres in size; (b) the Court finds affirmatively that said Mortgaged property has been abandoned by the owners and those persons personally liable under this Mortgage at the tie of such foreclosure; and (c) the lender in such action files an election to waive any deficiency judgment against the Borrower or their successor in interest in such action. If the redemption period is so reduced, the Borrower or successor in interest or the owner shall have the exclusive right to redeem for the first 30 days after such sale, and the time provided for redemption by creditors as provided in Section 628.5, 628.15 and 628.16 of the Code shall be reduced to 40 days. Entry of appearance by pleading or docket entry by or on behalf of the Borrower shall be presumption that the Mortgaged Property is not abandoned. Any such short redemptive period shall be consistent with all of the provisions of Chapter 408, 62nd G.A., amending Chapter 628, Code of Iowa.

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

15. Governing Law. This 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 Partnerships Program.

16. 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.

17. Non-judicial 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.

18. 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 Borrower 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.

19. Co-signers; Successors and Assigns Bound. Any Borrower who co-signs this Mortgage but does not execute the Note (a co-signer): (a) is co-signing this Mortgage only to mortgage, grant and convey the co-signer's interest in the Mortgaged Property under the terms of this Mortgage; (b) is not personally obligated to pay the sums secured by this Mortgage; and (c) agrees that Lender and any other Borrower can agree to extend modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Note without the co-signer's consent.

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

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

21. Release of Rights of Dower, Homestead and Distributive Share. Each of the undersigned Borrowers 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.

22. 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 Borrower and the Borrower's successors and/or assigns during the Affordability Period.

23. Additional Provisions: None

BORROWER ACKNOWLEDGES HAVING READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS MORTGAGE, AND AGREES WITH ITS TERMS.

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

BORROWER:

Scott A. Wulfekuhle, Individually

INDIVIDUAL ACKNOWLEDGEMENT

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

On this 10 day March of 2014, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Scott A. Wulfekuhle, 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.

Seal

LORETTA J. WELCHER
Commission Number 726245
My Comm. Exp. 1-5-16

Notary Public in and for the State of Iowa

Commission Expires: 1-5-16