



MUSCATINE MUNICIPAL HOUSING AGENCY

City Hall, 215 Sycamore Street
Muscatine, IA 52761-3840
(563) 264-1554
(563) 264-1550 Voice/TT
Fax (563) 263-3064

MEMORANDUM

TO: Gregg Mandsager, City Administrator
FROM: Dick Yerington, Housing Administrator
DATE: August 2, 2012
RE: **Release Mortgage**

INTRODUCTION: MMHA participated in a HUD Homeownership program from 1995 to 2011. This activity consisted of developing 15 scattered site, single-family dwellings and making them available to eligible first-time homebuyers.

BACKGROUND: Gilbert M. & Kimberly S. Cavazos participated in this program in 1996 by purchasing one of the scattered site houses at 2313 Isett Avenue, Muscatine, Iowa.

As was common with this program, the Cavazos entered into a mortgage with a promissory note in the amount of \$23,000 with the City of Muscatine. This mortgage was in the form of a forgivable loan with a 7-year repayment provision.

All provisions of this mortgage and promissory note were satisfied on November 27, 2003.

RECOMMENDATION/RATIONALE: It is recommended the city council approve the attached resolution and release the mortgage at this time.

RESOLUTION NO. _____

RESOLUTION RELEASING REAL ESTATE MORTGAGE UNDER THE SECTION 5(h)
HOMEOWNERSHIP PROGRAM FOR PUBLIC AND INDIAN HOUSING

WHEREAS, a zero-percent-interest forgivable loan was granted by the city under the 5 (h) Homeownership Program of the City of Muscatine, Iowa; and a real estate mortgage was executed by Gilbert M. & Kimberly S. Cavazos owner of said property commonly known as 2313 Isett Avenue; Muscatine, IA; and legally described as:

Lot 1 Isett Avenue Subdivision, a Subdivision of Lots 8,9,10,11,12,13,14 and 15 of Block 56, of Park Place
Addition to the City of Muscatine

granting a lien against the real estate to the City of Muscatine, Iowa; and,

WHEREAS, said loan has been forgiven and the real estate mortgage should be released.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, that the real estate mortgage referred to in the Release of Real Mortgage which is attached to this Resolution is hereby released; and the Mayor and City Clerk are hereby authorized to execute said Release of Real Estate Mortgage in order that the same can be recorded in the office of the Recorder of Muscatine County, Iowa.

PASSED, APPROVED, AND ADOPTED this 2nd day of August 2012.

BY THE CITY COUNCIL OF
THE CITY OF MUSCATINE, IOWA

DeWayne M. Hopkins, Mayor

ATTEST:

Gregg Mandsager, City Clerk

RELEASE OF REAL ESTATE MORTGAGE

(Prepared by & return to Richard Yerington, City Hall, 215 Sycamore, Muscatine, Iowa 52761 563-264-1554

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the present owner of the mortgage hereinafter described, does hereby acknowledge that a certain mortgage bearing the date of the 27th day of November 1996 made and executed by Gilbert M. & Kimberly S. Cavazos to the City of Muscatine, Iowa and recorded in the Muscatine County, Iowa, Recorder's Office in Book Number 431 page 394, on the 2nd day of December 1996, commonly described as 2313 Isett Avenue, Muscatine, Iowa, and legally described as

Lot 1 Isett Avenue Subdivision, a Subdivision of Lots 8,9,10,11,12,13,14 and 15 of Block 56, of Park Place Addition to the City of Muscatine

is redeemed, paid off, satisfied and discharged in full. Said mortgage was in the original amount of \$23,000.00.

Words and phrases herein, including acknowledgment hereof, shall be construed as in singular or plural number, and as masculine, feminine or neuter gender, according to the context.

Dated this 2nd day of August 2012
CITY OF MUSCATINE, IOWA

Attest:

By _____
DeWayne M. Hopkins, Mayor

Gregg Mandsager, City Clerk

STATE OF IOWA, Muscatine County, ss:

On this 2nd day of August 2012, before me _____, a Notary Public in and for the State of Iowa, personally appeared DeWayne M. Hopkins and Gregg Mandsager, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Muscatine, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ passed by the City Council, under Roll Call No. _____ of the City Council on the 2nd day of August 2012, and that DeWayne M. Hopkins and Gregg Mandsager acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

96 DEC -2 PM 2: 52

DOROTHY J. FITCHNER
RECORDER
MUSCATINE CO.

Wayne P. Taylor, City Hall - Housing Dept., 215 Sycamore St., Muscatine, IA (319)264-1554

fee \$16.00

MORTGAGE

This indenture made on November 27, 1996 between Gilbert M. & Kimberly S. Cavazos (Husband & Wife) of Muscatine County, Iowa as Mortgagor, in consideration of Twenty Three Thousand Dollars (\$23,000.00) in hand paid, does hereby grant, bargain, sell, and convey to the City of Muscatine, Iowa, as Mortgagee, the following described premises situated in the County of Muscatine, State of Iowa: Lot 1 of East Avenue Subdivision, a Subdivision of Lots 8, 9, 10, 11, 12, 13, 14 and 15 of Block 56, of Park Place Addition to the City of Muscatine, Iowa all in the County of Muscatine and State of Iowa, AKA 2213 East Ave., together with all and singular tenements, hereditaments, privileges, buildings, fixtures, and appurtenances thereunto belonging, and the rents, issues, and profits thereof, including all crops of every kind and nature which may be grown or raised on the above described premises by Mortgagor herein, or by lessees or tenants, or by grantee or other persons subsequently in possession of the premises, during the life of this mortgage, and also all the rights, title, interest, and estate of Mortgagor, including those of dower, the surviving spouse's distributive share, homestead, and the right to possession of the premises during the period of redemption, all of which are hereby expressly waived, relinquished, and released; and Mortgagor hereby covenants with the Mortgagee that he is lawfully seized of the premises, and that the same are free from encumbrances and liens, except the attached promissory note, and hereby covenants to warrant and defend the premises against all lawful claims of all persons whomsoever.

Conditioned however, that if Mortgagor pays or causes to be paid to Mortgagee, its successors or assigns, a certain promissory note in the principal sum of Twenty Three Thousand Dollars (\$23,000.00), dated November 27, 1996 and maturing as therein provided, together with all other indebtedness that may be now or hereafter owing by Mortgagor to Mortgagee, its successors or assigns, whether on open account, promissory note, overdraft, or otherwise, together with interest as may be provided in the note or by law, and attorneys' fees, and any new notes which may be taken in renewal of the note above described and referred to, and subsequent renewals thereof, the full and prompt payment of all of which at maturity and at all times thereafter is hereby guaranteed by Mortgagor, then the above sale and conveyance shall be void, but otherwise it shall remain in full force and effect.

Mortgagor hereby expressly covenants and agrees:

1. *To occupy the premises as the mortgagors principal residence.*
2. *Not to permit or commit waste on the premises.*
3. *Not to allow the property to become substandard due to utility shutoffs or City Code violations related to health, housing, building and zoning. To allow a representative of the City to make an annual inspection inside and outside the property.*
4. *To pay all legal taxes and assessments levied on the premises, on this mortgage, on the lien hereby created, or on the note or debt hereby secured, before any penalty for nonpayment attaches hereto.*
5. *To procure and deliver to Mortgagee a paid up policy or policies of insurance, and renewals thereof, on the buildings and improvements on the premises during the existence of this mortgage, in such company or companies as Mortgagee may select or approve, in an amount not less than the value thereof, and having attached thereto such mortgage indemnity clauses as Mortgagee may name, for the further security of the holder of this mortgage.*
6. *In any event of the foreclosure of this mortgage, to pay reasonable attorneys' fees, the cost of extending the abstract of title, and all other costs necessary and incidental to such foreclosure, and the same shall be included in the judgment of such foreclosure case.*
7. *In case of failure to pay taxes and assessments, or to keep the improvements at all times insured, as herein provided, or if at any time becomes necessary for the protection of the lien created by this mortgage, Mortgagee may for the benefit of the holder of the note, pay off any lien or liens on the premises, whether prior or subsequent, that may in any way affect the title of same, and pay such delinquent taxes and procure such insurance, and the sum so paid, with interest at the rate of six percent (6%) per annum shall immediately become payable, and shall be secured by this mortgage and be paid by Mortgagor; and in case of loss and payment by any insurance company, the amount of insurance money paid shall be applied on the note and indebtedness or in the rebuilding or replacement of the damaged property, as Mortgagee may elect; the Mortgagee is hereby empowered and authorized to receive and receipt for such insurance money for any such company.*

Mortgagor, having herein pledged all the rents, issues, and profits derived from the premises and having specifically stipulated that the holder of this mortgage shall have a lien on the same, for the payment of the principal indebtedness, interest, attorneys' fees, and costs, hereby authorizes, agrees, and consents that in case of any default in the provisions hereof and the filing of the bill or petition for the foreclosure of this mortgage, the court in which the suit shall be instituted, or any judge thereof, shall at the commencement of the action or at any stage during the pendency or progress of the case, on application of the plaintiff, appoint a receiver to take possession of the property and its issues, who shall have the power to rent the same and collect the rents and profits and apply the same to the payment of the

MORTGAGE (CONTINUED)

debt in default, interest, attorneys' fees, and costs, or at the option of the plaintiff, to the payment of any accruing interest on prior liens or taxes, during the statutory period of redemption and under the order of the court; and this stipulation for the appointment of a receiver shall apply and be enforced whether the property or any part thereof is used as a homestead or not, without regard to the solvency or insolvency of Mortgagor, and without proof of any other ground that default for the appointment of a receiver.

This stipulation is hereby made binding on Mortgagor, his heirs, administrators, executors, grantees, lessees, tenants, and assigns, and in the case of the renting or leasing of the premises while this mortgage remains unsatisfied, all rental payments after default shall be paid by the tenant or lessee to the receiver above mentioned or the Mortgagee herein, or its successors or assigns, to apply on the debt, and no payment of rent coming due, accruing, or covering the period after such default shall have occurred, paid to anyone other than Mortgagee, or its successors or assigns, or the receiver above mentioned, shall constitute payment or discharge of the rental.

Mortgagor further agrees that if default is made in any interest payment or part thereof, in the payment of any principal note or part thereof strictly in accordance with its terms, in payment of any tax or assessment or any part thereof, in payment of the principal amount of any prior mortgage or lien or any part thereof, or interest thereon, in procuring or maintaining insurance, or in keeping and performing the covenants and agreement for any one of them, then, after any such default has continued 60 days, the holder of the principal note may treat the same, and money paid in advance, as due and collectible, and an action may be commenced for the foreclosure of this mortgage and the sale of the property to pay and satisfy the amount of note, interest on same, advances and costs, including cost of extending abstract, and attorneys' fees.

If Mortgagor shall well and truly pay or cause to be paid the money in the note aforementioned with interest thereon according to the tenure and effect of same, and shall duly keep and perform all the other covenants and agreements herein contained on his part to be kept and performed, then these presents shall be as aforesaid null and void; and this mortgage shall be deemed satisfied, and Mortgagee shall release the same of record at the expense of Mortgagor.

Redemption. It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the 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 (6) months provided the Mortgagee, in such action files an election to waive any deficiency judgment against Mortgagors which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Mortgagor, and the time periods in Sections 628.5, and 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) The real estate is less than ten (10) acres in size; (2) the Court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagors or their successors in interest in such action. If the redemption period is so reduced, Mortgagors or their successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagors shall be a presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

In witness whereof, Mortgagor has hereunto set his hand on November 27, 1996
(date)

Gilbert M. Cavazos
Gilbert M. Cavazos

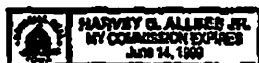
Kimberly S. Cavazos
Kimberly S. Cavazos

STATE OF IOWA

County of Muscatine

On this 27th day of November, 1996, before me, the undersigned, a Notary Public in and for the County of Muscatine, State of Iowa, Gilbert M. & Kimberly S. Cavazos personally appeared to me known to be the person(s) named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Harvey G. Allbee Jr.
Notary Public in and for Muscatine County, Iowa



My commission expires:

PUBLIC HOUSING HOMEOWNERSHIP PROGRAM

FAMILY: Gilbert M. & Kimberly S. CavazosADDRESS: 2313 Isett Ave.

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (hereafter, the **BORROWER**) jointly and severally promises to pay to the order of the City of Muscatine, Iowa, (hereafter, the **LENDER**), or any successors or assigns, the sum of Twenty-Three Thousand Dollars (\$23,000.00) at City Hall, Muscatine, Iowa with no interest thereon, subject to the following terms and conditions:

FORGIVABLE LOAN REPAYMENT PROVISIONS

This is a forgivable loan of the City of Muscatine, Iowa. Payment of this note is secured by a real estate mortgage on the property described on the attached mortgage. If title to said property is rented, sold, transferred, or assigned, voluntarily or involuntarily, to any person or persons other than the undersigned,

- o within one (1) year of date hereof, 100% of the loan, or
- o within two (2) years of date hereof, 85.71% of the loan, or
- o within three (3) years of date hereof, 71.42% of the loan, or
- o within four (4) years of date hereof, 57.13% of the loan, or
- o within five (5) years of date hereof, 42.84% of the loan, or
- o within six (6) years of date hereof, 28.55% of the loan, or
- o within seven (7) years of date hereof, 14.26% of the loan

shall, at the option of the City, become due and payable immediately. If title to the property has not been sold, transferred, or assigned within seven (7) years from the date hereof, this loan shall automatically be forgiven, no amount shall be due the City of Muscatine, and this promissory note shall automatically become null and void.

Makers, endorsers, and sureties waive demand of payment, notice of non-payment, protest and notice thereof. Sureties, endorsers, and guarantors agree to all the provisions of this note and consent that the time or times of payment of all or any part hereof may be extended after maturity, from time to time, without notice.

The BORROWER agrees to occupy and maintain property for seven years; keep all mortgage payments, assessments, property taxes, insurance and utility payments current in order to prevent the property from being foreclosed upon, uninsured or substandard due to utility shutoffs or City Code violations related to health, housing, building and zoning. A representative of the City shall be allowed to make an annual inspection inside and outside the property after standard notice has been given to the Borrower.

Any forbearance by the **LENDER** with respect to any of the terms and conditions of this Note in no way constitutes a waiver of any of the **LENDER'S** rights or privileges granted hereunder. Any written notice for payment of one party to the other shall be addressed to the parties as follows:

The **LENDER** - City of Muscatine (Housing Division), 215 Sycamore St., Muscatine, IA 52761

The **BORROWER** - Gilbert M. & Kimberly S. Cavazos (Husband & Wife)

The **BORROWER**, or his/her personal representative in the event of the death of the **BORROWER**, shall notify the **LENDER** of the name and address of any successor to or assignee of the **BORROWER**.

If suit is instituted by the City of Muscatine to recover on this Note, the **BORROWER** agrees to pay all costs of such collection, including reasonable attorney's fees and court costs.

Upon satisfactory completion of all terms and conditions of this Note by the **BORROWER** or upon payment of any and all balance due, the **BORROWER** shall be entitled to a release and satisfaction of this Note at the **LENDER'S** own cost.

IN WITNESS WHEREOF an agreement herewith, the **BORROWER** has executed the Promissory Note:

Gilbert M. Cavazos
BORROWER
Kimberly S. Cavazos
BORROWER

11-27-96
DATE
11-27-96
DATE HOMESON, INC.